

FACTUAL HISTORY

This case was previously before the Board on a different issue.² 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 23, 2016, appellant, then a 47-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day, she twisted her right ankle and scratched her knee when leaving a building while in the performance of duty.³ She stopped work on December 23, 2016 and has not returned to work. On April 12, 2017, OWCP accepted appellant's claim for sprain of tibiofibular ligament of right ankle. It paid appellant wage-loss compensation on the supplemental rolls for the period January 23, 2021 through February 25, 2023, on the periodic rolls for the period February 26 through August 12, 2023, and on the supplemental rolls from August 13 to 20, 2023.

On June 30, 2021, OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Orlando S. Fernandez, a Board-certified orthopedic surgeon, for a second opinion to assess the status of her accepted conditions, her claimed conditions, and work capacity.

In an August 10, 2021 medical report, Dr. Fernandez noted his review of the SOAF, appellant's history of injury and medical treatment. He also noted appellant's complaints of weak right ankle that tended to invert on uneven ground and swelled after prolonged walking at the end of the day. On physical examination of the right ankle, Dr. Fernandez reported essentially normal findings with the exception of inversion instability and a trace positive anterior drawer sign. He also reviewed diagnostic test results. Dr. Fernandez diagnosed chronic right ankle lateral instability due to a preexisting anterior talofibular ligament tear and permanent aggravation of right ankle anterior talofibular ligament tear sustained on December 23, 2016. He noted that appellant's right ankle anterior talofibular ligament rupture had healed with thinning of the ligament based on magnetic resonance imaging scan findings discussed in his report, which resulted in chronic right ankle lateral instability. Dr. Fernandez advised that appellant was not disabled from work due to her right ankle lateral instability condition although she could not return to her date-of-injury city carrier position. He noted that part of her job involved walking significant distances and that due to her chronic right ankle instability, she had difficulty negotiating uneven ground. Dr. Fernandez concluded that "walking on uneven ground and working as a city carrier would not be possible with chronic right ankle lateral instability." However, he advised that appellant could perform full-time work in an office setting with minor restrictions/limitations that included wearing a light-weight ankle brace with tennis shoes. Dr. Fernandez indicated that she had standing and walking limitations. In a work capacity evaluation (Form OWCP-5c) dated August 9, 2021, he reiterated

² Docket No. 20-0889 (issued December 17, 2020) (the Board remanded for referral to a second opinion physician on the expansion issue).

³ OWCP assigned the present claim OWCP File No. xxxxxx536. Appellant has a prior claim before OWCP. Under OWCP File No. xxxxxx576, OWCP accepted appellant's traumatic injury claim for a June 11, 2014 right ankle sprain, not otherwise specified. OWCP administratively combined OWCP File Nos. xxxxxx536 and xxxxxx576, with the former serving as the master file.

his opinion regarding appellant's work capacity and advised that appellant could work eight hours per day with sitting, reaching, reaching above shoulder, twisting, bending/stooping, operating a motor vehicle at work, and repetitive movements of the wrists and elbows up to eight hours per day; walking and standing up to four hours per day, pushing, pulling, and lifting no more than 25 pounds up to four hours per day; squatting and climbing with no more than 20 pounds up to four hours per day; and kneeling with no more than 25 pounds up to four hours per day. Dr. Fernandez additionally noted that appellant could operate a motor vehicle to/from work, and she required three 15-minute breaks per day.

By decision dated May 4, 2022, OWCP expanded the acceptance of appellant's claim to include chronic right ankle lateral instability and permanent aggravation of tear of right talofibular ligament.

On May 14, 2022, the employing establishment offered appellant a full-time position as a modified city carrier, effective that date, purportedly based on Dr. Fernandez's August 10, 2021 restrictions. The position required one to six hours of delivering mail from a sitting position in a vehicle and one to two hours of casing mail into slots with right hand. The physical requirements of the position included walking to deliver mail, standing to case/deliver mail, lifting up to 25 pounds to case/distribute/deliver mail with right hand and pushing/pulling up to 25 pounds to move equipment and load vehicle, all one to four hours a day intermittently; simply grasping/fine manipulation to case/deliver one to six hours intermittently; and bending/stooping to case/load/deliver mail, sitting to drive to case and deliver mail, and reaching with right arm to case mail/deliver one to eight hours intermittently.

On May 18, 2022, appellant refused the employing establishment's job offer. She contended that she was unable to walk because she suffered from permanent damage to her right ankle.

