



to terminate appellant's compensation based on her refusal of suitable work.<sup>2</sup> The facts and circumstances of the case are set forth in the Board's prior decision and incorporated herein by reference.

On November 10, 2003 appellant requested reconsideration. She submitted a March 28, 2003 magnetic resonance imaging (MRI) scan of the cervical spine, which revealed central herniation at C6-7 with degenerative changes. A November 10, 2003 report from Dr. Lewis noted a history of appellant's injury and treatment. He diagnosed cervical radiculopathy, herniated cervical disc at C6-7, herniated lumbar disc at L5-S1 and lumbar radiculopathy. Dr. Lewis noted that both objective and subjective symptoms consistent with lumbar and cervical radiculopathy and recommended surgical intervention. In a decision dated April 9, 2004, OWCP denied modification of the prior decision.

In an August 1, 2010 appeal form, appellant requested reconsideration and noted her disagreement with the suitable work decision. She disputed that she had failed to report for work. Appellant asserted that she worked in a limited-duty capacity and never failed to report to work. She filed a grievance against the employing establishment and, in a July 22, 1999 decision, she was instructed to remain on limited duty for four hours a day as directed by her physician. Appellant was offered a job on December 21, 1999 and refused the position on January 7, 2000 on the grounds that it was not tailored to her physical needs or meet her medical restrictions. She noted that the job offer was based on the restrictions of Dr. Kramer, an OWCP physician, who found that she could work four hours a day with restrictions of no twisting, squatting, kneeling or climbing. Appellant contended that the job offer was not suitable because the letter carrier duties consisted of twisting, squatting, kneeling and climbing numerous times a day. She noted that in a separate claim, number xxxxxx596, she was referred by OWCP on October 15, 2009 to Dr. Balazs B. Somogyi, a Board-certified orthopedic surgeon, who found that she developed moderate disability related to the cervical and lumbosacral segment, which was related to the initial injury. Appellant stated that the work capacity evaluation found that she could work four hours a day limited duty and therefore the job offer of 2000 was not suitable or within her medical restrictions.

Appellant submitted a copy of a November 9, 1999 report from Dr. Kramer, the referee physician, the job offer dated December 21, 1999, reports from Dr. Lewis dated November 22, 1999 to March 2, 2000 and duty status reports from Dr. Lewis dated January 3 to February 1, 2000, all previously of record. She submitted duty status reports from Dr. Lewis dated July 25,

---

<sup>2</sup> Docket No. 02-1023 (issued January 23, 2003). On February 7, 1994 appellant, a letter carrier, was injured when she slipped on ice. OWCP accepted the claim for concussion and contusions of the cervical and lumbar spine. Appellant eventually returned to light duty four hours per day. OWCP determined that a conflict of medical opinion existed between Dr. William S. Lewis, a Board-certified orthopedist, her treating physician, who indicated that she could work light duty four hours per day, and Dr. Alan H. Goodman, a Board-certified orthopedist, an OWCP referral physician, who determined that she had no residuals of the accepted conditions and could work full time. Appellant was referred to Dr. Kenneth M. Kramer, a Board-certified orthopedist, to resolve the conflict. In an October 5, 1999 report, Dr. Kramer found that she could work four hours per day within certain restrictions. The employing establishment offered appellant a modified light-duty position on December 21, 1999 conforming to Dr. Kramer's restrictions. Appellant declined the December 21, 1999 job offer. After providing her required procedural notices that the reasons for her refusal of the offered position were not justified, OWCP, on February 28, 2000 terminated her compensation for refusing suitable work.

2005 to November 7, 2008.<sup>3</sup> Dr. Lewis noted clinical findings of herniated nucleus pulposus of the cervical spine/contusion of the back and enthesopathy of the hip. He advised that appellant could return to work for four hours daily within specified restrictions. Appellant also submitted return to work slips from Dr. Lewis dated November 7, 2005 to September 10, 2007. Dr. Lewis diagnosed C1-4 level spinal cord injury unspecified, contusion of the back, concussion and enthesopathy of the hip region. He found that she could return to work with restrictions of no lifting over 10 pounds, no standing or walking, no packing or driving a mail route and she could only work four hours a day. Appellant submitted the October 19, 2009 report from Dr. Somogyi,<sup>4</sup> who diagnosed a history of cervical radiculopathy, chronic cervical syndrome, a history of lumbar radiculopathy, chronic low back syndrome and MRI scan changes suggestive of cervical and lumbar herniated discs. Dr. Somogyi opined that her diagnosis of cervical and lumbar radiculopathies were the result of the reported work injury in 1994. As a result of the 1994 injury, appellant developed moderate disability related to the cervical and lumbar segments that continued to be present.

