United States Department of Labor
Employees' Compensation Appeals Board

W.B., Appellant	)	
and	)	**Docket No. 11-239**
	)	**Issued: January 27, 2012**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Lyons, NJ, Employer	)	

Appearances:
Martin Kaplan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 8, 2010 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' (OWCP) May 11, 2010 merit decision affirming the termination of his monetary compensation for refusing suitable work and an October 27, 2010 decision denying his request for reconsideration.[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] This case was previously before the Board with respect to a wage-earning capacity determination. In a June 6, 2001 decision, the Board reversed a June 10, 1999 OWCP decision, which reduced appellant's compensation on the grounds that the constructed position of electronics mechanic apprentice represented his wage-earning capacity. Docket No. 99-2444 (issued June 6, 2001).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's monetary compensation benefits effective October 26, 2008 for refusing an offer of suitable work pursuant to 5 U.S.C. § 8106(c); and (2) whether OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

On appeal, counsel contends that the offered position was not suitable as it was not located in appellant's commuting area nor did it take into consideration appellant's nonemployment-related conditions. He further contends that appellant was entitled to relocation expenses to accept the offered position.

FACTUAL HISTORY

OWCP accepted that on December 12, 1984 appellant, then a 31-year-old housekeeping aid, sustained a lumbosacral sprain/strain and displacement of lumbar intervertebral discs without myelopathy as a result of lifting newspaper machines at work. He moved from Lyons, New Jersey to Weldon, North Carolina as of June 26, 1992. Subsequently, appellant moved to Roanoke Rapids, North Carolina.

On July 11, 2006 Dr. Raven L. DeLoatch, an attending Board-certified internist, advised that appellant was permanently and totally disabled for work and was not a candidate for vocational rehabilitation.

By letter dated March 21, 2007, OWCP referred appellant, together with a statement of accepted facts and the case record, to Dr. Edward W. Gold, a Board-certified orthopedic surgeon, for a second opinion. In a March 26, 2007 medical report, Dr. Gold advised that appellant had an employment-related chronic lumbar strain with sciatica. Appellant also had continuing residuals causally related to the accepted condition, but there were some elements of symptom magnification. Dr. Gold concluded that appellant was unable to return to work as a housekeeping aid, but could perform light-duty work with restrictions for eight hours a day.

By letter dated May 3, 2007, OWCP inquired as to whether the employing establishment could offer appellant a position based on the restrictions set forth by Dr. Gold.

By letter dated September 12, 2007, the employing establishment offered appellant a full-time housekeeping aid position that was immediately available in Lyons, New Jersey based on Dr. Gold's restrictions. It was unable to offer him a position in North Carolina since its nearest facilities to him were more than a 50-mile commuting distance. The employing establishment offered to pay appellant's relocation expenses. It advised him that, if he did not accept the job offer and return to work by October 1, 2007, it would inform OWCP of his refusal, which could result in the termination of his monetary compensation. The employing establishment submitted a list of its facilities located in North Carolina and Virginia.

By letter dated October 11, 2007, OWCP advised appellant that the offered modified-duty position was available and found suitable to his physical limitations. Appellant had 30 days to accept the position or provide an explanation for his refusal to accept it. OWCP informed him

that, if he failed to accept the position or provide a reasonable cause for his refusal, his compensation benefits would be terminated.

In an October 23, 2007 report, Dr. DeLoatch stated that appellant suffered from chronic back pain due to herniated lumbar and thoracic discs. Appellant also had hypertension, anxiety and was under a lot of stress. The lack of job security at the same date-of-injury job site in New Jersey forced him to retire in 1991. The cold weather was a factor that precipitated appellant's chronic pain and increased his current suffering. Dr. DeLoatch stated that a move to New Jersey would not be advantageous to him. Also, appellant's wife did not want to relocate due to her illnesses and age.

On November 13, 2007 appellant refused the offered position on the grounds that he was physically unable to work 40 hours a week. He stated that his physical condition would result in his termination from the employing establishment and he had no family or friends in New Jersey who could provide food, shelter or basic necessities.

On December 3, 2007 OWCP advised appellant that the reasons given for refusing to accept the offered position were not sufficient. He was provided an additional 15 days to accept.

By letters dated December 20, 2007 and January 17, 2008, the employing establishment advised OWCP that appellant had not accepted the offered position and that it remained available.

