United States Department of Labor
Employees' Compensation Appeals Board

L.L., Appellant	)	
and	)	**Docket No. 17-1247**
	)	**Issued: April 12, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Providence, RI, Employer	)	

Appearances:
Sheilah F. McCarthy, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 15, 2017 appellant, through counsel, filed a timely appeal from a November 16, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from November 16, 2016, the date of OWCP s last decision, was May 15, 2017. Since using May 16, 2017, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is May 15, 2017 rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective May 29, 2016, as she refused an offer of suitable work under 5 U.S.C. § 8106(c)(2); (2) whether OWCP properly denied appellant's request for the issuance of a subpoena.

On appeal counsel contends that the medical evidence was insufficient to terminate benefits as it did not consider all the reasons for refusing the offered position.

FACTUAL HISTORY

On October 27, 1992 appellant, then a 32-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she developed left carpal tunnel syndrome due to turning over bundles of mail to read zip codes and pushing them on the belt for sorting. She indicated that she performed these actions repetitively while keying the mail. OWCP accepted appellant's claim for de Quervain's tendinitis of the left wrist on February 26, 1993.

Appellant worked in a series of modified positions. The employing establishment offered her a temporary, limited-duty position on April 24, 1997 as a quality checker. Appellant's physician found that this position was safe and consistent with her work restrictions on September 9, 1998. The employing establishment offered appellant a light-duty position as a modified distribution clerk on August 31, 1998. On April 7, 2003 it provided her a modified job offer performing record collection and assisting in throwing parcels weighing less than 20 pounds. The employing establishment offered appellant a position as a modified mail processing clerk on December 8, 2004 which she accepted on that date.

In a report dated September 17, 2008, Dr. Steven G. McCloy, an occupational medicine physician, noted treating appellant for 10 years and diagnosed de Quervain's tendinitis and forearm tendinitis. He found tenderness in the extensor muscle on the right, good grip strength, and negative Finkelstein's test. Dr. McCloy diagnosed overuse syndrome of both arms secondary to her job as well as resolved de Quervain's tendinitis. He noted that appellant currently required no treatment and found that she was capable of performing modified work. Dr. McCloy determined that she was at a high risk for recurrence of symptoms if she resumed all the tasks of a mail handler.

On April 20, 2009 the employing establishment offered appellant a limited-duty position as a clerk working three hours a day. Appellant filed a recurrence of disability claim (Form CA-2a) alleging that on May 1, 2009 she stopped work as there was no light-duty work available for four hours a day. She listed her work restrictions as no fine manipulation and no pinching. OWCP combined appellant's injury files noting her accepted conditions of left wrist de Quervain's and tendinitis in File No. xxxxxx577 and left thumb tenosynovitis in File No. xxxxxx412. By decision dated September 18, 2009, it denied her recurrence of disability claim. On September 24, 2009

[3] 5 U.S.C. § 8101 *et seq.*

appellant requested an oral hearing from OWCP's Branch of Hearings and Review. She noted that, prior to April 20, 2009, the employing establishment had provided her with 40 hours a week of limited duty. Under the National Reassessment Process (NRP) appellant's limited-duty position was withdrawn as it was unnecessary. She asserted that she was not offered a suitable work position.

By decision dated May 25, 2010, OWCP's hearing representative reversed OWCP's September 18, 2009 decision. In a decision dated June 22, 2010, OWCP accepted appellant's recurrence of disability claim, effective May 1, 2009. It authorized compensation benefits. On June 22, 2011 OWCP entered appellant on the periodic rolls, effective June 5, 2009.

On November 28, 2012 the employing establishment offered appellant a modified mail processing clerk position. This position entailed physical requirements of lifting up to 30 pounds, simple grasping for 15 minutes per hour, and fine manipulation for 30 minutes per hour. The position involved working 8 hours a day with the duties of flat sequencing system operations, general expeditor, and waste mail or rewrap. Appellant refused the position on December 11, 2012 noting that the assignment required repetitive grasping and fine manipulation.

In a letter dated January 10, 2013, OWCP provided Dr. McCloy with the offered position description and asked that he provide an opinion of whether appellant was medically able to perform the job duties. Dr. McCloy responded on January 16, 2013 and opined that she could not perform the offered job, because "every time [appellant] took on tasks with repetitive grasping her [d]e Quervain's tendinitis flared severely." However, on May 23, 2013 he again reviewed the job offer dated November 28, 2012 and found that the job was consistent with the limitations he provided. Dr. McCloy noted that he was not clear why appellant had rejected the job offer based on his assumption that it was a fair representation of the job.

