United States Department of Labor
Employees' Compensation Appeals Board

G.D., Appellant	)	
and	)	**Docket No. 25-0578**
	)	**Issued: July 7, 2025**
U.S. POSTAL SERVICE, SHIRLEY POST OFFICE, Shirley, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 24, 2025 appellant, through counsel, filed a timely appeal from an April 21, 2025 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.[3]

[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*.

[3] The Board notes that following the April 21, 2025 decision, appellant submitted additional evidence to OWCP. 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 April 21, 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

On March 26, 2024 appellant, then a 48-year-old sales and services associate, filed a traumatic injury claim (Form CA-1) alleging that on March 25, 2024, she twisted her right knee when she pushed a postal container while in the performance of duty. She stopped work on March 25, 2024. OWCP accepted appellant's claim for complex tear of the right medial meniscus. It paid her wage-loss compensation on the supplemental rolls, effective May 10, 2024, and on the periodic rolls, effective September 8, 2024.

OWCP received reports dated March 26 through September 9, 2024 wherein Dr. Barry C. Kleenman, a Board-certified orthopedic surgeon, diagnosed a right medial meniscus tear sustained at work on March 25, 2024 and held appellant off work.

In an October 16, 2024 work slip, Jason G. Tonno, a physician assistant, returned appellant to modified-duty work with restrictions.

In an October 17, 2024 duty status report (Form CA-17), Dr. Kleenman returned appellant to work for four hours a day effective October 21, 2024, with restrictions. He limited lifting to 10 pounds frequently and 15 pounds intermittently; sitting, simple grasping, fine manipulation, and reaching above shoulder level to four hours a day; twisting, pushing, and pulling to two hours a day; standing and walking to one hour a day; climbing to 30 minutes a day; and no kneeling, bending, stooping, driving a vehicle, or operating machinery. Dr. Kleenman indicated that appellant could perform sedentary work.[4]

In an October 30, 2024 report, Dr. Kleenman held appellant off work as she was unable to stand for prolonged periods.

On November 20, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Jonathan Paul, a Board-certified orthopedic surgeon, for a second opinion examination to determine her current diagnosis and her work capacity.

In a December 16, 2024 report, Dr. Paul noted his review of the SOAF and the medical record with regard to the March 25, 2024 employment injury. He noted that appellant ambulated using a cane and a walker. Dr. Paul reviewed diagnostic studies of the right knee, which demonstrated tearing of the medial meniscal body and posterior, progressive in severity, tricompartmental cartilage loss, effusion, bone marrow edema in front of the medial meniscus tear,

[4] On October 18, 2024 the employing establishment offered appellant a modified-duty position as a modified sales/service/distribution associate for 20 hours a week. Appellant refused the position on October 21, 2024, asserting that she remained totally disabled from work.

small Baker's cyst, and red marrow conversion requiring clinical correlation. He related findings on examination of trace effusion and restricted flexion of the knees, with greater restriction of motion on the right. Dr. Paul diagnosed knee osteoarthritis and morbid obesity. He opined that appellant had residuals of the accepted right knee injury and was "not capable of performing her date-of-injury job as a sales and services associate." Dr. Paul opined that she could work four hours a day with sedentary activities including limited sitting, standing, walking, and lifting. He completed a work capacity evaluation (Form OWCP-5c) of the same date limiting sitting to four hours a day, walking and standing to 30 minutes a day, and lifting to 15 pounds.

Thereafter, OWCP received a December 11, 2024 report by Dr. Kleenman wherein he diagnosed primary localized osteoarthritis of the right knee secondary to obesity.

In a February 5, 2025 work slip, Mr. Tonno held appellant off work until cleared by a physician.

On February 22, 2025 the employing establishment provided appellant with a cover letter and offer of modified assignment (limited duty) as a modified sales and services/distribution associate, with a scheduled tour of four hours a day. The duties were identified as answering telephones for up to four hours and window duties, such as certified mail and second notices, for up to four hours. The physical requirements were identified as standing and walking for up to 30 minutes each, sitting and simple grasping for up to four hours, and lifting/carrying up to 15 pounds for up to four hours. The employing establishment also explained that the offer would be available "indefinitely" and was subject to revision based on changes to appellant's physical restrictions and the availability of work. If revision was necessary, appellant would be provided a revised written modified assignment.

In a notice dated March 14, 2025, OWCP proposed to reduce appellant's wage-loss compensation. It advised her that it had reviewed the work restrictions provided by Dr. Paul and determined that the "temporary" position the employing establishment offered[5] was within her restrictions. OWCP informed appellant of the provisions of 20 C.F.R. § 10.500(a) and advised her that her entitlement to wage-loss compensation would be "reduced indefinitely" if she did not accept the offered "temporary" job or provide a written explanation with justification for her refusal within 30 days.

Thereafter, OWCP received appellant's March 1, 2025 refusal of the offered position. She contended that she remained totally disabled from work. Appellant submitted a February 25, 2025 work slip, wherein Mr. Tonno held appellant off work until cleared by a physician.

In a March 17, 2025 job offer refusal memorandum, the employing establishment confirmed that appellant had not returned to work and that the offered position remained open and available. The employing establishment answered a question "Yes" to indicate that the offered position was a "temporary job[.]"

[5] On its face, the March 14, 2025 notice indicates that the job offer was dated March 8, 2025. The Board notes that there is no job offer of record dated March 8, 2025.

OWCP received a February 5, 2025 report wherein Mr. Tonno held appellant off work.

By decision dated April 21, 2025, OWCP reduced appellant's wage-loss compensation, effective that date, in accordance with 20 C.F.R. § 10.500(a). It noted that she had not accepted the February 22, 2025 "temporary" modified position, which was within the work restrictions provided by Dr. Paul.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[6]

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.)"[7]

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.[8] The claims examiner must provide a pretermination notice if the claimant is being removed from the periodic rolls.[9] When a temporary light-duty assignment either ends or is no longer available, the claimant is

[6] *See S.V.,* Docket No. 17-1268 (issued March 23, 2018); *I.J.,* 59 ECAB 408 (2008).

[7] 20 C.F.R. § 10.500(a).

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

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

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.[10]

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to reduce appellant's wage-loss compensation, effective April 21, 2025.

The evidence of record contains a written job offer, dated February 22, 2025, for a modified sales and services/distribution associate position. The duties were identified as answering telephones for up to four hours and performing window duties for up to four hours. The physical requirements were identified as standing and walking for up to 30 minutes each, sitting and simple grasping for up to four hours, and lifting/carrying up to 15 pounds for up to four hours. Neither the February 22, 2025 job offer, nor the attached cover letter, indicated that the position was temporary. OWCP, however, subsequently issued a notice of proposed reduction of wage-loss compensation on March 14, 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.[11] As OWCP has not established that 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.[12]

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to reduce appellant's wage-loss compensation, effective April 21, 2025.

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

[11] *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).

[12] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 7, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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