United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 18-0862**
	)	**Issued: October 12, 2018**
U.S. POSTAL SERVICE, ALOHA BRANCH, Beaverton, OR, Employer	)	

Appearances:
Sara Kincaid, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 14, 2018 appellant, through counsel, filed a timely appeal from a December 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and entitlement to a schedule award, effective January 31, 2017, as he refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2).

[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] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 18, 2014 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on March 12, 2014 he experienced a sharp pain in his right shoulder while delivering mail. He stopped work that day and returned to work on March 24, 2014. OWCP accepted the claim for a sprain of the right shoulder and upper arm at the rotator cuff and right shoulder tendinopathy. It paid appellant intermittent wage-loss compensation beginning May 9, 2014.

OWCP previously accepted appellant's March 2004 occupational disease claim (Form CA-2) for right shoulder bursitis under File No. xxxxxx306, which is the subsidiary file under the current claim.

In a work status form dated July 16, 2014, Dr. Thomas P. McWeeney, a Board-certified orthopedic surgeon, found that appellant was capable of performing modified work with restrictions that included occasional lifting with the right arm under shoulder level of up to 10 pounds. On August 20, 2014 Dr. McWeeney found a mildly positive impingement test and full strength of the shoulder muscles. He diagnosed right rotator cuff tendinitis and cervical strain, and noted that appellant's symptoms may be related to his cervical spine rather than the shoulder. Dr. McWeeney recommended treatment by a physiatrist. In a work status form, he found unchanged physical limitations.

On February 20, 2015 Dr. Nels Carlson, a Board-certified physiatrist, noted that appellant had experienced sudden right shoulder pain while delivering mail on March 12, 2014. He found that a February 18, 2015 magnetic resonance imaging (MRI) scan study showed a disc protrusion at C5-6 and severe right neural foraminal stenosis, and that a June 2014 MRI scan study of the right shoulder revealed supraspinatus tendinopathy and a possible labral tear. Dr. Carlson diagnosed findings consistent with right shoulder impingement syndrome and a possible labral tear, paresthesia of the right neck and C5-6 suggesting C5-6 radiculopathy, and severe right C5-6 neural foraminal stenosis.

OWCP, on April 8, 2015, referred appellant to Dr. Mark Weston, a Board-certified orthopedic surgeon, for a second opinion examination.

Dr. Carlson, in an April 9, 2015 progress report, indicated that a March 2015 arthrogram of the right shoulder revealed a near circumferential labral tear. He noted that appellant was currently performing sedentary work. Electrodiagnostic testing performed on April 15, 2015 for Dr. Carlson revealed chronic right radiculopathy at C6 and right carpal tunnel syndrome.

In a report dated April 23, 2015, Dr. Robert M. Orflay, a Board-certified orthopedic surgeon, advised that appellant had "right shoulder pain consistent with subacromial bursitis/rotator cuff tendinitis and degenerative labral tear. His labrum does not seem to be a significant cause of his shoulder pain." Dr. Orflay recommended physical therapy.

In a report dated May 11, 2015, Dr. Weston reviewed appellant's history of injury and listed findings on examination of full right shoulder strength with no impingement. He diagnosed chronic myofascial pain of the right shoulder due to his work injury, noting that the right rotator cuff tear was not symptomatic. Dr. Weston opined that appellant had no objective residuals of his employment injury and could resume work without restrictions.

OWCP determined that a conflict existed between Dr. Weston and Dr. McWeeney regarding whether appellant had residuals of his work injury and the extent of any disability. It referred him to Dr. Walter Smith, a Board-certified orthopedic surgeon, for an impartial medical examination.

