United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 21-0649**
	)	**Issued: December 8, 2022**
U.S. POSTAL SERVICE, SOUTH SUBURBAN PROCESSING AND DISTRIBUTION CENTER, Bedford Park, IL, Employer	)	

Appearances:
Stephanie Leet, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 23, 2021 appellant, through counsel, filed a timely appeal from a December 9, 2020 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 December 9, 2020 decision, OWCP received additional evidence. 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 appellant has met his burden of proof to expand the acceptance of his claim to include additional employment-related conditions; and (2) whether OWCP met its burden of proof to terminate appellant's wage-loss and compensation and entitlement to a schedule award, effective September 18, 2017, because he abandoned suitable work pursuant to 5 U.S.C. § 8106(c)(2).

FACTUAL HISTORY

On June 4, 2013 appellant, then a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date he sprained his low back when he hit a bump while driving a work vehicle in the performance of duty. OWCP accepted the claim for lumbar sprain. Appellant stopped work on July 29, 2013, received wage-loss compensation from OWCP on the periodic rolls, and returned to modified employment on September 2, 2014.[4] He again stopped work on December 10, 2016 when his modified position expired. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning December 10, 2016 and on the periodic rolls effective March 5, 2017.

An August 1, 2013 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated a mild disc bulge at L5-S1. A December 4, 2014 lumbar MRI scan revealed degenerative changes at L5-S1 with no disc herniation or spinal stenosis and noted that the "previously present mild midline disc protrusion appears essentially resolved."

On February 3, 2017 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Allan M. Brecher, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated February 8, 2017, Dr. Howard Freedberg, a Board-certified orthopedic surgeon, diagnosed lumbar neuritis/radiculitis and found that appellant could work light duty with restrictions.

On February 24, 2017 Dr. Brecher discussed appellant's history of a June 2013 injury to his back and provided his review of the medical records. He noted that appellant had subjective complaints unsupported by essentially normal MRI scans. Dr. Brecher found no objective evidence of disability and referred appellant for a functional capacity evaluation (FCE). He diagnosed lumbar sprain, or lumbago, subjectively, but not objectively present.

An FCE dated March 24, 2017 indicated that appellant could perform medium work. It found that he could perform constant firm and simple grasping, sit for up to 6 hours per day, and stand for up to 2 hours and 40 minutes per day. The FCE further indicated that appellant could perform frequent bending, reaching, pinching, squatting, walking, and overhead reaching.

[4] On August 15, 2014 OWCP referred appellant to Dr. James P. Elmes, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated October 17, 2014, Dr. Elmes diagnosed a lumbar sprain that healed in six to eight weeks, nonspecific low back pain, and generalized deconditioning. He found that appellant could currently perform light-duty work and could resume his usual employment after a work conditioning program.

In an addendum dated April 20, 2017, Dr. Brecher reviewed the findings of the FCE and found that appellant had subjective limiting factors. He related that evidence failed to support inability to work.

In a duty status report (Form CA-17) dated May 3, 2017, Dr. Freedberg diagnosed lumbar sprain/strain and advised that appellant could work with restrictions of lifting and carrying up to 35 pounds intermittently for four hours per day, twisting, pushing, and pulling for four hours per day, bending and stooping for one hour per day, sitting for six hours per day, and standing and walking for two hours per day. He indicated that appellant needed an ergonomic chair with a back, and that he "needs to sit, but can walk and stand when able." In an accompanying progress report of even date, Dr. Freedberg diagnosed lumbar neuritis/radiculitis and advised that he could perform light work.

On May 30, 2017 the employing establishment offered appellant a position as a modified mail handler. The duties included sitting in a chair with arm and back support and sorting mail for eight hours per day, and the physical requirements consisted of sitting in an ergonomic chair reaching, pinching, and grasping for eight hours per day. The position indicated that it was subject to revision based on appellant's condition and "the availability of adequate work." The employing establishment advised that it had based the offer on the May 3, 2017 Form CA-17 from Dr. Freedberg. It indicated that appellant could also stand to case mail if he needed to stretch and change positions.

