

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

A.S., Appellant)	
)	
and)	Docket No. 24-0712
)	Issued: December 18, 2024
U.S. POSTAL SERVICE, PALO ALTO)	
SORTING & DELIVERY CENTER,)	
Palo Alto, CA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 24, 2024 appellant filed a timely appeal from a June 5, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 5, 2024 decision, a appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedures* 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.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation under 20 C.F.R. § 10.500(a), effective June 5, 2024, based on her earnings had she accepted a temporary light-duty assignment.

FACTUAL HISTORY

On December 21, 2018 appellant, then a 44-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a right shoulder condition due to factors of her federal employment, including casing mail, carrying a satchel, and repetitively opening and shutting the door of a life-long vehicle. She noted that she first became aware of her condition and realized its relation to her federal employment on August 20, 2018. OWCP accepted appellant's claim for sprain of the right shoulder joint. Appellant stopped work on September 15, 2018.

On April 30, 2019, Dr. Ashay Kale, a Board-certified orthopedic surgeon, performed an OWCP-authorized right shoulder arthroscopy with extensive intra-articular debridement, labral debridement, subacromial decompression, distal clavicle coplaning, and rotator cuff repair. He diagnosed right shoulder impingement, degenerative labral tear of the right shoulder, rotator cuff tear of the right shoulder, and right shoulder acromioclavicular (AC) arthropathy. In a report dated April 29, 2020, Dr. Kale diagnosed impingement syndrome of the right shoulder, other specified arthritis of the right shoulder, and strain of the muscles and tendons of the right rotator cuff of right shoulder. He held appellant off work.

On April 11, 2022, Dr. Kale treated appellant in follow-up for right shoulder pain that she reported had not improved since prior to her surgical procedure in 2019. He noted that appellant's job duties involve repetitive use of the right arm. Appellant stated that she did not believe that she was not yet ready to return to work. Dr. Kale noted diagnoses and continued to hold appellant off work. He performed an intraarticular injection in the right shoulder.

By decision dated June 22, 2022, OWCP expanded the acceptance of appellant's claim to include unspecified rotator cuff tear or rupture of the right shoulder, impingement syndrome of the right shoulder, other shoulder lesions of the right shoulder, and post-traumatic osteoarthritis of the right shoulder.

A June 29, 2022 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated mild degenerative changes of the AC joint, partial acromioplasty findings associated with prior rotator cuff repair, mild-to-moderate rotator cuff tendinosis, and supraspinatus and moderate tendinosis.

On July 6, 2022, Dr. Kale diagnosed impingement syndrome of the right shoulder, right shoulder pain, and strain of the muscles and tendons of the rotator cuff of the right shoulder. He noted that an MRI scan of the right shoulder was unremarkable and opined that he was "somewhat confused as to why she is having continued discomfort, especially since the MRI scan was unremarkable." Dr. Kale continued to hold appellant off work.

On February 21, 2024, OWCP forwarded appellant's medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Glenn Scott, a Board-certified orthopedic surgeon, for a second opinion examination regarding the nature and extent of appellant's condition and disability.

In a March 4, 2024 report, Dr. Scott noted appellant's accepted conditions and complaints of right shoulder pain that limits the use of her right shoulder and entire right upper extremity. He noted findings on examination of tightness in the right trapezius, marked tenderness to palpation about the right shoulder extending down her right arm, guarding, which made accurate assessment of range of motion and motor strength difficult, tenderness from the proximal clavicle to marked tenderness of the right clavicle extending to the superior surface of the shoulder, and tenderness over the bicipital groove with pain. Dr. Scott diagnosed status post right shoulder arthroscopy with intraarticular debridement, labral debridement, subacromial decompression, distal clavicle coplaning, arthroscopic rotator cuff repair, probable adhesive capsulitis of the right shoulder, and possible chronic pain syndrome. He opined that appellant's work-related conditions had not resolved as there was continued pain and limitation of both motion and function related to the post-operative condition. Dr. Scott indicated that appellant was not capable of returning to her date of injury job because she had restricted use of her right shoulder due to pain, and was unable to lift, carry, and drive. He opined that appellant's current level of disability was a direct result of the accepted work-related conditions. Dr. Scott related that appellant's prognosis was fair but she had not reached maximum medical improvement (MMI). In a March 4, 2024 work capacity evaluation (Form OWCP-5c), he opined that appellant could work full-time sedentary duty, with restrictions of no reaching, reaching above the shoulder, operating a motor vehicle at work or to and from the office, and no climbing. Dr. Scott further provided restrictions for the right upper extremity of no pushing, pulling or lifting; and for the left upper extremity of pushing up to 10 pounds for four hours a day, pulling up to 10 pounds for two hours a day, and lifting up to 10 pounds for two hours a day.

On March 7, 2024, OWCP requested that the employing establishment prepare a written job offer consistent with the work restrictions outlined in Dr. Scott's March 4, 2024 medical report and Form OWCP-5c.