In a letter dated May 24, 2013, OWCP informed appellant that the December 11, 2012 position of mail processing clerk was suitable in accordance with her medical limitations as provided by Dr. McCloy. It noted that the position was still available for her and afforded her 30 days to accept the position or offer her reasons for refusal. OWCP informed appellant of the penalty provision of 5 U.S.C. § 8106(c)(2) and noted that, if she failed to report to the offered position, and failed to demonstrate that her denial of the suitable work position was justified, then her right to wage-loss compensation and schedule award benefits would be terminated.

On June 21, 2013 OWCP noted the May 24, 2013 letter and noted that appellant continued to refuse to accept or to report to work. It considered her reasons for refusing to accept the offered position and found that these reasons were not valid. OWCP noted that the position remained available and afforded appellant an addition 15 days to accept and report to the offered position. It noted that if she did not accept and report to the position with 15 days of June 21, 2013 her entitlement to wage-loss compensation and schedule award benefits would be terminated.

OWCP contacted the employing establishment *via* e-mail on July 16, 2013 and the employing establishment advised that, while the offered position was still available, it was not a permanent position.

In a note dated July 1, 2014, Dr. McCloy reported his findings and conclusions. He further noted that the employing establishment had repeatedly offered appellant's a job which appeared to be an amalgam of her various job restrictions. Dr. McCloy reported, "It is not an actual job in [appellant's] view. I have been asked to certify whether she can or cannot do that 'job.'" He noted that the employing establishment had not been able to provide appellant with a job consistent with her restrictions. Dr. McCloy completed a work capacity evaluation (Form OWCP-5) and indicated that she could perform full-time work with restrictions. He restricted repetitive movements of appellant's wrists and elbows noting that speed was more relevant than duration. Dr. McCloy further restricted her lifting to 20 pounds. He directed that appellant should have limited repetitive grasp and pinch with both hands, grasping for 15 minutes per hour, and fine manipulation for 30 minutes per hour. Dr. McCloy indicated that she should perform "flat-hand activity" for the remaining time.

OWCP referred appellant for vocational rehabilitation services on August 1, 2014. The vocational rehabilitation counselor selected the positions of receptionist, general office clerk, security guard, and animal caretaker as within appellant's vocational and physical abilities.

On June 11, 2015 the employing establishment offered appellant a permanent, modified-duty assignment as a modified mail processing clerk. The duties involved flat sequencing systems operating the feeder with a toggle switch, clearing jams in the feeder, and containerizing rejects into flat tubs for processing. Appellant would also perform automated flat sorting machine operation *via* a toggle switch, clearing jams in the feeder and transport area, sweeping flat tubs from the bins, and containerizing flat tubs. The physical requirements were standing, walking, reaching, bending, and stooping each intermittently for eight hours a day. Lifting up to 20 pounds for 4 hours intermittently, repetitive grasp or pinch for 15 minutes per hour intermittently, and fine manipulation for 30 minutes per hour intermittently. Appellant would perform flat hand activity as needed.

Dr. McCloy completed a work restriction evaluation (Form OWCP-5) on June 17, 2015 and indicated that appellant could perform restricted duty eight hours a day. He indicated that she could perform repetitive grip for a maximum of 15 minutes per hour. Dr. McCloy noted that the hand position of grasping could be a risk, and indicated that appellant had limitations on repetitive movements of the wrists and elbows. He indicated that she could push, pull, and lift up to 25 pounds and that her lifting should be occasionally.

In a July 16, 2015 letter, OWCP noted that appellant had been offered a light-duty job as a modified mail processing clerk at the employing establishment. It found that the position was suitable work based on Dr. McCloy's June 17, 2015 restrictions. OWCP noted that the position remained available, and afforded appellant 30 days to accept the position or provide a written explanation of her refusal. It provided appellant with a description of the penalty provisions of 5 U.S.C. § 8106(c)(2) noting that if she refused a suitable work position she would not be entitled to further wage-loss compensation benefits or schedule award benefits.

