

FACTUAL HISTORY

On July 23, 2011 appellant, then a 54-year-old rural mail carrier, injured her right shoulder rotator cuff while lifting a heavy package. On September 13, 2011 OWCP accepted her claim for recurrent right shoulder rotator cuff tear with retraction. On October 18, 2011 appellant underwent a right shoulder arthroscopy.

In an October 1, 2012 report, Dr. Jeffrey D. Stone, a treating Board-certified orthopedic surgeon with a subspecialty in surgery of the hand, noted that appellant was seen for an 11-month follow up from right rotator cuff revision surgery. Appellant had undergone physical therapy, but still complained of right shoulder pain at rest and especially with motion. Dr. Stone noted that she also complained of psoriatic arthritis. He advised that appellant had work restrictions on her right shoulder prohibiting lifting over 25 pounds from floor to thigh or greater than 10 pounds overhead.

In a February 25, 2013 report, Dr. Stone noted that appellant had history of a recurrent rotator cuff status post revision repair performed on October 18, 2011. He also noted that she had a new complaint of left shoulder pain. Appellant brought in a magnetic resonance imaging (MRI) scan report of the left shoulder from an outside facility dated February 8, 2013. The report noted degenerative changes of the acromioclavicular joint with mild downward impingement. Dr. Stone noted no rotator cuff tear or tendinitis. He advised that the left shoulder condition was not employment related. Dr. Stone reiterated that appellant's functional capacity restrictions remained at lifting less than 25 pounds floor to thigh and less than 10 pounds overhead. With regard to the left shoulder, appellant would follow up under her regular insurance.

In a May 23, 2013 letter, the employing establishment informed Dr. Stone that appellant had refused a job offer for a sedentary position as a sales solution team member, with the date of job offer January 23, 2013. It provided the physician with a copy of the job offer and asked him whether she was able to perform the duties. The duties consisted of contacting customers by telephone, light typing, answering telephone and administrative type duties. The employing establishment asked Dr. Stone whether, based on his restrictions, appellant would be able to perform the job duties of assisting customers in the lobby and retrieving mail for customers, as long as it weighed less than 25 pounds. On June 7, 2013 Dr. Stone checked the line marked "yes."

On June 12, 2013 the employing establishment made a job offer to appellant as a modified rural carrier. The description of duties was to be a lobby director -- assisting customers in the completion of forms, ensuring that the lobby had sufficient supply of forms and retrieve accountable or hold mail for customers if it involved lifting less than 25 pounds from floor to thigh.

In a June 17, 2013 letter, the employing establishment, through a health and resource management specialist, noted that Dr. Stone advised that appellant was able to work. On June 12, 2013 it provided a new job offer and scheduled her for an interview, but she failed to show. Dr. Stone noted that the job offer was based on the restrictions dated February 25, 2013,

which noted that appellant could lift 25 pounds from floor to thigh and no more than 10 pounds overhead.

On July 12, 2013 OWCP informed appellant that it found the offered position to be within her medical limitations as set by Dr. Stone. Appellant had 30 days to report for duty. If she failed to accept the position, she was asked to provide a written explanation of the reasons for her refusal within 30 days.

By letter dated July 25, 2013, appellant stated that in the last two years her diseases became worse and that she was under 14 medications and weekly shots. She contended that she was unable to work at all and was in constant pain. In a February 14, 2013 report, Dr. Anas Moureiden, a Board-certified rheumatologist, diagnosed psoriatic arthritis and Sjogren's disease; spondylarthritis and osteoarthritis with arthralgias and myalgias; tenderness of the hips/trochanteric bursae and of the superior/inferior S1 joints; hypothyroidism; fatty liver; hyperlipidemia; gastroesophageal reflux disease; and episodes of hypokalemia. He opined that appellant had total and permanent disability due to all of the above. In a brief note dated March 20, 2013, Dr. Dhammika Ekanayake, a Board-certified internist, stated that she was known to him for several years and was disabled due to multiple medical problems that impaired her ability to work.

By letter to OWCP dated August 12, 2013, the employing establishment advised that appellant had not contacted them or returned to work.

On August 28, 2013 OWCP informed appellant that her reasons for refusing the job were not acceptable. The offered position continued to be available and she had 15 additional days to accept the position. If appellant did not accept the position, her entitlement to monetary benefits would be terminated.

By letter dated September 12, 2013, a representative from the employing establishment advised that appellant had not returned to work and that the job offer of June 12, 2013 was still available.

In a September 23, 2013 decision, OWCP terminated appellant's entitlement to monetary compensation effective October 20, 2013 due to her refusal of suitable work. It noted that this did not affect coverage of medical benefits.

LEGAL PRECEDENT

It is well settled that, once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ Section 8106(c)(2) of FECA 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.⁴ Section 8106(c)(2) will be narrowly construed as it serves as a penalty provision, which may bar an

³ See also *R.W.*, Docket No.13-428 (issued January 8, 2014); see *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ 5 U.S.C. § 8106(c)(2); see also *Geraldine Foster*, 54 ECAB 435 (2003).

employee's entitlement to compensation based on a refusal to accept a suitable offer of employment.⁵

Section 10.517(a) of FECA's implementing regulations provide that an employee who refuses or neglects to work after suitable work has been offered or secured by the employee, has the burden of showing that such refusal or failure to work was reasonable or justified.⁶ Pursuant to section 10.516, the employee shall be provided with the opportunity to make such a showing before a determination is made with respect to termination of entitlement to compensation.⁷

ANALYSIS

The Board finds that OWCP properly terminated appellant's compensation on the grounds that she refused suitable work.

OWCP accepted a recurrent right shoulder rotator cuff tear with retraction as a result of the July 23, 2011 employment-related injury. Appellant received treatment from Dr. Stone, who set work restrictions on October 1, 2012 as no lifting more than 25 pounds from the floor to thigh level or lifting more than 10 pounds overhead. Dr. Stone reiterated the restrictions in subsequent medical reports. In response to a query from the employing establishment, he advised that appellant would be able to perform the work of assisting customers in the lobby and retrieving mail, as long as it weighed less than 25 pounds.

The job offered by the employing establishment on June 12, 2013 was within the restrictions set forth by Dr. Stone. The position involved assisting customers in the lobby and involved lifting no more than 25 pounds from floor to thigh. The Board finds that OWCP provided appellant with proper notice and opportunities to accept the offered position and informed her of the consequences of her failure to do so. The medical evidence of record is not sufficient to establish that she was unable to perform the offered work, especially in light of the well-rationalized opinion of Dr. Stone. Dr. Ekanayake's brief statement that appellant was disabled due to multiple medical problems did not specifically address her accepted injury or provide any explanation in support of his conclusion. Dr. Moureiden did not address her accepted condition of right rotator cuff tear, but based his conclusion that she was totally disabled on multiple other medical conditions including psoriatic arthritis, Sjogren's disease and osteoarthritis. Therefore, OWCP properly terminated appellant's compensation benefits.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation effective October 20, 2013 on the grounds that she refused suitable work under 5 U.S.C. § 8106(c)(2).

⁵ See *Joan F. Burke*, 54 ECAB 406 (2003).

⁶ 20 C.F.R. § 10.517(a).

⁷ *Id.* at 10.516.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 23, 2013 is affirmed.

Issued: April 10, 2014
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