Dr. Smith evaluated appellant on September 9, 2015. In a report dated September 16, 2015, he discussed the history of injury and the medical reports of record. On examination Dr. Smith found a positive Neer impingement test on the right and a positive Tinel's sign at the right ulnar distribution. He diagnosed a chronic degenerative right rotator cuff tear and labral disease unrelated to the employment injury, an employment-related aggravation of chronic impingement syndrome of the right shoulder secondary to appellant's degenerative rotator cuff tear and labral disease, cervical degenerative disc and facet disease unrelated to his injury and likely causing C7 radiculopathy, and latent right carpal tunnel syndrome unrelated to the work injury. Dr. Smith noted that he currently worked at a computer terminal and used a mouse with his left hand and related:

> "[Appellant] is not physically capable of work duties above a sedentary work level, as defined by OWCP as a limitation of 10 pounds of lifting force. He has physical limitations on reaching above [the] shoulder and lifting above 10 pounds. [Appellant] is capable of performing duties within [the] limitation of sedentary work for eight hours per day. His current job meets these qualifications."

In a September 9, 2015 work capacity evaluation (OWCP-5c), Dr. Smith indicated that appellant could perform sedentary work with restrictions on reaching and reaching above the shoulder for eight hours and lifting up to 10 pounds for eight hours per day.

On October 26, 2015 the employing establishment offered appellant a position as a modified city carrier performing fine manipulation, grasping, and reaching up to eight hours per day, standing and walking up to three hours per day, sitting up to six and a half hours per day, and pushing and pulling up to 10 pounds for eight hours per day. The duties consisted of casing and delivering mail. The employing establishment advised that the assignment would remain within the physical restrictions of his attending physician.

In a November 5, 2015 duty status report (Form CA-17), Dr. Carlson found that appellant could drive a vehicle one hour per day and lift up to 10 pounds for two to three hours per day using only the left upper extremity.

By letter dated November 10, 2015, OWCP notified appellant that the offered position was suitable and provided him 30 days to accept the position or provide reasons for his refusal. It informed him that an employee who refused an offer of suitable work was not entitled to compensation.

Appellant, in a November 17, 2015 response, asserted that Dr. Carlson found that he should not use his right shoulder and that, consequently, the job offer did not meet the restrictions of his attending physician.

On December 15, 2015 OWCP advised appellant that his reasons for refusing the position were invalid and provided him 15 days to accept the position or have his entitlement to wage-loss compensation benefits terminated.

By decision dated January 5, 2016, OWCP terminated appellant's wage-loss and entitlement to schedule award compensation as he refused an offer of suitable work.

In a report dated March 28, 2016, Dr. Carlson discussed his treatment of appellant beginning February 20, 2015 for right shoulder pain originating at work on March 12, 2014. He opined that appellant was permanently precluded from right shoulder activities that would involve overhead reaching, or any reaching, lifting, carrying, pushing, or pulling in excess of 10 pounds on an occasional to frequent basis. Dr. Carlson concurred with Dr. Smith's opinion that appellant could perform sedentary work. He found that he was unable to resume his regular employment.

Counsel, on April 18, 2016, requested reconsideration, arguing that the position offered by the employing establishment failed to constitute sedentary work. On July 7, 2016 OWCP vacated its January 5, 2016 decision, finding that further clarification from the impartial medical examiner was needed regarding the suitability of a position that was not sedentary.

By letter dated September 13, 2016, OWCP requested that Dr. Smith clarify appellant's work restrictions, noting that sedentary work allowed lifting only up to 10 pounds occasionally, rather than for eight hours per day.

In an OWCP-5c dated October 3, 2016, Dr. Smith indicated that appellant could perform medium work reaching and reaching above the shoulder for eight hours per day and lifting up to 10 pounds for eight hours per day.

OWCP, on November 16, 2018, requested that Dr. Smith specify whether appellant could perform medium work lifting 20 to 50 pounds occasionally and 10 to 25 pounds frequently.

