

FACTUAL HISTORY

On May 18, 2011 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that she awoke on May 5, 2011 with severe pain throughout her back. She noted that, on the prior day, she carried heavy bulk mail up and down steps throughout her route. Although OWCP initially denied appellant's claim, pursuant to the November 8, 2002 decision of the hearing representative, it accepted her claim for resolved lumbar strain. It later accepted her claim for sprain of lumbar region of the back and displacement of lumbar intervertebral disc without myelopathy. Appellant stopped work on November 6, 2003 and returned to a modified position on January 7, 2004. However, under the National Reassessment Program (NRP), her limited-duty assignment was eliminated and she refused an offer of a different assignment, so she was sent home on September 17, 2010. Appellant received total disability compensation beginning September 17, 2010. She has refused all subsequent offers of employment by the employing establishment, contending that the positions exceeded her work capacity.

In a November 21, 2011 report, Dr. Charles Bonner, appellant's treating Board-certified physiatrist, diagnosed appellant with lumbago and displacement of lumbar intervertebral disc without myelopathy. In an accompanying work capacity evaluation, he limited her daily employment activities to six hours of sitting, walking, standing, squatting, kneeling and reaching above the left shoulder and four hours of bending, stooping and twisting. Dr. Bonner limited appellant to pushing, pulling and lifting more than 20 pounds. He prohibited reaching above the shoulder with the right arm and climbing stairs.

On July 5, 2012 the employing establishment made an offer of modified assignment (limited duty) for a position as a city letter carrier. The duties of the assignment were delivery of park and loop route (flat) for up to six hours, delivery of curbside route for up to six hours, delivery of Neighborhood Delivery and Collection Box Unit (NDCBU) route for up to six hours, and afternoon office/administrative carrier duties for up to five minutes. The physical requirements of the modified assignment were sitting, walking, standing and reaching above left shoulder up to six hours; twisting and bending/stooping up to four hours, pushing/pulling/lifting limited to 20 pounds and no reaching above right shoulder or climbing stairs. In a July 6, 2012 letter to appellant, the employing establishment noted that the job offered was based upon the information provided by appellant's treating physician on a November 21, 2011 form.

By letter dated July 25, 2012, OWCP informed appellant that the position offered by the employing establishment of modified city letter carrier was found to be within her work capabilities. It informed appellant that she had 30 days from the date of the letter to either accept the position or provide an explanation of the reasons for refusing it.

By letter dated August 14, 2012, appellant contended that the job assignment was based on outdated medical information, that all her medical information should be used and that the requirements of the modified job assignment are outside of her medical limitations. She contended that she requested reasonable accommodations under the American with Disabilities Act (ADA), and engagement in an interactive process.

In a decision dated September 20, 2012, OWCP determined that appellant's reasons for refusing the position were unacceptable. It gave appellant a period of 15 additional days to accept the position.

By letter dated October 2, 2012, appellant contended that OWCP did not consider all of her medical conditions when it determined that she could perform the position. She attached an October 2, 2012 note from her physician, Dr. Bonner, indicating that she was unable to perform her usual employment as a carrier. Appellant also submitted a work capacity evaluation wherein Dr. Bonner limited appellant to four hours of sitting, standing, operating a motor vehicle at work, squatting, kneeling, climbing and pushing/pulling/lifting up to 20 pounds. Dr. Bonner limited appellant to six hours of walking, repetitive movements with her wrist and elbow and prohibited reaching above the shoulder and twisting. He indicated that bending/stooping were limited to one hour a day. Dr. Bonner concluded that appellant was unable to perform her carrier duties. In a November 26, 2012 report, he indicated that on examination on November 5, 2012 appellant ambulated with a cane, was slow to sit and stand and had mildly antalgic behavior. Dr. Bonner noted that appellant injured her back at work on May 4, 2011 and has causally-related diagnoses of lumbago, chronic pain syndrome, myalgia and displacement of lumbar intervertebral disc. He noted that these diagnoses were the direct sequelae of employment-related injury. Dr. Bonner opined that the effects of the employment injury had not ceased and her prognosis was guarded. He opined that appellant was unable to perform her usual job, and he anticipated that she will be unable to return to her previous employment without work hardening.

