

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

A.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
The Dalles, OR, Employer**

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**Docket No. 13-686
Issued: June 25, 2013**

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

Case Submitted on the Record

ORDER REVERSING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

On February 4, 2013 appellant filed a timely appeal from a December 19, 2012 merit decision of the Office of Workers' Compensation Programs terminating his compensation for refusing suitable work. The Board docketed the appeal as No. 13-686.

OWCP accepted that on July 13, 2009 appellant, then a 34-year-old part-time flexible distribution clerk, sustained right shoulder strain with impingement, rotator cuff tendinitis and a superior labrum anteroposterior tear. Appellant stopped work on February 28, 2011 and received compensation for total disability.

On November 8, 2012 the employing establishment offered appellant a position as a part-time flexible modified city carrier effective November 19, 2012. By letter dated November 13, 2012, OWCP advised him that the offered position was suitable and provided him 30 days to either accept the position or to provide an explanation of his refusal. It further notified appellant of the penalties for refusing suitable work under 5 U.S.C. § 8106(c).

On November 16, 2012 a rehabilitation counselor advised OWCP that appellant notified him that he could not return to work on November 19, 2012 because he was in a drug and alcohol treatment program. On December 3, 2012 the rehabilitation counselor informed OWCP that appellant had telephoned him on December 1, 2012 and related that he had aggravated his shoulder condition when he was arrested on November 27, 2012.

By decision dated December 19, 2012, OWCP terminated appellant's compensation on the grounds that he refused an offer of suitable work under section 8106(c).

The Board, having duly considered the matter, finds 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 regulations and procedures and Board case law provide that OWCP must inform appellant of the consequences of refusing suitable work and allow appellant an opportunity to provide reasons for declining the offered position.¹ If appellant presents reasons for refusing the offered position, OWCP must inform him if it finds the reasons inadequate to justify the refusal of the offered position and afford him a final opportunity to accept the position.²

Following receipt of the information from the rehabilitation counselor explaining why appellant was not accepting the offered position, OWCP terminated his wage-loss benefits on December 19, 2012 without advising him that his reasons for refusing the position were unacceptable and that he had 15 days to accept the job offer.³ OWCP did not comply with the proper notice requirements prior to termination. Accordingly, the Board finds that the invocation of section 8106(c) under the facts of this case constituted error and, thus, OWCP improperly terminated appellant's compensation effective December 19, 2012 on the grounds that he refused suitable work.

¹ 20 C.F.R. §§ 10.516-10.517; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4(c) (July 1997); *see also Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

² Federal (FECA) Procedure Manual, *id.* at Chapter 2.814.5(d)(1) (July 1997); *Maggie L. Moore, id.*

³ *See Kenneth R. Love*, 50 ECAB 193 (1998).

IT IS HEREBY ORDERED THAT the December 19, 2012 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 25, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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