



## **ISSUES**

The issues are: (1) whether OWCP properly terminated appellant's compensation, effective February 8, 2015, due to her refusal of suitable work under 5 U.S.C. § 8106(c)(2); and (2) whether it properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On January 5, 2001 appellant, then a 49-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that her hand and wrist conditions were due to the repetitive motions required by her work duties. Specifically, she claimed that pounding bundles of mail, pasting stamps down, and separating and casing mail caused or contributed to injuries to her hands and wrists. OWCP accepted the claim for right carpal tunnel syndrome and left wrist sprain.<sup>3</sup>

Dr. Aerie Rim, appellant's treating physiatrist, released appellant to return work on May 7, 2001 with restrictions of no repetitive wrist motion, heavy lifting, or heavy pushing. Appellant returned to work in a limited-duty capacity and worked until September 2004 when her limited-duty position was withdrawn. OWCP began paying appellant wage-loss compensation on the periodic rolls as of October 3, 2004.<sup>4</sup>

OWCP subsequently received a series of progress notes from Dr. Adriana Manta, a treating physician Board-certified in physical medicine and rehabilitation. In a June 24, 2013 report, Dr. Manta noted diagnoses of cervical radiculopathy, cervical disc displacement, carpal tunnel syndrome, chronic pain, and Chiari I malformation.

On August 14, 2013 OWCP referred appellant for a second opinion examination to Dr. Hormozan Aprin, a Board-certified orthopedic surgeon. It provided Dr. Aprin with appellant's medical records and an August 1, 2013 statement of accepted facts (SOAF) referencing OWCP File No. xxxxxx906. OWCP asked him to address appellant's disability status and to address her limitations resulting from both her work-related and nonwork-related conditions.

In an October 1, 2013 report, Dr. Aprin noted his review of the SOAF and that appellant reported a past medical history of a right shoulder and neck injury since 1996, from which she lost 10 months of work time. He found that appellant suffered from disabling residuals of her accepted right carpal tunnel syndrome and left wrist sprain, which required further medical treatment. Dr. Aprin also noted objective findings of cervical radiculopathy, right carpal tunnel syndrome, and herniated cervical disc. He found that appellant had the following physical limitations due to her work-related conditions: weakness in her hands, mostly right; decreased range of motion of both wrists; and inability to hold and carry heavy objects. Accordingly, appellant could not push,

---

<sup>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx314. Appellant also has another accepted occupational disease claim, under OWCP File No. xxxxxx906, which was accepted for musculoskeletal chest pain. Appellant noted that she first became aware of her chest pain on October 10, 2001 which she alleged was caused by repeated lifting of mail. OWCP File Nos. xxxxxx314 and xxxxxx906 has have not been administratively combined.

<sup>4</sup> Appellant underwent second opinion evaluations on March 8, 2007 and April 29, 2009. Both second opinion physicians found her able to perform limited-duty work.

pull, or lift heavy objects. Dr. Aprin found, however, that appellant was able to work part time in a sedentary job with restrictions based on her work-related and nonwork-related hand and neck conditions. The restrictions involved no more than four hours of bending/stooping, and repetitive movements of the wrists and elbow. Also pushing/pulling and lifting were not to exceed 10 pounds in four hours.

On September 17, 2014 the employing establishment offered appellant a modified position as a city carrier. The physical requirements of the position included: standing and walking limited to four hours; bending/stooping not to exceed four hours; repetitive movement of the wrist/elbows not to exceed four hours; pulling/pushing and lifting not to exceed 10 pounds, and limited to four hours.

On October 15, 2014 appellant signed the job offer “under protest and under duress.” She indicated, in an attached October 14, 2014 statement, that she was unable to work because her anxiety attacks would interfere with the limited-duty work and she believed that the job offered would aggravate her accepted conditions. Appellant did not report to work.

In a November 12, 2014 notice, appellant was advised that OWCP found the job offer suitable and in accordance with her medical limitations provided by Dr. Aprin and that the employing establishment confirmed that the position remained open and available to her. OWCP allowed appellant 30 days to accept the position or provide her reasons for refusal. It advised that an employee who refuses an offer of suitable work without reasonable cause is not entitled to further compensation for wage loss or a schedule award. Appellant, however, continued to refuse to report to duty for the offered position.

In an October 1, 2014 report, Dr. Yardley Charles,<sup>5</sup> a Board-certified physiatrist, noted that appellant had related that her employing establishment requested that she return to work, but she did not want to return to work.

