

**United States Department of Labor
Employees' Compensation Appeals Board**

M.B., Appellant

and

**U.S. POSTAL SERVICE, BAYCHESTER
STATION, Bronx, NY, Employer**

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Docket No. 21-1034

Issued: January 10, 2022

Appearances:

Aaron B. Aumiller, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 28, 2021 appellant, through counsel, filed a timely appeal from an April 21, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

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 June 18, 2019, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

FACTUAL HISTORY

On November 17, 2003 appellant, then a 36-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed right de Quervain's tendinitis and right carpal tunnel syndrome caused by processing return-to-sender mail while in the performance of duty. She noted that she first became aware of her conditions and their relationship to her federal employment on October 31, 2003. Appellant stopped work on November 7, 2003 and has not returned. OWCP initially denied appellant's claim, but on May 17, 2004 it accepted the claim for right carpal tunnel syndrome and right wrist de Quervain's tendinitis. It paid her wage-loss compensation on the daily rolls as of November 10, 2003. Appellant underwent authorized right second trigger finger release on November 2, 2004 and authorized release of right wrist first dorsal compartment or release of right wrist de Quervain's on September 13, 2005. Both surgeries were performed by Dr. Marc M. Silverman, an attending Board-certified orthopedic surgeon.

On March 22, 2018 OWCP referred appellant for a second opinion examination with Dr. Marie Czaplicki-Margiotti, a Board-certified orthopedic surgeon, to assess the nature of appellant's employment-related injury, extent of her disability and work restrictions, and treatment recommendations.

In an April 27, 2018 medical report, Dr. Czaplicki-Margiotti noted her review of a statement of accepted facts and appellant's history of injury and medical treatment. On physical examination she found no significant pain on palpation of the neck; full range of motion of the shoulders, elbows, and wrists; a questionable Tinel's sign on the left wrist and a positive Tinel's sign on the right; a negative Tinel's sign of the elbows; a dry right hand compared to the left hand, which may be a residual of complex regional pain syndrome (CRPS); decreased sensation on the right hand along the thumb and index finger, but no evidence of atrophy; a longitudinal scar on the wrist from the de Quervain's release; and a positive Tinel's sign at the incision site. Dr. Czaplicki-Margiotti opined that appellant had reached maximum medical improvement. She found that appellant had some disability for performing repetitive work with her hands. Dr. Czaplicki-Margiotti found that she could not return to her original work, but she could work with lifting limited up to 20 pounds occasionally and no performing repetitive work. On April 24, 2018 she completed a work capacity evaluation (Form OWCP-5c) with indefinite restrictions limiting continuous repetitive movements of the wrists and elbows to one hour per day, pushing, pulling, and lifting up to 20 pounds one hour per day and squatting, kneeling, and climbing with up to 20 pounds eight hours per day. Dr. Czaplicki-Margiotti indicated that appellant could twist eight hours per day.

On March 5, 2019 the employing establishment offered appellant a full-time position as a modified city carrier, effective March 16, 2019, based on Dr. Czaplicki-Margiotti's April 27, 2018 indefinite restrictions. The duties included "casing mail at a carrier case" up to one hour, handling enterprise customer care inquiries up to five hours, and delivery of Express Mail, intermittently,

up to one hour. The physical requirements included: sitting up to five hours per day ; standing up to two hours per day; walking intermittently up to one hour; pushing/pulling/lifting intermittently no more than 20 pounds up to one hour per day; and squatting/kneeling/climbing intermittently with no more than 20 pounds up to one hour per day. There were no extreme or hazardous environmental conditions. The employing establishment afforded appellant 14 days to accept the offered position.

On March 11, 2019 appellant requested a copy of Dr. Czaplicki-Margiotti's April 27, 2018 report and an extension of the deadline to respond to the employing establishment's job offer.

On March 14, 2019 the employing establishment confirmed that the offered position remained available.

By letter dated March 19, 2019, OWCP advised appellant that it confirmed with the employing establishment that the offered position remained available. It explained that the modified city carrier position was suitable and in accordance with the restrictions set forth in Dr. Czaplicki-Margiotti's April 27, 2018 report. Pursuant to 5 U.S.C. § 8106(c)(2), OWCP afforded appellant 30 days to accept the position or to provide reasons for the refusal. It advised her that, if she failed to accept the position or provide adequate reasons for refusing the job offer, her wage-loss compensation and entitlement to a schedule award would be terminated.

