

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.

Appellant underwent OWCP-authorized left shoulder arthroscopy surgery on May 24, 2023 and revision surgery on March 13, 2024.²

In a November 1, 2024 medical report, Dr. Steven Milos, a Board-certified orthopedic surgeon serving as a second opinion physician, related that appellant had active residuals of adhesive capsulitis secondary to her authorized left shoulder surgery. He opined that appellant could not perform her date-of-injury position, but she could return to full-time limited-duty work with restrictions. In an attached work capacity evaluation (Form OWCP-5c) dated November 1, 2024, Dr. Milos reiterated his opinion regarding appellant's work capacity and work restrictions.

On November 21, 2024 OWCP determined that Dr. Milos' November 1, 2024 opinion constituted the weight of the medical evidence. It requested that the employing establishment offer appellant a job within those restrictions.

On November 25, 2024 the employing establishment offered appellant a full-time position as a modified mail processing clerk, effective November 29, 2024, based on Dr. Milos' November 1, 2024 restrictions.

In a memorandum of telephone call (Form CA-110) dated December 5, 2024, the employing establishment confirmed that appellant had not returned to work and the offered position remained available.

By letter dated December 12, 2024, OWCP advised appellant of its determination that the modified mail processing clerk position offered by the employing establishment on November 25, 2024 was suitable in accordance with the medical limitations provided by Dr. Milos in his November 1, 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.

OWCP received a December 17, 2024 report, wherein Dr. Chandrasekhar Sompalli, an attending orthopedic surgeon, reviewed the duties of the offered modified processing clerk position and opined that appellant may return to work in the position on January 1, 2025. In a referral of even date, he ordered a functional capacity evaluation (FEC) of appellant's left shoulder.

In a December 19, 2024 Form CA-110, appellant notified OWCP that she had not refused the offered position as her physician had told her to return to modified work on January 1, 2025. She also indicated that she had applied to the Office of Personnel Management for retirement benefits, effective December 30, 2024.

In reports dated November 5, 2024 and January 28, 2025, Jorge Hernandez, a certified physician assistant, indicated that appellant had decreased ability to perform her work duties. He recommended a position in the light strength/sedentary strength category with up to 15 pounds floor to waist, up to 10 pounds waist to chest and no chest to overhead lifting based on FCE

² On September 29, 2023 appellant underwent nonwork-related cervical spine surgery.

results. In a November 5, 2024 referral, Mr. Hernandez ordered range of motion strengthening, massage therapy, and a transcutaneous electrical nerve stimulation unit.

In a January 25, 2025 form report, Dr. Sompalli indicated that appellant was retired and medically discharged.

In a February 13, 2025 Form CA-110, the employing establishment again confirmed that appellant had not returned to work and that the offered position remained open and available.

By decision also dated February 13, 2025, 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. Milos in his November 1, 2024 report. OWCP also found that appellant's reasons for job refusal were not justified as Dr. Sompalli opined in his December 17, 2024 report that the offered position was suitable and retirement is not a justifiable reason for refusing an offer of suitable work.

On February 25, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a December 21, 2024 note, Dr. Sampalli advised that appellant had reached maximum medical improvement.

On April 11, 2025 OWCP received a May 24, 2023 report wherein Dr. Daniel Ur, an anesthesiologist, indicated that appellant's problem list included bursitis, impingement syndrome, and primary osteoarthritis of left shoulder.

On May 21, 2025 OWCP converted appellant's request for an oral hearing to a request for a review of the written record.

By decision dated July 31, 2025, OWCP's hearing representative affirmed the February 13, 2025 decision.

The Board, having duly considered this matter, finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits and entitlement to schedule award compensation.

Section 10.516 of FECA's implementing regulations provides that OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability.³ If the employee presents such reasons and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in time, OWCP's notification need not state the reasons for finding that the employee's reasons are not acceptable.⁴ After providing the 30- and 15-day

³ 20 C.F.R. § 10.516; *C.C.*, Docket No. 15-1778 (issued August 16, 2016); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

⁴ *Id.*

notices, OWCP will terminate the employee's entitlement to further wage-loss compensation and schedule award benefits.⁵

OWCP, however, did not provide appellant with an additional 15 days to accept the offered position without penalty. The Board has recognized that section 8106(c)(2) serves as a penalty provision as it may bar an employee's entitlement to future compensation and, for this reason, will be narrowly construed.⁶ In light of the above-noted procedural error, the Board finds that OWCP failed to meet its burden of proof. Accordingly,

IT IS HEREBY ORDERED THAT the July 31, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 9, 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

⁵ *Id.* at § 10.517.

⁶ *L.A.*, Docket No. 20-0946 (issued June 25, 2021); *see R.G.*, Docket No. 15-0492 (issued November 16, 2015); *H. Adrian Osborne*, 48 ECAB 556 (1997); *Maggie L. Moore*, *supra* note 3.