United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 24-0732**
	)	**Issued: August 8, 2024**
U.S. POSTAL SERVICE, MID ISLAND PROCESSING & DISTRIBUTION CENTER, Melville, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 29, 2024 appellant filed a timely appeal from a May 23, 2024 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.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective May 23, 2024, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted a temporary light-duty assignment.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On June 1, 2008 appellant, then a 43-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder, neck and back when the rack she was pulling jammed while in the performance of duty. She stopped work that day. Appellant returned to a part-time work in a limited-duty capacity on July 28, 2008. OWCP accepted her claim for neck sprain and cervical radiculitis.[2] It paid appellant wage-loss compensation on the supplemental rolls from July 21, 2008 through May 9, 2009, and for her loss of wage-earning capacity on periodic compensation rolls, effective May 10, 2009.

Appellant continued to receive medical treatment.

On October 3, 2023 OWCP referred appellant, along with a September 13, 2023 statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Jonathan Paul, an orthopedic surgeon, for a second opinion evaluation as to whether she continued to have residuals of the accepted June 1, 2008 employment injury and her work capacity.

In a November 10, 2023 report, Dr. Paul indicated that he had reviewed the SOAF, and he noted appellant's accepted conditions of cervical sprain and cervical radiculitis. He provided an assessment of severe multilevel herniation, severe foraminal stenosis, and partial fusion C2-3, symptomatic. Dr. Paul related that appellant's subjective findings included loss of motion and pain. In terms of cervical radiculopathy, he found no objective findings correlating to her subjective complaints. Dr. Paul noted that objectively, appellant had an electromyography (EMG) nerve conduction study which was positive for bilateral C5-6 radiculopathy. He opined that appellant's work-related condition had permanently aggravated an underlying condition and that her work-related condition had not resolved as she had severe loss of motion and radicular pain. Dr. Paul also indicated that appellant's present level of disability was a direct result of spinal stenosis which would be "more of a degenerative condition and exacerbation by a work-related injury." He opined that while appellant was unable to return to her date-of-injury job, she could perform a sedentary position, if available. In a work capacity evaluation (Form OWCP-5c), Dr. Paul opined that appellant could work in a sedentary capacity with pushing/pulling/lifting no more than 10 pounds, and no bending/stooping or climbing. He indicated that she had not reached maximum medical improvement (MMI) and that her restrictions were permanent.

On January 3, 2024 the employing establishment offered appellant a temporary modified mail processing clerk position for 30 hours per week, with a yearly salary of $73,702.00 for the hours 7:00 a.m. through 1:00 p.m., with scheduled days off on Monday and Tuesday. The assigned duties entailed up to six hours of nixie (finding the destination of undelivered mail to be put back in mail system for delivery) and casing letters/flat mail in manual operation. The position required up to 6 hours of sitting sedentary, up to 6 hours of pushing/pulling/lifting, and up to 10 pounds

[2] The current claim, OWCP File No. xxxxxx788, serves as a master file for OWCP File Nos. xxxxxx952 and xxxxxx065. Under OWCP File No. xxxxxx952, date of injury July 20, 2012, OWCP accepted a left upper arm sprain and a right knee contusion and neck sprain. Under OWCP File No. xxxxxx065, date of injury January 19, 2013, OWCP accepted lumbosacral radiculitis. Under OWCP File No. xxxxxx602, date of injury April 2, 2004, OWCP accepted generalized anxiety disorder, major depressive disorder, recurrent. OWCP denied her other emotional condition claims under OWCP File Nos. xxxxxx706, xxxxxx799, and xxxxxx609.

with no bending/stooping/climbing. It also required standing/walking/twisting up to two hours, kneeling/twisting up to six hours, simple grasping/fine manipulation/reaching above shoulder up to six hours, and driving a vehicle up to six hours. The job offer was available January 17, 2024, and remained available indefinitely during appellant's period of recovery. The employing establishment afforded appellant until January 16, 2024 to accept the position or to provide written medical evidence from her attending physician if she was unable to perform the modified duties.

On January 14, 2024 appellant refused the modified assignment offer. In January 8 and 14, 2024 statements, she indicated that she had concerns returning to the employing establishment under the same supervisor she had previously filed an April 2, 2004 sexual harassment claim against, noting that OWCP had accepted her claim for anxiety disorder and major depressive disorder. Appellant requested to be considered for employment in a facility outside of the Long Island District or in Stuart, Florida.

In a February 8, 2024 letter, the employing establishment reviewed appellant's reasoning for not accepting the temporary job offer due to a sexual harassment claim filed 20 years ago. It indicated that since 2021 the supervisor named in appellant's allegations from 2004 and 2006 was no longer employed by the employing establishment. The employing establishment advised that the job offer remained unchanged and available at her current duty station, noting that appellant could voluntarily transfer or relocate to another installation.

On April 11, 2024 the employing establishment confirmed that the offered position remained open and available.

