

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

_____)	
D.J., Appellant)	
)	
and)	Docket No. 24-0640
)	Issued: August 19, 2024
U.S. POSTAL SERVICE, MEMPHIS BULK MAIL CENTER, Memphis, TN, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 22, 2024 appellant filed a timely appeal from a November 24, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Pursuant to the Board's *Rules of Procedure*, an appeal is considered filed when received by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(e)-(f). However, when the date of receipt would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the U.S. Postal Service postmark or other carriers date markings. *Id.* at § 501.3(f)(1). The 180th day following OWCP's November 23, 2023 decision was May 22, 2024. Because using May 28, 2024, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is May 22, 2024, rendering the appeal timely filed.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's claim for a schedule award after his wage-loss benefits were terminated for refusal of suitable work effective February 1, 1988, pursuant to 5 U.S.C. § 8106(c)(2).

FACTUAL HISTORY

On June 7, 1976 appellant, then a 33-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging injury to his left ankle that same day when he jumped down from a parcel on the loading dock while in the performance of duty. OWCP assigned File No. xxxxx538 and accepted appellant's claim for strained left ankle, post lateral ligament reconstruction left ankle, and degenerative arthritis of ankle. Under OWCP File No. xxxxxx253, it accepted an August 19, 1976 date-of-injury for a lumbar sprain. Under OWCP File No. xxxxxx902, OWCP accepted a December 20, 1981 date-of-injury for sprains and strains of left knee and left leg. It administratively combined OWCP File Nos. xxxxxx538, xxxxxx253, and xxxxxx902, with the current File No. xxxxxx538 serving as the master file.

By decision dated April 23, 1981, OWCP granted appellant a schedule award for 20 percent permanent impairment of his left lower extremity (leg). The award ran for 57.60 weeks for the period March 27, 1980 to May 4, 1981.

By decision dated February 1, 1988, OWCP terminated appellant's entitlement to wage-loss and schedule award compensation benefits, effective February 1, 1988, because he refused to work after suitable work had been provided, pursuant to 5 U.S.C. § 8106(c)(2). The claim remained open for medical benefits. It indicated that on August 27, 1987, appellant's physician Dr. Randy L. Holcomb, a Board-certified orthopedic surgeon, had agreed that appellant was medically capable of performing modified distribution clerk duties. OWCP noted that appellant worked for about six hours in the modified distribution clerk position before stopping work completely. Dr. Holcomb retired on medical disability in September 1987. OWCP also noted that the employing establishment indicated that the modified distribution clerk position remained available.

On October 28, 2022 OWCP received appellant's claims for compensation (Form CA-7) for a schedule award and for disability for the period September 13, 1987 through the present.³ Medical evidence was submitted.

By decision dated July 24, 2023, OWCP denied appellant's schedule award claim. It found that appellant was not entitled to a schedule award due to his June 7, 1976 employment injury because it had terminated his compensation for refusing suitable work under section 8106 of FECA (5 U.S.C. § 8106(c)(2)) in its February 1, 1988 decision. OWCP noted that the February 1, 1988 termination decision precluded any subsequent claim for a schedule award arising out of the June 7, 1976 employment injury, and that "There is no record of appeal or overturning of this decision."

³ OWCP has not addressed or issued a decision regarding appellant's claim for wage-loss compensation commencing September 13, 1987.

On August 22, 2023 appellant requested a review of the written record before a hearing representative of OWCP's Branch of Hearings and Review. He argued that he did not refuse suitable work as he was found totally disabled for useful service, and had retired on disability. Appellant stated that he had only received a schedule award for his ankle, but also had injuries to his left knee, left hip and lower back. Evidence submitted included a September 16, 1987 Office of Personnel Management (OPM) disability retirement decision, which indicated appellant was totally disabled for useful and efficient service as a clerk.

By decision dated November 24, 2023, a hearing representative affirmed OWCP's July 24, 2023 decision.

LEGAL PRECEDENT

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.⁴ OWCP regulations provides that after termination of compensation under section 8106(c) of FECA, a claimant has no further entitlement to compensation under sections 8105, 8106, and 8107 of FECA.⁵ However, the claimant remains entitled to medical benefits as provided by 5 U.S.C. § 8103.⁶ Section 8106(c) of FECA serves as a penalty provision, which may bar an employee's future entitlement to compensation for the same injury based on a refusal to accept a suitable offer of employment.⁷

OWCP's procedures provide, in pertinent part, that, if the claimant does not accept a suitable work offer, the claims examiner should prepare a formal decision which provides full findings of fact as to why the claimant's reasons for refusing the job are deemed unacceptable, and terminate compensation under section 8106(c)(2) of FECA as of the end of the roll period. Such a decision should not be modified even if the claimant's medical condition later deteriorates, and he or she claims a recurrence of disability or a schedule award.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's claim for a schedule award after his wage-loss benefits were terminated for refusal of suitable work effective February 1, 1988, pursuant to 5 U.S.C. § 8106(c)(2).

In a February 1, 1988 decision, OWCP terminated appellant's wage-loss compensation and schedule award benefits, effective February 1, 1988, because he had refused an offer of suitable

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

⁵ 20 C.F.R. § 10.517.

⁶ *Id.*

⁷ *E.W.*, Docket No. 19-1711 (issued July 29, 2020); *Joan F. Burke*, 54 ECAB 406 (2003); *Robert Dickerson*, 46 ECAB 1002 (1995).

⁸ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.6 (June 2013).

work under 5 U.S.C. § 8106(c)(2). On October 28, 2022 it received appellant's Form CA-7 claim for a schedule award and wage-loss compensation.

The Board finds that OWCP properly determined that the February 1, 1988 decision terminating appellant's compensation for refusal of suitable work served as a bar to any subsequent schedule award claim as a result of the June 7, 1976 employment injury.⁹ As noted above, section 8106(c) of FECA provides that an employee who refuses suitable work is not entitled to further compensation for total disability or permanent impairment.¹⁰ Because OWCP terminated appellant's compensation due to his refusal of suitable work, effective February 1, 1988, he is barred from future entitlement to schedule award compensation for his June 7, 1976 employment injury.¹¹ The Board therefore finds that OWCP properly denied his schedule award claim.

CONCLUSION

The Board finds that OWCP properly denied appellant's claim for a schedule award after his wage-loss benefits were terminated for refusal of suitable work effective February 1, 1988, pursuant to 5 U.S.C. § 8106(c)(2).

⁹ See *E.S.*, Docket No. 20-0706 (issued September 9, 2021) (appellant was not entitled to wage-loss compensation after OWCP had terminated his wage-loss compensation and schedule award benefits for refusal of suitable work); *A.L.*, Docket No. 17-1975 (issued August 21, 2018) (appellant was not entitled to wage-loss compensation after OWCP had terminated her wage-loss and schedule award compensation benefits for refusal of suitable work); *A.N.*, Docket No. 16-0230 (issued April 4, 2016) (OWCP properly denied a claimant's recurrence of disability claim on the basis that he or she was not entitled to compensation due to his prior refusal of suitable work).

¹⁰ *Supra* notes 6 and 7.

¹¹ The Board notes that appellant is not barred from pursuing a schedule award for his other accepted employment-related injuries. *E.S.*, *supra* note 9; *T.B.*, Docket No. 17-1761 (issued June 6, 2018); *E.M.*, Docket No. 09-0039 (issued March 3, 2009).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2024
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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