

FACTUAL HISTORY

On July 25, 2011 appellant, then a 33-year-old food inspector, filed a traumatic injury claim form alleging that she sustained injury on July 25, 2011 when she pulled on a chair. She requested on the form that she receive continuation of pay.² Appellant stopped work on July 25, 2011. On August 25, 2011 OWCP accepted that she sustained a work-related sprain of her lumbar region.

In an August 22, 2011 form report, Dr. Harold Weems, an attending Board-certified orthopedic surgeon, provided various work restrictions. He indicated that appellant could not lift more than 15 pounds and that she should not engage in bending, stooping, pulling or pushing.

On August 30, 2011 the employing establishment offered appellant an alternative-duty assignment. The description of the assignment indicated that she would perform the full duties of her food inspector position, except that an inspector's helper would hang all carcasses presented for inspection.³

On September 8, 2011 appellant filed a claim for compensation (Form CA-7) claiming that she was entitled to disability compensation for the period July 25 to September 8, 2011. Appellant later filed CA-7 forms claiming disability from September 9 through mid-December 2011.

In a September 13, 2011 letter, OWCP requested that appellant submit additional factual and medical evidence within 30 days in support of her September 8, 2011 disability claim. It noted that the employing establishment had offered appellant an alternative-duty assignment on August 30, 2011 and stated:

“[Section] 8106(c)(2) states that ‘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.’ Therefore, anyone who stops working a suitable job without good cause is not entitled to further compensation for wage loss or schedule award.”⁴

Appellant submitted medical reports including treatment notes of Dr. Weems dated July 27 and August 10, 2011 and an August 31, 2011 disability slip of Dr. Hasmukh Patel, an attending Board-certified internist, who indicated that she should be off work until she had magnetic resonance imaging (MRI) scan testing.⁵ In a September 5, 2011 report, Dr. James M. Arthur, an attending Board-certified neurosurgeon, stated that appellant was under his care for a bulging disc at L5-S1 and that she was to remain off work until October 12, 2011. In a

² Appellant began to receive continuation of pay starting July 25, 2011.

³ Appellant did not accept the position and she remained off work.

⁴ In a September 13, 2011 letter, OWCP requested that the employing establishment answer questions regarding the alternative-duty assignment.

⁵ The record contains the findings of MRI scan testing from September 2, 2011.

September 26, 2011 note, Dr. Patel indicated that appellant had low back pain caused by central disc protrusion and that she would be off work until she was seen by Dr. Arthur. A September 28, 2011 report from Dr. Arthur stated that appellant would be off work until October 5, 2011 and an October 18, 2011 note from Dr. Arthur indicated that she was able to perform limited-duty work beginning November 20, 2011.

In a December 29, 2011 decision, OWCP denied appellant's claim for disability compensation beginning August 31, 2011 indicating that continuation of pay was authorized through August 30, 2011 but was denied for the period thereafter. In the "basis for decision" portion of an accompanying memorandum, it briefly discussed some of the medical evidence submitted by appellant and indicated that it did not contain medical rationale regarding the relationship of the claimed disability to the July 25, 2011 work injury. OWCP also noted that, to accommodate Dr. Weems' work restrictions, the employing establishment made a modified-duty offer to appellant on August 30, 2011, but indicated that she advised her supervisor that she would not be returning to work on August 31, 2011. In the "conclusion" portion of the memorandum, OWCP stated:

"Continuation of pay (COP) is authorized for the period [July 25 to August 30, 2011] as you were released to work by Dr. Weems with restrictions; however, the [employing establishment] did not make an offer of accommodations until [August 30, 2011].

"You refused the offer by not reporting for duty on [August 31, 2011] as advised. You were previously notified by [OWCP] that 5 U.S.C. § 8106(c)(2) of the Federal Employees' Compensation Act (FECA) provides that, '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.'

"COP and wage[-]loss compensation benefits beginning [August 31, 2011] and continuing are denied because you refused suitable work."

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors.⁷

⁶ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁷ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

Section 8106(c)(2) of FECA provides in pertinent part, “A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation.”⁸ However, to justify such termination, OWCP must show that the work offered was suitable and must inform the claimant of the consequences of refusal to accept such employment.⁹ An employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified.¹⁰

In determining whether a claimant has discharged her burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulations to make findings of fact.¹¹ Its procedure specifies that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to “understand the precise defect of the claim and the kind of evidence which would tend to overcome it.”¹² These requirements are supported by Board precedent.¹³

ANALYSIS

OWCP accepted that on July 25, 2011 appellant sustained a work-related sprain of her lumbar region and paid her continuation of pay starting July 25, 2011, the date she stopped work. Appellant did not return to work and filed claims alleging continued entitlement to compensation. In a December 29, 2011 decision, OWCP denied her claim for disability compensation beginning August 31, 2011.

The Board finds that OWCP did not provide adequate facts and findings in its December 29, 2011 decision which would provide appellant a clear picture of the reason for the denial of her compensation claim after August 30, 2011. Appellant would not understand the precise defect of the claim and the kind of evidence which would tend to overcome it.

In a portion of its December 29, 2011 decision, OWCP briefly discussed some of the medical evidence submitted by appellant and indicated that it did not contain medical rationale regarding the relationship of the claimed disability to the July 25, 2011 work injury. Therefore, it suggested that it was denying her claim because she did not submit sufficient medical to show

⁸ 5 U.S.C. § 8106(c)(2).

⁹ See *Y.A.*, 59 ECAB 701 (2008); *T.T.*, 58 ECAB 296 (2007); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon*, 43 ECAB 818 (1992). OWCP regulations require that OWCP shall advise the claimant that it has found the offered work to be suitable and afford the claimant 30 days to accept the job or present any reasons to counter OWCP’s finding of suitability. If the employee presents such reasons and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that she has 15 days in which to accept the offered work without penalty. 20 C.F.R. § 10.516.

¹⁰ 20 C.F.R. § 10.517; see *Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

¹¹ 5 U.S.C. § 8124(a) provides that OWCP “shall determine and make a finding of facts and make an award for or against payment of compensation.” 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP “shall contain findings of fact and a statement of reasons.”

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

¹³ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

she had work-related disability after August 30, 2011. However, in other portions of the decision, OWCP suggested that it was denying appellant's claim for disability compensation after August 30, 2011 because she had refused suitable work offered by the employing establishment, *i.e.*, the alternative-duty assignment offered on August 30, 2011. The Board notes that it is unclear why OWCP would suggest that it was carrying out a suitable work termination as OWCP did not carry out a number of the formal requirements of a suitable work termination, such as formally advising appellant of its determination that the position was suitable and providing her an opportunity to present arguments challenging a suitability determination.¹⁴ In fact, it is uncertain whether OWCP intended to carry out a suitable work termination under 5 U.S.C. § 8106(c)(2). The basis for the denial of appellant's claim for disability compensation after August 30, 2011 remains unclear.

For these reasons, OWCP's December 29, 2011 decision must be set aside and the case remanded to OWCP for further development, to include issuance of a merit decision containing adequate facts and findings regarding appellant's claim that she is entitled to disability compensation after August 30, 2011 due to her July 25, 2011 work injury.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she had disability after August 30, 2011 due to her July 25, 2011 work injury.

¹⁴ *See supra* note 9. In a September 13, 2011 letter, OWCP made a brief reference to 5 U.S.C. § 8106(c)(2), but this document would not constitute a formal finding by OWCP, within the strictures of 20 C.F.R. § 10.516, that the position offered by the employing establishment was suitable.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 7, 2012
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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