In a letter dated October 21, 2022, OWCP advised appellant of its determination that the modified city carrier position offered by the employing establishment on May 14, 2022 was suitable in accordance with the medical limitations set forth in Dr. Fernandez's August 10, 2021 report. It confirmed with the employing establishment that the offered position 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 the refusal. It advised her that, if she failed to accept the position or provide adequate reasons for refusing the job offer, her wage-loss compensation and entitlement to a schedule award would be terminated.

On November 5, 2022, the employing establishment again offered appellant a full-time position as a modified city carrier, effective that date. The job duties and physical requirements were exactly the same as the May 14, 2022 job offer.

In a November 17, 2022 letter, appellant, through her then-representative, contended that the employing establishment's May 14, 2022 job offer conflicted with Dr. Fernandez's work restrictions. He noted that the job offer required appellant to deliver mail while sitting in a vehicle from one to six hours per day, but it also required her to walk to deliver mail one to four hours per day. Appellant's representative requested that the employing establishment clarify the nature of the offered position.

On December 1, 2022, OWCP again referred appellant to Dr. Fernandez, in his capacity as second opinion physician, and requested that he review the employing establishment's November 5, 2022 job offer and explain whether it was suitable and within the restrictions set forth in his August 10, 2021 report.

In a December 21, 2022 supplemental report, Dr. Fernandez reviewed the November 5, 2022 job offer and found that the offered position was in accordance with the work restrictions set forth in his August 10, 2021 report.

By letter dated January 31, 2023, OWCP advised appellant that it confirmed with the employing establishment that the offered position remained available. It explained that the modified city carrier position was suitable based on Dr. Fernandez's December 21, 2022 supplemental report. Pursuant to 5 U.S.C. § 8106(c)(2), OWCP afforded appellant 30 days to accept the position or to provide reasons for the refusal. It advised her that, if she failed to accept the position or provide adequate reasons for refusing the job offer, her wage-loss compensation and entitlement to a schedule award would be terminated.

In a letter dated February 15, 2023, appellant advised OWCP that she had not refused the employing establishment's May 14 and November 5, 2022 job offers. She contended that Dr. Fernandez's reports established that she could not work as a city carrier due to her employment-related right ankle condition.

OWCP, in a March 16, 2023 letter, informed the employing establishment that the offered position was not suitable because it did not accommodate the restrictions set forth in Dr. Fernandez's August 10, 2021 and December 21, 2022 reports. It noted that it had expanded acceptance of appellant's claim to include chronic right ankle lateral instability and permanent aggravation of ligament tear of the right ankle talofibular ligament. OWCP also related that Dr. Fernandez had stated that "walking on uneven ground and working as a city carrier would not be possible with chronic right ankle lateral instability." It requested that the employing establishment provide a permanent job offer based on Dr. Fernandez's restrictions. OWCP afforded the employing establishment 60 days to respond.

On August 3, 2023, the employing establishment confirmed that the offered position remained available.

By decision dated August 21, 2023, 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), based on her refusal of suitable work. It found that the job offer was suitable based upon her current work restrictions as provided by Dr. Fernandez in his August 10, 2021 and December 21, 2022 reports. OWCP also found that appellant's reasons for job refusal were not justified as they were not based on the title of the position, but on the actual restrictions of the position.

On September 22, 2023, appellant requested reconsideration and submitted additional evidence, including a progress note dated August 28, 2023, wherein Dr. Jesus Ramos Garcia, an attending Board-certified physiatrist, diagnosed complex regional pain syndrome (CRPS) of right lower limb; muscle wasting and atrophy, not elsewhere classified, right ankle and foot; pain in

right ankle and joints of right foot; sprain of tibiofibular ligament of right ankle, sequela; and difficulty in walking, not elsewhere classified. He noted that appellant had not worked since December 24, 2016, and she continued to have residuals and disability due to her June 11, 2014 and December 23, 2016 employment injuries.

By decision dated December 7, 2023, OWCP denied modification of its August 21, 2023 decision, finding that the evidence submitted was insufficient to outweigh Dr. Fernandez's opinion that appellant could perform the duties of the offered position.

On May 16, 2024, appellant requested reconsideration. In a May 20, 2024 response, OWCP related that it was unclear which decision or issues she was requesting reconsideration and informed her that no further action would be taken.

On June 11, 2024, appellant requested reconsideration of OWCP's December 7, 2023 decision.

On June 17, 2024, the employing establishment confirmed that the November 5, 2022 job offer remained available.

On July 19, 2024, OWCP again referred appellant, along with a SOAF, the medical record, and a series of questions, to Dr. Fernandez for a second opinion to determine the extent of appellant's employment-related residuals and work capacity.