On November 28, 2016 the employing establishment offered appellant a position as a modified city letter carrier casing and delivering mail by vehicle. The physical requirements included sitting and driving for six hours, standing for two hours, frequent walking for five hours, occasional climbing up to two hours, frequent lifting up to 10 pounds for eight hours, occasional twisting for two hours, frequent reaching at or below shoulder level for five hours, occasional reaching above the shoulder with the left arm for two hours, pushing and pulling up to 10 pounds for 30 minutes, and constant simple grasping for eight hours. The employing establishment advised that the restrictions were within those set forth by Dr. Smith on October 3, 2016, noting that another employee would deliver parcels over 10 pounds and that appellant could use his left arm for any overhead reaching.

On December 6, 2016 OWCP informed appellant of its determination that the offered position was suitable as it was within the limitations provided by Dr. Smith on October 3, 2016. It notified him that he had 30 days to accept the position or provide reasons for his refusal, and advised him of the penalties for refusing an offer of suitable work.

OWCP thereafter received a November 30, 2016 progress report from Dr. Carlson, who noted that appellant had shoulder pain and a labral tear precluding his working as a letter carrier. Dr. Carlson opined that he could work "in a sedentary occupation, with no right overhead activities, limiting his pushing and pulling, and no more than occasional lifting with both upper extremities at [or less than] 10 pounds."

On January 5, 2017 counsel challenged OWCP's determination that the offered position was suitable. She indicated that Dr. Smith had not examined appellant for more than a year prior

to completing the October 3, 2016 work restriction evaluation and did not provide any rationale for his opinion.

OWCP, by letter dated January 11, 2017, informed appellant that his reasons for refusing the position were not valid and provided him 15 days to accept the position or have his entitlement to wage-loss compensation benefits terminated. It advised him that the position remained available.

Counsel, on January 25, 2017, related that the job offer was outside the restrictions set forth by Dr. Carlson. She further asserted that whether he had the ability to perform the offered position must be based on current medical evidence.

On January 26, 2017 appellant accepted the modified city letter carrier "within the restrictions set forth by Dr. Nels Carlson."

A manager at the employing establishment related that after appellant accepted the offered modified position she instructed him to deliver mail, but he advised that he could not deliver mail or use his right arm. He told her that he could "take LWOP [leave without pay] for the remainder of the day and will be contacting OWCP and his attorney for further guidance on this matter."

In a January 27, 2017 e-mail, the employing establishment advised OWCP that appellant had requested sick leave for January 27 and 28, 2017.

By decision dated January 31, 2017, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective that date as he refused an offer of suitable work. It found that he had not accepted the offered position nor resumed work following its 15-day letter.

OWCP thereafter received a January 25, 2017 report from Dr. Carlson, finding that appellant could work in a sedentary position occasionally lifting, carrying, pushing, and pulling no more than 10 pounds.

On February 14, 2017 counsel telephoned OWCP and asserted that he resumed work on January 25, 2017. On March 1, 2017 OWCP contacted the employing establishment, who advised that he had not returned to work as he had refused to carry out the duties of the offered position.

On March 15, 2017 Dr. Carlson diagnosed right shoulder pain with a near circumferential labral tear, right C5-6 paresthesias, and severe neural foraminal stenosis at C5-6. He found that appellant could perform sedentary employment not lifting overhead with his right arm, and performing only occasional lifting, carrying, pushing, and pulling up to 10 pounds. In another report dated March 15, 2017, Dr. Carlson concurred with Dr. Smith's September 16, 2015 report finding that appellant could perform full-time sedentary work. He related that he was "permanently precluded from right shoulder activities that would involve overhead reaching, or any reaching, lifting, carrying, pushing or pulling in excess of 10 pounds on an occasional to frequent basis. I feel that he is able to work full time in a sedentary position using the left upper extremity for his activities."

Appellant, through counsel, requested reconsideration on July 19, 2017. She asserted that Dr. Smith had not provided any rationale for his October 3, 2016 work capacity determination, noting that in his initial report he found that appellant could only perform sedentary employment.