In a Form CA-17 dated June 14, 2017, Dr. Freedberg diagnosed lumbar strain/sprain and found that appellant could work with restrictions of lifting and carrying up to 35 pounds intermittently for up to one hour per day, sitting, standing, walking, twisting, and reaching above the shoulder for two hours per day, bending for one hour per day, and performing simple grasping and fine manipulation for four hours per day. In a narrative report of even date, Dr. Freedberg reviewed the findings of Dr. Brecher and Dr. Elmes. He diagnosed lumbar neuritis/radiculitis. Dr. Freedberg disagreed with Dr. Brecher's finding that appellant could return to his usual employment, noting that the FCE had found that he could perform medium work. Dr. Freedberg opined that appellant could return to light-duty work.

On July 14, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work for the period June 10 to July 9, 2017. On the form the employing establishment noted that appellant had accepted a limited-duty job offer and returned to work on June 2, 2017.

In a July 18, 2017 development letter, OWCP requested that appellant submit additional medical evidence supporting disability from work beginning June 10, 2017.

Thereafter, OWCP received a July12, 2017 progress report from Dr. Freedberg. Dr. Freedberg noted that appellant had returned to work, but had been unable to perform the job. He indicated that he had released him to work in accordance with the FCE. In a work status report of even date, Dr. Freedberg opined that appellant could perform light-duty work in accordance with the FCE. He indicated that he required a chair with a back support and should sit more than stand while working. In a Form CA-17 dated July 17, 2017, Dr. Freedberg again indicated that appellant could sit, stand, and walk no more than two hours per day.

By letter dated July 19, 2017, OWCP advised appellant that it had determined that the May 30, 2017 offered position was suitable and afforded him 30 days to accept the position or provide reasons for his refusal. It found that the position was in accordance with the limitations provided by Dr. Freedberg in his June 14, 2017 report and noted that the employing establishment would provide him with an ergonomic chair. OWCP informed appellant that an employee who refused an offer of suitable work without cause was not entitled to wage-loss or schedule award compensation. It further notified him that he would receive any difference in pay between the offered position and the current pay rate of the position held at the time of injury.

On July 22, 2017 an OWCP field nurse asserted that appellant had returned to light-duty work for one day on June 12, 2017. She indicated that she had contacted the employing establishment, which advised her that "a lumbar supportive chair [was] not an option at this time." The field nurse noted that appellant had applied for disability and was not motivated to resume work.

On July 31, 2017 Dr. David Barnes, an osteopath, obtained a history of appellant injuring his back when he hit a pothole at work on June 4, 2013 while driving. He reviewed the results of diagnostic studies. On examination Dr. Barnes found muscle spasm at the bilateral lumbar paraspinals and pain with motion. He further found a positive straight leg raise on the right side. Dr. Barnes advised that appellant had been inaccurately diagnosed, and that his initial diagnosis should have been lumbosacral intervertebral disc displacement, lumbar spinal stenosis, lumbosacral radiculopathy, and lumbar strain. He asserted that the disc bulge at L5-S1 should have been accepted as an "active diagnosis." Dr. Barnes opined that appellant's condition had progressed such that he now had disc bulges at three levels and stenosis at two levels due to his inadequate treatment. He requested that OWCP expand its acceptance of the claim to include the additional diagnosed conditions.

OWCP determined that a conflict existed regarding causation, continuing residuals, and treatment recommendations. On August 9, 2017 it referred appellant to Dr. Richard D. Lim, a Board-certified orthopedic surgeon, for an impartial medical examination. The statement of accepted facts (SOAF) indicated that appellant had not returned to work since December 10, 2016.

In a statement dated August 21, 2017, appellant advised that when he had arrived at work on June 12, 2017 management had been unable to locate a chair with back support. He stopped work after one hour due to pain.

On August 24, 2017 OWCP notified appellant that his reasons for abandoning the position were not valid and provided him 15 days to accept the position or have his entitlement to wage-loss compensation benefits terminated. It advised him that the offered position remained available.

By decision dated September 12, 2017, OWCP denied appellant's claim for wage-loss compensation for disability from work beginning June 2017.

