

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.S., Appellant

and

U.S. POSTAL SERVICE, BAXTER ANNEX,  
Baxter, MN, Employer

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**Docket No. 12-663  
Issued: September 25, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 1, 2012 appellant filed a timely appeal of the December 8, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her wage-loss compensation and entitlement to a schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly terminated appellant's wage-loss compensation and entitlement to a schedule award effective March 13, 2011 for refusing an offer of suitable work pursuant to 5 U.S.C. § 8106(c).

On appeal, appellant contends that she refused an offered position based on the medical opinion of her attending physicians and her inability to perform the duties of the offered job as they exceeded her physical restrictions.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 10, 2008 appellant then, a 41-year-old rural carrier associate, filed an occupational disease claim alleging that on February 11, 2007 she first realized that her left carpal tunnel syndrome and left shoulder conditions were caused by using her left arm to perform her limited-duty work. She used the left arm due to a prior accepted right arm condition.<sup>2</sup> By letter dated May 6, 2008, OWCP accepted appellant's claim for left carpal tunnel and left shoulder impingement. Appellant stopped work on February 29, 2008 and OWCP paid her appropriate temporary total disability compensation. She returned to work in a modified rural carrier associate position on September 9, 2008.<sup>3</sup> As of October 20, 2008 appellant worked up to four hours a day, two days a week.

In an October 23, 2008 medical report, Dr. Paul D. Thompson, an attending Board-certified orthopedic surgeon, advised that appellant had left upper extremity RSD and left leg pain. He continued her current work restrictions which included working two four-hour days a week.

By letter dated November 7, 2008, the employing establishment requested that OWCP refer appellant's case for a second opinion evaluation to determine whether she could work additional hours.

In a January 20, 2009 report, Dr. Richard C. Strand, a Board-certified orthopedic surgeon serving as an OWCP referral physician, advised that appellant had chronic right upper extremity regional pain syndrome, left shoulder pain without significant objective findings to correlate with her subjective complaints, mild left carpal tunnel syndrome without objective findings and mild left shoulder impingement syndrome by medical records and history that were not confirmed on examination. He opined that she had no residuals of her employment-related left shoulder impingement and left carpal tunnel syndrome. No further medical treatment was necessary for the left upper extremity. Dr. Strand advised that, although appellant could not return to her date-of-injury rural carrier position due to restrictions for her right upper extremity, she could work on a full-time basis with no restrictions for her left upper extremity.

On February 23, 2009 OWCP determined that there was a conflict in medical opinion between Dr. Thompson and Dr. Strand regarding the nature of appellant's work-related conditions and her ability to perform full-duty work with no restrictions. By letter dated March 2, 2009, it referred her, together with the case record and statement of accepted facts, to Dr. Stephen E. Barron, a Board-certified orthopedic surgeon, for an impartial medical examination.

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<sup>2</sup> The record reveals that OWCP accepted appellant's prior claims filed under OWCP File Nos. xxxxxx203 and xxxxxx927 for right wrist sprain, right upper extremity reflex sympathetic dystrophy (RSD), left shoulder sprain and adhesive capsulitis and bilateral wrist tenosynovitis.

<sup>3</sup> Although appellant returned to work in the modified rural carrier associate position on September 9, 2008, she refused to sign the September 3, 2008 job offer for this position. In this position, she initially worked eight hours a day, one day a week, but on October 9, 2008 she increased her workday to two days a week.

In a March 30, 2009 report, Dr. Barron reviewed a history of the accepted employment injuries and appellant's medical treatment, family and educational background. He described a full examination which included 160 degrees each of abduction and forward flexion, 60 degrees of external rotation and 45 degrees of internal rotation of the left shoulder. Appellant had diminished grip strength in her right hand. She had diffuse loss of sensation and diffuse weakness in her entire right upper extremity. Reflexes at the biceps, triceps and brachioradialis were +2/+2 and equal bilaterally. There was no hair loss, erythema or significant swelling of the right upper extremity. There was no temperature difference in either right or left upper extremity. Appellant had full range of motion of her left hand. She had a positive Tinel's sign and Phalen's test on the left. Appellant had positive impingement signs and tenderness of her left shoulder. There was no evidence of spasm. Dr. Barron diagnosed left shoulder impingement syndrome based on an electromyogram and x-ray results. He also diagnosed left carpal tunnel syndrome based on the positive Tinel's sign and Phalen's test results. Dr. Barron opined that appellant continued to have residuals of the accepted work injuries which included left shoulder pain and numbness from the accepted left shoulder impingement syndrome and continuing numbness in the left hand. He further opined that she had reached maximum medical improvement. Dr. Barron recommended against surgery due to appellant's prior right shoulder RSD. He stated that performing surgery on the left shoulder or hand could cause RSD in the left upper extremity. Dr. Barron concluded that appellant could not work without restrictions. He recommended that she work at a sedentary level based on the results of a prior functional capacity evaluation (FCE).<sup>4</sup> Dr. Barron concluded that there was no need to restrict appellant's work hours.

