



## **FACTUAL HISTORY**

On July 24, 2009 appellant, then a 48-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a bruise and cut on his left elbow as a result of falling down steps in the performance of duty. He stopped work. OWCP accepted appellant's claim for left elbow bursitis and paid compensation.

OWCP referred appellant's case, along with the medical record and statement of accepted facts, to Dr. Michael Katz, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant continued to suffer residuals of his employment injury and was able to work. In a December 7, 2009 report, Dr. Katz provided an accurate history of the July 24, 2009 employment injury. Upon examination of appellant's left elbow, he observed no erythema, swelling, or induration. Range of motion was normal and Tinel's sign was negative. Dr. Katz diagnosed left lateral epicondylitis and opined that this condition was causally related to the July 24, 2009 employment incident. He reported that appellant had not reached maximum medical improvement, but was capable of returning to work full time with restrictions of no lifting greater than 20 pounds.

On February 8, 2010 the employing establishment offered appellant a position as a modified city carrier, delivering and casing mail. The physical requirements of the position were lifting not to exceed 20 pounds for one to four hours, and standing, walking, reaching, pulling limited to one to four hours.

In a letter dated February 12, 2010, OWCP informed appellant that the offered modified city carrier position was suitable in light of his work restrictions. Appellant was advised that he had 30 days to accept the position or provide a valid reason for refusing suitable work.

On March 12, 2010 Elizabeth Chan, a human resource specialist for the employing establishment, informed OWCP that the modified position was still available, but appellant had neither reported to work, nor provided any explanation as to why he could not perform the job. She requested that appellant's compensation be terminated.

In a letter dated March 23, 2010, OWCP advised appellant that he had 15 days to accept the offered job position and that, if he did not do so, his entitlement to wage-loss and schedule award compensation benefits would be terminated pursuant to section 8106(c) of FECA.

On June 15, 2010 OWCP terminated appellant's entitlement to wage-loss and schedule award compensation benefits, effective June 15, 2010, because he refused suitable work. The claim remained open for medical benefits.

On April 17, 2015 appellant filed a claim for recurrence of disability (Form CA-2a) beginning August 27, 2014 as a result of the July 24, 2009 employment injury. He specifically indicated by checkmark on the claim form that the claim was not for medical treatment, but rather was for wage-loss compensation benefits. Appellant indicated that the employing establishment terminated him in September 2010 and that his left elbow worsened to the point that he needed surgery.

Appellant submitted various physical therapy treatment notes dated April 7 to 17, 2015 from Jennilyn Munda, a physical therapist. Ms. Munda related a diagnosis of left elbow sprain and recommended appellant continue physical therapy.

By decision dated April 27, 2015, OWCP denied appellant's recurrence of disability claim. It found that appellant was not entitled to any monetary compensation due to his July 24, 2009 employment injury because OWCP had terminated his compensation for refusing suitable work under section 8106 of FECA. OWCP noted that the June 15, 2010 termination decision stood as a bar to any subsequent monetary compensation arising out of the July 24, 2009 injury.

### **LEGAL PRECEDENT**

OWCP regulations provides that, after termination of compensation under section 8106(c) of FECA a claimant has no further entitlement to compensation under section 8105, 8106, and 8107 of FECA.<sup>3</sup> However, the claimant remains entitled to medical benefits as provided by 5 U.S.C. § 8103.<sup>4</sup> Section 8106(c) of FECA serves as a penalty provision, barring an employee's future entitlement to compensation for the same injury based on a refusal to accept a suitable offer of employment.<sup>5</sup>

OWCP procedures provide that if the claimant does not accept a suitable work offer, the claims examiner should prepare a formal decision which provides full findings of facts as to why claimant's reasons for refusing the job are deemed unacceptable and terminate compensation under section 8106(c)(2) of FECA as of the end of the roll period. Such a decision should not be modified even if the claimant's medical condition later deteriorates and he claims a recurrence of disability.<sup>6</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a left elbow condition due to a July 24, 2009 employment injury. In a decision dated June 15, 2010, it terminated his wage-loss and schedule award benefits effective June 15, 2010 because he refused an offer of suitable work. On April 17, 2015 appellant filed a claim for recurrence of disability beginning August 27, 2014 due to his July 24, 2009 employment injury. By decision dated April 27, 2015, OWCP denied appellant's claim on the basis that he was not entitled to compensation due to his prior refusal of suitable work.

The Board finds that OWCP properly determined that the June 15, 2010 decision terminating appellant's compensation for refusing suitable work served as a bar to any subsequent monetary compensation as a result of the July 24, 2009 work injury.<sup>7</sup> Section 8106(c) of FECA provides that an employee who refuses suitable work is not entitled to further compensation for total disability or permanent impairment.<sup>8</sup> Because OWCP terminated appellant's compensation due to his refusal of suitable work, he is barred from future entitlement

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<sup>3</sup> 20 C.F.R. § 10.517.

<sup>4</sup> *Id.*

<sup>5</sup> See *Joan F. Burke*, 54 ECAB 406 (2003).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.6 (June 2013).

<sup>7</sup> See *C.C.*, Docket No. 07-2031 (issued April 7, 2008).

<sup>8</sup> 5 U.S.C. § 8106(c); see also 20 C.F.R. § 10.517(a).

to wage-loss compensation for his July 24, 2009 employment injury. The Board therefore finds that appellant's recurrence claim for disability compensation is precluded by section 8106(c).<sup>9</sup>

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 denied appellant's claim for recurrence of disability commencing August 27, 2014 after he refused suitable work.<sup>10</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2016  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> See *E.M.*, Docket No. 9-39 (issued March 3, 2009).

<sup>10</sup> Following the April 27, 2015 decision appellant's counsel alleged that appellant was seeking medical benefits. The issue of entitlement of medical benefits was not before OWCP at the time of the April 27, 2015 decision, and therefore will not be reviewed by the Board on appeal. See 20 C.F.R. § 501.2(c).