OWCP received a February 4, 2019 report by Dr. Silverman, who diagnosed the accepted condition of right wrist carpal tunnel syndrome. In a March 12, 2019 addendum to his February 4, 2019 report, Dr. Silverman advised that appellant was temporarily totally disabled from work.

In a March 27, 2019 response to OWCP's March 19, 2019 letter, appellant contended that Dr. Czaplicki-Margiotti's report did not constitute the weight of the medical evidence. She noted that Dr. Czaplicki-Margiotti was not her treating physician, that she conducted a limited examination 11 months ago, and that there was a 2016 malpractice case against her. Thus, appellant claimed that the employing establishment's job offer was not suitable as it was based on Dr. Czaplicki-Margiotti's report.

Dr. Silverman, in a March 26, 2019 Form OWCP-5c, advised that appellant was temporarily totally disabled from her usual job due to her accepted right wrist carpal tunnel syndrome.

On April 18 and 19, 2019 the employing establishment again confirmed that appellant had not returned to work and that the offered position remained available.

By letter dated April 19, 2019, OWCP informed appellant that her reasons for refusal of the offered job were not valid. It confirmed that the offered position remained available and provided her 15 days to accept the position or have her benefits terminated.

In an April 29, 2019 response to OWCP's April 19, 2019 letter, appellant reiterated her prior contention that the employing establishment's job offer was not suitable because it was based on Dr. Czaplicki-Margiotti's report. She requested an extension of time to allow Dr. Silverman to

explain why she was unable to perform the duties of the offered position due to her accepted employment injury.

OWCP received progress notes dated April 16 and July 23, 2018 by Dr. Ramin Ghobadi, a Board-certified orthopedic surgeon. Dr. Ghobadi examined appellant and provided assessments that included the accepted right carpal tunnel syndrome, and also left carpal tunnel syndrome, left de Quervain's tenosynovitis, and arthritis of the carpometacarpal (CMC) joint of the right and left thumb. In a May 6, 2019 prescription, he ordered a functional capacity evaluation (FCE).

Dr. Silverman, in May 1, 2019 addendum to his February 4, 2019 report, provided appellant's restrictions, which included no lifting more than five pounds, no driving, and no excessive use of her hands. He noted that her work status and ability to work were deferred to her hand surgeon and dermatologist.

On May 8 and 9, 2019 the employing establishment again confirmed that appellant had not returned to work and that the offered position remained available.

In an additional report dated May 8, 2019, Dr. Silverman noted Dr. Ghobadi's recommendation that appellant undergo an FCE. He advised that she could work within the restrictions set forth in his May 1, 2019 addendum report.

By letter dated May 29, 2019, OWCP again informed appellant that her reasons for refusal of the offered job were not valid. It confirmed that the offered position remained available and provided her 15 days to accept the position or have her benefits terminated.

A Form CA-110 dated June 11, 2019 indicated that appellant failed to attend the scheduled FCE.

On June 14, 2019 the employing establishment again confirmed that appellant had not returned to work and that the offered position remained available.

OWCP, by decision dated June 18, 2019, terminated appellant's wage-loss compensation and entitlement to schedule award benefits, effective that date, pursuant to 5 U.S.C. § 8106(c)(2), based on her refusal of suitable work. It explained that Dr. Czaplicki-Margiotti provided a well-reasoned opinion as to appellant's current work limitations and the employing establishment offered her a job within those restrictions.

In a June 16, 2019 letter, appellant continued to allege that Dr. Czaplicki-Margiotti's April 27, 201 report was not entitled to the weight of the medical evidence and that the employing establishment's job offer was not suitable because it relied on the report.

On July 17, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated January 22, 2020, an OWCP hearing representative affirmed the June 18, 2019 decision. She found that Dr. Czaplicki-Margiotti's April 27, 2018 work restrictions

represented the weight of the medical evidence and that the employing establishment's March 5, 2019 job offer was properly based on those restrictions.

OWCP subsequently received reports dated March 2 and November 2, 2020 by Dr. Silverman who reiterated his prior diagnosis of the accepted condition of right wrist carpal tunnel syndrome. Dr. Silverman also diagnosed right wrist rheumatoid arthritis. He again deferred to appellant's right wrist rheumatoid arthritis regarding her work capacity.