Appellant responded on August 11, 2015 and refused the offered position asserting that she could not accept the position without causing herself further painful physical harm. She alleged that the job required repetitive grasping, pulling, and lifting while sweeping the machine and containerizing. Appellant further alleged that she would be required to grasp and manipulate with

her fingers, wrist, elbows, and shoulders hundreds of times an hour. She further asserted that the buckets weighed between 30 and 35 pounds and had to be lifted shoulder height and above. Appellant alleged the position required strong pinching and grasping to constantly pull the jammed mail from the rubber belts and pulleys. She further noted fine manipulation required to slot hundreds of paper labels on each bucket. Appellant asserted that the job description lacked specifics and merely relisted her work restrictions provided by Dr. McCloy.

The vocational rehabilitation counselor performed a job analysis of automated flat sorting machine operation and found occasional lifting, defined as up to one third of the shift. She noted that lifting buckets was at the clerk's discretion and that appellant could limit the weight of the buckets to 20 to 25 pounds if needed. The same discretion applied to carrying buckets. Handling and fingering were both described as occasional or up to 1/3 of the 8-hour shift to operate the toggle switch, place labels on buckets, and handle mail and clear mail out of the machine and to hold buckets. The job analysis of the flat sequencing system mail processing clerk also required occasional handling, fingering, and lifting up to 20 pounds.

In a letter dated April 14, 2016, OWCP found that the offered position was not repetitive and that the weight requirement was within appellant's lifting restrictions. It found that she had not offered a valid reason for refusing the offered position. OWCP noted that the position was still available and provided appellant with an additional 15 days to accept and report to the position. It advised her that, if she did not accept and report to the position within the allotted period, her entitlement to wage-loss compensation and schedule award benefits would be terminated.

On April 21, 2016 appellant again refused the offered position alleging that she could not accept the position without causing herself further painful physical harm. She repeated her prior allegations that the offered position was repetitious and submitted a statement from a coworker agreeing with this assessment.

By decision dated May 18, 2016, OWCP terminated appellant's wage-loss compensation and entitlement to schedule award benefits effective May 29, 2016 due to her refusal to accept the offered position.

On June 3, 2016 appellant requested an oral hearing from OWCP's Branch of Hearings and Review. In a July 25, 2016 letter, she requested a subpoena to obtain all memoranda, reports, forms, and faxes regarding the vocational rehabilitation counselor's visit to the employing establishment to develop the job analysis. Appellant explained that a subpoena was necessary as the vocational rehabilitation counselor had not responded to her telephone messages. On September 8, 2016 OWCP's Branch of Hearings and Review denied her request for a subpoena finding that the documentation was part of the case record and that a subpoena was unnecessary. It noted that, if OWCP's hearing representative's decision was not in her favor, appellant could appeal all issues in the case, including the denial of her request for a subpoena.

Counsel contended that the offered position was not suitable as it was makeshift or odd lot work, the position description lacked specificity based on a coworker's statement, and that the offer position exceeded appellant's work restrictions. In a statement dated September 21, 2016, a coworker, J.A., described the duties of a clerk on the flat sorter machine and asserted that the

machine required three clerks who generally rotate every three hours and required repetitive work with the hands and wrists.

Appellant testified at the oral hearing on October 11, 2016 before an OWCP hearing representative. She stated that in her opinion the offered position was machine driven and could not be modified. Appellant asserted that J.A.'s description of his duties, would have been the duties that she would have had to perform. She noted that she could not know the weight of the buckets. Before the hearing representative, counsel submitted a CD containing documents related to the NRP at the employing establishment and appellant's loss of her position in 2009.

In a report dated October 27, 2016, Dr. McCloy diagnosed right carpal tunnel syndrome based on findings from August 31, 2016. He noted his familiarity with the Flat Sorter Machine and the Flat Sorter Sequencing Machine and reported concerns regarding the repetitive nature of the grabbing, lifting, carrying, and manipulations required by these positions. Dr. McCloy indicated that he had concerns that the offered position would aggravate and accelerate appellant's carpal tunnel syndrome symptoms. He opined that the job was unsuitable for appellant.

By decision dated November 16, 2016, OWCP's hearing representative found that OWCP met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits as she refused an offer of suitable work. He found that her arguments did not establish that the offered position was not suitable work.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[4] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[5] 5 U.S.C. § 8106(c) provides in pertinent part, "A partially disabled employee who (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation." It is OWCP's burden of proof to terminate compensation under section 8106(c) for refusing to accept suitable work or neglecting to perform suitable work.[6] To justify such a termination, OWCP must show that the work offered was suitable[7] and must inform appellant of the consequences of refusal to accept such employment.[8] Section 8106(c) will be narrowly 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.[9]

[4] *G.R.*, Docket No. 16-0455 (issued December 13, 2016); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[5] *Id.*

[6] *D.S.*, Docket No. 16-1593 (issued December 21, 2016); *Henry P. Gilmore*, 46 ECAB 709 (1995).