On January 28, 2008 OWCP determined that there was a conflict in the medical opinion evidence between Dr. Gold and Dr. DeLoatch regarding the extent of appellant's disability. On February 20, 2008 it referred appellant, together with the case record and statement of accepted facts, to Dr. Robert W. Elkins, a Board-certified orthopedic surgeon, for an impartial medical examination.

On February 27, 2008 the employing establishment advised OWCP that the offered position remained available. It noted that the average high temperature in Roanoke Rapids, North Carolina was eight degrees higher than in Lyons, New Jersey. The average low temperature in Roanoke Rapids was eight degrees warmer than in Lyons.

In a March 26, 2008 report, Dr. Elkins reviewed a history of the December 12, 1984 injury and appellant's medical treatment and occupational background. He noted complaints of pain which awakened appellant three to four times at night. Appellant's spinal complaints included pain in the central and left side of his low back, bilateral buttock and left thigh calf and foot. He identified various physical activities and weather conditions that caused increased pain. Appellant's symptoms remained the same over the past month. He rated his current and average daily intensity of pain as 6 out of 10. Dr. Elkins described a full physical examination which included a slightly choppy gait, good toe walking, fair heel walking, but with left-sided pain and poor use of a cane that appellant used 80 percent of the time in his left hand. There was no particular tenderness in the lumbar sacroiliac joints, sciatic notch, posterior thigh or thoracic spine area. There was restricted range of motion of the lumbar spine and normal range of motion of the bilateral hip, knee and ankle. There was normal strength testing of the bilateral hips, quadriceps, ankle and toes. Ancillary test results revealed diminished left hand strength,

somewhat nonphysiologic pain that was rated as 27 and a self-rated depression score of 62. Dr. Elkins diagnosed chronic low back pain, possible chronic herniated disc at L4-5 with possible L5-S1 radiculopathy and chronic deconditioning. He stated that appellant was overweight with high blood pressure, and demonstrated mild symptom-magnification and pain accentuation. Dr. Elkins advised that he was capable of gainful employment in the sedentary to light-duty category with occasional lifting of 25 pounds, frequent lifting of 10 pounds and no repetitive bending, stooping or squatting. He stated that this type of gainful employment could be done in any state and was accurate regardless of the weather since appellant mostly worked inside.

On May 22, 2008 the employing establishment advised OWCP that it needed a work capacity evaluation (Form OWCP-5c) before offering a job to appellant.

In a June 11, 2008 Form OWCP-5c, Dr. Elkins stated that appellant could not walk or stand more than four hours, twist, squat, kneel or climb more than one hour, bend or stoop more than one-half hour and push, pull or lift more than 25 pounds for more than one hour. The restrictions applied for one year.

By letter dated June 13, 2008, the employing establishment offered appellant a full-time modified housekeeping aid position that was available in Lyons, New Jersey based on the physical restrictions set forth in Dr. Elkins' June 11, 2008 Form OWCP-5c. The duties included folding patient linens such as, bed pads and clothing such as, pajama tops and bottoms, and bagging up mops and rags for distribution. The employing establishment reiterated that it was unable to offer appellant a position in North Carolina since its nearest facilities to him were more than a 50-mile commuting distance. It again offered to pay his relocation expenses.

On June 22, 2008 appellant accepted the June 13, 2008 job offer. He stated that he was being pressured and coerced to make this decision. Appellant indicated that both OWCP referral physicians explained to him that their decisions were based on his condition in 1987 and not on his current back conditions. He knew his body and stated that his decision to accept the job offer was a mistake. Appellant did not return to work.

A memorandum of a July 31, 2008 telephone conference with an employing establishment nurse and OWCP claims examiner indicated that the nurse had reviewed the offered position and determined that it was not suitable for appellant. The job offer did not specifically identify the physical requirements of the position. The nurse planned to rewrite the job offer taking into consideration appellant's relocation to New Jersey and his ability to undergo vocational rehabilitation to identify a position in North Carolina.

