

September 12, 2003 OWCP accepted that she sustained employment-related lumbosacral, left shoulder and left hip sprains. Appellant received continuation of pay and wage-loss compensation. She returned to part-time modified duty in 2004.

By decision dated December 8, 2004, OWCP denied appellant's claim that she sustained a recurrence of total disability on March 20, 2004. On May 20, 2005 it accepted that appellant sustained a lumbar sprain/strain when she slipped and fell on May 15, 2004.² In April 2006 appellant was placed on total disability due to the second injury. In July 2006 OWCP determined that a conflict in medical opinion was created between Dr. Jay S. Simoncic, appellant's attending physician, and Dr. Jonathan D. Glassman, who provided a second-opinion evaluation for OWCP. It referred her to Dr. Norman M. Heyman for an impartial evaluation.³ In a September 25, 2006 report, Dr. Heyman provided permanent restrictions and advised that appellant could return to work for four hours a day initially and, within four weeks, to eight hours daily.

On December 14, 2006 OWCP offered appellant a position in accordance with Dr. Heyman's physical restrictions.⁴ Appellant refused the offered position. By decision dated June 21, 2007, OWCP terminated her compensation benefits, effective June 5, 2007, on the grounds that she refused to accept an offer of suitable work. Appellant was paid compensation through June 5, 2007. The record reflects that she returned to work on August 8, 2007. Appellant did not appeal this decision with either OWCP or the Board.

By decision dated January 16, 2008, OWCP denied appellant's claim that she sustained a recurrence of total disability on October 23, 2007. On January 27, 2008 the employing establishment offered appellant the modified position which she refused on February 20, 2008. On May 21, 2008 appellant returned to a modified position for four hours daily. She stopped work on July 10, 2008 and filed a recurrence claim. In a September 16, 2008 decision, OWCP denied that appellant sustained a recurrence of disability on July 10, 2008.

On January 29, 2009 appellant accepted a full-time, modified mail processing clerk position. In a December 17, 2009 decision, OWCP denied appellant's request for reconsideration of the September 16, 2008 decision on the grounds that it was untimely filed and she failed to present clear evidence of error.

On May 13, 2010 appellant was sent home under the National Reassessment Process because no work was available within her restrictions. She was paid wage-loss compensation and placed on the periodic compensation rolls. Appellant returned to a modified position on May 11, 2011.

² The instant claim was adjudicated by OWCP under file number xxxxxx715. The May 15, 2004 claim was adjudicated under file number xxxxxx101. In April 2006 the claims were combined with the former becoming the master file.

³ All three physicians are Board-certified orthopedic surgeons.

⁴ OWCP followed proper notice procedures in letters dated April 26 and May 30, 2007.

In an August 29, 2011 decision, OWCP found that an overpayment of compensation in the amount of \$5,163.11 had been created for the period May 11 through July 2, 2011 because appellant received wage-loss compensation after her return to work. By decision dated November 10, 2011, OWCP denied appellant's request for a hearing of the August 29, 2011 overpayment decision. Appellant received wage-loss compensation for intermittent periods when she was sent home because no work was available.

On September 21, 2011 Dr. Maxim Tyorkin, a Board-certified orthopedic surgeon, recommended left shoulder surgery, which was approved by a medical adviser and authorized by OWCP. He performed the surgery on February 23, 2012. Appellant filed a recurrence claim, commencing February 23, 2012. On March 14, 2012 OWCP accepted the February 23, 2012 recurrence and advised appellant to file CA-7 claims for compensation.

By decision dated June 5, 2012, OWCP vacated the March 14, 2012 acceptance and denied appellant's recurrence claim. It noted that, as it had issued a decision on June 21, 2007 that terminated her compensation under section 8106(c)(2) of FECA because she refused an offer of suitable work, she was not entitled to compensation after that date. OWCP noted that appellant had not appealed the June 21, 2007 decision and advised her that an overpayment of compensation was being developed regarding compensation she had received after that date.

LEGAL PRECEDENT

Section 8106(c) of FECA provides in pertinent part, "A partially disabled employee who (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation."⁵ The employee remains entitled to medical benefits as provided by section 8103 or as justified.⁶

ANALYSIS

The Board finds that OWCP properly vacated the March 14, 2012 acceptance of a February 23, 2012 recurrence of total disability.

OWCP issued a decision on June 21, 2007, terminating appellant's compensation, effective June 5, 2007, on the grounds that she refused an offer of suitable employment under section 8106(c). OWCP paid appellant wage-loss compensation from May 22, 2010 to May 11, 2011, when she returned to work, and for intermittent periods thereafter. She filed a recurrence claim, commencing February 23, 2012 when she underwent authorized left shoulder surgery. On March 14, 2012 OWCP accepted the recurrence, but in a June 5, 2012 decision, vacated the acceptance, based on the 2007 decision that terminated her compensation under section 8106(c)(2). It found that she was not entitled to further wage-loss compensation.

The Board finds that OWCP erred in paying appellant compensation after June 5, 2007, the effective date of the termination under section 8106(c)(2), because she was not entitled to further wage-loss compensation based on her refusal of suitable employment. Although

⁵ 5 U.S.C. § 8106(c).

⁶ 5 U.S.C. § 8103; *see Y.A.*, 59 ECAB 701 (2008).

appellant subsequently returned to work at the employing establishment on August 8, 2007, after her compensation was terminated for refusing suitable work, this does not change the fact that she refused suitable employment.⁷ Appellant remained entitled to medical benefits only following the June 21, 2007 decision.

Section 8128(a) of FECA provides that the Secretary may review an award for or against payment of compensation at any time and on his own motion or on request and may end, decrease or increase the compensation awarded.⁸ The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under section 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁹

The evidence of record supports that OWCP properly terminated appellant's compensation under section 8106(c)(2). Appellant was barred from future wage-loss compensation after June 5, 2007, and OWCP issued the March 14, 2012 decision in error.¹⁰ Thus, OWCP properly vacated that decision by its June 5, 2012 decision.

Appellant may submit new evidence or argument with a written request for reconsideration with OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly vacated its March 14, 2012 acceptance of a February 23, 2012 recurrence of total disability.

⁷ See *M.S.*, 58 ECAB 328 (2007).

⁸ 5 U.S.C. § 8128(a); see *R.C.*, 59 ECAB 546 (2008).

⁹ *V.C.*, 59 ECAB 137 (2007).

¹⁰ A termination under 8106(c) precludes further monetary compensation benefits arising from the accepted injury. See *Albert Pineiro*, 51 ECAB 310 92000); *Henry P. Gilmore*, 46 ECAB 709 (1995).

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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