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P.W., Appellant)	
)	
and)	Docket No. 25-0484
)	Issued: June 4, 2025
U.S. POSTAL SERVICE, MIDDLETOWN POST)	
OFFICE, Middletown, MD, Employer)	
)	

Case Submitted on the Record

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

² The Board notes that, following the October 24, 2024 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On March 23, 2018 appellant, then a 60-year-old sales and service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2018 she injured her right shoulder when attempting to open a gate while in the performance of duty. She did not stop work. OWCP accepted the claim for right acromioclavicular (AC) joint sprain and contusion of right shoulder and later expanded its acceptance of the claim to include a right rotator cuff tear.

Appellant underwent an OWCP-authorized surgery to the right shoulder on July 23, 2018 by Dr. Matthew J. Levine, a Board-certified orthopedic surgeon, including right rotator cuff debridement and repair and subpectoral biceps tenodesis. On July 13, 2020 she underwent right reverse shoulder arthroplasty and removal of deep hardware by Dr. Khurram Pervaiz, a Board-certified orthopedic surgeon.

OWCP paid appellant wage-loss compensation on the supplemental rolls, effective July 7, 2018, and on the periodic rolls, effective December 9, 2018.

In medical reports dated December 14, 2022 and February 15, 2023, Evan Taxin, a physician assistant, noted that appellant related complaints of bilateral shoulder pain. He reviewed a magnetic resonance imaging scan of the left shoulder, which demonstrated a high-grade rotator cuff tear, with the bulk of the tendon retracted to the mid-humeral level, subacromial impingement, proximal biceps tenosynovitis, and AC joint osteoarthritis. Mr. Taxin recommended surgery to the left shoulder, including arthroscopy, rotator cuff repair, subacromial decompression, distal clavicle resection, and biceps tenotomy.³ With regard to the right shoulder, he opined that appellant was totally disabled and recommended a work capacity examination.

In a narrative report dated August 24, 2023, Dr. Pervaiz noted the history of appellant's March 21, 2018 employment injury and her medical treatment with regard to the right shoulder. He indicated that on physical examination he observed painful passive range of motion (ROM), limited active ROM, and persistent weakness in the right shoulder. Dr. Pervaiz opined that appellant had "lifelong restrictions of no lifting greater than 10 pounds, no reaching over shoulder height, sedentary work preferred," which were directly related to the March 21, 2018 employment injury.

On October 25, 2023 Mr. Taxin administered an injection to the right shoulder and reiterated that appellant had permanent work restrictions of no lifting greater than 10 pounds and no repetitive lifting or carrying. He also noted that she had a large rotator cuff tear on the left, which would require surgery.

In a work status note dated April 5, 2024, Mr. Taxin indicated that appellant was unable to drive long distances or perform repetitive lifting or carrying due to primary osteoarthritis of the right shoulder.

³ On July 4, 2022 appellant requested that the acceptance of her claim be expanded to include a left shoulder condition. By decision dated March 21, 2023, OWCP denied expansion of the acceptance of her claim to include a left shoulder condition.

On March 21, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Abdurrahman Kandil, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the status of her accepted conditions and work capacity. The SOAF did not provide any information regarding appellant's left shoulder condition.

In a report dated April 12, 2024, Dr. Kandil reviewed appellant's history of injury and medical treatment and noted that she related complaints of severe right shoulder pain with reaching, lifting, overhead activities, and carrying objects. On physical examination of the right shoulder, he observed reduced ROM and strength and positive Neer, Hawkins, Jobe's, speeds, O'Brien's, and lift off tests. Dr. Kandil diagnosed right shoulder contusion, AC joint sprain, and rotator cuff tear and advised that appellant could not return to her date-of-injury position. In an April 29, 2024 work capacity evaluation (Form OWCP-5c) form, he opined that she was able to work full time in a sedentary to light-duty capacity with restrictions of pushing, pulling, and lifting no more than 15 pounds for up to two hours per day and climbing, reaching, and reaching above shoulder height for up to two hours per day. Dr. Kandil indicated that appellant complained that her left shoulder worsened due to overuse and favoring of that shoulder; however, he did not address the status of appellant's left shoulder.

In a letter dated May 3, 2024, the employing establishment offered appellant a part-time modified-duty postal support clerk position, effective May 11, 2024. The position required up to one hour of verifying daily route mileage for carriers and up to four hours of answering telephones and customer service inquiries, preparing end-of-day reports, and mapping of the rural route evaluated compensation system (RRECS). The physical requirements of the position involved four hours of sitting, two hours of walking, and no reaching, standing, or climbing.

On May 13, 2024 appellant refused the job offer. She indicated that she was not able to drive, stand, or walk without assistance due to back weakness and arm pain.

On May 23, 2024 the employing establishment confirmed that the job offer remained available to appellant.