By letter dated August 12, 2008, the employing establishment revised its June 13, 2008 job offer to include the requirements of the limited-duty housekeeping aid position. The position was sedentary in nature and involved folding patient linens such as, bed pads, using hands and arms to fold pads that were on a table, lifting up to three pounds and intermittently standing and walking up to one hour placing the pads into a cart. The position also required folding patient clothing such as, pajama tops and bottoms, using hands and arms to fold the clothing on a table, lifting up to two pounds and intermittently standing and walking up to one hour placing the clothing into a cart. The position further required bagging mops and rags for distribution using

hands and arms to place the mops and rags into a bag on a table, lifting up to five pounds intermittently while standing and walking up to one hour placing the items into a cart. The employing establishment stated that, "unfortunately, we are unable to offer you a position in North Carolina since our nearest VA facility/CBOCs to you are more than a 50-mile commuting distance." It reiterated its offer to pay his relocation expenses. The employing establishment advised appellant that, if he did not accept the offered position and return to work by September 2, 2008, it would inform OWCP of his refusal, which may result in the termination of his monetary compensation.

By letter dated August 26, 2008, OWCP advised appellant that the offered modified-duty position was available and found suitable to his physical limitations set forth by Dr. Elkins. Appellant had 30 days to accept the position or provide an explanation for his refusal to accept it. OWCP informed him that, if he failed to accept the position or provide a reasonable cause for his refusal, his compensation benefits would be terminated.

On August 27, 2008 OWCP received appellant's August 12, 2008 acceptance of the employing establishment's job offer. Appellant stated that his back condition would not withstand a trip to New Jersey and allow him to perform his work duties. He stated that none of OWCP's referral physicians were asked to determine whether he could currently perform the offered position, instead the physicians based their opinion on his ability to work on his condition in 1984.

On September 26, 2008 the employing establishment advised OWCP that appellant did not report to work and that the offered position was still available.

On September 30, 2008 OWCP advised appellant that the reasons given for refusing to accept the offered position were not sufficient. Appellant was given an additional 15 days to accept. He did not respond.

In an October 23, 2008 decision, OWCP terminated appellant's monetary compensation benefits effective that date on the grounds that he refused an offer of suitable work.

On November 1, 2008 appellant requested an oral hearing. Reports dated August 29 and December 7, 1987 from Dr. Mark Friedman, a Board-certified physiatrist, advised that appellant had a herniated disc at L4-5 that was causally related to his December 12, 1984 employment injuries. Dr. Friedman stated that the diagnosed condition prevented appellant from lifting and carrying heavy items.

In an April 23, 2009 decision, an OWCP hearing representative affirmed the October 23, 2008 decision, finding the evidence sufficient to establish that appellant refused an offer of suitable work.

In a March 11, 2010 letter, appellant, through his attorney, requested reconsideration. Citing 20 C.F.R. § 10.508 and *M.L.*,[3] counsel contended that the modified-duty position was not suitable as appellant was not on the employing establishment's rolls and there was no indication

[3] 57 ECAB 746 (2006).

that it gave any consideration to positions located in his commuting area. Citing *Kenneth A. Crawford*,[4] he further contended that the cost of living in Lyons, New Jersey was four times greater than the cost of living in Roanoke Rapids, North Carolina. Appellant submitted documents which compared the cost of living in Roanoke Rapids, North Carolina with certain cities in New Jersey, including Lyons, New Jersey.

In a March 18, 2010 note, Dr. DeLoatch advised that appellant suffered from chronic low back pain due to degenerative lumbar disc disease. Appellant also had fatigue and did not feel well due to sleep apnea syndrome. He suffered from hypertensive cardiovascular disease and osteoarthritis. Dr. DeLoatch concluded that appellant was not a suitable participant for gainful employment due to his noted multiple ailments.

In a May 11, 2010 decision, OWCP denied modification of the April 23, 2009 decision. It found that the evidence submitted by appellant failed to establish that he was unable to perform the requirements of the offered modified position.

By letter dated October 6, 2010, appellant, through his attorney, requested reconsideration. He again contended that appellant was no longer on the employing establishment's rolls and that his relocation from North Carolina to New Jersey was financially prohibitive. Counsel further contended that appellant's nonwork-related conditions would prevent him from performing the modified position.

Appellant resubmitted a cost-of-living comparison between Roanoke Rapids, North Carolina and Lyons, New Jersey. A financial resources questionnaire dated July 22, 2010 indicated that his monthly expenses exceed his monthly income.

In an undated letter, appellant advised the President of the United States that his physical condition prevented him from performing the duties of the offered position. He could not afford to move from North Carolina to New Jersey. Appellant experienced financial difficulties and was unable to make his bankruptcy payments.