On January 2, 2013 the employing establishment made appellant an offer of modified assignment (limited duty) as a city letter carrier. The position required appellant to do NDCBU/DBU delivery for two hours, park and loop delivery for two hours and curbside delivery for one hour. The physical requirements of the modified assignment were sitting, walking, standing, carrying and lifting up to 20 pounds for 1 to 2.5 hours (60-minute intervals).

By letter dated February 7, 2013, OWCP advised appellant that the position of city letter carrier with the employing establishment was found suitable and within her restrictions, and that she had 30 days to accept the position or offer reasons for refusing it.

In a February 8, 2013 letter, Dr. Bonner indicated that appellant had been under his care for treatment of her employment-related injury. He opined that her accepted condition of displacement of lumbar intervertebral disc without myelopathy is causative of her radiculitis, which constitutes nerve root inflammation and irritation secondary to her discopathy, and that therefore her sciatica is causally related to her employment injury. Dr. Bonner noted that appellant's required physical therapy was a medically-necessary treatment of this injury two to three times a week. In a February 27, 2013 letter, he stated that she suffered an employment-related injury on May 4, 2001 and that, as a result of this injury, she is unable to perform the duties of her previous job. Dr. Bonner noted that appellant has had extensive evaluations and functional capacity evaluations which reveal that the job of letter carrier is beyond her functional capacity and would risk her further injury. He concluded that, due to her employment-related injury to her back and her reduced functional capacities as documented in evaluations, appellant was unable to return to the position of letter carrier.

By decision dated March 13, 2013, OWCP found that appellant's reasons for refusing the position were unacceptable and allowed her 15 additional days to accept the position. It noted that, if they did not receive a written response within 15 days of the letter, or if appellant's response is that she continues to refuse the offer, OWCP will proceed with a final decision in this matter. OWCP noted that they would consider no further reasons for refusal.

By decision dated March 28, 2013, OWCP terminated appellant's wage-loss and schedule award benefits because she failed to accept suitable employment.

In a March 28, 2013 letter to OWCP, Dr. Bonner stated that he performed a functional capacity evaluation and used the Department of Labor, *Dictionary of Occupational Titles* (DOT) to determine the functional requirements of the job of letter carrier. He noted that the job of letter carrier requires lifting 50 pounds occasionally up to one-third of the day, and that therefore appellant was clearly unable to perform the job. Dr. Bonner then noted that the offer of modified assignment only required sitting 60-minute intervals for up to 2.5 hours per day and walking and standing up to 2.5 hours per day.

On April 16, 2013 appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on September 12, 2013, she stated that the employing establishment continued to offer her jobs that were outside her functional capacity. Appellant argued that her doctor has not cleared her to perform the position offered by the employing establishment. She contended, *inter alia*, that she had to use a cane and could not deliver mail using the cane, that OWCP did not consider all medical conditions and that the job description was inaccurate. In an October 11, 2013 letter, appellant contended that the modified letter carrier duty exceeded her functional capabilities as stated by her doctor, that her condition has worsened since the date of injury of May 4, 2011 and that her medical report stipulates that she required a cane to walk. Appellant contended that the offered position required her to exceed her restrictions set by her physician in that she would be required to work above her shoulders, bend to retrieve mail, lift tubs weighing more than 20 pounds and perform curbside delivery that would require her to twist her body.

In an October 11, 2013 letter, Dr. Bonner indicated that appellant has been under his medical care since her on-the-job injury of May 4, 2011, that he reviewed the modified job offer of January 5, 2012, and that it was his professional opinion that appellant was unable to perform her duty as a modified letter carrier. He noted that he had outlined limitations in his functional capacity reports, and that appellant had limitations in walking, carrying, lifting, twisting, bending and reaching above her shoulders. Dr. Bonner opined that the modified job assignment was outside of these functional capacities. He noted that appellant did have functional capacity for light work with alternating sitting, standing, walking, carrying, lifting, bending and reaching.