Counsel indicated that OWCP requested further clarification of the work restrictions on November 16, 2016, but had not received a response. She also maintained that appellant would be unable to perform the duties of the offered position within the set work restrictions.

By decision dated December 15, 2017, OWCP denied modification of its January 31, 2017 decision.[3] It found that the evidence from Dr. Smith represented the weight of the evidence. OWCP found that counsel's contention that performing the job duties would necessitate exceeding the set forth work restrictions was "speculative and thus of a diminished value."

On appeal counsel contends that OWCP erred in terminating appellant's compensation benefits after it determined that Dr. Smith's work restrictions required clarification and requested, but did not receive, a supplemental report. She notes that he provided new work restrictions on October 3, 2016, over a year after his initial evaluation. Counsel also asserts that Dr. Smith did not provide rationale for his opinion that appellant could perform work at a medium level. She maintains that the November 28, 2016 offered position was not sedentary as it required frequent rather than occasional lifting and was not primarily a seated position. Counsel also contends that appellant would not be able to perform the duties of the offered position and stay within the set forth restrictions, citing Board case law.[4]

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[5] Section 8106(c)(2) of FECA[6] 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] To justify termination of compensation, it must show that the work offered was suitable 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]

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 showing that such refusal or failure to work was reasonable or justified.[10] Section 10.516 of OWCP's regulations provide that it will advise the employee that the work offered is suitable and provide 30 days for the employee to accept the job or present any reasons to counter

[3] OWCP initially issued a November 16, 2017 decision, but subsequently found that decision superseded by the December 15, 2017 decision.

[4] Counsel cited *S.J.*, Docket No. 07-0469 (issued June 4, 2007) and *B.O.*, Docket No. 07-0103 (issued May 2, 2007).

[5] *Linda D. Guerrero*, 54 ECAB 556 (2003).

[6] 5 U.S.C. § 8101*et seq.*

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

[8] *Ronald M. Jones*, 52 ECAB 190 (2000).

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

[10] 20 C.F.R. § 10.517(a); *see supra* note 8.

OWCP's finding of suitability.[11] Thus, before terminating compensation, OWCP must review the employee's proffered reasons for refusing or neglecting to work.[12] If the employee presents such reasons and OWCP finds them unacceptable, it will offer the employee an additional 15 days to accept the job without penalty.[13]

Once OWCP establishes that the work offered is suitable, the burden of proof shifts to the employee who refuses to work to show that the refusal or failure to work was reasonable or justified.[14] The determination of whether an employee is physically capable of performing a modified assignment is a medical question that must be resolved by medical evidence.[15] OWCP procedures state that acceptable reasons for refusing an offered position include medical evidence of inability to do the work.[16]

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[17]

ANALYSIS

OWCP accepted that appellant sustained right shoulder tendinopathy and a sprain of the right shoulder and upper arm at the rotator cuff due to a March 12, 2014 employment injury. It terminated his compensation effective January 31, 2017 as he refused an offer of suitable work. The initial question is whether OWCP properly determined that the position was suitable.

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.[18]

Dr. McWeeney, an attending physician, found in a July 16, 2014 work status form that appellant could perform limited-duty employment with restrictions of occasional lifting of up to 10 pounds on the right side below shoulder level. Dr. Weston, an OWCP referral physician, opined in a May 11, 2015 report that he had no residuals of his work injury and could return to work with no limitations.

[11] 20 C.F.R. § 10.516.

[12] *See Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

[13] 20 C.F.R. § 10.516; *see Sandra K. Cummings*, 54 ECAB 493 (2003).

[14] 20 C.F.R. § 10.517(a).

[15] *Gayle Harris*, 52 ECAB 319 (2001).

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.5(a)(4) (June 2013).

[17] *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

[18] *See Kathy E. Murray*, 55 ECAB 288 (2004).