[7] *D.S., id.; John E. Lemker*, 45 ECAB 258 (1993).

[8] *G.R., supra* note 4.

[9] *Id*.; *Joan F. Burke*, 54 ECAB 406 (2003).

According to OWCP's procedure, a job offer must be in writing and contain a description of the duties to be performed and the specific physical requirements of the position.[10] OWCP regulations provide factors to be considered in determining what constitutes suitable work for a particular disabled employee, including the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area, the employee's qualifications to perform such work and other relevant factors.[11] The issue of whether an employee has the physical ability to perform a modified position offered by the employing establishment is primarily a medical question that must be resolved by medical evidence. All impairments, whether work related or not, must be considered in assessing the suitability of an offered position.[12] Section 10.517(a) of FECA's implementing regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured by the employee has the burden of proof to show that such refusal or failure to work was reasonable or justified.[13] 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.[14]

After termination or modification of benefits clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.[15]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's compensation and entitlement to schedule award benefits, effective May 29, 2016, as she refused an offer of suitable work under 5 U.S.C. § 8106(c)(2).

On June 11, 2015 the employing establishment offered appellant a permanent modified-duty assignment as a modified mail processing clerk. The duties involved flat sequencing systems operation and automated flat sorting machine operation. The employing establishment provided the specific duties of the position and the physical requirements. The physical requirements were standing, walking, reaching, bending, and stooping each intermittently for eight hours a day. Lifting up to 20 pounds for 4 hours intermittently, repetitive grasp or pinch for 15 minutes per hour intermittently, and fine manipulation for 30 minutes per hour intermittently. Appellant would perform flat hand activity as needed.

The physical requirements of the position as listed by the employing establishment comply with Dr. McCloy's work restrictions provided on work capacity evaluations (Form OWCP-5) completed in July 2014 and June 17, 2015. The Board finds that the weight of the medical

[10] *T.S.*, 59 ECAB 490 (2008); *Ronald M. Jones*, 52 ECAB 190 (2000).

[11] *J.J.*, Docket No. 17-0410 (issued June 20, 2017); *Rebecca L. Eckert*, 54 ECAB 183 (2002).

[12] *Id.*

[13] *Catherine G. Hammond*, 41 ECAB 375, 385 (1990); 20 C.F.R. § 10.517(a).

[14] *Id.* at § 10.516.

[15] *K.J.*, Docket No. 16-0846 (issued August 18, 2016); *Talmadge Miller* 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

evidence establishes that the offered position was within appellant's medical restrictions as established by Dr. McCloy.[16]

The vocational rehabilitation counselor performed a job analysis of the two machine operations and found that lifting buckets was at the clerk's discretion and that appellant could limit the weight of the buckets to 20 to 25 pounds if needed. Handling and fingering were both described as occasional or up to 1/3 of the 8-hour shift to operate the toggle switch, place labels on buckets and handle mail and clear mail out of the machine and to hold buckets.

In a letter dated July 16, 2015, OWCP informed appellant that the light-duty position as a modified mail processing clerk was suitable work based on Dr. McCloy's June 17, 2015 restrictions and afforded her 30 days to accept the position or provide a written explanation of her refusal. Appellant refused the position and disagreed with the vocational rehabilitation counselor's job analysis. In a letter dated April 14, 2016, OWCP found that she had not offered a valid reason for refusing the offered position. It provided appellant with an additional 15 days to accept and report to the position. OWCP advised her that if she did not accept and report to the position within the allotted period, her entitlement to wage-loss compensation and schedule award benefits would be terminated.

The Board finds that OWCP properly terminated appellant's wage-loss compensation and entitlement to schedule award benefits effective May 29, 2016 in the May 18, 2016 decision. Where OWCP shows that, an offered limited-duty position was suitable based on the claimant's work restrictions at that time, the burden shifted to appellant to show that her refusal to work in that position was justified.[17]

Before OWCP's hearing representative, appellant submitted a statement from a coworker describing the full-duty work he performed on the two machines. While appellant, in her testimony, and her coworker asserted that the offered position requires repetitive work, both the employing establishment and the vocational rehabilitation counselor disputed this allegation. She did not actually return to work in the offered position and her allegations that this limited-duty position was beyond her restrictions as the machine dictates the type and amount of motion and lifting involved are unsubstantiated by her coworker's description of his full-duty position on the machines in question.