In an October 15, 2014 report, Dr. Charles indicated that appellant was an anxious woman who had musculoskeletal chest pain, cervical radiculopathy, bilateral carpal tunnel syndrome, cervical disc displacement, and chronic pain due to trauma. She recommended that appellant be followed by psychiatry for her anxiety and undergo physical therapy to manage her chronic symptoms. Dr. Charles noted that appellant was incapable of returning to work in any capacity due to her susceptibility to reinjury and lack of confidence. She indicated that appellant should be re-examined to determine her disability status before being placed back on active duty.

By notice dated December 16, 2014, OWCP advised appellant that her refusal of the offered position was not justified. It afforded her an additional 15 days to accept the offered position.

In response to the 15-day notice, OWCP received a December 19, 2014 report from Dr. Elizabeth Mathew, a Board-certified physiatrist. Dr. Mathew opined that appellant was permanently disabled from work due to her accepted injury and was unable to work.

---

<sup>5</sup> As Dr. Rim retired, appellant sought treatment with Dr. Charles.

In a December 19, 2014 attending physician's report (Form CA-20), Dr. Charles diagnosed appellant with chronic pain due to old trauma and prescribed physical therapy. She indicated that appellant remained totally disabled from work from 2004 to the present due to chronicity of symptoms.

By decision dated January 29, 2015, OWCP terminated appellant's entitlement to wage-loss and schedule award compensation benefits effective February 8, 2015 because she refused an offer of suitable work. It found that Dr. Aprin's report constituted the weight of the medical evidence regarding appellant's work tolerances and limitations.

On February 23, 2015 OWCP received appellant's February 16, 2015 request for an oral hearing before an OWCP hearing representative. A hearing was held on July 20, 2015.

In a February 17, 2015 report, Dr. Mathew opined that appellant's symptoms and current examination findings were causally related to her accepted work-related injury. She stated that whatever the cause, the unending pain, tender points, and insomnia tended to increase anxiety, reduced activity, and increased pain. Dr. Mathew opined that appellant was unable to return to the work she was doing at the time of injury, in any capacity. She stated that appellant was vulnerable to reinjury and was not confident that she could continue to be productive in the work along with her ailments and anxieties. Dr. Mathew further opined that Dr. Aprin's examination was out dated and ignored that her symptoms were aggravated by prolonged sitting/standing, repetitive pulling, pushing, or lifting affecting her wrists, neck, and hands and would continue if she worked part time.

By decision dated September 8, 2015, an OWCP hearing representative affirmed OWCP's January 29, 2015 decision. He found that the medical documentation began to support an inability to work due to conditions which were not accepted as work related only after a job was offered. The hearing representative also found that the medical opinion of record was completely unsupported by any discussion of objective findings of disability related to the myriad of medical and psychological conditions which had not been accepted as work related; and were, therefore, only based upon appellant's own complaints.

On March 8, 2016 appellant, through counsel, requested reconsideration along with a January 26, 2016 statement from appellant. She argued that OWCP's hearing representative failed to take into consideration all of her medical and psychological conditions in finding that the limited duty position was suitable. Appellant noted that the job offer came more than one year after she saw Dr. Aprin and alleged that Dr. Aprin was unaware of her various conditions and was not provided records from her October 10, 2001 work-related injury. Appellant also stated that she was very anxious and depressed about her condition and had a fear of reinjury by working at the employing establishment. Counsel further alleged that the job offer required a long commute.

By decision dated June 2, 2016, OWCP denied modification of its September 8, 2015 decision. The claims examiner noted that appellant was only found totally disabled from work by her treating physicians after the job offer was presented, and the evidence of record failed to provide objective findings to support her complaints and the myriad medical and psychological conditions.

On June 27, 2016 appellant, through counsel, requested reconsideration. Copies of reports previously of record were not submitted with appellant's previous request for reconsideration, including: a December 22, 2011 report of Dr. Rim, a May 30, 2012 report of Dr. Charles, an August 30, 2007 electrodiagnostic testing report of Dr. Rim, and an October 15, 2014 report of Dr. Charles.

In a November 20, 2014 report, Dr. Sandeep Gupta, an internist and rheumatologist, provided an assessment of polyarthralgia with pains in all four quadrants with increased tender points with increased associated symptoms s/o fibromyalgia.

In a February 20, 2015 report, Dr. Aylin Kiyici, a Board-certified internist, indicated that appellant had complaints of musculoskeletal chest pain, lumbar radiculopathy, cervical radiculopathy, bilateral carpal tunnel syndrome, and fibromyalgia. She recommended that appellant go on early retirement due to her work-related injuries and illness that have affected her work.

In a January 21, 2015 report, Dr. Rajesh Bhatnagar, a neurologist, provided an assessment of generalized anxiety disorder, depressive disorder, and fibromyalgia.

