

received total disability compensation until her return to work in 1974 and later suffered several intermittent recurrences of disability. On October 3, 1977 she sustained a work-related right shoulder sprain, but this claim was administratively closed due to no activity. Appellant twisted her back when she slipped on a sticky liquid substance at work on June 15, 1978 and this claim was accepted for lumbar sprain and displacement of lumbar intervertebral disc without myelopathy.

In a June 8, 1979 report, an OWCP medical adviser reported that appellant might have a neuropsychiatric disorder due to her work-related injuries. He recommended that she be sent to an impartial orthopedic specialist to determine if she continued to have residuals of her 1973 or 1978 work injuries and that she also be sent to an impartial psychiatrist to determine if she had a work-related neuropsychiatric disorder. On July 3, 1979 the same OWCP medical adviser again recommended that, after developing the claim with respect to work-related physical residuals, appellant be referred to an impartial psychiatrist in order to evaluate whether she had a neuropsychiatric disorder and, if so, whether it was related to her 1973 or 1978 work injury.

In a July 9, 1985 report, Dr. Paul F. Wallace, an attending Board-certified orthopedic surgeon, indicated that appellant was capable of doing some sedentary form of work. He noted, "I do not feel any treatment is indicated because of her psychological adjustment to lack of work." In an attached July 9, 1985 form report, Dr. Wallace noted that appellant could perform modified duty, including work that required sitting for eight hours per day and lifting up to 10 pounds for up to an hour per day.

In a March 3, 1986 report, Dr. James L. West, an attending Board-certified orthopedic surgeon, noted that appellant had back pain and rigidity and that she had sensitivity over the sciatic notch on either side with significant lower extremity irritation. He also noted that appellant's surgery status needed to be considered.

On June 24, 1986 the employing establishment offered appellant a full-time modified position as a medical machine technician. The position involved watching monitors on continuous basis and could be performed while sitting, standing, or walking. It did not require any lifting, pushing, or pulling.

In September 1986 appellant was referred to a vocational rehabilitation program to assist her with her return to work. Her vocational rehabilitation counselor determined that she was able to work as a medical machine technician.

On September 10, 1986 Dr. West reviewed the position description of medical machine technician job and determined that appellant was able to perform this job.

In a November 20, 1986 letter, OWCP advised appellant of its determination that the medical machine technician position offered by the employing establishment was suitable. It informed her that her compensation would be terminated if she did not accept the position or provide good cause for not doing so within 30 days of the date of the letter. Appellant did not respond to OWCP within the allotted time.

Appellant submitted a December 15, 1986 report, but the report is not signed and it is unclear who authored it.²

In a December 30, 1986 decision, OWCP terminated appellant's compensation effective December 30, 1986 because she refused an offer of suitable work.

In an August 5, 2014 letter, appellant's counsel requested reconsideration of OWCP's December 30, 1986 decision noting that the request was timely because it had been made with respect to an OWCP decision issued prior to June 1, 1987 and OWCP had not subsequently reviewed the December 30, 1986 decision.³ He argued that OWCP improperly terminated appellant's compensation for refusing an offer of suitable work effective December 30, 1986 because the contemporaneous medical evidence did not show that she had the ability to perform the medical machine technician position offered by the employing establishment.⁴ Counsel indicated that Dr. West provided opinions in March 3 and December 15, 1986 reports that appellant was not employable and that other medical evidence of record showed that she had a disabling "consequential psychological condition triggered by her work injury."⁵

Counsel submitted September 27, 1975 and January 4, 1978 reports in which Dr. R. Knaus, an attending osteopath, diagnosed agitated reactive depression. In a December 28, 1977 report, Dr. James R. Tyler, an attending osteopath, diagnosed several physical conditions and indicated "some psychogenic, psychological overlay condition is suggested." Counsel also submitted medical reports dated between 1993 and 2014 that described medical treatment appellant received, but they provide no opinion on appellant's medical condition or ability to work around the time the medical machine technician position was offered in 1986.

By decision dated October 21, 2014, OWCP affirmed its December 30, 1986 decision noting that appellant's compensation had been properly terminated effective December 30, 1986 because she refused an offer of suitable work.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁶ 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.⁷ Section 8106(c)(2) will be narrowly

² The report stated that appellant reported severe lower back pain radiating down to her left heel and that she lifted 10 to 15 pounds. It also indicated that she did not desire surgery and that she "continues to be disabled."

³ *E.R.*, Docket No. 13-719 (issued April 17, 2014); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4e (October 2011).

⁴ Counsel resubmitted a number of medical reports that had already been in the record.

⁵ Counsel stated that these psychological conditions were accepted by OWCP "by way of [OWCP medical adviser memoranda] dated June 8 and July 3, 1979."

