United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
	)	**Docket No. 26-0546**
and	)	**Issued: September 4, 2026**
	)	
U.S. POSTAL SERVICE, BROOKLYN POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Appellant, *pro se*
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 May 29, 2026 appellant filed a timely appeal from a December 11, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective August 9, 2021, because he refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2); and (2) whether appellant has met his burden of proof to establish that his refusal of suitable work was justified.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the December 11, 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.*

FACTUAL HISTORY

On April 17, 2009, appellant, then a 59-year-old modified letter carrier, filed a notice of recurrence (Form CA-2a) alleging that he sustained a recurrence of disability on January 16, 2009.[3] He noted that he sustained the original injury on June 3, 2006.[4] Appellant indicated that, while performing his work duties, he experienced increased pain in his neck, right shoulder, and back to the point that he could no longer complete the required tasks. He also indicated that he suffered from sinus infections and gastrointestinal problems.

In a May 26, 2009 letter, OWCP notified appellant that the January 16, 2009 claim of recurrence would be treated as a new traumatic injury.[5] It accepted the claim for permanent exacerbation of right rotator cuff tear, exacerbation of right shoulder impingement syndrome, adhesive capsulitis of the right shoulder, and exacerbation of preexisting cervical and lumbar spine disc disease. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective January 17, 2009, and on the periodic rolls, effective July 29, 2012.

Appellant received treatment for the accepted injuries with Dr. Victor Katz, a Board-certified orthopedic surgeon and physiatrist, including physical therapy and epidural steroid injections.[6]

On October 29, 2020 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Arnold Goldman, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the status of his accepted conditions and work capacity.[7]

In a report dated November 23, 2020, Dr. Goldman reviewed the medical record, SOAF, and history of the June 3, 2006 and January 16, 2009 employment injuries. He noted appellant's additional medical conditions of hypertension, cardiac issues, asthma, irritable bowel syndrome, and vestibular neuritis and that appellant had taken a car service to the examination and sometimes used a cane for ambulation. Dr. Goldman performed a physical examination of the right shoulder and observed positive Neer's, Hawkins, and Yergason's signs, reduced range of motion (ROM),

[3] The record reflects that at the time of the claimed recurrence, appellant was working part-time, four hours per day, with the following restrictions: driving up to one hour per day; lifting up to 10 pounds with a single arm and 20 pounds with both arms; standing and reaching above shoulder height for up to three hours per day; and no mail delivery.

[4] Appellant filed a traumatic injury claim (Form CA-1) for a June 3, 2006 injury, which OWCP accepted for cervical, thoracic, and lumbar sprains under OWCP File No. xxxxxx951.

[5] OWCP assigned the present claim OWCP File No. xxxxxx674. It administratively combined OWCP File No. xxxxxx951 and OWCP File No. xxxxxx674, with the latter serving as the master file.

[6] Appellant underwent OWCP-directed second opinion evaluations on February 22, 2012 with Dr. Leon Sultan, a Board-certified orthopedic surgeon, and on April 23, 2013 and November 11, 2014 with Dr. Hormozan Aprin, a Board-certified orthopedic surgeon, who both opined that he was limited to working four hours per day with restrictions. Dr. Aprin noted that he did not anticipate that appellant would be able to work eight hours per day in the future.

[7] The October 7, 2020 SOAF listed the accepted June 3, 2006 and January 16, 2009 conditions and referenced appellant's additional medical conditions of high blood pressure, atrial fibrillation, vestibular neuritis, hypertension, irritable bowel syndrome, and sinusitis.

pain along the bicipital groove and long head of the biceps tendon, and reduced motor power. He also examined appellant's lumbar spine and lower extremities and observed a positive straight leg raise test, reduced lumbar flexion due to pain, positive abductor lurch gait, and a positive Apley sign at the right knee. Dr. Goldman diagnosed cervical spine neck derangement, right shoulder impingement and rotator cuff arthropathy, low back derangement, and sprain/strain of the right knee. He opined that appellant had reached maximum medical improvement (MMI) and was unable to return to his date-of-injury position but could perform "light work that involves exerting occasionally up to 20 pounds and up to 10 pounds of force frequently." Dr. Goldman indicated the restrictions were permanent.

In a work capacity evaluation (Form OWCP-5c) dated November 3, 2020, Dr. Goldman indicated that appellant could return to full-time light-duty work with the following restrictions: up to eight hours per day sitting and repetitive movements with the wrists and elbows; up to two hours per day walking, standing, reaching, reaching above shoulder height, twisting, bending/ stooping, operating a motor vehicle at work, and operating a motor vehicle to/from work; up to four hours per day pushing, pulling, and lifting up to 20 pounds; up to two hours per day squatting and kneeling with a 10-pound limitation; and no climbing. He also noted that he would require two to three breaks per day of 15 to 20-minute duration and that the restrictions were permanent in nature.