On January 21, 2021 appellant, through counsel, requested reconsideration of the January 22, 2020 decision. In support of her reconsideration request, she submitted additional medical evidence from Dr. Ghobadi. In a November 11, 2019 progress note, Dr. Ghobadi reiterated his prior assessments of bilateral carpal tunnel syndrome, left de Quervain's tenosynovitis, and arthritis of the CMC joint of the right and left thumb. He also provided an assessment of sprain of the interphalangeal joint of the right middle finger, initial encounter.

In a January 8, 2021 report, Dr. Ghobadi concurred with Dr. Czaplicki-Margiotti's opinion that appellant could not return to her original work. He disagreed, however, with her opinion that appellant could lift up to 20 pounds occasionally. Dr. Ghobadi noted that appellant's overall condition was complex given her orthopedic diagnoses and the development of reflex sympathetic dystrophy (RSD) (also known as CRPS). He indicated that as a dysfunction of the sympathetic nervous system, RSD was a very debilitating condition and was known to cause excruciating pain, even to the slightest touch or pressure. Dr. Ghobadi maintained that ultimately, the treatment and prognosis of RSD were beyond the scope of orthopedic treatment and would be better assessed by a neurologist and/or rheumatologist. He advised that, since appellant had not undergone the recommended FCE, she should follow the work restrictions of no lifting more than five pounds up to one hour, no repetitive tasks or excessive use of the hands, and no driving, set forth in Dr. Silverman's May 1, 2019 addendum report.

OWCP thereafter received a January 5, 2021 report by Dr. Edward A. Lin, a Board-certified orthopedic surgeon. Dr. Lin noted appellant's history of injury and medical treatment. He discussed findings on physical and x-ray examination. Dr. Lin found that appellant had bilateral diffuse hand pain.

By decision dated April 21, 2021, OWCP denied modification of the January 22, 2020 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's compensation benefits.³ Section 8106(c)(2) of FECA provides that a partially disabled employee who refuses or neglects to work after suitable

³ See *K.S.*, Docket No. 19-1650 (issued April 28, 2020); *J.R.*, Docket No. 19-0206 (issued August 14, 2019); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005).

work is offered to, procured by, or secured for the employee is not entitled to compensation.⁴ To justify termination of compensation, OWCP must show that the work offered was suitable, that the employee was informed of the consequences of refusal to accept such employment, and that he or she was allowed a reasonable period to accept or reject the position or submit evidence to provide reasons why the position is not suitable.⁵ 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.⁶

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, has the burden of showing that such refusal or failure to work was reasonable or justified.⁷ 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.⁸

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.⁹ OWCP's 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.¹⁰ In a suitable work determination, OWCP must consider preexisting and subsequently-acquired medical conditions in evaluating an employee's work capacity.¹¹

ANALYSIS

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 June 18, 2019, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

⁴ 5 U.S.C. § 8106(c)(2); *see also K.S.*, Docket No. 19-1650 (issued April 28, 2020); *Geraldine Foster*, 54 ECAB 435 (2003).

⁵ *See R.A.*, Docket No. 19-0065 (issued May 14, 2019); *Ronald M. Jones*, 52 ECAB 190 (2000).

⁶ *S.D.*, Docket No. 18-1641 (issued April 12, 2019); *Joan F. Burke*, 54 ECAB 406 (2003).

⁷ 20 C.F.R. § 10.517(a).

⁸ *Id.* at § 10.516.

⁹ *M.A.*, Docket No. 18-1671 (issued June 13, 2019); *Gayle Harris*, 52 ECAB 319 (2001).

¹⁰ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.5a (June 2013); *see K.S.*, *supra* note 5; *E.B.*, Docket No. 13-0319 (issued May 14, 2013).

¹¹ *See K.S.*, *supra* note 5; *G.R.*, Docket No. 16-0455 (issued December 13, 2016); *Richard P. Cortes*, 56 ECAB 200 (2004).