In an October 27, 2010 decision, OWCP denied appellant's request for reconsideration. It found that the evidence submitted was cumulative in nature or not relevant and, thus, insufficient to warrant further merit review of his claim.

LEGAL PRECEDENT -- ISSUE 1

Section 8106(c) of FECA provides in pertinent part, a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for him is not entitled to compensation.[5] It is OWCP's burden to terminate compensation under section 8106(c) for refusing to accept suitable work or neglecting to perform suitable work.[6] The implementing regulations provide that an employee who refuses or neglects to work after

[4] Docket No. 02-2306 (issued September 5, 2003).

[5] 5 U.S.C. § 8106(c).

[6] *Joyce M. Doll*, 53 ECAB 790 (2002).

suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified and shall be provided with the opportunity to make such a showing before entitlement to compensation is terminated.[7]

To support 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.[8] In determining what constitutes suitable work for a particular disabled employee, it considers the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area, the employee's qualifications to perform such work and other relevant factors.[9] OWCP's procedures state that acceptable reasons for refusing an offered position include withdrawal of the offer or medical evidence of inability to do the work or travel to the job.[10] Section 8106(c) will be narrowly construed as it serves as a penalty provision which may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment.[11] It is well established under this section of FECA, OWCP must consider both preexisting and subsequently acquired conditions in the evaluation of the suitability of an offered position.[12]

OWCP regulations provide that the employer, if possible, should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may offer suitable reemployment at the employee's former duty station or other location.[13] Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, OWCP may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the employing establishment employment rolls and would incur relocation expenses by accepting the offered reemployment. It may also pay such relocation expenses when the new employer is other than a federal employer. OWCP will notify the employee that relocation expenses are payable if it makes a finding that the job is suitable. To determine whether a relocation expense is reasonable and necessary, it shall use as a guide the federal travel regulations for permanent changes of duty station.[14]

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[7] 20 C.F.R. § 10.517(a).

[8] *Linda Hilton*, 52 ECAB 476 (2001); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

[9] 20 C.F.R. § 10.500(b); *see Ozine J. Hagan*, 55 ECAB 681 (2004).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5.a(1) (July 1997); *see Lorraine C. Hall*, 51 ECAB 477 (2000).

[11] *Gloria G. Godfrey*, 52 ECAB 486 (2001).

[12] *Richard P. Cortes*, 56 ECAB 200 (2004).

[13] 20 C.F.R. § 10.508; *Sharon L. Dean*, 56 ECAB 175 (2004) (where the employing establishment, among other things, did not attempt to determine whether suitable employment was available where appellant resided. The Board reversed OWCP's termination of benefits).

[14] 20 C.F.R. § 10.508.

OWCP procedures provide that an injured employee who relocates to accept a suitable job offer after termination from the employing establishment rolls may receive payment or reimbursement of moving expenses from the compensation fund. Relocation expenses are payable only to claimants who are no longer on the employing establishment rolls. They are payable whether the claimant still resides in the locale where he last worked and is offered employment in another area, or whether the claimant has moved away from the locale where he was employed and is offered employment in either the original area or a different one.[15]

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[16] When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[17]

ANALYSIS -- ISSUE 1

OWCP accepted that on December 12, 1984 appellant sustained a lumbosacral sprain/strain and displacement of the lumbar intervertebral discs without myelopathy as a result of lifting newspaper machines while working as a housekeeping aid. The Board notes that a conflict in the medical opinion evidence arose with respect to appellant's disability for work. Dr. Gold, an attending physician, opined that appellant was totally disabled, while Dr. DeLoatch, a second opinion physician, found that appellant could work full time with restrictions. To resolve the conflict, OWCP properly referred appellant to Dr. Elkins for an impartial medical examination.[18]

In a March 26, 2008 report, Dr. Elkins reviewed the history of injury and medical treatment. He reported essentially normal findings with the exception of a slightly choppy gait, fair heel walking with left-sided pain, restricted range of motion of the lumbar spine, along with ancillary test results. Dr. Elkins diagnosed chronic low back pain, possible chronic herniated disc at L4-5 with possible L5-S1 radiculopathy and chronic deconditioning. He advised that appellant was overweight with high blood pressure, and demonstrated mild symptom magnification and pain accentuation. Dr. Elkins found that appellant could perform light-duty work with restrictions, which included occasional lifting of 25 pounds, frequent lifting of 10 pounds and no repetitive bending, stooping or squatting. He concluded that the position could be located in any state regardless of the weather since appellant mostly worked inside. In a June 11, 2008 OWCP-5c form, Dr. Elkins clarified appellant's limitations. Appellant was restricted from walking or standing more than four hours, twisting, squatting, kneeling and climbing more than one hour, bending or stooping more than one-half hour and pushing, pulling and lifting more than 25 pounds for more than one hour.