By decision dated September 20, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim, finding that the evidence submitted was insufficient to require a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8106(c) of FECA 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."<sup>6</sup> It is OWCP's burden of proof to justify termination of compensation under section 8106(c) due to refusal of suitable work or neglecting to perform suitable work.<sup>7</sup> The implementing regulations provide that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified and shall be provided with the opportunity to make such a showing before entitlement to compensation is terminated.<sup>8</sup>

To support termination, OWCP must show that the work offered was suitable and that appellant was informed of the consequences of her refusal to accept such employment.<sup>9</sup> In 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, the employee's qualifications to perform such work and other

---

<sup>6</sup> 5 U.S.C. § 8106(c).

<sup>7</sup> *Joyce M. Doll*, 53 ECAB 790 (2002).

<sup>8</sup> 20 C.F.R. § 10.517(a).

<sup>9</sup> *Linda Hilton*, 52 ECAB 476 (2001); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

relevant factors.<sup>10</sup> OWCP procedures provide 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.<sup>11</sup> 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.<sup>12</sup> It is well established under this section of FECA, OWCP must consider both preexisting and subsequently-acquired conditions in the evaluation of the suitability of an offered position.<sup>13</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to justify the termination of appellant's compensation benefits pursuant to 5 U.S.C. § 8106(c) as appellant refused an offer of suitable work.

In August 2013, OWCP referred appellant to Dr. Aprin for a second opinion evaluation to determine the nature and extent of her disability. It provided these physicians with an August 1, 2013 SOAF, as well as appellant's medical records. In an October 1, 2013 report, following a physical evaluation and a review of the August 1, 2013 SOAF, as well as appellant's medical records including Dr. Manta's recent progress notes, Dr. Aprin concluded that appellant continued to experience residuals of her accepted right carpal tunnel syndrome and left wrist sprain as well as a prior cervical radiculopathy that rendered her partially disabled. He limited pushing/pulling and lifting to items weighing up to 10 pounds for no more than four hours each and no more than four hours of bending/stooping and repetitive movements of the wrists and elbow. On September 17, 2014 the employing establishment offered appellant a modified position as a city carrier in accordance with the restrictions noted by Dr. Aprin. The physical requirements of the position included: standing and walking limited to four hours, bending/stooping not to exceed four hours, repetitive movement of the wrist/elbows not to exceed four hours, pulling/pushing and lifting not to exceed 10 pounds, and limited to four hours. Dr. Aprin provided a well-reasoned medical opinion based on a complete medical background and objective findings.<sup>14</sup> Therefore, his opinion was properly afforded the weight of the evidence.

Subsequent to the suitable work offer, appellant submitted a number of medical reports which referenced a myriad of conditions, including anxiety. However, none of the medical reports addressed why appellant would be unable to perform the duties of the suitable work position. The

---

<sup>10</sup> 20 C.F.R. § 10.500(b); *see Ozone J. Hagan*, 55 ECAB 681 (2004).

<sup>11</sup> Federal (FECA) Procedure Manual, Part -- Claim, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5.a (June 2013); *see Lorraine C. Hall*, 51 ECAB 477 (2000).

<sup>12</sup> *Gloria G. Godfrey*, 52 ECAB 486 (2001).

<sup>13</sup> *Richard P. Cortes*, 56 ECAB 200 (2004).

<sup>14</sup> A well-reasoned medical opinion should also be consistent with the findings upon examination. Findings may be noted during physical examination, laboratory testing, and diagnostic procedures. Sufficient objective data (findings on examination, test results) should be included in the report to support the medical conclusions. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.6(a)(2) (September 2010).

Board finds that there was no medical evidence of record showing that the offered position exceeded appellant's then-current medical restrictions.<sup>15</sup>

In her December 19, 2014 report, Dr. Mathew opined that appellant had suffered a permanent disability due to her work-related injury and was unable to work due to the chronicity of the symptoms and persistence of neurological deficits. Dr. Charles concurred. The Board has held that a medical report is of limited probative value on a given medical matter if it contains a conclusion which is unsupported by medical rationale.<sup>16</sup> While both Dr. Mathew and Dr. Charles opined that appellant was totally disabled, neither physician offered an opinion as to why appellant was medically disabled from performing the offered position. These physicians also failed to support their diagnoses with objective findings. As such, their medical reports are of limited probative value regarding appellant's medical ability to perform the offered position.