In letters dated June 1 and 11, 2024, appellant indicated that her attending physician had recommended permanent restrictions. She also related limitations on her activities of daily living.

On July 2, 2024 the employing establishment again confirmed that the job offer remained available to appellant.

By letter dated July 19, 2024, OWCP advised appellant of its determination that the modified postal support clerk position offered by the employing establishment on May 4, 2024 was suitable in accordance with the medical limitations provided by Dr. Kandil in his April 12, 2024 report and remained available to her. It informed her that her compensation would be terminated, pursuant to 5 U.S.C. § 8106(c)(2), if she did not accept the position or provide good cause for not doing so within 30 days of the date of the letter.

In statements dated August 11 and 19, 2024, appellant noted that she had significant limitations in the use of her right arm.⁴

By letter dated September 18, 2024, OWCP notified appellant that her reasons for refusing the position offered by the employing establishment were unjustified. It provided her 15 days to accept the position or have her entitlement to wage-loss compensation and schedule award compensation terminated, pursuant to 5 U.S.C. § 8106(c)(2). No reply was received.

By decision dated October 24, 2024, OWCP terminated appellant's wage-loss compensation and entitlement to schedule award benefits, effective that date, pursuant to 5 U.S.C. § 8106(c)(2), as she refused an offer of suitable work. It found that the job offer was suitable based upon her current work restrictions as provided by Dr. Kandil in his April 14, 2024 report. OWCP also found that appellant's reasons for job refusal were not justified as there was no medical evidence to support her allegations that she could not perform the duties of the job.

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.⁵ Section 8106(c)(2) of FECA 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.⁶ 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.⁷ Section 8106(c)(2) 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.⁸

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.⁹ 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.¹⁰

⁴ On September 13, 2024 OWCP received a letter from the employing establishment, which indicated that appellant retired, effective August 30, 2024.

⁵ See *B.P.*, Docket No. 21-0614 (issued December 30, 2021); *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).

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

⁷ See *R.A.*, Docket No. 19-0065 (issued May 14, 2019); *Ronald M. Jones*, 52 ECAB 190 (2000).

⁸ *S.D.*, Docket No. 18-1641 (issued April 12, 2019); *Joan F. Burke*, 54 ECAB 406 (2003).

⁹ 20 C.F.R. § 10.517(a).

¹⁰ *Id.* at § 10.516.

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.¹¹ 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.¹² In a suitable work determination, OWCP must consider preexisting and subsequently-acquired medical conditions in evaluating an employee's work capacity.¹³ The Federal (FECA) Procedure Manual provides that, if medical reports document a condition, which has arisen since the compensable injury and disables an employee from the offered job, the job will be considered unsuitable, even if the subsequently-acquired condition is not employment related.¹⁴

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective October 24, 2024, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

The issue of whether a claimant is able to perform the duties of the offered employment position is a medical question that must be resolved by probative medical evidence. In finding that appellant could perform the duties of the offered employment position, OWCP found that Dr. Kandil's restrictions as set forth in his April 12, 2024 OWCP-5c form supported appellant's ability to perform the duties of the position. However, he failed to consider all of her conditions in the assignment of the work restrictions.¹⁵ Although referenced in his report, Dr. Kandil did not address whether appellant's left shoulder condition impacted her ability to perform the offered job. As previously noted, all conditions must be considered in determining whether an offered position is suitable work, whether or not they are employment related.¹⁶ Therefore, the Board finds that Dr. Kandil's opinion did not establish that appellant could perform the modified postal support clerk position offered by the employing establishment. Thus, his opinion did not establish that the position was suitable.¹⁷

¹¹ See *K.W.*, Docket No. 19-0860 (issued September 18, 2019); *M.A.*, Docket No. 18-1671 (issued June 13, 2019); *Gayle Harris*, 52 ECAB 319 (2001).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.5a (June 2013); see also *E.B.*, Docket No. 13-0319 (issued May 14, 2013).

¹³ *D.P.*, Docket No. 21-0596 (issued August 31, 2021); see *G.R.*, Docket No. 16-0455 (issued December 13, 2016); *Richard P. Cortes*, 56 ECAB 200 (2004).

¹⁴ Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 2.814.4c(7) (June 2013); *R.M.*, Docket No. 19-1236 (issued January 24, 2020).

¹⁵ *Id.*

¹⁶ See *B.P.*, *supra* note 5; *supra* note 14.

¹⁷ See *V.J.*, Docket No. 22-0941 (issued September 8, 2023).

As a penalty provision, the termination of compensation benefits is narrowly construed.¹⁸ Consequently, the Board finds that OWCP failed to meet its burden of proof to justify the termination of appellant's compensation benefits pursuant to 5 U.S.C. § 8106(c)(2).

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective October 24, 2024, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 4, 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

¹⁸ *R.M.*, *supra* note 14; *see also supra* note 14.