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

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| **A.S., Appellant** | ) | |
| **and** | ) | **Docket No. 25-0821** |
| | ) | **Issued: December 12, 2025** |
| **U.S. POSTAL SERVICE, PALO ALTO SORTING & DELIVERY CENTER, Palo Alto, CA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

## ***JURISDICTION***

On August 18, 2025 appellant filed a timely appeal from a May 5, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the May 5, 2025 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

## ***ISSUE***

The issue is whether OWCP met its burden of proof to reduce appellant's wage-loss compensation, effective May 5, 2025, based on her refusal of an offer of a temporary limited-duty assignment, pursuant to 20 C.F.R. § 10.500(a).

## ***FACTUAL HISTORY***

This case was previously before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 21, 2018 appellant, then a 44-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a right shoulder condition due to factors of her federal employment, including casing mail, carrying a satchel, and repetitively opening and shutting the door of a long-life vehicle (LLV). She noted that she first became aware of her condition and realized its relation to her federal employment on August 20, 2018. Appellant stopped work on August 31, 2018. OWCP accepted appellant's claim for sprain of the right shoulder joint. It paid appellant wage-loss compensation on the supplemental rolls as of August 31, 2018, and on the periodic rolls as of August 18, 2019.

On April 30, 2019, Dr. Ashay Kale, a Board-certified orthopedic surgeon, performed an OWCP-authorized right shoulder arthroscopy with extensive intra-articular debridement, labral debridement, subacromial decompression, distal clavicle coplaning, and rotator cuff repair. He diagnosed right shoulder impingement, degenerative labral tear of the right shoulder, rotator cuff tear of the right shoulder, and right shoulder acromioclavicular (AC) arthropathy. In a report dated April 29, 2020, Dr. Kale diagnosed impingement syndrome of the right shoulder, other specified arthritis of the right shoulder, and strain of the muscles and tendons of the right rotator cuff of right shoulder. He held appellant off work.

On April 11, 2022, Dr. Kale treated appellant in follow-up for right shoulder pain that she reported had not improved since prior to her surgical procedure in 2019. He noted that appellant's job duties involve repetitive use of the right arm. Appellant stated that she was not yet ready to return to work. Dr. Kale noted diagnoses and continued to hold appellant off work. He performed an intraarticular injection in the right shoulder.

By decision dated June 22, 2022, OWCP expanded the acceptance of appellant's claim to include unspecified rotator cuff tear or rupture of the right shoulder, impingement syndrome of the right shoulder, other shoulder lesions of the right shoulder, and post-traumatic osteoarthritis of the right shoulder.

A June 29, 2022 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated mild degenerative changes of the AC joint, partial acromioplasty findings associated

[3] Docket No. 24-0712 (issued December 18, 2024).

with prior rotator cuff repair, mild-to-moderate rotator cuff tendinosis, and supraspinatus and moderate tendinosis.

On July 6, 2022, Dr. Kale diagnosed impingement syndrome of the right shoulder, right shoulder pain, and strain of the muscles and tendons of the rotator cuff of the right shoulder. He noted that an MRI scan of the right shoulder was unremarkable and opined that he was "somewhat confused as to why she is having continued discomfort, especially since the MRI scan was unremarkable." Dr. Kale continued to hold appellant off work.

On February 21, 2024, OWCP forwarded appellant's medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Glenn L. Scott, a Board-certified orthopedic surgeon, for a second opinion examination regarding the nature and extent of appellant's condition and disability.