By decision dated December 3, 2013, OWCP's hearing representative affirmed OWCP's decision.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² 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.³ OWCP may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.⁴ The Board has stated that monetary compensation payable to an employee under section 8107 are payments made from the Employees' Compensation Fund and are, therefore, subject to provision of section 8106(c).⁵

Section 10.517(a) of FECA's implementing regulations provide that an employee who refused to work after suitable work has been offered to or secured for 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

OWCP accepted appellant's claim for sprain of the back and displacement of lumbar intervertebral disc without myelopathy. On March 28, 2013 it terminated appellant's compensation benefits as it found that she refused a suitable position with the employing establishment as a modified carrier.

The position of the modified carrier, as proposed by the employing establishment, involved NDCBU/DBU delivery for two hours, park and loop delivery for two hours and curbside delivery for one hour. The physical requirements of the position were modified so sitting, walking, standing, carrying and lifting up to 20 pounds would be accomplished in 60-minute intervals for between 1 to 2.5 hours. This position was within the physical restrictions set by Dr. Bonner. In an October 2, 2012 work capacity evaluation, Dr. Bonner limited appellant to walking and performing repetitive movements with her wrist and elbows to six hours; sitting, standing, squatting, kneeling, climbing and pushing/pulling/lifting of 20 pounds to four hours; and bending and stooping to one hour. He prohibited her from reaching above her shoulder. The position proposed by the employing establishment was clearly within these restrictions. Dr. Bonner, in several reports, indicated that appellant could not perform her usual employment

² *Barry Neutuch*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995); *see also M.B.*, Docket No. 12-728 (issued September 26, 2012).

³ 5 U.S.C. § 8106(c)(2); *see also Linda D. Guerro*, 54 ECAB 556 (2003).

⁴ *Ronald M. Jones*, 52 ECAB 190 (2000); *Arthur R. Reck*, 47 ECAB 339 (1995).

⁵ *Sandra A. Sutphen*, 49 ECAB 174 (1997); *Stephen R. Lubin*, 43 ECAB 564 (1992).

⁶ 20 C.F.R. § 10.517(a); *see Ronald M. Jones*, *supra* note 4.

⁷ *Id.* at § 10.516; *see Kathy E. Murray*, 55 ECAB 288 (2004).

as a letter carrier, and stated that he checked the position in the DOT and noted that the requirements of a letter carrier involved such activities as lifting 50 pounds which appellant could not do. However, the position offered was a position as a modified carrier, and the employing establishment clearly described a number of limitations on appellant's required activities. Although in his October 11, 2013 letter Dr. Bonner did specifically indicate that appellant could not perform the duty of a modified letter carrier, he did not provide a rationalized opinion as to why she was unable to perform the duties of this position despite the fact that the limitations he provided in earlier medical opinions were being accommodated in the description of the proposed position.

Appellant continues to maintain that the modified position would actually require her to exceed her work restrictions as set by Dr. Bonner. However, there is absolutely no evidence that appellant would be required to exceed her restrictions. Appellant makes certain allegations as to her limitations that are not supported by the evidence of record. For example, there is no medical report that indicates that appellant must walk with a cane. Although some twisting, bending and stooping are required by the proposed position, there is no evidence that her physician prohibited these activities. Rather, Dr. Bonner simply imposed restrictions as to the amount of time appellant could engage in each of these activities.

Accordingly, after reviewing the evidence of record, 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 compensation benefits based on her refusal to accept suitable work.⁸

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 under 5 U.S.C. § 8106(c) for refusal of suitable work.

⁸ *Roy E. Bankston*, 38 ECAB 380 (1987).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 3, 2013 is affirmed.

Issued: October 27, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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