By notice of proposed termination dated April 11, 2024, OWCP informed appellant that it determined that the January 3, 2024 job offer as a temporary modified mail processing clerk appropriately accommodated her current work restrictions, as provided by Dr. Paul on November 10, 2023. It indicated that it concurred with the employing establishment's assessment of January 8, 2024 that the offered position was suitable in accordance with her work limitations. OWCP also explained that, although appellant had been a permanent employee at the time of injury, as Dr. Paul's restrictions were temporary in nature, a temporary light-duty position may be provided to an employee during a period of recovery. It advised appellant that upon acceptance of the assignment she would be working 30 hours per week with wages of $1,424.15, per week. OWCP included a computation of compensation which reflected that the weekly pay rate when appellant was injured was $1,030.75, effective June 1, 2008, and that the current pay rate for the job and step when injured was $1,424.15. It advised appellant that, pursuant to 20 C.F.R. § 10.500(a), an employee who "declines a temporary light[-]duty assignment deemed appropriate by OWCP (or fails to report for work when scheduled) is not entitled to compensation for total wage loss for the duration of the assignment." The employing establishment afforded her 30 days to accept the assignment.

On May 8, 2024 appellant accepted the January 3, 2024 offer of modified assignment.

In a memorandum of telephone call (Form CA-110) of May 13, 2024, appellant indicated that she accepted the job offer on May 8, 2024 and retired on May 11, 2024. In the May 13, 2004 Form CA-110 and in a May 14, 2023 Form CA-110, the employing establishment verified that she had accepted the job offer on May 8, 2024 but never reported to work.

On May 23, 2024 the employing establishment notified OWCP that the offered position remained open and available to appellant.

By decision dated May 23, 2024, OWCP terminated appellant's wage-loss compensation benefits, effective May 23, 2024, pursuant to 20 C.F.R. § 10.500(a), as she failed to accept a temporary light-duty position offered to her on January 3, 2024. It explained that had she accepted the assignment, she would not have sustained any wage loss as the actual earnings in that assignment either met or exceeded the current wages of her date-of-injury position. OWCP advised appellant that she remained entitled to medical benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of compensation benefits.[3]

OWCP regulations at 20 C.F.R. § 10.500(a) provides in relevant part:

> "(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage loss claimed on a [Form] CA-7 to the extent that evidence contemporaneous with the period claimed on a [Form] CA-7 establishes that an employee had medical work restrictions in place; that light duty within those restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing [establishment] had offered, in accordance with OWCP procedures, a temporary light-duty assignment within the employee's work restrictions."[4]

When it is determined that an employee is no longer totally disabled from work and is on the periodic rolls, OWCP's procedures provide that the claims examiner should evaluate whether the evidence of record establishes that light-duty work was available within his or her restrictions. The claims examiner should provide a pretermination or prereduction notice if appellant is being removed from the periodic rolls.[5] When the light-duty assignment either ends or is no longer

[3] *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[4] 20 C.F.R. § 10.500(a).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9c(1) (June 2013).

available, the claimant should be returned to the periodic rolls if medical evidence supports continued disability.[6]

OWCP's procedures further advise: "If there still would have been wage loss if the claimant had accepted the light-duty assignment, the claimant remains entitled to compensation benefits based upon the temporary actual earnings WEC [wage-earning capacity] calculation (just as if he/she had accepted the light-duty assignment)."[7]

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective May 23, 2024, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted a temporary modified-duty assignment.

OWCP accepted appellant's claim for neck sprain and cervical radiculitis. By decision dated May 23, 2024, it terminated appellant's wage-loss compensation benefits, effective May 23, 2024, pursuant to 20 C.F.R. § 10.500(a), as she failed to accept a temporary light-duty position offered to her on January 3, 2024. It found that the January 3, 2024 temporary light-duty assignment as a temporary modified mail processing clerk appropriately accommodated her current work restrictions, as provided by Dr. Paul on November 10, 2023.

In his November 10, 2023 report, Dr. Paul provided an assessment of severe multilevel herniation, severe foraminal stenosis, and partial fusion C2-C3, symptomatic and opined that appellant's present level of disability was a direct result of spinal stenosis which was exacerbated by appellant's employment injury. He opined that while she was unable to return to her date-of-injury job, appellant could perform a sedentary job, if available. In his OWCP-5c form, Dr. Paul opined that appellant had not reached MMI, but could work in a sedentary position with permanent restrictions on pushing/pulling/lifting no more than 10 pounds and no bending/stooping or climbing. In its January 3, 2024 modified job offer, the employing establishment offered appellant a temporary modified mail processing clerk position for 30 hours a week which fully incorporated Dr. Paul's work restrictions. The Board finds that the evidence establishes that appellant was offered a temporary modified job offer within her work restrictions, that the position remained available, and that her earnings in the position would have met the current wages of the job when injured.[8]

The Board also finds that appellant has not submitted any rationalized medical evidence establishing that she was unable to perform the duties of the temporary light-duty assignment offered by the employing establishment.

Appellant indicated that she had concerns returning to the employing establishment under the same supervisor she had previously filed an April 2, 2004 sexual harassment claim against,

[6] *Id.*

[7] *Id.* at Chapter 2.814.9c(8).

[8] *See D.D.*, Docket No. 23-0173 (issued December 13, 2023).

and she requested to be considered for employment in a facility outside of the Long Island District or in Stuart, Florida. However, the employing establishment responded to appellant's concerns indicating the supervisor in question had retired from the employing establishment in 2021, and that appellant could request a transfer to another employing establishment. Appellant ultimately accepted the position, but did not return to work, and retired from the employing establishment.

In light of the foregoing, the Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted a temporary light-duty assignment.

Appellant may submit new evidence or argument with a written request for reconsideration to 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 has met its burden of proof to terminate appellant's wage-loss compensation effective May 23, 2024, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted a temporary modified-duty assignment.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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