In an October 27, 2009 report, Dr. Thompson stated that he had been treating appellant for a prolonged period for impingement syndrome of the shoulders, carpal tunnel syndrome and complex regional pain syndrome (CRPS) or RSD. He advised that she was unable to return to work because work exacerbated her symptoms. Dr. Thompson ordered a repeat FCE, which he believed would demonstrate further decline in appellant's work capacity. In a December 17, 2009 report, he advised that she was permanently unable to return to work.<sup>5</sup>

On April 30, 2010 the employing establishment offered appellant a part-time modified rural carrier associate position, three to four hours a day, four days a week based on Dr. Barron's March 23, 2010 opinion. The physical restrictions included occasional lifting up to 10 pounds (up to 33 percent) from the floor to waist, up to 5 pounds from the waist to shoulder, sitting, standing, walking, climbing, pushing and pulling up to 40 pounds, bending, stooping and reaching. The position did not require lifting above the shoulder.

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<sup>4</sup> An August 4, 2008 FCE found that appellant could work in a sedentary position, four hours a day (shift). She could occasionally lift up to 10 pounds from the floor to knuckle using a proper lifting technique waist and up to 5 pounds from the knuckle to shoulder. Appellant could also occasionally push up to 40 pounds, pull up to 30 pounds and hand carry up to 8 pounds for 100 feet. She was unable to lift shoulder to overhead without significant subjective complaints of pain. Appellant was unable to sustain any activities long enough to be categorized as frequent use.

<sup>5</sup> A December 7, 2009 report provided the results of FCE tests that appellant underwent on December 4 and 6, 2009. She could lift up to 5 pounds from floor to waist and 5 pounds from waist to overhead, unilaterally carry up to 10 pounds on the left, push up to 15 pounds and pull up to 6 pounds. Appellant had no functional usage of the right upper extremity, limited left upper extremity usage, chronic pain and poor thoracic mobilization/rotation.

By letter dated July 8, 2010, OWCP requested that Dr. Barron submit a supplemental report describing appellant's specific physical limitations and ability to work at a sedentary level. He was also asked to provide an opinion as to whether she could perform the duties of the April 30, 2010 job offer.

In a July 20, 2010 report, Dr. Barron advised that appellant was capable of working at a sedentary level based on the August 4, 2008 FCE. He restricted her to lifting no more than 10 pounds. Appellant could not engage in repetitive use of her left wrist and shoulder and lift above the left shoulder. Dr. Barron reviewed the April 30, 2010 job offer and concluded that she was capable of performing the described work duties.

By letter dated October 29, 2010, OWCP advised appellant that the offered modified-duty position was available and found suitable to her physical limitations. Appellant had 30 days to accept the position or provide an explanation for her refusal to accept it. OWCP informed her that, if she failed to accept the position or provide a reasonable cause for her refusal, her compensation benefits would be terminated. Appellant did not respond.

By letter dated November 29, 2010, OWCP advised appellant that she had not provided a valid reason for refusing to accept the offered position. Appellant was given an additional 15 days to accept. She did not respond.

In a March 16, 2011 decision, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award effective March 13, 2011 on the grounds that she refused an offer of suitable work. It reissued the March 16, 2011 decision on March 17, 2011.

On April 10, 2011 appellant requested an oral hearing before an OWCP hearing representative.

In a December 8, 2011 decision, an OWCP hearing representative affirmed the March 17, 2011 termination decision, finding that the evidence of record was sufficient to establish that appellant refused an offer of suitable work.

### **LEGAL PRECEDENT**

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.<sup>6</sup> It is OWCP's burden to terminate compensation under section 8106(c) for refusing to accept suitable work or neglecting to perform suitable work.<sup>7</sup> The implementing regulations provide that an employee who refuses or neglects to work after 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.<sup>8</sup>

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<sup>6</sup> 5 U.S.C. § 8106(c).

<sup>7</sup> *Joyce M. Doll*, 53 ECAB 790 (2002).

<sup>8</sup> 20 C.F.R. § 10.517(a).

To support termination, OWCP must show that the work offered was suitable and that appellant was informed of the consequences of her refusal to accept such employment.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

### ANALYSIS

OWCP accepted that appellant sustained left carpal tunnel and left shoulder impingement while working as a rural carrier associate. Appellant stopped work on February 29, 2008 and returned to work in a modified rural carrier position on September 9, 2008 up to four hours a day, two days a week. OWCP terminated her compensation effective March 13, 2011 for refusing the employing establishment's April 30, 2010 offer of suitable work.

The medical evidence of record establishes that appellant was capable of performing the part-time modified rural carrier associate position offered by the employing establishment and determined to be suitable by OWCP. The position was sedentary in nature and required occasional lifting up to 10 pounds (up to 33 percent) from the floor to waist and up to 5 pounds

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<sup>9</sup> *Linda Hilton*, 52 ECAB 476 (2001); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

<sup>10</sup> 20 C.F.R. § 10.500(b); *see Ozone J. Hagan*, 55 ECAB 681 (2004).

<sup>11</sup> 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).

<sup>12</sup> *Gloria G. Godfrey*, 52 ECAB 486 (2001).

<sup>13</sup> *Richard P. Cortes*, 56 ECAB 200 (2004).