On March 5, 2019 the employing establishment offered appellant a position as a modified city carrier and on March 19, 2019 OWCP determined that the position was suitable. The duties of the position included casing mail at a carrier case up to one hour, handling enterprise customer care inquiries up to five hours, and delivery of Express Mail intermittently up to one hour. The physical requirements included sitting up to five hours per day, standing up to two hours per day, walking intermittently up to one hour, pushing/pulling/lifting intermittently no more than 20 pounds up to one hour per day, and squatting/kneeling/climbing intermittently with no more than 20 pounds up to one hour per day.

The Board finds that the March 5, 2019 job offer was within the restrictions as prescribed by the second opinion physician, Dr. Czaplicki-Margiotti. Dr. Czaplicki-Margiotti reported that appellant could perform sedentary work; however, she could not perform repetitive movements of the wrists and elbows more than one hour per day, push, pull, and lift up to 20 pounds more than one hour per day, and squat, kneel, and climb with more than 20 pounds eight hours per day.

The Board finds that OWCP properly accorded the weight of the medical opinion evidence to the report of Dr. Czaplicki-Margiotti who opined that, while appellant required work restrictions involving repetitive movements of her wrists and elbows, pushing, pulling, lifting, squatting, kneeling, and climbing, she was capable of returning to work. Dr. Czaplicki-Margiotti based her opinion on a proper factual and medical history. She also provided appropriate physical examination findings. OWCP properly relied on her report to determine that the offered position, which defined work activities with even further work restrictions was suitable.¹²

Appellant's treating physician, Dr. Silverman, in reports dated February 4, 2019 through November 2, 2020, diagnosed the accepted condition of right wrist carpal tunnel syndrome. He also diagnosed right wrist rheumatoid arthritis. While he initially opined that appellant was temporarily totally disabled from work due to the accepted employment injury, Dr. Silverman did not provide a reasoned opinion explaining how appellant's conditions disabled her from performing the modified position offered by the employing establishment. The Board has held that a medical report is of limited probative value on a given matter if it contains a conclusion which is unsupported by medical rationale.¹³ Dr. Silverman subsequently found that, while appellant required work restrictions, including no lifting more than five pounds, no driving, and no excessive use of her hands, she was capable of returning to work. He did not explain, however, with rationale the need for these restrictions.¹⁴

Dr. Ghobadi's progress notes diagnosed the accepted condition of right carpal tunnel syndrome. He also diagnosed left carpal tunnel syndrome, left de Quervain's tenosynovitis, arthritis of the CMC joint of the right and left thumb, and interphalangeal joint of the right middle finger, and RSD also known as CRPS. In a January 8, 2021 report, Dr. Ghobadi agreed with Dr. Czaplicki-Margiotti's opinion that appellant could not return to her date-of-injury position, but

¹² *M.S.*, Docket No. 20-0676 (issued May 6, 2021); *S.V.*, Docket No. 19-0349 (issued October 18, 2019).

¹³ *S.V.*, *id.*; *P.S.*, Docket No. 18-1789 (issued April 11, 2019); *Sanyal Valcourt*, Docket No. 06-322 (issued May 1, 2006).

¹⁴ *B.H.*, Docket No. 21-0366 (issued October 26, 2021).

disagreed with her 20-pound lifting restriction. Instead, he advised that the work restrictions set forth in Dr. Silverman's May 8, 2019 report should apply because appellant had not undergone the FCE he had recommended to assess her work capacity and work restrictions. Dr. Ghobadi noted that her RSD condition was complex and debilitating neurological condition that caused excruciating pain, even to the slightest touch or pressure, but failed to explain how the condition prevented appellant from performing the duties of the offered position.¹⁵

Dr. Lin, in his January 5, 2021 report, did not provide an opinion addressing whether appellant was capable of performing the job offered by the employing establishment.¹⁶

The Board finds that OWCP properly followed its established procedures prior to the termination of appellant's compensation pursuant to 5 U.S.C. § 8106(c)(2), including providing her with an opportunity to accept the position offered by the employing establishment after informing her that her reasons for initially refusing the position were not valid.¹⁷

For these reasons, the Board finds that OWCP properly terminated appellant's wage-loss compensation and entitlement to a schedule award, effective June 18, 2019, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).¹⁸

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 June 18, 2019, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *K.S.*, Docket No. 19-1650 (issued April 28, 2020); *C.H.*, Docket No. 17-0938 (issued November 27, 2017).

¹⁸ See *M.S.*, *supra* note 13; *M.H.*, Docket No. 17-0210 (issued July 3, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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