In a March 4, 2024 report, Dr. Scott noted appellant's accepted conditions and complaints of right shoulder pain that limits the use of her right shoulder and entire right upper extremity. He noted findings on examination of tightness in the right trapezius, marked tenderness to palpation about the right shoulder extending down her right arm, guarding, which made accurate assessment of range of motion and motor strength difficult, tenderness from the proximal clavicle extending to an area of marked tenderness encompassing the right clavicle and superior surface of the shoulder, and tenderness over the bicipital groove with pain. Dr. Scott diagnosed status post right shoulder arthroscopy with intraarticular debridement, labral debridement, subacromial decompression, distal clavicle coplaning, arthroscopic rotator cuff repair, probable adhesive capsulitis of the right shoulder, and possible chronic pain syndrome. He opined that appellant's work-related conditions had not resolved as there was continued pain and limitation of both motion and function related to the postoperative condition. Dr. Scott indicated that appellant was not capable of returning to her date-of-injury job because she had restricted use of her right shoulder due to pain, and was unable to lift, carry, and drive. He opined that appellant's current level of disability was a direct result of the accepted work-related conditions. Dr. Scott related that appellant's prognosis was fair, but she had not reached maximum medical improvement (MMI). In a March 4, 2024 work capacity evaluation (Form OWCP-5c), he opined that appellant could work full-time sedentary duty, with restrictions of no reaching, reaching above the shoulder, operating a motor vehicle at work or to and from the office, and no climbing. Dr. Scott further provided restrictions for the right upper extremity of no pushing, pulling or lifting; and for the left upper extremity of pushing up to 10 pounds for four hours a day, pulling up to 10 pounds for two hours a day, and lifting up to 10 pounds for two hours a day.[4]

[4] Pursuant to the prior appeal, on March 14, 2024, the employing establishment offered appellant a written job offer as a modified carrier technician, allegedly within the restrictions provided in Dr. Scott's March 4, 2024 report. Appellant refused the modified job offer on March 20, 2024, contending that she was medically unable to perform the listed duties. By notice dated May 1, 2024, and finalized June 5, 2024, OWCP terminated appellant's wage-loss compensation, effective June 5, 2024, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted the temporary light-duty assignment. Appellant then appealed to the Board. By decision dated December 18, 2024, the Board reversed OWCP's June 5, 2024 decision, finding that the evidence of record was insufficient to establish that the modified position the employing establishment offered appellant on March 20, 2024 was within Dr. Scott's restrictions. *Id*.

On January 21, 2025, OWCP requested that the employing establishment prepare a written job offer consistent with the work restrictions outlined in Dr. Scott's March 4, 2024 medical report and Form OWCP-5c.

On February 20, 2025, the employing establishment offered appellant a written job offer as a modified carrier technician, beginning March 1, 2025, for 20 hours a week. The cover letter instructed appellant to report to work on March 1, 2025 at a time and address provided. The job offer noted that the position was part-time with an annual salary of $70,121.00. The duties of the modified assignment were noted as casing a route and or any available routes for four hours. The physical requirements of the position included sedentary work for four hours, intermittent pushing no greater than 10 pounds up to four hours; intermittent lifting no greater than 10 pounds up to two hours; and intermittent pulling no greater than 10 pounds up to two hours. Page one of the job offer (PS Form 2499) noted that this was an Offer of Modified Assignment (Limited Duty). Page two of the job offer noted that the physical requirements were based on the restrictions provided in Dr. Scott's March 4, 2024 report. The restrictions were working up to eight hours a day, sedentary duty, no reaching, no reaching above the shoulder, no operating a motor vehicle at work or to and from work, no pushing more than 10 pounds for four hours, no pulling more than 10 pounds for more than two hours, no lifting more than 10 pounds for more than two hours a day, and no climbing.

In a March 6, 2025 e-mail, the employing establishment notified OWCP that appellant had not returned to work nor formally responded to the February 19, 2025 job offer. The employing establishment indicated that the job offer was temporary and no permanent job offer was available.

On March 19, 2025, OWCP issued appellant a notice of proposed reduction of her wage-loss compensation in accordance with 20 C.F.R. § 10.500(a) based on her refusal of the February 19, 2025 part-time temporary light-duty assignment. It informed her that she had been provided with a temporary light-duty assignment as a modified carrier technician by the employing establishment on February 19, 2025. OWCP noted that the employing establishment advised that she had failed to respond to the job assignment or report for duty as instructed. It indicated that it had reviewed the temporary light-duty assignment and determined that it comported with the work restrictions provided by Dr. Scott in his March 4, 2024 report. OWCP also informed appellant of the provisions of 20 C.F.R. § 10.500(a), and further advised that her entitlement to wage-loss compensation would be reduced under this provision if she did not accept the offered temporary assignment or provide a written explanation with justification for her refusal within 30 days.