By decision dated September 19, 2017, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective September 18, 2017, as he had abandoned suitable work. It found that he had not accepted the offered position and resumed work following its 15-day letter. OWCP determined that the job offer was within the limitations provided by Dr. Freedberg in his June 14, 2017 report. It further found that appellant had not established a recurrence of disability and that the evidence from Dr. Barnes was insufficient to

establish that he had sustained additional conditions causally related to his accepted employment injury.

Thereafter, OWCP received a September 5, 2017 report from Dr. Lim. Dr. Lim discussed appellant's history of injury and provided his review of the medical evidence of record. On examination he found no spasm and self-limiting reduced motion of the spine. Dr. Lim noted that the most current MRI scan showed mild disc degeneration at L5-S1 with an annular tear and no foraminal stenosis. He opined that appellant had "most likely sustained a lumbar strain" due to his June 4, 2013 employment injury. Dr. Lim advised that it was "impossible to correlate the development of radiculopathy beginning one year ago with his injury that occurred in 2013." He noted that diagnostic studies were "essentially normal with minor age consistent changes and these objective findings do not support his subjective complaints…." Dr. Lim found that appellant should have recovered from his lumbar strain and that he had self-limiting behavior that has negatively affected his outcome. He opined that he could work at a medium level.

On September 21, 2017 Dr. Barnes indicated that he had reviewed OWCP's September 12, 2017 decision. On examination he found a positive straight leg raise on the left and right and intact sensation. Dr. Barnes asserted that the jarring motion to appellant's spine when he hit a pothole while driving on June 4, 2013 had caused his lumbar discs to bulge causing pressure on the nerve and resulting in radiculopathy. He requested that OWCP should expand acceptance of the claim to include been lumbosacral intervertebral disc displacement, lumbar spinal stenosis, lumbosacral radiculopathy. Dr. Barnes related that he had obtained these diagnoses from the MRI scans and found that the disc conditions were directly related to the June 4, 2013 employment injury. He asserted that appellant hitting the pothole had caused his disc to bulge, pinch the spinal nerve, and cause radiating pain into the legs. Dr. Barnes found that he could work with a supportive chair, no repetitive reaching, and other restrictions.

On October 16, 2017 appellant requested reconsideration.

In CA-17 forms, dated beginning October 23, 2017, Dr. Barnes indicated that appellant was disabled from work.

By decision dated January 19, 2018, OWCP denied modification of its September 19, 2017 decision.

In a report dated May 10, 2018, Dr. Barnes noted that Dr. Freedberg had initially provided a conservative diagnosis of lumbar sprain, but that an MRI scan had demonstrate that the diagnosis should have been a lumbar disc bulge. He advised that appellant had not abandoned suitable work, noting that he had reported to work, but his symptoms had increased. Dr. Barnes attributed his pain and disability to his lumbar stenosis, radiculopathy, and disc bulge, which he attributed to the accepted employment injury. He opined that appellant was unable to repetitive reach to case mail as it would exacerbate his condition.

On July 9, 2018 appellant requested reconsideration.

In form reports dated August 27 and October 1, 2018, Dr. Barnes found that appellant was disabled from work.

By decision dated October 15, 2018, OWCP denied modification of its January 19, 2018 decision.

In Form CA-17 reports dated December 10, 2018 through August 15, 2019, Dr. Barnes indicated that appellant was disabled from work.

In a report dated September 11, 2019, Dr. Thomas F. Gleason, a Board-certified orthopedic surgeon, noted that appellant had symptoms of right lumbar radicular syndrome, likely mechanical, and degenerative disc disease as seen on a lumbar MRI scan.

On September 25, 2019 Dr. Barnes opined that the June 4, 2013 work injury had jarred appellant's spine, exerting force on the discs that had caused a disc bulge at L5-S1. He opined that the bulge disc had resulted in pressure on the nerves and radiculopathy. Dr. Barnes related, "The sudden jarring impact of driving over the bump at work also resulted in the space between his spinal discs harrowing and pressure being placed on the nerves and spinal cord resulting in stenosis. The lumbar stenosis then caused lumbar radiculopathy by the inflammation causing compression on the spinal nerve root in the lower back. The lumbar stenosis, radiculopathy, and disc bulge were a direct and natural consequence that flows from the tractor hitting the bump at work." Dr. Barnes provided work restrictions, including not standing or walking more than 1 hour or sitting more than 6 hours each 12-hour period.