The Board further finds that OWCP complied with its procedural requirements prior to terminating appellant's compensation. In the November 12, 2014 notice, OWCP provided appellant with a 30-day opportunity to accept the modified city carrier position offered by the employing establishment after informing her that her reasons for initially refusing the position were not valid. It advised her in a December 16, 2014 letter that her reason for refusing the offered position were insufficient and that she had 15 additional days to accept the offered position. The Board finds that OWCP followed the established procedures prior to the termination of compensation pursuant to section 8106(c)(2).<sup>17</sup>

For these reasons, the Board finds that OWCP properly terminated appellant's entitlement to wage-loss and schedule award compensation, effective February 8, 2015, pursuant to section 8106(c)(2) of FECA as she refused an offer of suitable work.<sup>18</sup>

Once OWCP establishes that the work offered was suitable, the burden of proof shifts to the employee who refuses to work to show that such refusal was justified.<sup>19</sup> The employee may then submit new medical evidence to OWCP and request reconsideration. The new medical evidence must address, with medical rationale, the employee's ability to perform the offered position, at the time of the job offer.<sup>20</sup> In the instant case, OWCP continued to receive medical evidence following the termination of appellant's compensation benefits. In her February 17, 2015 report, Dr. Mathew indicated that appellant's symptoms were aggravated by prolonged sitting/standing, repetitive pulling, pushing or lifting affecting her wrists, neck, and hands and would continue if she worked part time. However, she did not provide a rationalized medical opinion explaining how or why appellant's work-related symptoms and current examination

---

<sup>15</sup> See *L.D.*, Docket No. 16-1169 (September 20, 2017).

<sup>16</sup> *C.M.*, Docket No. 14-88 (issued April 18, 2014).

<sup>17</sup> See *C.H.*, Docket No. 17-0938 (issued November 29, 2017).

<sup>18</sup> See generally *Maggie L. Moore*, *supra* note 9.

<sup>19</sup> See *Ronald M. Jones*, 48 ECAB 600 (1997).

<sup>20</sup> See *Lizzie M. Greer*, 49 ECAB 681 (1998).

findings rendered her totally disabled from performing the offered position, her report is insufficient to show that the offered position was not medically suitable.<sup>21</sup>

On appeal counsel contends that Dr. Aprin was unaware of appellant's preexisting medical problems. Contrary to counsel's contentions, however, Dr. Aprin, in his October 1, 2013 report, noted his review of the August 1, 2013 SOAF as well as appellant's complete medical record, on which he based his findings. Counsel also contends on appeal that OWCP's hearing representative misunderstood the law and erroneously indicated that only the accepted employment-related conditions could be considered in relation to the job offer. As noted, OWCP must consider all preexisting and subsequently-acquired conditions, regardless of etiology, in evaluating the suitability of an offered position.<sup>22</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>23</sup> OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>24</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received by OWCP within one year of the date of that decision.<sup>25</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>26</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration.

In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She submitted a duplicative copy of her January 26, 2016 statement, which OWCP considered in its June 2, 2016 decision. The assertions and arguments contained therein were previously addressed by OWCP and do not show a legal error by OWCP

---

<sup>21</sup> See *Eileen Chilek*, Docket No. 05-1077 (issued November 14, 2005).

<sup>22</sup> See *id.*, *Richard P. Cortes*, *supra* note 13 (OWCP is required to consider preexisting and subsequently-acquired conditions in evaluating the suitability of an offered position).

<sup>23</sup> Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>24</sup> 20 C.F.R. § 10.606(b)(3).

<sup>25</sup> *Id.* at § 10.607(a).

<sup>26</sup> *Id.* at § 10.608(b).

or advance a new and relevant legal argument.<sup>27</sup> Counsel made the vague allegation that the job offer required a long commute, but he offered no substantiation of this allegation. While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>28</sup>

The underlying issue in this case pertains to whether appellant submitted medical evidence establishing that her refusal to accept the suitable work was justified. That is a medical issue which must be addressed by relevant new medical evidence.<sup>29</sup> However, appellant failed to submit any relevant and pertinent new medical evidence in support of her claim. She submitted duplicative reports previously of record. While the reports from Dr. Gupta, Dr. Kiyici, and Dr. Bhatnagar were new to the record and contained additional diagnoses, they are not relevant to the underlying issue as none of the physicians provided an opinion that appellant was disabled from performing the offered position. As explained, the underlying issue in this claim is whether the medical evidence establishes that appellant's refusal to accept the suitable work was justified. Appellant's submissions on reconsideration are not relevant to this underlying medical issue.<sup>30</sup> Therefore, this new evidence is insufficient to warrant reopening the case for a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation benefits, effective February 8, 2015, due to her refusal of suitable work under 5 U.S.C. § 8106(c)(2). The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>27</sup> The submission of evidence or argument that repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a case. *T.H.* Docket Nos. 17-1578 & 17-1651 (issued April 26, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>28</sup> *John F. Critz*, 44 ECAB 788, 794 (1993).

<sup>29</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>30</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. *See J.J.*, Docket No. 16-0555 (issued June 2, 2016); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 20 and June 2, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 21, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board