

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

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<b>J.H., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 06-886</b>
	)	<b>Issued: February 8, 2007</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer</b>	)	
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*Appearances:*  
Appellant, pro se  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 8, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 15, 2005 decision which found that she was not entitled to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

**ISSUE**

The issue is whether appellant is entitled to a schedule award following her February 28, 1998 refusal of suitable employment.

**FACTUAL HISTORY**

This case has previously been on appeal before the Board.<sup>1</sup> In a January 11, 2000 decision, the Board affirmed the Office's February 28 and August 12, 1998 decisions which

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<sup>1</sup> Docket No. 99-2506 (issued January 11, 2000).

terminated appellant's compensation effective February 28, 1998 on the grounds that she neglected suitable work. The Board also affirmed the Office's February 18, 1999 decision finding that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review. The facts and the history contained in the prior appeal are incorporated by reference.

On February 15, 2000 appellant requested that her case be reopened.<sup>2</sup> She alleged that she did not purposefully abandon her job. Appellant submitted a copy of an October 25, 1999 decision from the Social Security Administration decision finding that she had met the disability requirements entitling her to compensation for disability commencing March 10, 1997.

In a September 28, 2000 report, Dr. Larry L. Likover, a Board-certified orthopedic surgeon and fitness-for-duty physician, indicated that appellant complained of severe bilateral shoulder pain. However, his clinical examination reflected significant inconsistencies and no objective findings to indicate a serious or substantial injury to either the right or left shoulder. Furthermore, Dr. Likover noted that appellant's magnetic resonance imaging (MRI) scan was normal. He advised that appellant's subjective complaints of disabling pain were not verified by his examination or by diagnostic testing. Dr. Likover opined that appellant was capable of working and that no restriction of her activities was required.

On November 20, 2000 the employing establishment requested that the Office address appellant's ability to return to work.

By decision dated December 18, 2000, the Office denied appellant's request for reconsideration on the grounds that her request neither raised substantial legal questions nor included new and relevant evidence and thus it was insufficient to warrant review of its prior decision.

On April 16, 2003 appellant again requested that the Office reopen her case and requested a schedule award.

By letter dated June 12, 2003, the Office advised appellant that additional medical evidence was needed.

By letter dated August 6, 2003, the Office requested that appellant's treating physician provide an impairment rating according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*). However, no impairment rating was received.

By decision dated December 29, 2003, the Office denied appellant's request for a schedule award as no medical evidence established that she had any permanent impairment. The Office noted that appellant's physician failed to provide an impairment rating.

In a December 15, 2003 report, Dr. Marcos V. Masson, a Board-certified orthopedic surgeon, opined that appellant was at maximum medical improvement. In a January 2, 2004

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<sup>2</sup> The Office treated this request as a request for reconsideration.

report, he advised that appellant was at maximum medical improvement and had impairment of seven percent. In a January 14, 2004 report, Dr. Masson advised that the fifth edition of the A.M.A., *Guides* was utilized and that appellant had a two percent impairment of the left arm, five percent of the right arm and one percent of the right hand.

On January 7, 2004 appellant requested a hearing, which was held on June 22, 2004.

In an August 5, 2004 letter, appellant's representative indicated that he was enclosing additional medical evidence to support of her claim that she had not refused suitable employment. He enclosed a June 15, 2004 report from Dr. Rafael E. Sacasa, a clinical psychologist, and contended that the report was sufficient to show that appellant had severe debilitating depression since her injury. Appellant's representative argued that all job-related and nonjob-related conditions needed to be considered and the Office did not properly develop this aspect of her claim.

In a June 15, 2004 report, Dr. Sacasa noted that he began treating appellant in 2001 for severe depression, which originated at that time. He opined that appellant could not hold a job or work and that her emotional state was interfering with her ability to function "in any work environment."

