United States Department of Labor
Employees' Compensation Appeals Board

K.N., Appellant	)	
and	)	**Docket No. 26-0436**
	)	**Issued: September 24, 2026**
U.S. POSTAL SERVICE, SAN FRANCISCO NETWORK DISTRIBUTION CENTER, Richmond, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 April 10, 2026 appellant, through counsel, filed a timely appeal from a March 17, 2026 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 March 17, 2026 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective September 8, 2025, pursuant to 20 C.F.R. § 10.500(a), because he refused a temporary limited-duty assignment; and (2) whether appellant has met his burden of proof to establish that his refusal of the temporary limited-duty assignment was justified.

FACTUAL HISTORY

On September 28, 2024 appellant, then a 36-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained bilateral knee injuries when he was climbing a slide and fell through a cutout on the bottom of the platform, landing on his knees while in the performance of duty. He stopped work on the date of injury. OWCP accepted appellant's claim for contusion of right knee, initial encounter.

On February 25, 2025 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. J. Hearst Welborn, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of his employment-related injury and work capacity.

In a report dated March 31, 2025, Dr. Welborn noted his review of the SOAF and the medical record. He discussed findings from a September 28, 2024 x-ray and January 29, 2025 magnetic resonance imaging (MRI) scan of the right knee. Dr. Welborn recounted appellant's history of injury, provided examination findings, and diagnosed contusion of right knee, initial encounter which he opined related to his work injury. He reported that appellant continued to suffer from residuals of the right knee injury, displayed no objective findings on examination, and his prognosis remained poor as he had reached maximum medical improvement (MMI). Dr. Welborn opined that appellant was not totally disabled from work. He recommended vocational rehabilitation and provided restrictions of no lifting greater than 25 pounds and "no repetitive kneeling or stairs." In an accompanying work capacity evaluation (Form OWCP-5c) also dated March 31, 2025, Dr. Welborn determined that appellant could not return to his date-of-injury position but could work eight hours a day with restrictions of no pushing, pulling, or lifting greater than 25 pounds, and no kneeling or climbing for more than one hour per day. He further indicated that the restrictions would apply for a period of three months.

In reports dated March 19 through May 13, 2025, Dr. Scott Jeffrey Peterson, Board-certified in emergency medicine, evaluated appellant and diagnosed right knee contusion and right knee sprain loose body. He provided modified-duty work restrictions of standing occasionally for 25 percent of his shift, walking occasionally for 25 percent of his shift, squatting, kneeling, and knee bending for 25 percent of his shift, no climbing ladders, no use of scaffolds or heights at work, and no lifting, carrying, pushing, or pulling, greater than 15 pounds.

On May 15, 2025 OWCP subsequently expanded the acceptance of appellant's claim to include the additional condition of right knee sprain.

On May 15, 2025 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On May 15, 2025 OWCP requested an addendum report from Dr. Welborn pertaining to appellant's claim.

In a May 27, 2025 addendum report, Dr. Welborn reported that OWCP had accepted appellant's condition for right knee sprain and right knee contusion. He also provided clarification pertaining to his initial report, noting that appellant's right knee MRI scan revealed calcified body in the joint at the supra patella area which was seen prior to the date of injury, as well as cartilage thinning, which he opined were work-related as decreased cartilage represented objective findings and supported residuals of the injury. However, Dr. Welborn also opined that the conditions did not need treatment since appellant was not tender at the pat femoral joint and had continued knee pain. He explained that appellant's prognosis for a full recovery was poor due to the nature of his injury which involved the patella femora arthritis and further degeneration as he aged as there was no treatment which would prevent this and he could need a knee replacement in the future. While Dr. Welborn initially determined that appellant had reached MMI and provided restrictions of no lifting greater than 25 pounds for three months prior to returning to full-duty work, he modified his opinion indicating appellant had not reached MMI at the time of his evaluation. He explained that if appellant could not return to full-duty work, he would be at MMI.

On June 4, 2025 the employing establishment provided appellant with a modified assignment. The hours were listed from 11:00 p.m. to 7:50 a.m., Monday through Friday, with an annual salary of $59,761.00. The assignment was listed as "modified maintenance mechanic," the duties were provided, and the physical requirements were listed as standing and walking up to eight hours per day; lifting, carrying, pushing, and pulling no more than 25 pounds up to eight hours per day; and kneeling and climbing up to one hour per day. The modified assignment was listed as available effective June 20, 2025.[4]

On June 11, 2025 appellant refused the job offer. He asserted that, due to the nature of his injury, he would not be able to function inside the facility safely.

Appellant submitted additional medical evidence, wherein Dr. Peterson diagnosed loose body in right knee, contusion of right knee, and sprain of right knee. He held appellant off work from July 9 through August 12, 2025.

In a notice dated July 30, 2025, OWCP proposed to terminate appellant's wage-loss compensation, pursuant to 20 C.F.R. § 10.500(a). It informed appellant that he had been provided with a "temporary" light-duty assignment as "Maintenance" on June 11, 2025. OWCP noted that it had been advised that he had refused to accept or report to the job assignment provided. It indicated that it had reviewed the "temporary" light-duty assignment and determined that it comported with the work restrictions provided by Dr. Welborn. OWCP also informed appellant of the provisions of 20 C.F.R. § 10.500(a) and further advised 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. It noted that the actual earnings "in the assignment provided would meet or exceed the current wages of the job held when injured. Therefore, you would not be entitled to ongoing wage-loss compensation during this period."

[4] The employing establishment indicated that the position was based on medical evidence dated March 31 through June 30, 2025.