On October 1, 2019 appellant, through counsel, requested reconsideration. Counsel contended that the job offer was incomplete and outside of appellant's physical limitations as shown by the FCE, that Dr. Lim's opinion was not based on the SOAF, and that OWCP should expand its acceptance of the claim to include additional employment-related conditions.

Appellant submitted reports from a podiatrist, Dr. Erwin Friedman, and an October 24, 2019 Form CA-17 from Dr. Barnes finding that he was totally disabled from work.

By decision dated December 23, 2019, OWCP denied modification of its October 15, 2018 decision.

Thereafter, OWCP received a September 17, 2019 report from Dr. Bruce J. Montella, a Board-certified orthopedic surgeon. Dr. Montella evaluated appellant for pain in the low back and right lower extremity after a June 4, 2013 employment injury. On examination he found a positive straight leg raise. Dr. Montella diagnosed a lumbar spine sprain and opined that appellant was totally disabled, noting that he had sustained a permanent impairment due to his June 4, 2013 employment injury. He submitted similar reports on October 28 and December 9, 2019, and January 27, March 10, and May 27, 2020.[5]

A February 27, 2020 MRI scan of the lumbar spine demonstrated a posterior disc herniation at L5-S1 indenting the thecal sac, bilateral neuroforaminal narrowing exacerbated by facet arthrosis, and ligamentum flavum hypertrophy.

In a report dated June 23, 2020, Dr. Montella advised that he was treating appellant for lumbar sprain and an employment-related disc herniation with radiculopathy. He related that traveling over a bump at work had jarred his spine and caused bulging at L5-S1 due to changes of pressure within the disc. Dr. Montella opined that the herniation caused radiculopathy. He found that appellant was unable to perform the duties of the May 30, 2017 offered position. In an August 26, 2020 report, Dr. Montella noted that, when he attempted to return to work on June 12,

[5] Dr. Montella also evaluated appellant on April 27, 2020.

2017, he had received a broken chair. He indicated that trying to perform the duties had aggravated appellant's condition.

On September 16, 2020 appellant, through counsel, requested reconsideration. She noted that the SOAF inaccurately advised that appellant had not returned to work even though he had resumed work on June 12, 2017. Counsel further argued that the job offer was outside of the restrictions provided by Dr. Freedberg and that it was unclear whether the offer was for a permanent or temporary position.

By decision dated December 9, 2020, OWCP denied modification of its December 23, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim, including the fact that he or she is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[7]

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[8]

Causal relationship is a medical question that requires medical opinion evidence to resolve the issue.[9] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.[10]

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[11] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[12]

[6] *Supra* note 2.

[7] *See C.W.*, Docket No. 17-1636 (issued April 25, 2018).

[8] *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *Id*.

[11] 5 U.S.C. § 8123(a).

[12] 20 C.F.R. § 10.321.

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant has met his burden of proof to expand the acceptance of his claim to include additional employment-related conditions.

In a duty status report (Form CA-17) dated May 3, 2017, Dr. Freedberg diagnosed lumbar sprain/strain and advised that appellant could work with restrictions. In an accompanying progress report of even date, he diagnosed lumbar neuritis/radiculitis and advised that he could perform light work.

In a Form CA-17 dated June 14, 2017, Dr. Freedberg diagnosed lumbar strain/sprain and found that appellant could work with restrictions. In a narrative report of even date, he diagnosed lumbar neuritis/radiculitis. Dr. Freedberg disagreed with Dr. Brecher's finding that appellant could return to his usual employment, noting that the FCE had found that he could perform medium work. He opined that appellant could return to light-duty work.

In a report dated July 31, 2017, Dr. Barnes discussed appellant's history of a back injury when he hit a pothole driving at work on June 4, 2013. He opined that he had received an incorrect initial diagnosis. Dr. Barnes diagnosed lumbosacral intervertebral disc displacement, lumbar spinal stenosis, lumbosacral radiculopathy, and lumbar strain. He further found that OWCP should have accepted a disc bulge at L5-S1.