OWCP properly determined that a conflict arose between Dr. McWeeney and Dr. Weston regarding appellant's current condition and disability from employment. It referred him to Dr. Smith, a Board-certified orthopedic surgeon, for an impartial medical examination. Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.[19]

In a September 16, 2015 report, Dr. Smith diagnosed as employment related an aggravation of chronic impingement syndrome secondary to a degenerative rotator cuff tear and labral disease. He further found cervical disc and facet disease unrelated to the work injury causing C7 radiculopathy. Dr. Smith advised that appellant could perform sedentary work lifting up to 10 pounds and that he had limitations on reaching above the shoulder. He completed a September 9, 2016 work capacity evaluation and opined that he had weight restrictions on reaching and reaching above his shoulder, but indicated that he could perform those activities for eight hours per day. Dr. Smith further determined that appellant could lift up to 10 pounds for eight hours per day.

Based on Dr. Smith's report, the employing establishment offered appellant a position as a modified city carrier, which OWCP determined was suitable and, when he refused the job, terminated his compensation by decision dated January 5, 2016. It subsequently vacated its termination and requested clarification from Dr. Smith regarding his work restrictions, noting that sedentary work allowed lifting up to 10 pounds occasionally rather than for eight hours per day.

On March 28, 2016 Dr. Carlson opined that appellant could reach, lift, carry, push, and pull up to 10 pounds occasionally to frequently with his right arm, but could not reach overhead. He advised that he could perform sedentary work predominately using his left upper extremity.

Dr. Smith, on October 3, 2016, indicated in a work capacity evaluation form that appellant could reach at or below and above his shoulder for eight hours per day and lift up to 10 pounds for eight hours per day. He indicated by checking a box that he could perform medium work. Dr. Smith's October 3, 2016 work capacity evaluation, in conjunction with his September 16, 2015 report, constitutes probative, reasoned evidence based on a proper factual background. The Board thus finds that Dr. Smith's opinion, as the impartial medical examiner, represents the special weight of the evidence and establishes that appellant could work full time with restrictions on lifting up to 10 pounds for eight hours per day.[20]

The employing establishment, on November 28, 2016 offered appellant a position as a modified city letter carrier. The duties involved casing mail, loading his vehicle, and delivering mail. The position required sitting and driving for six hours, standing for two hours, walking for five hours frequently, climbing for two hours occasionally, lifting up to 10 pounds for eight hours frequently, twisting for two hours occasionally, reaching at or below shoulder level for five hours frequently, reaching above the shoulder with the left arm for two hours occasionally, pushing and pulling up to 10 pounds for 30 minutes, and performing simple grasping for 8 hours constantly. The employing establishment indicated that appellant would not deliver parcels over 10 pounds and could use his left arm to reach overhead. The position was within the restrictions set forth by

[19] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[20] *See C.H.*, Docket No. 16-1647 (issued September 12, 2017).

Dr. Smith, the impartial medical examiner. OWCP therefore properly determined that the offered position was suitable.[21]

In accordance with the procedural requirements of section 8106(c), OWCP advised appellant on December 6, 2016 that it found the position offered by the employing establishment suitable and provided him the opportunity to accept the position or provide reasons for his refusal within 30 days. Appellant submitted a November 30, 2016 report from Dr. Carlson, who opined that appellant could perform sedentary work with no more than occasional lifting of up to 10 pounds. On January 25, 2017 Dr. Carlson found that appellant could work in a sedentary position occasionally lifting, carrying, pushing, and pulling no more than 10 pounds. He did not, however, provide any rationale for his disability determination. A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[22]

By letter dated January 11, 2017, OWCP informed appellant that his reasons for refusing the position were not acceptable and provided him 15 days to accept the position or have his compensation terminated. He signed the job offer on January 26, 2017, but qualified the offer indicating that he was only working within the restrictions provided by Dr. Carlson. Appellant informed the employing establishment that he could not deliver mail or use his right arm, and left work on January 26, 2017 advising that he would take LWOP. He requested sick leave on January 27 and 28, 2017. While counsel advised OWCP on February 14, 2017 that he had returned to work, the employing establishment informed OWCP on March 1, 2017 that he had not returned to work and refused to perform the duties of the offered position. There is no evidence that the employing establishment granted his request for LWOP or sick leave on January 26 to 28, 2017.[23] The Board, consequently, finds that OWCP followed established procedures prior to the termination of compensation pursuant to section 8106(c) of FECA.