In an August 8, 2025 report, Dr. Peterson discussed initially evaluating appellant on October 10, 2024 following a September 28, 2024 injury when he fell when, while working on machinery, he stepped in a hole in a package chute with his right lower extremity and forcefully hit his right knee which was work related. He diagnosed loose body in right knee, contusion of right knee, and sprain of right knee and reported that appellant's diagnoses were related to focal moderate to high-grade cartilage loss within the patella and an intraarticular osteochondral body measuring four millimeters within the suprapatellar recess that appeared to migrate into weight bearing portions of the knee. Dr. Peterson noted that appellant's symptoms interfered with his federal position as a mechanic by limiting his ability to walk as well as the inability to climb onto equipment to perform repairs and lift, squat, and kneel. He opined that without orthopedic surgical intervention, his conditions were expected to continue for at least one additional year and even with surgical intervention and removal of the loose body, there would remain cartilage loss within the patella that may likely be symptomatic and limit his physical activity indefinitely.

By decision dated September 8, 2025, OWCP terminated appellant's wage-loss compensation, effective that date, pursuant to 20 C.F.R. § 10.500(a). It noted that he had refused the June 4, 2025 "temporary" light-duty position which was within the work restrictions provided by Dr. Welborn.

Appellant continued to submit medical evidence in support of his claim.

On March 11, 2026 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted medical and form reports dated August 8 through February 25, 2026 from Dr. Peterson, and reports dated August 26, 2025 and January 7, 2026 from Dr. Joshua Hatch, a Board-certified orthopedic surgeon, indicating that appellant was unable to perform the duties of the offered position.

By decision dated March 17, 2026, OWCP denied modification of its September 8, 2025 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.[5]

OWCP regulations at 20 C.F.R. § 10.500(a) provide, in relevant part:

> "(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

[5] *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *see R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

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]

When it is determined that an appellant is no longer totally disabled from work and is on the periodic rolls, OWCP's procedures provide that the claims examiner should evaluate whether the evidence establishes that light-duty work was available within his or her restrictions. The claims examiner should provide a pretermination or prereduction notice if the claimant is being removed from the periodic rolls.[7] When the light-duty assignment either ends or is no longer available, the claimant should be returned to the periodic rolls if medical evidence supports continued disability.[8] OWCP's procedures further advise, "If there still would have been wage loss if the claimant had accepted the light-duty assignment, the claimant remains entitled to compensation benefits based on the temporary actual earnings WEC [wage-earning capacity] calculation (just as if he/she had accepted the light[-]duty assignment)."[9]

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits, effective September 8, 2025, pursuant to 20 C.F.R. § 10.500(a).

OWCP terminated appellant's wage-loss compensation on September 8, 2025 pursuant to 20 C.F.R. § 10.500(a). The Board, however, is unable to determine from the current record whether its termination of his benefits is proper under 20 C.F.R. § 10.500(a) since it cannot be established whether he had been offered a temporary or a permanent employment position. OWCP's procedures require that when an employing establishment provides an alternate employment position to a partially disabled employee who cannot perform his or her date-of-injury position, it must be determined whether the offered position is permanent or temporary in nature. If the employment offered to an employee on the periodic rolls is temporary and the employee does not accept the position, section 20 C.F.R. § 10.500(a) applies. However, if the offered employment is permanent in nature and the employee does not accept the position the penalty provisions under 5 U.S.C. § 8106(c)(2) apply.[10]

The evidence of record contains a written job offer, dated June 4, 2025, for a modified maintenance mechanic, which appellant declined on June 11, 2025. The job offer noted the duties and physical requirements of the modified assignment. The assignment was for full-time work

[6] 20 C.F.R. § 10.500(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9c(1) (June 2013).

[7] *Id.* at Chapter 2.814.9c(1)(b).

[8] *Id.* at Chapter 2.814.9c(1)(d).

[9] *Id.* at Chapter 2.814.9c(8).

[10] *Id.* at Chapter 2.814.4.

and had an annual salary of $59,761.00. OWCP subsequently issued a proposed termination of wage-loss compensation on July 30, 2025. It noted that appellant had been provided with a "temporary" light-duty assignment as a "Maintenance" on June 11, 2025. The Board finds, however, that there is no documentation of record supporting that the offered assignment was temporary in nature. The June 4, 2025 job offer did not indicate whether the position was temporary and the employing establishment did not provide a cover letter advising appellant or OWCP whether the modified city carrier position was temporary or permanent.[11] Thus, appellant had no notice that the job was temporary in nature at the time the job offer was received and refused.

Pursuant to 20 C.F.R. § 10.500(a), OWCP has the burden of proof to establish that appellant declined an offered employment position that was temporary in nature.[12] The evidence of record is insufficient to establish that the modified job offered on June 4, 2025 was temporary.[13] The Board thus finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation.[14]

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation benefits, effective September 8, 2025, pursuant to 20 C.F.R. § 10.500(a).[15]

[11] *R.S.,* Docket No. 20-1004 (issued March 15, 2021).

[12] *See N.H.,* Docket No. 24-0659 (issued September 19, 2024); *M.B.,* Docket No. 24-0478 (issued June 5, 2024); *A.W.,* Docket No. 21-1287 (issued September 22, 2023); *C.W.,* Docket No. 18-1779 (issued May 6, 2019).

[13] *J.W.,* Docket No. 26-0011 (issued January 15, 2026); *K.S.,* Docket No. 25-0855 (issued December 3, 2025). *See also C.M.,* Docket No. 20-0929 (issued August 25, 2021).

[14] *See M.N.,* Docket No. 25-0818 (issued November 25, 2025); *L.C.,* Docket No. 25-0082 (issued December 26, 2024); *supra* note 12.

[15] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2026 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 24, 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