On September 25, 2019 Dr. Barnes again found that the June 4, 2013 work injury had jarred appellant's spine exerting force on the discs and causing a disc bulge at L5-S1. He advised that the impact of driving over the bump while at work had narrowed the spaces between his disc and put pressure on the spinal cord causing stenosis. Dr. Barnes asserted that the lumbar stenosis had resulted in radiculopathy due to inflammation causing spinal nerve root compression. He opined that appellant had sustained lumbar stenosis, radiculopathy, and a disc bulge as a consequence of his accepted employment injury.

OWCP referred appellant to Dr. Lim to resolve a conflict in medical opinion regarding whether appellant required further medical treatment due to his accepted employment injury. As there was no conflict in opinion regarding whether OWCP should expand the acceptance of the claim to include additional conditions, Dr. Lim's report is reduced to that of a second opinion physician on the issue of claim expansion.

In a report dated September 10, 2017, Dr. Lim opined that appellant had likely sustained a lumbar strain due to the June 4, 2013 employment injury. He found that it was not possible to relate his radicular symptoms that had begun a year earlier to his 2013 work injury. Dr. Lim noted that diagnostic testing showed minor changes consistent with age and indicated that the objective findings failed to support his subjective complaints.

The Board, thus, finds that a conflict in medical opinion exists between Dr. Lim, OWCP's second opinion physician, and Drs. Barnes and Freedberg, appellant's treating physicians, regarding whether appellant has established expansion of the acceptance of the claim to include additional employment-related conditions. On remand OWCP shall refer appellant, along with an updated SOAF, to an impartial medical specialist in accordance with 5 U.S.C. § 8123(a) for

examination and a rationalized opinion regarding claim expansion.[13] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[14] 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.[15] To justify termination of compensation, it must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.[16] Section 8106(c) 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.[17]

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 by the employee, has the burden of showing that such refusal or failure to work was reasonable or justified.[18] 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.[19]

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.[20] 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.[21] In a suitable work determination, OWCP must consider preexisting and subsequently acquired medical conditions in evaluating an employee's work capacity.[22]

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[13] *See C.H.*, Docket No. 20-0608 (issued April 5, 2021).

[14] *See K.S.*, Docket No. 19-1650 (issued April 28, 2020); *T.M.*, Docket No. 18-1368 (issued February 21, 2019).

[15] 5 U.S.C. § 8106(c)(2); *see also M.J.*, Docket No. 18-0799 (issued December 3, 2018); *Geraldine Foster*, 54 ECAB 435 (2003).

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

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

[18] 20 C.F.R. § 10.517(a).

[19] *Id*. at § 10.516.

[20] *M.A.*, Docket No. 18-1671 (issued June 13, 2019); *Gayle Harris*, 52 ECAB 319 (2001).

[21] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.5a (June 2013); *see E.B.*, Docket No. 13-0319 (issued May 14, 2013).

[22] *See G.R.*, Docket No. 16-0455 (issued December 13, 2016); *Richard P. Cortes*, 56 ECAB 200 (2004).

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and entitlement to a schedule award, effective September 18, 2017, pursuant to 5 U.S.C. § 8106(c)(2).

As explained above, OWCP undertook development of the medical record to determine whether the acceptance of appellant's claim should be expanded to include additional conditions, but it did not resolve the issue. As the issue of expansion was not in posture for decision, the Board finds that OWCP failed to establish that appellant had the capacity to perform the position of modified mail handler. Consequently, OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and entitlement to a schedule award, effective September 18, 2017, pursuant to 5 U.S.C. § 8106(c)(2).[23]

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has met his burden of proof to expand the acceptance of his claim to include additional employment-related conditions. The Board further finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss and compensation and entitlement to a schedule award, effective September 18, 2017, pursuant to 5 U.S.C. § 8106(c)(2).

[23] *See C.S.*, Docket No. 20-0621 (issued December 22, 2020).

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2020 decision is reversed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 8, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board