

**United States Department of Labor
Employees' Compensation Appeals Board**

N.O., Appellant)	
)	
and)	Docket No. 26-0217
)	Issued: May 21, 2026
U.S. POSTAL SERVICE, TRAFFORD POST OFFICE, Trafford, PA, Employer)	
)	

Appearances:
Douglas Sughrue, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 5, 2026 appellant, through counsel, filed a timely appeal from a November 13, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 November 13, 2025 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.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective February 12, 2025, pursuant to 20 C.F.R. § 10.500(a), based on his refusal of an offer of a temporary limited-duty assignment.

FACTUAL HISTORY

On February 9, 2023 appellant, then a 40-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed pain and herniated discs in his lower back due factors of his federal employment, including carrying a 35-pound satchel on the right side of his body. OWCP accepted the claim for cauda equina syndrome and intervertebral disc displacement at L5-S1. It paid appellant wage-loss compensation on the supplemental rolls effective February 6, 2023, and on the periodic rolls effective July 14, 2024.

Appellant underwent right-sided microdiscectomy at L5-S1 by Dr. Eugene A. Bonaroti, a Board-certified neurosurgeon, followed by postoperative care.

In an October 19, 2023 medical report, Dr. Justin Berthold, a Board-certified physiatrist, noted that a June 15, 2023 electromyography and nerve conduction velocity study demonstrated right-sided S1 radiculopathy. He performed a physical examination and observed reduced strength with extensor hallucis longus dorsiflexion on the right, difficulty performing 10 sequential calf raises on the right, reduced sensation in the right L5 and S1 dermatomes, and an asymmetric right Achilles reflex. Dr. Berthold diagnosed lumbosacral radiculopathy and indicated that it "could be feasible" for appellant to return to work with modifications for repetitive bending, repetitive squatting, and material handling up to 30 pounds if he completed a work-hardening program.

In a narrative report dated March 9, 2024, Dr. Bonaroti opined that appellant had permanent weakness in the right lower extremity, which prevented him from returning to his pre-injury position.

On May 13, 2024 OWCP referred appellant, along with the case record and statement of accepted facts (SOAF) to Dr. Mitchell Antin, an osteopath Board-certified in orthopedic surgery, for a second opinion evaluation regarding the nature and extent of appellant's condition and disability.

In a report dated May 28, 2024, Dr. Antin reviewed the medical record and noted appellant's complaints of pain, weakness, and numbness in the right buttock and calf. He performed a physical examination and observed numbness in the inner right calf and weakness in the proximal right thigh. Dr. Antin diagnosed cauda equina syndrome and a permanent aggravation of lumbar degenerative disc disease at L5-S1. He opined that appellant could not perform his pre-injury duties but could return to work with restrictions. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Antin indicated that he had permanent restrictions of sitting, standing, and walking for no more than two to four hours each; bending/stooping for no more than one hour; and lifting no more than 20 pounds.

On October 30, 2024, OWCP requested that the employing establishment prepare a written job offer for a permanent position consistent with the work restrictions outlined in Dr. Antin's May 28, 2024 medical report and Form OWCP-5c.

On October 3, 2024, the employing establishment offered appellant a temporary position as a modified city carrier beginning November 16, 2024. The job offer noted that the position was full time, with an annual salary of \$48,094.00. The duties of the modified assignment were noted as "casing and carrying routes." The physical requirements of the position included walking for two to four hours, standing for two to four hours, and lifting up to 20 pounds. The job offer noted that the modified job was temporary, and that it was based on the restrictions provided in Dr. Antin's May 28, 2024 report, including walking for two to four hours, standing for two to four hours, and lifting up to 20 pounds.

Appellant refused to sign the job offer on November 12, 2024. On November 13, 2024, the employing establishment requested that he provide an explanation for his refusal.

On November 13, 2024, the employing establishment notified OWCP of the temporary modified-duty job offer and requested that it determine whether the offered position was medically suitable in accordance with the work restrictions provided by Dr. Antin.

In a letter to the employing establishment dated December 5, 2024, OWCP noted that the modified-duty job offer did not indicate whether bending or stooping was limited to one hour, as set forth in the May 28, 2024 Form OWCP-5c by Dr. Antin. In a December 6, 2024 agency response, the employing establishment clarified that "the job offer submitted to the employee requires less than [one] hour of bending and stooping."

On December 16, 2024, OWCP requested that the employing establishment submit a permanent job offer based upon appellant's permanent restrictions.

In a December 29, 2024 agency response, the employing establishment indicated that it was "offering the temporary position while searching for a permanent job offer."

On December 19, 2024, OWCP issued appellant a notice of proposed termination of his wage-loss compensation in accordance with 20 C.F.R. § 10.500(a) based on his refusal of the October 3, 2024 temporary limited-duty assignment. It informed him that he had been provided with a temporary limited-duty assignment as a modified city carrier and that the employing establishment advised that he had failed to respond to the job assignment or report for duty as instructed. OWCP indicated that it had reviewed the temporary limited-duty assignment and determined that it comported with the work restrictions provided by Dr. Antin in his May 28, 2024 report and Form OWCP-5c. It also informed appellant of the provisions of 20 C.F.R. § 10.500(a) and further advised him that his entitlement to wage-loss compensation would be terminated under this provision if he did not accept the offered temporary assignment or provide a written explanation with justification for his refusal within 30 days.