On May 1, 2025, the employing establishment confirmed that the February 19, 2025 job offer remained available, and that appellant had not returned to work.

By decision dated May 5, 2025, OWCP reduced appellant's wage-loss compensation, effective that date, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted a temporary light-duty assignment.

## ***LEGAL PRECEDENT***

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[5]

Section 10.500(a) of the Code of Federal Regulations provides:

> "(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing establishment had offered, in accordance with OWCP procedures, a temporary light-duty assignment within the employee's work restrictions. (The penalty provision of 5 U.S.C. § 8106(c)(2) will not be imposed on such assignments under this paragraph.)"[6]

OWCP's procedures also provide that if the evidence establishes that injury-related residuals continue and result in work restrictions, that light duty within those work restrictions is available, and the employee was notified in writing that such light duty was available, then wage-loss benefits are not payable for the duration of light-duty availability, since such benefits are payable only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.[7]

The claims examiner must provide a pretermination notice if the claimant is being removed from the periodic rolls.[8] When a temporary light-duty assignment either ends or is no longer available, the claimant is entitled to compensation and should be returned to the periodic rolls immediately as long as medical evidence supports any disabling residuals of the work-related condition.[9]

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[5] *See G.D.*, Docket No. 25-0578 (issued July 7, 2025); *S.V.*, Docket No. 17-1268 (issued March 23, 2018); *I.J.*, 59 ECAB 408 (2008).

[6] 20 C.F.R. § 10.500(a).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9c(1)(a) (June 2013).

[8] *Id.* at Chapter 2.814.9c(1)(b).

[9] *Id.* at Chapter 2.814.9c(1)(d).

## ***ANALYSIS***

The Board finds that OWCP failed to meet its burden of proof to reduce appellant's wage-loss compensation, effective May 5, 2025.

The evidence of record contains a written job offer, dated February 19, 2025, for a modified carrier technician position for four hours a day. The duties were identified as casing appellant's own route and/or any available routes. The physical requirements were identified as "[s]edentary" for up to four hours, intermittent pushing no greater than 10 pounds for up to four hours, and intermittent lifting and pulling up to two hours. Neither the February 19, 2025 job offer, nor the attached cover letter, indicated that the position was temporary. In a March 6, 2025 e-mail, the employing establishment notified OWCP that appellant had not returned to work nor formally responded to the February 19, 2025 job offer. The employing establishment indicated that the job offer was temporary and no permanent job offer was available. OWCP subsequently issued a notice of proposed reduction of wage-loss compensation on March 19, 2025, noting that appellant had been offered a "temporary" light-duty assignment.

Pursuant to 20 C.F.R. § 10.500(a), OWCP had the burden of proof to establish that the offered employment position was temporary in nature.[10] The record establishes that when the February 19, 2025 job offer was communicated to appellant, there was no indication that it was temporary in nature. As OWCP has not established that the offered modified job was a temporary position, the Board finds that OWCP has not met its burden of proof to reduce appellant's wage-loss compensation.[11]

## ***CONCLUSION***

The Board finds that OWCP failed to meet its burden of proof to reduce appellant's wage-loss compensation, effective May 5, 2025.

[10] *G.D.*, *supra* note 5. *See N.H.*, Docket No. 24-0659 (issued September 19, 2024); *M.B.*, Docket No. 24-0478 (issued June 5, 2024); *A.W.*, Docket No. 21-1287 (issued September 22, 2023); *C.W.*, Docket No. 18-1779 (issued May 6, 2019).

[11] *Id*.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the May 5, 2025 decision of the Office of Workers' Compensation is reversed.

Issued: December 12, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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