In a decision dated September 5, 2013, OWCP denied modification of the prior decision.

### **LEGAL PRECEDENT**

Section 8106(c)(2) of FECA states that a partially disabled employee who refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by or secured for him or her is not entitled to compensation.<sup>5</sup> An employee who refuses or neglects to work after suitable work has been offered or secured for him or her has the burden to show that this refusal or failure to work was reasonable or justified.<sup>6</sup>

### **ANALYSIS**

The Board previously affirmed OWCP's February 28, 2000 termination of appellant's compensation under section 8106(c) due to her refusal of suitable work. Thus, in the current appeal, it is appellant's burden of proof to establish that her refusal to accept the offered modified-duty position was justified. The Board finds that she has not met her burden of proof to establish that her refusal of suitable work was justified.

Following the Board's January 23, 2003 decision, appellant requested reconsideration. In the August 1, 2010 statement, she disagreed with the finding that she refused suitable work. Appellant asserted that she never failed to report to work. She contends that the job offer was not suitable because the letter carrier duties in the job offer consist of twisting, squatting, kneeling and climbing numerous times a day. Appellant noted that, in a separate claim number xxxxxx596, she was referred to Dr. Somogyi, an OWCP physician, on October 15, 2009 who found moderate disability related to the initial work injury. She indicated that a work capacity

---

<sup>3</sup> The November 7, 2008 duty status report was cosigned by a Dr. Patrick Matraramo.

<sup>4</sup> Claim number xxxxxx596 is not presently before the Board.

<sup>5</sup> 5 U.S.C. § 8106(c)(2).

<sup>6</sup> 20 C.F.R. § 10.517(a).

evaluation found that she could work four hours a day limited duty and therefore the job offer of 2000 was not suitable and not within her medical restrictions. However, the Board notes that it previously considered similar assertions and that appellant, on reconsideration, has not otherwise submitted evidence establishing that she did not refuse suitable work. As noted in the prior appeal, appellant was offered a job on December 21, 1999 and refused the position and the Board found such refusal unjustified. These assertions by her do not show that her refusal of the offered job was justified at the time that OWCP terminated monetary compensation on February 28, 2000.

Appellant submitted duty status reports from Dr. Lewis dated July 25, 2005 to November 7, 2008 who noted findings and work restrictions.<sup>7</sup> However, Dr. Lewis did not specifically address her ability to perform the offered position at the time OWCP terminated monetary benefits on February 28, 2000. Furthermore, he was on one side of a conflict that was resolved by Dr. Kramer.<sup>8</sup> Therefore, these reports do establish that appellant's refusal of the offered position was justified.

Appellant submitted an October 19, 2009 report from Dr. Somogyi, an OWCP referral physician, who had examined appellant in another claim. Dr. Somogyi diagnosed history of cervical radiculopathy, chronic cervical syndrome, history of lumbar radiculopathy, chronic low back syndrome and MRI scan changes suggestive of cervical and lumbar herniated discs. He opined that appellant's cervical or lumbar radiculopathies were due to her 1994 reported work injury and caused moderate disability that continued. This report is insufficient to establish that the position offered to her on December 21, 1999 was not medically suitable. Dr. Somogyi did not address the suitability of the offered position or otherwise explain how appellant's medical conditions prevented her return to work in the modified position by the time OWCP terminated her compensation on February 28, 2000. The other medical evidence submitted by appellant on reconsideration was duplicative of evidence previously of record. She has not explained how such evidence establishes that her refusal of the offered position was justified.

The Board accordingly finds that the evidence submitted is not sufficient to meet appellant's burden of proof to establish that her refusal to accept the suitable work was justified.

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 appellant has not established that her refusal of suitable work was justified.

---

<sup>7</sup> Appellant also submitted reports from Dr. Lewis that were previously considered by the Board.

<sup>8</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is, generally, insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board