<sup>14</sup> 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

<sup>15</sup> *Manuel Gill*, 52 ECAB 282 (2001).

from the waist to shoulder, sitting, standing, walking, climbing, pushing and pulling up to 40 pounds, bending, stooping and reaching. It did not require lifting above the shoulder.

In determining that appellant was physically capable of performing the modified-duty rural carrier associate position, OWCP properly relied on the opinion of Dr. Barron, a Board-certified orthopedic surgeon, who served as an impartial medical examiner. It found that a conflict in the medical opinion evidence arose between Dr. Thompson, an attending physician, and Dr. Strand, a second opinion physician, with respect to appellant's continuing employment-related residuals and capacity for work. Dr. Thompson opined that she had left upper and lower extremity conditions and could continue working a four-hour shift, two days a week while Dr. Strand found that she had no residuals of the accepted employment-related conditions and could work full time with no restrictions. To resolve the conflict, OWCP properly referred appellant to Dr. Barron for an impartial medical examination.<sup>16</sup>

In a March 30, 2009 report, Dr. Barron reviewed the history of injury and medical treatment. He reported essentially normal findings with the exception of diminished range of motion of the left shoulder and grip strength in the right hand, diffuse loss of sensation and weakness in the entire right upper extremity, positive Tinel's sign and Phalen's test results on the left and positive impingement signs and tenderness of the left shoulder. Dr. Barron diagnosed impingement syndrome of the left shoulder and left carpal tunnel syndrome. He found that appellant had continued residuals of the accepted work injuries which included left shoulder pain and numbness from the employment-related impingement syndrome and numbness in the left hand. Dr. Barron opined that she could not work without restrictions and recommended a sedentary position based on the results of the August 4, 2008 FCE. He further opined that there was no need to restrict appellant's work hours. In a supplemental report dated July 20, 2010, Dr. Barron found that she could perform the duties of the April 30, 2010 job offer for a part-time modified rural carrier position based on his restrictions and the August 4, 2008 FCE findings. He restricted appellant to lifting no more than 10 pounds and from engaging in repetitive use of the left wrist and shoulder and lifting above the left shoulder. The Board finds that Dr. Barron's restrictions are consistent with the restrictions set forth in the August 4, 2008 and December 4 and 6, 2009 FCE test results and April 30, 2010 job offer. Although Dr. Barron found that appellant had residuals of the accepted conditions, he concluded that she was capable of performing the duties of the offered position.

The Board finds that Dr. Barron provided a complete and rationalized opinion, based on an accurate factual and medical background. Dr. Barron's opinion that appellant could return to modified-duty work is accorded special weight as an impartial medical examiner with respect to appellant's work restrictions.<sup>17</sup>

Appellant did not submit sufficient medical evidence to establish that she could not return to modified duty at the time it was offered in April 2010. She submitted Dr. Thompson's October 27 and December 17, 2009 reports, which found that she was permanently disabled from returning to work because work exacerbated her symptoms related to bilateral impingement

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<sup>16</sup> See *R.H.*, 59 ECAB 382 (2008).

<sup>17</sup> See *L.W.*, 59 ECAB 471 (2008).

syndrome, carpal tunnel syndrome and CRPS and RSD. However, none of these reports provided a rationalized medical opinion on how appellant continued to be totally disabled due to her accepted employment injuries. The Board has held that a medical opinion not fortified by rationale is of diminished probative value.<sup>18</sup> As noted, Dr. Thompson was on one part of the conflict in the medical opinion for which appellant was referred to Dr. Barron. He did not provide any narrative opinion explaining how appellant's symptoms disabled her from performing the duties of the offered position. The Board finds, therefore, that Dr. Thompson's reports are insufficient to overcome the special weight accorded to the well-rationalized opinion of Dr. Barron, the impartial medical specialist or to create a new conflict.

In accordance with the procedural requirements under 5 U.S.C. § 8106(c), OWCP advised appellant on October 29, 2010 that it found the modified-duty job offer to be suitable and gave her an opportunity to provide reasons for refusing the position within 30 days. It advised her in a November 29, 2010 letter that she 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 wage-loss compensation and entitlement to a schedule award effective March 13, 2011.<sup>19</sup>

On appeal, appellant contended that she refused the offered position based on the medical opinion of her attending physicians and because the offered job was not medically suitable. As stated, Dr. Thompson's reports were found insufficient to establish her incapacity to perform the duties of the offered position as he did not provide any rationalized medical opinion explaining how her continuing symptoms disabled her from performing the offered job. Moreover, the special weight of the medical evidence, as represented by Dr. Barron's impartial opinion establishes that appellant refused an offer of suitable work. Therefore, the Board finds that OWCP properly terminated her wage-loss compensation benefits and entitlement to a schedule award on the grounds that she refused an offer of suitable work.

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.

### **CONCLUSION**

The Board finds that OWCP properly terminated appellant's wage-loss compensation and entitlement to a schedule award effective March 13, 2011 for refusing an offer of suitable work pursuant to 5 U.S.C. § 8106(c).

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<sup>18</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>19</sup> *Joyce M. Doll*, *supra* note 7.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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