

1998 on the grounds that appellant refused an offer of suitable work as a modified distribution clerk.² The facts as set forth in the Board's prior opinion are hereby incorporated into this decision.³ Subsequent to the Board's decision, OWCP issued schedule awards totaling six percent for impairment to appellant's right upper extremity and two percent for an impairment to appellant's left upper extremity.⁴

On May 20, 2011 appellant requested reconsideration of the prior schedule award determinations. In a medical report dated January 20, 2011, Dr. J. Arden Blough, a Board-certified family practitioner, opined that appellant sustained a 33 percent impairment to her right upper extremity and a 28 percent impairment to her left upper extremity.

By memorandum dated April 6, 2011, this case was forwarded to OWCP's medical adviser for review. In an April 16, 2011 report, he opined that appellant had a 13 percent impairment of her left upper extremity and a 13 percent impairment of her right upper extremity. The medical adviser noted that this would result in an additional award of 7 percent for the right upper extremity and 11 percent for the left. He listed the date of maximum medical improvement as January 20, 2011, the date of Dr. Blough's report.

By letter dated May 5, 2011, OWCP informed appellant that on March 12, 1998 her compensation was terminated on the basis that she refused suitable work. The decision terminated entitlement to all monetary compensation or a schedule award, and therefore no further consideration can be given to any additional schedule award past the date of the termination.

By letter dated May 20, 2011, appellant, through counsel, argued that her claim should be paid as the schedule award claim was not a new claim but a continuation of the prior claim paid on July 13, 2010.

By decision dated August 5, 2011, OWCP denied appellant's claim for an increased schedule award, noting that the date of maximum medical improvement was January 20, 2011, which was after the date of termination of appellant's compensation benefits on March 12, 1998 under section 8106(c).

² On October 16, 1990 appellant, then a 33-year-old distribution clerk, filed an occupational disease claim alleging that she was suffering from neck and back pain due to factors of her employment. OWCP accepted his claim for a herniated cervical disc C6-7 and subsequently expanded his claim to include adjustment.

³ Docket No. 00-456 (issued August 2, 2001). In a previous decision in this case, the Board affirmed OWCP's denial of a claim for an emotional condition resulting from the same injury. Docket No. 99-234 (issued May 22, 2000).

⁴ On November 23, 2004 OWCP issued a schedule award for a three percent impairment of the right arm. The date of maximum medical improvement was September 3, 1997. The time period for this award was November 8 to January 12, 1998. This award was affirmed by an OWCP hearing representative on November 10, 2005. On December 11, 2006 OWCP issued an additional schedule award for another three percent permanent impairment of the right upper extremity. This award covered the period November 8, 1997 through January 12, 1998. On July 13, 2010 OWCP ultimately issued an award for a two percent impairment to the left arm, which covered the period January 13 to February 25, 1998.

LEGAL PRECEDENT

Section 8106(c) of FECA⁵ provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation. OWCP's regulations further provide that, after it has provided an employee with the appropriate notices, then OWCP will terminate the employee's entitlement to further monetary compensation under 5 U.S.C. §§ 8105,⁶ 8106⁷ and 8107,⁸ as provided by 5 U.S.C. § 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. § 8103.⁹ The Board has affirmed these determinations beginning in *Stephen R. Lubin*.¹⁰ The Board has found that a refusal to accept suitable work constitutes a bar to receipt of a schedule award for any impairment which may be related to the accepted employment injury.¹¹

ANALYSIS

OWCP terminated appellant's compensation, effective March 12, 1998, on the grounds that she refused an offer of suitable employment. The Board affirmed this determination on August 2, 2001. Appellant received various schedule awards after that date; however, the schedule awards were all periods of maximum medical improvement prior to the date of termination of benefits in 1998.

Appellant requested an additional schedule award. In a decision dated August 5, 2011, OWCP denied her claim for an additional schedule award because it previously terminated appellant's compensation benefits under the provisions of 5 U.S.C. § 8106(c). OWCP's medical adviser noted that the date of maximum medical improvement was January 20, 2011, the date of the impairment rating by Dr. Blough. As OWCP terminated appellant's compensation effective March 12, 1998, she is barred from receiving monetary compensation under a schedule award for any period after that termination decision was reached.¹² Accordingly, as the medical adviser determined that appellant's date of maximum medical improvement was January 20, 2011, a date well after the termination of benefits, the Board finds that OWCP properly denied appellant's claim for an additional schedule award.

⁵ 5 U.S.C. § 8106(c)(2).

⁶ This section of FECA addresses claims for total disability.

⁷ This section of FECA addresses claims for partial disability.

⁸ This section of FECA addresses claim for schedule awards.

⁹ 20 C.F.R. § 10.517(b).

¹⁰ 43 ECAB 564 (1992).

¹¹ *T.U.*, Docket No. 08-1894 (issued June 15, 2009).

¹² *J.H.*, Docket No. 06-886 (issued February 8, 2007).

CONCLUSION

The Board finds that appellant is not entitled to compensation for additional permanent impairment following the termination of her compensation benefits on March 12, 1998 on the grounds that she refused an offer of suitable work.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 5, 2011 is affirmed.

Issued: August 20, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board