⁶ See *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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

construed as it serves as a penalty provision, which may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment.⁸

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.⁹ 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.¹⁰

To justify termination, OWCP must show that the work offered was suitable and that appellant was informed of the consequences of his or her refusal to accept such employment.¹¹ Determining what constitutes suitable work for a particular disabled employee, it considers the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area, and the employee's qualifications to perform such work.¹² OWCP procedures state that acceptable reasons for refusing an offered position include withdrawal of the offer or medical evidence of inability to do the work or travel to the job.¹³

Medical question can only be resolved by medical opinion evidence, *i.e.*, evidence produced by a person considered to be a physician under FECA.¹⁴

No time limit applies to requests for reconsideration of decisions issued before June 1, 1987 because there was no regulatory time limit for requesting reconsideration prior to June 1, 1987. Therefore, a request for reconsideration of a decision issued before June 1, 1987 may not be denied as untimely unless the claimant was advised of the one-year filing requirement in a later decision denying an application for reconsideration or denying modification of the contested decision. In these cases, the one-year time limit begins on the date of the decision that includes notice of the time limitation.¹⁵

⁸ See *Joan F. Burke*, 54 ECAB 406 (2003).

⁹ 20 C.F.R. § 10.517(a).

¹⁰ *Id.* at § 10.516.

¹¹ See *Linda Hilton*, 52 ECAB 476 (2001); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

¹² 20 C.F.R. § 10.500(b).

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.5a (June 2013); see *E.B.*, Docket No. 13-319 (issued May 14, 2013).

¹⁴ See *Arnold A. Alley*, 44 ECAB 912 (1993); 5 U.S.C. § 8101(2).

¹⁵ *Supra* note 3.

ANALYSIS

In a December 30, 1986 decision, OWCP terminated appellant's compensation effective December 30, 1986 because she refused an offer of suitable work. On August 5, 2014 appellant, through counsel, submitted a reconsideration request of OWCP's December 30, 1986 decision.¹⁶

The Board finds that OWCP properly terminated appellant's entitlement to compensation effective December 30, 1986.

The evidence of record establishes that appellant was capable of performing the medical machine technician position offered by the employing establishment in June 1986 and determined to be suitable by OWCP in November 1986. The position involved watching monitors on a continuous basis and could be performed while sitting, standing, or walking. It did not require any lifting, pushing, or pulling. The medical machine technician position was selected by appellant's vocational rehabilitation counselor and OWCP properly relied on the opinion of appellant's counselor in determining that appellant is vocationally and educationally capable of performing the position.¹⁷

In determining that appellant was physically capable of performing the medical machine technician position offered by the employing establishment, OWCP properly relied on the opinion of Dr. West, an attending Board-certified orthopedic surgeon. On September 10, 1986 Dr. West reviewed the description of the medical machine technician position and determined that appellant was able to perform the position.

Before OWCP and on appeal, counsel argued that the medical evidence of record, including March 3 and December 15, 1986 reports of Dr. West and a July 9, 1985 report of Dr. Wallace, an attending Board-certified orthopedic surgeon, established that appellant could not work as a medical machine technician. In his March 3, 1986 report, Dr. West indicated that appellant had back and lower extremity symptoms including pain and rigidity. However, he did not provide any opinion on appellant's ability to work. The record contains a December 15, 1986 report which notes that appellant reported continuing back and left leg symptoms, engaged in lifting 10 up to 15 pounds, and "continues to be disabled." However, the report is not signed and it is unclear who authored it. Therefore, it does not constitute probative medical evidence from a physician within the meaning of FECA.¹⁸ In his July 9, 1985 report, Dr. Wallace opined, "I do not feel any treatment is indicated because of her psychological adjustment to lack of

¹⁶ Appellant's reconsideration request was timely because it related to an OWCP decision issued prior to June 1, 1987 and she was not advised of the one-year filing requirement in a later decision. *See supra* note 15.

¹⁷ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.4 (June 2013).

¹⁸ *See supra* note 14. Even if the report were considered to constitute medical evidence, it is unclear whether the phrase "continues to be disabled" constitutes an actual medical opinion on disability (as opposed to appellant's self-reporting of disability) and, if so, what level of disability it would denote.

work.” However, he did not opine that appellant had any specific psychiatric diagnosis and, in fact, noted that appellant could perform sedentary work which included lifting up to 10 pounds.¹⁹

Counsel alleged that OWCP had accepted that appellant sustained a work-related psychiatric condition and that this condition prevented her from working as a medical machine technician. He submitted medical documents dated between 1975 and 1979 which made reference to psychiatric conditions. However, the record does not contain any evidence that appellant sustained a work-related psychiatric condition and there is no medical evidence of record showing that a psychiatric condition, whether work related or not, prevented her from performing the medical machine technician position around the time it was offered in mid-1986.

The Board finds that OWCP established that the medical machine technician position offered by the employing establishment is suitable. The Board has carefully reviewed the evidence and argument submitted by counsel on behalf of appellant in support of her refusal to accept the medical machine technician position and finds that it is not sufficient to justify her refusal of the medical machine technician position.

The Board therefore finds that OWCP properly terminated appellant’s compensation effective December 30, 1986 because she refused an offer of suitable work.

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 compensation benefits effective December 30, 1986 because she refused an offer of suitable work.

¹⁹ Counsel also submitted medical reports dated between 1993 and 2014 that described medical treatment appellant received for physical ailments, but they provide no opinion on her medical condition or ability to work around the time the medical machine technician position was offered in 1986.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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