

<sup>3</sup> The Board notes that following the August 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 terminate appellant's wage-loss compensation and entitlement to a schedule award, effective November 9, 2023, because he refused an offer or suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

## **FACTUAL HISTORY**

On October 26, 2021 appellant, then a 55-year old medical officer (psychiatrist), filed a traumatic injury claim (Form CA-1) alleging that on October 21, 2021 his right foot slid outward and to the right on a wet bathroom floor, causing low back and lumbosacral injuries, paresthesias in the anterior right thigh, mild right lower extremity weakness, and antalgic gait while in the performance of duty. He stopped work on October 27, 2021. OWCP accepted the claim for sprain of ligaments of lumbar spine, lumbar radiculopathy, and right-sided sciatica.

In a development letter dated March 15, 2022, an April 12, 2022 medical management field nurse referral letter,<sup>4</sup> and a development letter dated August 31, 2022, OWCP listed idiopathic aseptic necrosis of right femur as an additional accepted condition in the claim.

On November 23, 2022 OWCP referred appellant, along with a November 14, 2022 statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Seth L. Jaffe, an osteopath Board-certified in occupational medicine, for a second opinion evaluation regarding the nature and extent of appellant's employment-related residuals and disability. The SOAF noted accepted conditions of sprain of ligaments of lumbar spine, lumbar radiculopathy, and right-sided sciatica.

OWCP subsequently received a medical summary report for the period May 31 through November 22, 2022 wherein Dr. Jarrett Leathem, an osteopath Board-certified in anesthesiology and pain medicine, recounted administering a series of diagnostic lumbar medial branch block injections and performing bilateral multilevel lumbar radiofrequency ablation.

In a December 13, 2022 report, Dr. Jaffe noted his review of the medical record and SOAF. On examination, he observed mild tenderness with range of motion in the lower lumbar, paralumbar, and right sacroiliac regions, and mild lumbar scoliotic curvature. Dr. Jaffe provided an assessment of lumbar radiculopathy, lumbar sprain, and avascular necrosis of the right femur. He returned appellant to full-duty work with no restrictions.

On February 23, 2023, OWCP determined that a conflict of medical opinion existed between Dr. Leathem and Dr. Jaffe regarding whether appellant could return to full-time, full-duty work. On May 5, 2023, it referred appellant, along with a SOAF dated February 23, 2023, the medical record, and a series of questions, to Dr. Glenn Scott, a Board-certified orthopedic surgeon, for an impartial medical examination. The February 23, 2023 SOAF provided to Dr. Scott listed the accepted conditions in the claim only as sprain of ligaments of lumbar spine, lumbar radiculopathy, and right-sided sciatica.

In a June 27, 2023 report, Dr. Scott, the IME, related his review of the medical record and SOAF. On examination, he observed "a hairy patch at the lumbar area with no indication of

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<sup>4</sup> OWCP subsequently received a series of medical management field nurse reports dated from May 13 through August 11, 2022, which listed idiopathic aseptic necrosis of right femur as an accepted condition.

sustained paravertebral spasm,” slightly hypoactive reflexes in the left lower extremity, and some tenderness to deep pressure palpation in the plantar aspect of both feet. Dr. Scott provided an impression of degenerative lumbar spine and disc disease with multilevel facet arthritis and foraminal stenosis, probable neuropathic residual of lumbar radiculitis, avascular necrosis of the right hip without collapse, and permanent aggravation of preexisting lumbar spine condition. He opined that the accepted employment injury caused a permanent aggravation of appellant’s spinal conditions with material worsening unlikely to return to baseline. Dr. Scott opined that appellant would benefit from additional facet injections or ablations, and caudal epidural steroid injections. He indicated that appellant could return to modified work if allowed to “stand and move about on a frequent basis” as needed. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Scott returned appellant to full-time work at the sedentary or light physical demand levels, with sitting limited to four hours a day, walking, standing, twisting, bending, and stooping limited to two hours a day, pushing, pulling, and lifting up to 10 pounds for two hours a day, squatting and kneeling limited to one hour a day, no climbing, and no operating a motor vehicle.

On August 7, 2023, the employing establishment offered appellant a permanent modified-duty position as a psychiatrist. The physical requirements included pushing, pulling, and lifting up to 10 pounds, walking and standing for up to two hours a day, sitting for four hours a day, and the ability to change positions or walk as needed. The position was available effective August 28, 2023. The record indicates that appellant had relocated from South Carolina to Arizona.

In a letter dated August 28, 2023, OWCP advised appellant of its determination that the offered modified psychiatrist position was suitable work and remained available. Pursuant to 5 U.S.C. § 8106(c)(2), OWCP afforded appellant 30 days to accept the position or to provide reasons for his refusal. It advised him that, if he failed to accept the position or provide adequate reasons for refusing the job offer, his wage-loss compensation and entitlement to a schedule award would be terminated.