By decision dated September 17, 2004, the Office hearing representative found that appellant was not entitled to a schedule award because the Office previously terminated her compensation benefits on February 28, 1998 under the provisions of 5 U.S.C. § 8106(c) for neglecting suitable work after suitable work was offered. The Office hearing representative noted that the current review was confined to the schedule award decision as the appeal rights had expired with respect to the suitable work termination decision.

By letter dated September 12, 2005, appellant's representative repeated his previous arguments that the modified position was not suitable and that appellant's claim was not properly developed. He reargued matters with regard to the termination. Appellant's representative referenced appellant's other accepted work-related injury for an exacerbation of left shoulder tendinitis and alleged that this was not considered.<sup>3</sup>

In a January 26, 1998 attending physician's report, Dr. Thomas Melhoff, a Board-certified orthopedic surgeon, diagnosed impingent syndrome of the right shoulder and right and left carpal tunnel releases. He opined that appellant's condition was due to the injury for which compensation was claimed. Dr. Melhoff provided permanent restrictions of no lifting over 10 pounds and recommended changing jobs to accommodate her restrictions.

By decision dated December 15, 2005, the Office denied modification of the September 17, 2004 decision.<sup>4</sup>

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<sup>3</sup> File No. 16-0346775.

<sup>4</sup> The Office advised appellant that the issues of suitability and sanctions imposed under 5 U.S.C. § 8106(c) were addressed correctly in the previous decisions. The Office also found that the issues of causal relationship and conflict of medical opinion were not at issue in the present case.

## LEGAL PRECEDENT

The Office regulation provides that in termination under section 8106(c) of the Federal Employees' Compensation Act<sup>5</sup> a claimant has no further entitlement to compensation under sections 8105, 8106 and 8107<sup>6</sup> of the Act, which includes payment of continuing compensation for permanent impairment of a scheduled member.<sup>7</sup> The Board has found that a refusal to accept suitable work constitutes a bar to the receipt of a schedule award for any impairment which may be related to the accepted employment injury.<sup>8</sup>

## ANALYSIS

In a decision dated February 28, 1998, the Office terminated appellant's compensation, effective that same date, on the grounds that she neglected suitable work under section 8106. On April 16, 2003 appellant filed a claim for a schedule award.

In a decision dated September 17, 2004, the Office hearing representative found that appellant was not entitled to a schedule award because the Office had previously terminated her compensation benefits under the provisions of 5 U.S.C. § 8106(c).<sup>9</sup> As the Office terminated appellant's compensation benefits on February 28, 1998, she is barred from receiving schedule award compensation for any period after the termination decision was reached.<sup>10</sup> The record, as reflected in Dr. Masson's December 15, 2003 report, indicates that appellant reached maximum medical improvement in 2003 following the February 28, 1998 termination date.<sup>11</sup> The only medical evidence submitted to the record establishes the date of maximum medical improvement well after the termination arising in 1998. Therefore, the hearing representative properly denied her claim for a schedule award. The Office denied modification of this decision on December 15, 2005.

On appeal it is argued that the Office did not properly develop the suitable work issue. However, this aspect of the claim is not properly before the Board. The only issue on appeal is the denial of the schedule award claim.

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<sup>5</sup> 5 U.S.C. § 8106(c).

<sup>6</sup> 5 U.S.C. §§ 8105, 8106, 8107.

<sup>7</sup> 20 C.F.R. § 10.517.

<sup>8</sup> See *Stephen R. Lubin*, 43 ECAB 564, 573 (1992).

<sup>9</sup> Appellant was also informed that the appeal rights had expired with respect to the prior termination decision.

<sup>10</sup> See *supra* note 8.

<sup>11</sup> See *Lizzie M. Greer*, 49 ECAB 681 (1998) (where the date of maximum medical improvement occurred after the termination of compensation based on the refusal to accept a suitable offer of employment, section 8106(c) bars a claim for a schedule award).

**CONCLUSION**

The Board finds that the Office properly denied appellant's claim for a schedule award following her refusal of suitable work under section 8106(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 15, 2005 is affirmed.

Issued: February 8, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board