



was employment related. OWCP accepted the claim for bilateral ankle tendinitis. Appellant stopped working on July 13, 1996.

By decision dated June 20, 1997, OWCP terminated wage-loss compensation effective that day pursuant to section 8106(c) of FECA based on appellant's refusal of an offer of suitable work.

In a letter dated July 11, 1997, appellant requested a review of the written record by an OWCP hearing representative.

By decision dated October 2, 1997, an OWCP hearing representative affirmed the termination of appellant's wage-loss compensation for refusing an offer of suitable work.<sup>2</sup>

On May 31, 2012 appellant filed a claim for a schedule award and submitted evidence in support of her request.

In a May 31, 2012 report, Dr. Jessica Glazer Volsky, an examining osteopath, diagnosed foot and ankle tenosynovitis and ankle ligamentous laxity/joint instability. Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), she found that appellant had a 20 percent left lower extremity impairment and a 23 percent right lower extremity impairment. Dr. Volsky stated that appellant had reached maximum medical improvement as of May 31, 2012.

By decision dated July 18, 2012, OWCP denied appellant's claim for a schedule award. It found that as appellant had refused suitable work pursuant to 5 U.S.C. § 8106(c) she was not entitled to monetary compensation under a schedule award.

On July 20, 2012 appellant's counsel requested a telephonic hearing before an OWCP hearing representative, which was held on November 14, 2012.

By decision dated January 31, 2013, an OWCP hearing representative affirmed the July 18, 2012 schedule award denial.

### **LEGAL PRECEDENT**

Section 8106(c) of FECA<sup>3</sup> provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation. OWCP's regulations further provide that, after it has provided an employee with the appropriate notices, then OWCP will terminate the employee's entitlement to

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<sup>2</sup> Appellant appealed to the Board. On December 19, 2002 the Board issued an order dismissing appellant's appeal as there were no decisions over which it had jurisdiction. Docket No. 02-967 (issued December 19, 2002).

<sup>3</sup> 5 U.S.C. § 8106(c).

further monetary compensation under 5 U.S.C. §§ 8105,<sup>4</sup> 8106<sup>5</sup> and 8107,<sup>6</sup> as provided by 5 U.S.C. § 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. § 8103.<sup>7</sup> The Board has affirmed these determinations beginning in *Stephen R. Lubin*.<sup>8</sup> The Board has found that a refusal to accept suitable work constitutes a bar to receipt of a schedule award for any impairment which may be related to the accepted employment injury.<sup>9</sup>

Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether maximum medical improvement has been reached is based on probative medical evidence.<sup>10</sup>

### ANALYSIS

In a decision dated June 20, 1997, OWCP terminated appellant's compensation, effective that same date, on the grounds that she neglected suitable work under section 8106. On May 31, 2012 appellant filed a claim for a schedule award.

In a decision dated July 18, 2012, OWCP found that appellant was not entitled to a schedule award because OWCP had previously terminated her compensation benefits under the provisions of 5 U.S.C. § 8106(c). As OWCP terminated appellant's compensation benefits on June 20, 1997, she is barred from receiving schedule award compensation for any period after the termination decision was reached.<sup>11</sup> The record, as reflected in Dr. Volsky's May 31, 2012 report, indicates that appellant reached maximum medical improvement on May 31, 2012 following the June 20, 1997 termination date.<sup>12</sup> The only medical evidence submitted to the record establishes the date of maximum medical improvement well after the termination arising in 1997. Therefore, OWCP properly denied her claim for a schedule award.

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<sup>4</sup> This section of FECA addresses claims for total disability

<sup>5</sup> This section of FECA addresses claims for partial disability.

<sup>6</sup> This section of FECA addresses claim for schedule awards.

<sup>7</sup> 20 C.F.R. § 10.517(b).

<sup>8</sup> 43 ECAB 564 (1992).

<sup>9</sup> See *T.U.*, Docket No. 08-1894 (issued June 15, 2009); *B.K.*, 59 ECAB 228 (2007); *Alfred R. Anderson*, 54 ECAB 179 (2002); *Stephen R. Lubin*, *supra* note 8.

<sup>10</sup> See *J.C.*, 58 ECAB 258 (2007); *Mark A. Holloway*, 55 ECAB 321 (2004).

<sup>11</sup> See *supra* note 9.

<sup>12</sup> See *Lizzie M. Greer*, 49 ECAB 681 (1998) (where the date of maximum medical improvement occurred after the termination of compensation based on the refusal to accept a suitable offer of employment, section 8106(c) bars a claim for a schedule award).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's claim for a schedule award following her refusal of suitable work under section 8106(c) of FECA.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 31, 2013 is affirmed.

Issued: September 9, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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