After OWCP established that the offered position was suitable, the burden of proof shifted to appellant to establish that his refusal was reasonable or justified.[24] Subsequent to OWCP's termination of his wage-loss compensation, he submitted a March 15, 2017 report from Dr. Carlson, who related that he agreed with Dr. Smith's finding in his September 16, 2015 report that appellant could work full time in a sedentary capacity. He opined that he could not reach overhead with his right shoulder and should limit reaching, lifting, carrying, pushing, and pulling to no more than 10 pounds. The position offered by the employing establishment does not require lifting of more than 10 pounds or reaching above the shoulder with the right arm, and thus Dr. Carlson's report does not support appellant's contention that he was unable to perform the modified position.

On appeal counsel contends that OWCP erred in terminating his compensation benefits after it determined that Dr. Smith's work restrictions required clarification and requested, but did not receive, a supplemental report. OWCP requested that Dr. Smith clarify whether he could lift only 10 pounds for eight hours or whether he could lift 20 to 50 pounds occasionally and 10 to 25

[21] *See D.C.*, Docket No. 16-1665 (issued April 13, 2017).

[22] *See T.F.*, 58 ECAB 128 (2006).

[23] When the employing establishment authorizes a claimant's absence from duty, there is no basis for finding a refusal or neglect of suitable work. *See D.M.*, Docket No. 17-1235 (issued February 15, 2018).

[24] *See M.S.*, 58 ECAB 328 (2007).

pounds frequently. Dr. Smith did not respond to its request, but the offered position required lifting of only up to 10 pounds.

Counsel further argues that Dr. Smith provided his work restrictions over a year after his initial examination. The Board has held that an examination must be reasonably current; however, Dr. Smith examined appellant on September 9, 2015 and clarified his work restrictions on October 3, 2016. The employing establishment offered him the modified position of city carrier on November 28, 2016, a little over a year from the time of Dr. Smith's initial examination and less than two months after he provided supplemental work restrictions.[25]

Counsel asserts that the position offered by the employing establishment on November 28, 2016 was not sedentary. Dr. Smith, however, found that appellant could perform medium-level work with the exception of lifting no more than 10 pounds frequently.

Citing the Board cases of *B.O.* and *S.J.*,[26] counsel contends that appellant would not be able to perform the duties of the offered position and stay within the set forth restriction. In *B.O.*, the Board found that it was unclear whether the offered position was within the restrictions set forth by the impartial medical examiner as there was no indication that appellant could take a required 20-minute breaks every two hours or change positions as needed. In *S.J.*, the Board determined that the modified position offered by the employing establishment was not consistent with the work restrictions provided by a second opinion physician of lifting 20 pounds occasionally and 10 pounds frequently as the job indicated only a lifting restrictions of 20 pounds. Appellant also asserted that the modified job offer was substantially the same as her prior position and required reaching above her shoulder. In this case, however, the employing establishment specifically indicated that appellant would not be required to reach overhead with his right arm or deliver mail weighing over 10 pounds.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and entitlement to a schedule award effective January 31, 2017 as he refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c)(2).

[25] The Board has found a report more than two years old at the time of OWCP's suitable determination and almost three years old at the time it terminated a claimant's compensation was not reasonably current and thus insufficient to support a termination of compensation. *See S.H.*, Docket No. 10-1531 (issued April 13, 2011).

[26] *See supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2018
Washington, DC

Christopher J. Godfrey, 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