

chronic pain syndrome and opined that appellant's emotional condition was not caused by his employment and did not preclude him from returning to work.

In a July 21, 2010 letter, OWCP advised appellant that the position offered by the employing establishment was suitable work and he was given an additional 15 days to accept the job offer.

By decision dated August 5, 2010, OWCP terminated appellant's wage-loss compensation effective August 29, 2010 based on his refusal of an offer of suitable work. In a subsequent February 17, 2011 decision, it denied appellant's request for modification of its termination decision.

The Board having duly considered the matter concludes that OWCP failed to meet its burden of proof in terminating appellant's compensation benefits as it did not comply with its own procedural requirements. OWCP procedures and Board precedent require that OWCP must consider preexisting and subsequently acquired conditions in the evaluation of suitability of an offered position.¹ To justify termination, OWCP must show that the work offered was suitable and that appellant was informed of the consequences of his refusal to accept such employment.² 20 C.F.R. § 10.516 of OWCP's regulations provides that OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter its finding of suitability.

In its June 7, 2010 letter, OWCP advised appellant that the offered position was suitable and that he had 30 days to accept the position or provide his reasons for refusing the position. Subsequently, on June 9, 2010 it referred appellant for a second opinion evaluation with Dr. Reddy to determine whether appellant's emotional condition was employment related and whether he was capable of returning to work from a psychiatric viewpoint.³

It is well established that, when OWCP undertakes further development of the medical evidence after it has issued a 30-day letter and seeks to terminate compensation under 5 U.S.C. § 8106(c)(2) based on new medical evidence, it must again provide the employee with 30 days to accept the job offer or provide reasons for refusing.⁴ It terminated appellant's wage-loss

¹ *Richard P. Cortes*, 56 ECAB 200 (2004); *Gayle Harris*, 52 ECAB 319, 321 (2001).

² *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814(b)(4) (July 1997). *See Susan L. Dunnigan*, 49 ECAB 267 (1998) (if medical records in the file document a condition which has arisen since the compensable injury, and this condition disables the claimant from the offered job, then the job will be considered unsuitable, even if the subsequently acquired condition is not job related).

⁴ *See Adrienne L. Curry*, 53 ECAB 750 (2002) (OWCP obtained an additional clarifying report from a referee physician after a letter finding the offered position was suitable. The Board held appellant was entitled to a new letter giving her 30 days to accept the position or provide reasons for refusing); *Barbara L. Chien*, 53 ECAB 579 (2002) (a conflict still existed at the time of the suitability letter and when OWCP later received a referee's report, it should have given appellant an additional 30 days to accept the position or provide reasons for refusal). *See also Y.A.*, 59 ECAB 701 (2008) (the Board has held that OWCP may not find a position suitable and then obtain the medical evidence to show it was suitable).

compensation benefits on August 5, 2010 without issuing a new 30-day letter following receipt of Dr. Reddy's report. OWCP did not comply with the proper notice requirements prior to termination. Accordingly, the Board finds that the invocation of 5 U.S.C. § 8106(c) under the facts of this case constituted error. As such, OWCP improperly terminated appellant's monetary compensation benefits, effective August 29, 2010, on the grounds the he refused an offer of suitable work, and therefore, OWCP's February 17, 2011 decision is reversed.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 17, 2011 is reversed.

Issued: February 27, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board