In a September 27, 2023 letter, the employing establishment informed appellant that the offered modified position was in Columbia, South Carolina, as there were no positions open and available within 50 miles of appellant’s residence in Arizona.

Appellant accepted the position on September 27, 2023.

OWCP subsequently received additional chart notes by Dr. Leathem.

On October 2 and 5, 2023, the employing establishment informed OWCP that appellant did not report for duty.

By letter dated October 12, 2023, OWCP notified appellant that he had not provided a valid reason for his refusal of the offered position. It noted that the employing establishment indicated that the position remained available and provided him 15 days to accept the position or have his entitlement to wage-loss compensation and schedule award compensation terminated, pursuant to 5 U.S.C. § 8106(c)(2). OWCP subsequently received additional chart notes by Dr. Leathem.

By decision dated November 9, 2023, OWCP terminated appellant’s wage-loss compensation and entitlement to a schedule award, effective that date, pursuant to 5 U.S.C. § 8106(c)(2), as he refused an offer of suitable work. It listed the accepted conditions in the claim as idiopathic aseptic necrosis of right femur, lumbar radiculopathy, right-sided sciatica, and sprain

of ligaments of lumbar spine. OWCP accorded Dr. Scott's opinion as IME the special weight of the medical evidence in determining that the offered modified position was suitable work.

On March 22, 2024, appellant, through his then-counsel, requested reconsideration.

By decision dated May 15, 2024, OWCP denied modification of the November 9, 2023 decision.

On May 14, 2025, appellant, through counsel, requested reconsideration.

In a May 28, 2025 report, Dr. Michael McGrath, a Board-certified orthopedic surgeon, recounted appellant's history of injury and treatment and noted findings on examination. He provided an assessment of idiopathic aseptic necrosis of right femur, sprain of ligaments of lumbar spine, lumbar radiculopathy, and right-sided sciatica. Dr. McGrath concluded that appellant could return to sedentary work for up to four hours a day, three days a week, with the ability to stand and walk as needed, and sitting for no more than one hour continuously.

By decision dated August 5, 2025, OWCP denied modification of the May 15, 2024 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> Pursuant to section

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<sup>5</sup> 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).

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

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

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

<sup>9</sup> 20 C.F.R. § 10.517(a).

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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> In a suitable work determination, OWCP must consider preexisting and subsequently-acquired medical conditions in evaluating an employee's work capacity.<sup>13</sup>

### **ANALYSIS**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and entitlement to a schedule award, effective November 9, 2023.

In its March 15 and August 31, 2022 development letters, its April 12, 2022 medical management field nurse referral letter, and its November 9, 2023 decision, OWCP noted that it had accepted idiopathic aseptic necrosis of the right femur as an additional condition in the claim. However, the February 23, 2023 SOAF provided to Dr. Scott, the IME, did not list idiopathic aseptic necrosis of the right femur as an accepted condition.

OWCP's procedures provide that the claims examiner is responsible for ensuring that the SOAF is correct, complete, unequivocal, and specific.<sup>14</sup> As OWCP accepted idiopathic aseptic necrosis of the right femur as an additional condition in the claim, it was therefore responsible for including that condition in the SOAF.<sup>15</sup>

OWCP's procedures provide that when an OWCP referral physician or IME renders a medical opinion based on an SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>16</sup> OWCP, therefore, erred in relying on Dr. Scott's IME report, as he based his opinion upon a SOAF which did not identify the entirety of appellant's accepted, employment-related conditions.<sup>17</sup>

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<sup>10</sup> *Id.* at § 10.516.

<sup>11</sup> See *N.L.*, Docket No. 26-0110 (issued March 24, 2026); *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).

<sup>12</sup> 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).

<sup>13</sup> *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).

<sup>14</sup> *Supra* note 12 at Chapter 2.809.4a(2) (September 2009).

<sup>15</sup> *Id.*; see also *H.L.*, Docket No. 22-1114 (issued February 27, 2024).

<sup>16</sup> *Supra* note 12 at Chapter 3.600.3a(10) (October 1990).

<sup>17</sup> *H.L.*, *supra* note 15; see *C.S.*, Docket No. 20-1475 (issued October 4, 2021).

Thus, the Board finds that OWCP failed to meet its burden of proof to justify the termination of appellant's compensation benefits and entitlement to a schedule award effective November 9, 2023.

**CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and entitlement to a schedule award, effective November 9, 2023.

**ORDER**

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

Issued: June 8, 2026  
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