[15] Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 2.814.6 (July 1997).

[16] 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

[17] *Manuel Gill*, 52 ECAB 282 (2001).

[18] *See R.H.*, 59 ECAB 382 (2008).

The Board finds that Dr. Elkins provided a complete and rationalized opinion, based on an accurate factual and medical background. His opinion that appellant could return to light-duty work, is accorded special weight as an impartial medical examiner with respect to appellant's work restrictions.[19]

Appellant did not submit sufficient medical evidence to establish that he could not return to light duty within Dr. Elkins' restrictions. Although he subsequently submitted Dr. Friedman's August 29 and December 7, 1987 reports, the physician did not provide a rationalized opinion explaining how appellant continued to be totally disabled due to his employment injuries.[20] Although Dr. Friedman restricted appellant from lifting and carrying heavy items, the offered modified housekeeping aid position involved lifting and carrying items that only weighed two to five pounds, a weight within the restrictions set by the impartial medical specialist. Dr. DeLoatch stated that appellant was not suitable for gainful employment due to his chronic low back pain resulting from degenerative lumbar disc disease, fatigue resulting from sleep apnea syndrome, hypertensive cardiovascular disease and osteoarthritis. As noted, he was on one part of the conflict in the medical opinion for which appellant was referred to Dr. Elkins. In his March 18, 2010 brief note, Dr. DeLoatch merely listed appellant's symptomatology due to degenerative disease and other conditions. He did not provide any narrative opinion explaining how these conditions disabled appellant from performing the duties of the offered position. The Board has held that a medical opinion not fortified by rationale is of diminished probative value.[21] The Board finds that the reports of Dr. Friedman and Dr. DeLoatch are insufficient to overcome the special weight accorded to the well-rationalized opinion of Dr. Elkins, the impartial medical specialist, who found appellant capable of returning to limited-duty work.

The employing establishment offered appellant a full-time modified housekeeping aid position located in Lyons, New Jersey, where he worked at the time of his employment injury based on Dr. Elkins' June 11, 2008 work restrictions. Appellant accepted the position but thereafter refused to return to work. The position involved using hands and arms to fold patient linens such as, bed pads, and patient clothing such as, pajama tops and bottoms, lifting up to three and two pounds of each item, respectively, and intermittently standing and walking up to one hour while placing the items into a cart. The position also required the use of hands and arms to bag mops and rags for distribution, lifting up to five pounds of the items and placing them into a bag on a table and intermittently standing and walking up to one hour placing the items into a cart. The Board finds that the physical requirements of the offered position fall within appellant's work restrictions as set by the impartial medical specialist.

Once OWCP has established that a particular position is suitable, an employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified. An acceptable reason, if supported by medical evidence, for refusing an offer of suitable work is inability to travel to work.[22] OWCP's

[19] *See L.W.*, 59 ECAB 471 (2008).

[20] *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

[21] *Id.*

[22] *Mary E. Woodard*, 57 ECAB 211 (2005).

procedures and Board precedent provide that the inability to travel to work is an acceptable reason if the inability is because of residuals of the employment injury.[23] Appellant contended that his employment-related back condition prevented him from traveling to New Jersey and performing the modified housekeeping aid position.[24] The issue of whether appellant is able to perform the offered position is a medical one and must be resolved by probative medical evidence.[25] As noted, the medical evidence from his attending physicians, Dr. Friedman and Dr. DeLoatch, did not provide any rationalized opinion explaining why appellant was not capable of performing the duties of the modified position in New Jersey. Their reports were insufficient to outweigh the special weight accorded to Dr. Elkins' impartial medical opinion that he could perform light-duty work. The employing establishment notified appellant that it was unable to offer him a position in North Carolina since its nearest facility to him was more than a 50-mile commuting distance. It offered to pay his expenses to relocate to New Jersey. The record demonstrates that the employing establishment made reasonable efforts to accommodate appellant's return to work in the area of his residence at that time, Roanoke Rapids, North Carolina, but there were no permanent jobs in that commuting area. The employing establishment then offered him a permanent position consistent within Dr. Elkins' restrictions in New Jersey and made relocation expenses part of the job offer.[26] The Board finds that OWCP complied with the appropriate procedures and implementing regulations in finding that the offered position was suitable.