Appellant also submitted a report from Dr. McCloy dated October 27, 2016, diagnosing right carpal tunnel syndrome. Dr. McCloy indicated that he had concerns that the offered position would aggravate and accelerate her carpal tunnel syndrome symptoms. He opined that the job was unsuitable for appellant.

The Board has long held that OWCP must consider preexisting and subsequently-acquired conditions in the evaluation of suitability of an offered position.[18] While Dr. McCloy provided the diagnosis of an additional condition on October 27, 2016 and indicated that appellant should

[16] *G.G.*, Docket No. 16-1081 (issued May 9, 2017).

[17] *Gloria J. Godfrey*, 52 ECAB 421 (2003); *Id.*

[18] 20 C.F.R. § 10.500(b); *see Ozine J. Hagan*, 55 ECAB 681 (2004); *G.G., supra* note 16.

not perform the job duties of the offered position due to this condition, the Board finds that his note is couched in speculative terms. He notes his "concerns" without providing a clear medical opinion. Medical opinions which are speculative or equivocal in character have little probative value.[19] Likewise, a medical opinion not fortified by medical rationale is of little probative value.[20] Dr. McCloy did not provide any medical rationale explaining how or why the limited-duty position with 15 minutes of intermittent grasping per hour and 30 minutes of intermittent fine manipulation per hour would impact appellant's subsequently diagnosed condition of right carpal tunnel syndrome. The Board concludes that this evidence is of insufficient rationale to establish that she could not perform the duties of the offered position.

With respect to whether the position was vocationally or otherwise suitable, the Board notes that appellant has argued that the offered position was makeshift, but this analysis would be appropriate if OWCP had performed a loss of wage-earning capacity determination pursuant to 5 U.S.C. § 8115(a).[21] However, that is not the issue presented. To be suitable, a job offer must be in writing and with a proper description of the job duties. It cannot be a temporary position.[22] There is no evidence that the job offer was temporary in nature or otherwise vocationally unsuitable in this case.

Therefore, the Board finds that appellant's reasons for refusing the offered position were not acceptable, and OWCP properly terminated her wage-loss compensation and entitlement to schedule award benefits based on her refusal to accept a suitable work position.[23] Also, as noted above, OWCP complied with its procedural requirements in advising her that the position was suitable.

LEGAL PRECEDENT -- ISSUE 2

Under 5 U.S.C. § 8126 of FECA, and its implementing regulations (20 C.F.R. § 10.619), subpoenas may be issued by the hearing representative for the attendance and testimony of witnesses and the production of relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts. A person requesting a subpoena must submit the request in writing no later than 60 days after the date of the original hearing request and explain why the testimony or evidence is directly relevant to the issues at hand, and why the information

[19] *G.G., supra* note 16.

[20] *Id.*

[21] *See D.S.*, Docket No. 16-1594 (issued December 21, 2016); *D.B.*, Docket No. 16-0261 (issued June 9, 2016).

[22] *D.S., id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9 (June 2013). "There may be occasions when the (employing establishment) is only able to provide a temporary light-duty assignment to the claimant even though the claimant held a permanent job at the time of injury. In these instances, the penalty language of section 8106(c) cannot be applied. (Emphasis in the original.) *See K.T.*, Docket No. 16-0975 (issued June 9, 2017).

[23] *See Sandra R. Shepherd*, 53 ECAB 735 (2002); *G.G., supra* note 16.

cannot be obtained without the use of a subpoena. The decision to grant or deny a subpoena request is within the discretion of OWCP's hearing representative.[24]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for the issuance of a subpoena. In a July 25, 2016 letter, appellant requested the issuance of a subpoena to produce documents regarding the vocational rehabilitation counselor's visit to the employing establishment to observe the machines.

The Board notes that OWCP's hearing representative properly determined within her discretion that, with respect to documentation requested, this information was part of the case record which appellant could request at any time and a subpoena was not necessary.

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 met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits effective May 29, 2016 as she refused an offer of suitable work under 5 U.S.C. § 8106(c)(2). The Board further finds that OWCP properly denied appellant's request for the issuance of a subpoena.

[24] *See* 5 U.S.C. § 8126; 20 C.F.R. § 10.619; *J.M.*, Docket No 16-1575 (issued May 25, 2017).

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2018
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