In a letter dated February 9, 2021, the employing establishment offered appellant a full-time modified-duty mail processing clerk position, effective March 15, 2021, at its East New York Station. The position required processing undeliverable mail pieces, searching for forwarding addresses, and scanning small parcels weighing under 20 pounds for distribution, while seated. The employing establishment indicated that the position was "in compliance with your medical restrictions" and that appellant would be "expected to be regular in attendance."

On February 18, 2021 appellant refused the job offer. He indicated that he was physically unable to travel to and from the East New York Station five days per week and that walking, standing, sitting, grasping, and reaching were painful. Appellant also noted that he was not able to lift 20 pounds, that he needed a cane for walking, and that he took medication for high blood pressure, atrial fibrillation, asthma, vestibular neuritis, and irritable bowel syndrome. He related that his irritable bowel condition made it nearly impossible to leave the house on a regular morning schedule and that sciatica also limited his morning activity.

In a February 12, 2021 medical report, Dr. Katz noted that appellant related complaints of right shoulder and low back pain, which were aggravated by reaching and prolonged standing and walking, and that he used a cane for ambulation. He performed a physical examination of the right shoulder and observed limited flexion, abduction, and internal rotation and a positive impingement test. On examination of the cervical and lumbar spines, Dr. Katz observed limited ROM, positive Spurling's test on the right, weakness of the extensor hallucis longus, and tenderness to palpation. He diagnosed cervical herniated discs at C4-5 and C5-6, cervical radiculopathy, right shoulder impingement, and lumbar herniated disc at L5-S1. Dr. Katz opined that appellant was not capable of performing the full-time modified mail processing clerk position as he could not sit for longer than 20 minutes, commute in the car to and from work, lift 20 pounds, twist at his back, or perform any overhead activities with the right arm. He opined that appellant was totally disabled and that, due to his age and limited physical abilities, he was not a candidate for vocational training.

On March 16, 2021 the employing establishment confirmed that the job offer remained available to appellant.

By letter also dated March 16, 2021, OWCP advised appellant of its determination that the modified mail processing clerk position offered by the employing establishment on February 19, 2021 was suitable in accordance with the medical limitations provided by Dr. Goldman in his November 23, 2020 report and remained available to him. It informed him that his compensation would be terminated, pursuant to 5 U.S.C. § 8106(c)(2), if he did not accept the position or provide good cause for not doing so within 30 days of the date of the letter.

OWCP subsequently received an undated attending physician's report (Form CA-20) and a duty status report (Form CA-17) dated February 12, 2021 by Dr. Katz, who indicated that appellant was totally disabled.

In a letter dated March 22, 2021, Dr. Aaron H. Berger, a Board-certified internist and cardiovascular disease specialist, diagnosed active hypertension and atrial fibrillation.

On March 23, 2021 Dr. Murray J. Werzberger, an internist, indicated that appellant was under his care for asthma, vestibular neuritis, and irritable bowel syndrome.

By letter dated May 13, 2021, OWCP notified appellant that his reasons for refusing the position offered by the employing establishment were unjustified. It 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).

In a Form OWCP-20 dated May 13, 2021, Dr. Katz opined that appellant was totally disabled.

In a narrative dated May 21, 2021, Dr. Werzberger noted that appellant had frequent asthma attacks, which were exacerbated by being indoors. He also indicated that appellant's vestibular neuritis caused frequent and sporadic vertigo, which required him to lay down and take medication and precluded him from sitting, stopping, pushing, or pulling. Dr. Werzberger noted that the irritable bowel syndrome alternated between constipation and abrupt urgent bowl movements and diarrhea, which made "sitting at a job bending, stooping, pulling or pushing out of the question." He also diagnosed chronic prostatitis, which he related was refractory to medication and diet intervention, and required frequent bathroom stops, which could be twice once or twice per hour, depending on the day. Dr. Werzberger noted that appellant had an umbilical hernia, which caused chronic pain and could not be surgically corrected due to his cardiac conditions.

Appellant also submitted a statement dated May 23, 2021, which indicated that he was mostly homebound for all of 2020 and that his physical condition had worsened over time.

In a letter dated May 24, 2021, Dr. Berger indicated that appellant was seen in the office for an examination on that date. He opined that "given the patient's age and medical conditions including atrial fibrillation and vertigo, [he was] of the medical opinion that [appellant] should not work a job that includes standing or walking up to 2 hours daily or intermittently lifting up to 20 pounds for 40 hours a week."

On August 2, 2021 the employing establishment confirmed that the job offer remained available to appellant.

By decision dated August 9, 2021, 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 he refused an offer of suitable work. It found that the job offer was suitable based upon his current work restrictions as provided by Dr. Goldman in his November 23, 2020 report. OWCP also found that appellant's reasons for job refusal were not justified as there was no medical evidence to support his allegations that he could not perform the duties of the job.