In accordance with the procedural requirements under 5 U.S.C. § 8106(c), OWCP advised appellant on August 26, 2008 that it found the job offer to be suitable and gave him an opportunity to provide reasons for refusing the position within 30 days. It advised him in a September 30, 2008 letter that he had 15 additional days to accept the offered position. The Board finds that OWCP followed established procedures prior to the termination of compensation pursuant to section 8106(c) of FECA.

The Board finds that the position offered was medically and vocationally suitable and OWCP complied with the procedural requirements of section 8106(c) of FECA. OWCP met its burden of proof to terminate appellant's compensation benefits effective October 26, 2008.[27]

On appeal, appellant contended that the modified housekeeping aid position was not suitable because it was not located in his commuting area and it did not consider his nonwork-related conditions. As noted, OWCP complied with the appropriate procedures and implementing regulations in finding that the job offered to appellant in Lyons, New Jersey was suitable. Further, the Boards notes that, although Dr. DeLoatch's March 18, 2010 report found

[23] Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 2.814.5(a)(5) (July 1997); *see Mary E. Woodard*, *supra* note 22; *Janice S. Hodges*, 52 ECAB 379 (2001).

[24] An acceptable reason for refusal when a claimant is no longer on the agency's rolls is the employee has moved and a medical condition contraindicates return to the area of residence at the time of injury. Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 2.814.5(b)(3).

[25] *Kathy E. Murray*, 55 ECAB 288, 290 (2004).

[26] *See supra* notes 14 and 15.

[27] *Joyce M. Doll*, *supra* note 6.

that appellant was disabled from gainful employment due to his degenerative lumbar disc disease, fatigue, hypertensive cardiovascular disease and osteoarthritis, he did not provide any medical rationale addressing how the diagnosed conditions were caused by the accepted employment injuries.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128 of FECA[28] OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[29] To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[30] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

Appellant's October 6, 2010 request for reconsideration of the May 11, 2010 OWCP decision terminating his compensation benefits neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law.

On reconsideration, counsel reargued that appellant was no longer on the employing establishment's rolls and that his relocation from Roanoke Rapids, North Carolina to Lyons, New Jersey was financially prohibitive. Appellant resubmitted a cost-of-living comparison between the two cities. The submission of this argument and evidence does not require reopening of his claim for merit review because they were previously considered by OWCP. The Board has held that evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.[31]

Counsel further contended that appellant had nonemployment-related conditions that prevented him from performing the modified position. However, appellant did not submit any medical evidence on reconsideration to establish that he had a preexisting or subsequently acquired condition which would prevent him from performing the modified housekeeping aid

[28] 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[29] 20 C.F.R. § 10.606(b)(1)-(2).

[30] *Id.* at § 10.607(a).

[31] *See L.H.*, 59 ECAB 253 (2007); *James E. Norris*, 52 ECAB 93 (2000).

position. The Board finds, therefore, that his argument is not sufficient to constitute a basis for reopening a case.

Appellant failed to submit relevant and pertinent new evidence not previously considered by OWCP. The July 22, 2010 financial resources questionnaire indicated that his monthly expenses exceeded his monthly income. However, the relevant issue is whether appellant properly refused an offer of suitable work. Only medical evidence can establish that the August 26, 2008 job offer is not medically suitable.[32]

The undated letter appellant wrote to the President of the United States contending that his physical condition and financial difficulties prevented him from relocating from North Carolina to New Jersey to accept the modified position is insufficient to reopen his claim for further merit review. His letter merely repeated his arguments previously considered by OWCP and, thus, is repetitive and cumulative in nature.[33]

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his October 6, 2010 request for reconsideration.[34]

CONCLUSION

The Board finds that OWCP properly terminated appellant's monetary compensation benefits effective October 26, 2008 for refusing an offer of suitable work pursuant to 5 U.S.C. § 8106(c). The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8182(a).

[32] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[33] *See* cases cited *supra* note 31.

[34] *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the October 27 and May 11, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 27, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board