In a September 4, 2024 report, Dr. Fernandez reiterated appellant's history of injury and medical treatment and reviewed medical records. He again reported essentially normal findings on physical examination with the exception of marked internal inversion laxity of the right ankle with trace anterior drawer sign. Dr. Fernandez reiterated his assessments of the accepted conditions of chronic right ankle lateral instability, sprain of other ligament of right ankle, and permanent aggravation of tear of the right tibiofibular ligament. He advised that appellant did not sustain CRPS due to her accepted December 23, 2016 employment injury. Dr. Fernandez opined that appellant could not work eight hours per day delivering mail since it obviously required prolonged standing and carrying up to 70 pounds. However, he opined that she could work in an office setting, noting that she could perform light-duty work involving walking and standing to a significant degree, sitting most of the time while pushing or pulling with arms and legs working a production-rate pace with constantly pushing or pulling materials even though the weight of the materials was negligible, and lifting up to 20 pounds of force occasionally and 10 pounds of force frequently. Appellant was also limited in negotiating uneven ground or standing for more than four hours during her workday. She could drive a motor vehicle. In an undated Form OWCP-5c, Dr. Fernandez indicated that appellant could perform light-duty work four hours per day and she was expected to return to work eight hours per day with restrictions in three months. He indicated that she could sit, walk, stand, reach, reach above shoulder, twist, bend/stoop, perform repetitive movements with wrists and elbow, push, pull, lift, squat, kneel, and climb up to four hours per day; operate a motor vehicle at work up to one hour per day; and operate a motor vehicle to/from work up to 45 minutes each way.

By decision dated November 6, 2024, OWCP denied expansion of the acceptance of appellant's claim to include CRPS, as causally related to the accepted December 23, 2016 employment injury.

On December 12, 2024, OWCP requested that Dr. Fernandez clarify appellant's work restrictions, noting that the restrictions set forth in his August 9, 2021 Form OWCP-5c differed from the restrictions set forth in his 2024 Form OWCP-5c. It also requested that he review the employing establishment's November 5, 2022 job offer and provide an opinion addressing whether appellant was able to perform the offered position.

By decision dated April 21, 2025, OWCP denied modification of the December 7, 2023 decision. It accorded the weight of the medical evidence to Dr. Fernandez's June 28, 2024 report and August 20, 2024 supplemental report in finding that the offered position was suitable.

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.⁴ 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.⁵ 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.⁶ 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.⁷

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.⁸ 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.⁹

⁴ 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).

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

⁶ See *R.A.*, Docket No. 19-0065 (issued May 14, 2019); *Ronald M. Jones*, 52 ECAB 190 (2000).

⁷ *S.D.*, Docket No. 18-1641 (issued April 12, 2019); *Joan F. Burke*, 54 ECAB 406 (2003).

⁸ 20 C.F.R. § 10.517(a).

⁹ *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.¹⁰ 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.¹¹ In a suitable work determination, OWCP must consider preexisting and subsequently-acquired medical conditions in evaluating an employee's work capacity.¹²

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 August 21, 2023, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

On December 12, 2024, OWCP requested a supplemental report from Dr. Fernandez clarifying appellant's work restrictions, noting that the restrictions set forth in his 2021 Form OWCP-5c differed from the restrictions set forth in his 2024 Form OWCP-5c. It also requested that he review the employing establishment's November 5, 2022 job offer and provide an opinion addressing whether appellant was able to perform the position. However, OWCP issued its April 21, 2025 termination decision prior to receiving the report from Dr. Fernandez.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹³ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁴

In this case, OWCP issued its April 21, 2025 decision, denying modification of the August 21, 2023 decision terminating appellant's wage-loss compensation and entitlement to a schedule award for refusal of an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2) prior to receiving the requested supplemental second opinion report.¹⁵ Thus, it was premature for OWCP

¹⁰ 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).

¹¹ 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).

¹² *D.P.*, Docket No. 21-0596 (issued August 31, 2021); see *G.R.*, Docket No. 16-0455 (issued December 13, 2016); *G.R.*, Docket No. 16-0455 (issued December 13, 2016); *Richard P. Cortes*, 56 ECAB 200 (2004).

¹³ See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

¹⁴ *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

¹⁵ *W.L.*, Docket No. 26-0029 (issued February 26, 2026); *D.G.*, Docket No. 25-0654 (issued July 22, 2025); *S.R.*, Docket No. 24-0880 (issued October 31, 2024); *W.H.*, Docket No. 24-0855 (issued November 26, 2024).

to issue its April 21, 2025 decision. Accordingly, the Board finds that the termination was improper and shall be reversed.

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 August 21, 2023, because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

ORDER

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

Issued: March 24, 2026
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