On July 20, 2022 appellant, through his then-counsel, requested reconsideration of OWCP's August 9, 2021 decision.

OWCP also received medical reports by Dr. Katz dated November 22, 2021, and March 22 and June 6, 2022, who continued to find appellant totally disabled due to the accepted employment injuries.

By decision dated October 14, 2022, OWCP denied modification of the August 9, 2021 decision.

On February 2, 2023 appellant, through counsel, requested reconsideration of OWCP's October 14, 2022 decision. In support thereof, he submitted an e-mail dated June 26, 2022 by Dr. Werzberger who opined that appellant was totally disabled from work "due to his multiple medical problems which have been present for years and which are not going away." He explained that "the proposed job would have him leave at 5:00 a.m. and work until 1:30 p.m. with 40 minutes of travel with irritable bowel syndrome which he has had lifelong and is not well-controlled he can have the urge to go to the bathroom at any time suddenly and despite medication is unable to predict when this would happen." Dr. Werzberger indicated that any lifting greater than two to three pounds put appellant at risk of an incarcerated or strangulated hernia which would be a medical emergency. He also reiterated that his cardiac conditions and vestibular neuritis prevented him from working due to fainting and balance issues.

By decision dated April 26, 2023, OWPC denied modification of the October 14, 2022 decision.

OWCP continued to receive evidence, including magnetic resonance imaging (MRI) scans of the cervical and lumbar spine dated May 30, 2023 and follow-up medical reports by Dr. Katz dated May 15 through December 12, 2023, who noted that appellant's right shoulder symptoms had worsened. He continued to opine that appellant was totally disabled.

On April 14, 2025 appellant requested reconsideration of OWCP's April 18, 2024 decision. He also submitted statements on April 14 and July 22, 2025.

By decision dated December 11, 2025, OWCP denied modification of its April 26, 2023 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's compensation benefits.[8] 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.[9] 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.[10] Section 8106(c)(2) 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.[11]

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.[12] 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.[13]

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.[14] 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.[15] In a suitable work determination, OWCP must consider preexisting and subsequently-acquired medical conditions in evaluating an employee's work capacity.[16] The Federal (FECA) Procedure Manual provides that, if medical reports document a condition, which has arisen since the compensable injury and

[8] *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).

[9] 5 U.S.C. § 8106(c)(2); *see also Geraldine Foster*, 54 ECAB 435 (2003).

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

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

[12] 20 C.F.R. § 10.517(a).

[13] *Id.* at § 10.516.

[14] *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).

[15] *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).

[16] *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).

disables an employee from the offered job, the job will be considered unsuitable, even if the subsequently-acquired condition is not employment related.[17]

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective August 9, 2021, because he refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).

The issue of whether a claimant is able to perform the duties of the offered employment position is a medical question that must be resolved by probative medical evidence. In finding that appellant could perform the duties of the offered employment position, OWCP found that Dr. Goldman's restrictions as set forth in his November 23, 2020 report and OWCP-5c form supported appellant's ability to perform the duties of the position. The Board, however, finds that his opinion was conclusory in nature as it lacked rationale. The Board has held that a medical report is of limited probative value if it contains a conclusion which is unsupported by sufficient medical rationale.[18] Therefore, the Board finds that Dr. Goldman's opinion did not establish that appellant could perform the modified mail processing clerk position offered by the employing establishment.[19] Thus, his opinion did not establish that the position was suitable.

As a penalty provision, the termination of compensation benefits is narrowly construed.[20] Consequently, the Board finds that OWCP failed to meet its burden of proof to justify the termination of appellant's compensation benefits, pursuant to 5 U.S.C. § 8106(c)(2).

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective August 9, 2021, because he refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2).[21]

[17] Federal (FECA) Procedure Manual, *supra* note 14 at Chapter 2.814.4c(7) (June 2013); *R.M.*, Docket No. 19-1236 (issued January 24, 2020).

[18] *J.F.,* Docket No. 26-0068 (issued February 24, 2026); *N.R.,* Docket No. 25-0861 (issued December 23, 2025); *C.G.,* Docket No. 23-0013 (issued April 24, 2023); *C.B.,* Docket No. 20-0629 (issued May 26, 2021); *A.G.,* Docket No. 20-0187 (issued December 31, 2020); *see J.W.,* Docket No. 19-1014 (issued October 24, 2019); *S.W.,* Docket No. 18-0005 (issued May 24, 2018).

[19] *See V.J.*, Docket No. 22-0941 (issued September 8, 2023); *H.L.,* Docket No. 16-1810 (issued March 16, 2017).

[20] *R.M., supra* note 17; *see also supra* note 16.

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

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 4, 2026
Washington, D.C.

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