On December 23, 2024, appellant, through counsel, asserted that the October 3, 2024 temporary job offer was invalid. By follow-up letter dated January 19, 2025, counsel asserted that "the job was more fully described verbally by his supervisor as being a walking route," which could be outside of his capabilities. He noted that appellant was scheduled for a medical appointment with his attending physician to review the temporary modified position.

By decision dated February 12, 2025, OWCP terminated appellant's wage-loss compensation, effective that date, pursuant to 5 U.S.C. § 10.500(a). It explained that the termination was due to his failure to accept the October 3, 2024 temporary limited-duty job offer.

OWCP continued to receive evidence. In an attending physician's report (Form OWCP-20) and a Form OWCP-5c dated April 17, 2025, Dr. Katherine Burke diagnosed cauda equina syndrome and opined that appellant was partially disabled.⁴ She indicated that he could not perform a walking route and that he was limited to sedentary-duty work with up to five hours of sitting, a total of one hour of standing and walking combined, no pushing or pulling greater than 10 pounds, and no lifting greater than 20 pounds. Dr. Burke also indicated that appellant required one 15-minute break per hour.

In a medical report dated June 17, 2025, Dr. Burke noted that appellant related complaints of low back pain and that he was being treated for severe mitral valve regurgitation. She performed a physical examination and observed an antalgic gait, decreased sensation in the right thigh, and atrophy of the right calf. Dr. Burke diagnosed cauda equina syndrome and other intervertebral disc displacement of the lumbar region. She noted that appellant was "off work pending recent cardiac event."

On July 1, 2025, appellant, through counsel, requested reconsideration of OWCP's February 12, 2025 decision. In support thereof, he submitted an April 17, 2025 medical report by Dr. Burke, who opined that appellant could not perform the October 3, 2024 temporary modified-duty position. Dr. Burke explained that appellant's physical examination findings of gait abnormality, muscle wasting, and sensory deficits precluded him from walking, stair climbing, and prolonged standing.

By decision dated July 28, 2025, OWCP denied modification of its February 12, 2025 decision.

On October 21, 2025, appellant, through counsel, requested reconsideration. In support thereof, he submitted legal argument and a statement by appellant, who indicated that on November 12, 2024, R.K., an employing establishment postmaster, instructed him to come to the office to review a job offer. Appellant went to the office and R.K. told him that the position was a "walk-out route," which he asserted meant he would have no vehicle and would be on his feet carrying mail for eight hours per day. He told R.K. that he could not accept the offered position.

In an August 13, 2025 narrative report, Dr. Burke noted that appellant had reached maximum medical improvement and reiterated that he could not perform the modified city carrier position. She explained that his antalgic gait and impaired endurance prevented him from walking or standing for a full delivery route; muscle atrophy and sensory deficits in his right leg reduced his balance and stability, which made stair climbing and negotiating uneven terrain unsafe; persistent neuropathic pain limited his ability to bend, twist, and maintain the repetitive motions required for casing and delivering mail; and his lifting restriction prevented him from carrying mail satchels and packages for the duration of the route, particularly since mail weights varied and could not be controlled by appellant.

⁴ The Board notes that the physician's specialty could not be determined.

By decision dated November 13, 2025, OWCP denied modification of its July 28, 2025 decision.

LEGAL PRECEDENT

Once OWCP has accepted a claim under FECA, it has the burden of justifying termination or modification of compensation benefits.⁵

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.)”⁶

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.⁷ The claims examiner must provide a pretermination notice if the claimant is being removed from the periodic rolls.⁸ When a temporary light-duty assignment either ends or is no longer available, the claimant is 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.⁹

⁵ See *L.C.*, Docket No. 25-0082 (issued December 26, 2024); *S.V.*, Docket No. 17-1268 (issued March 23, 2018); *I.J.*, 59 ECAB 408 (2008).

⁶ 20 C.F.R. § 10.500(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9c(1)(a) (June 2013).

⁸ *Id.* at Chapter 2.814.9c(1)(b).

⁹ *Id.* at Chapter 2.814.9c(1)(d).

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective February 12, 2025, pursuant to 20 C.F.R. § 10.500(a).

OWCP referred appellant to Dr. Antin for an opinion regarding appellant's work capacity. In a May 28, 2024 Form OWCP-5c, Dr. Antin indicated that he had permanent restrictions of sitting, standing, and walking for no more than two to four hours each; bending/stooping for no more than one hour; and lifting no more than 20 pounds.

On November 12, 2024 the employing establishment offered appellant a temporary job as a full-time modified city carrier beginning November 16, 2024. The offered position required casing and carrying a route. The physical requirements of the position included walking for two to four hours, standing for two to four hours, and lifting up to 20 pounds. The job offer, however, did not indicate whether sitting, and/or bending/stooping were physical requirements of the modified city carrier position. Although the employing establishment later clarified that the position required bending/stooping for less than one hour, it neither clarified whether sitting was a requirement, nor presented appellant with a revised job offer.

As OWCP has not sufficiently established that appellant was capable of performing the modified job, the Board finds that OWCP failed to meet its burden of proof.¹⁰

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective February 12, 2025, pursuant to 20 C.F.R. § 10.500(a).

¹⁰ See *A.S., id.*

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 21, 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