On March 14, 2024, the employing establishment offered appellant a written temporary job offer as a modified carrier technician beginning March 25, 2024 for 20 hours a week. The job offer noted that the position was part time with an annual salary of \$68,021.00. The duties of the modified assignment were casing a route and or any available routes for four hours. The physical requirements of the position included sedentary work for four hours, intermittent pushing no greater than 10 pounds up to four hours; intermittent lifting no greater than 10 pounds up to two hours; and intermittent pulling no greater than 10 pounds up to two hours. On page two of the job offer it noted that this was an Offer of Modified Assignment (Limited Duty) and is a temporary assignment with no ending date and was based on the restrictions provided in Dr. Scott's March 4, 2024 report. The restrictions were working up to eight hours a day, sedentary duty, no reaching, no reaching above the shoulder, no operating a motor vehicle at work or to and from work, no pushing more than 10 pounds for four hours, no pulling more than 10 pounds for more than two hours, no lifting more than 10 pounds for more than two hours a day, and no climbing.

On March 20, 2024, appellant refused the modified job offer, contending that she experienced pain and stiffness 24 hours a day, she could not perform activities of daily living, and she did not feel comfortable performing job duties with her right arm because of a loss of mobility. She stated that she was unable to perform the duties listed.

On April 19, 2024, the employing establishment confirmed that the March 14, 2024 job offer remained available.

On May 1, 2024, OWCP issued appellant a notice of proposed termination of her wage-loss compensation in accordance with 20 C.F.R. § 10.500(a) based on her refusal of the March 14, 2024 temporary light-duty assignment. It informed her that she had been provided with a temporary light-duty assignment as a modified carrier technician by the employing establishment on March 14, 2024. OWCP noted that it had been advised that appellant had refused to accept or report to the job assignment provided. It indicated that it had reviewed the temporary light-duty assignment and determined that it comported with the work restrictions provided by Dr. Scott in his March 4, 2024 report. OWCP also informed appellant of the provisions of 20 C.F.R. § 10.500(a) and further advised that her entitlement to wage-loss compensation would be terminated under this provision if she did not accept the offered temporary assignment or provide a written explanation with justification for her refusal within 30 days.³ It informed her that any claimant who declined a temporary light-duty assignment deemed appropriate by OWCP was not entitled to compensation for total wage loss. OWCP noted that the actual earnings in the offered temporary light-duty assignment met or exceeded the wages of the position appellant had held when injured. It afforded her 30 days to accept the assignment and report to duty or demonstrate that her refusal was justified.

In a May 29, 2024 statement, appellant responded, asserting that the March 14, 2024 job offer was not within her restrictions. She noted her disagreement with Dr. Scott's opinion and asserted that her quality of life had declined since her surgery and that she was unable to perform activities of daily living including grooming, laundry, driving, and cleaning. Appellant indicated that her arm popped in and out of place and she had chronic pain 24 hours a day. She requested another second opinion. OWCP also received copies of Dr. Scott's March 4, 2024 report and the job offer dated March 4, 2024, previously of record.

By decision dated June 5, 2024, OWCP terminated appellant's wage-loss compensation, effective that date, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted a temporary light-duty assignment.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ OWCP may not terminate compensation without

³ OWCP noted that while Dr. Scott released appellant to work 40 hours a week, the employing establishment noted on March 14, 2024 that it was unable to provide work for the full number of hours she was released.

⁴ *L.L.*, Docket No. 18-1426 (issued April 5, 2019); *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

establishing that the disability ceased or that it was no longer related to the employment.⁵ In general, the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.⁶

Section 10.500(a) of OWCP's regulations provides that 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 claim for wage-loss compensation (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 work restrictions was available, and that the employee was previously notified in writing that such duty was available.⁷

When a claimant is on the periodic rolls, OWCP's procedures similarly provide that, if the evidence establishes that injury-related residuals continue and result in work restrictions, light duty within those work restrictions is available, that the employee was notified in writing that such light duty was available, then wage-loss benefits are not payable for the duration of light-duty availability.⁸ OWCP's procedures explain that this is because such benefits are payable 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.⁹ When a claimant is on the periodic rolls, a pretermination notice must be issued if the claims examiner is removing the claimant from the periodic rolls and ceasing his/her wage-loss compensation payments.¹⁰

ANALYSIS

The Board finds that OWCP improperly terminated appellant's wage-loss compensation under 20 C.F.R. § 10.500(a), effective June 5, 2024.

OWCP referred appellant to Dr. Scott for an opinion regarding appellant's work capacity. In his March 4, 2024 report and Form OWCP-5c, Dr. Scott reported that appellant could work full-time sedentary duty, with restrictions of no reaching, reaching above the shoulder, operating a motor vehicle at work or to and from the office, and no climbing. He further provided restrictions for the right upper extremity of no pushing, pulling or lifting and for the left upper extremity of

⁵ *A.D.*, Docket No. 18-0497 (issued July 25, 2018).

⁶ *See* 20 C.F.R. § 10.5(f).

⁷ *Id.* at § 10.500(a); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9a (June 2013).

⁸ *Id.* at Chapter 2.814.9c(1)(a) (June 2013).

⁹ *Id.*

¹⁰ *Id.* at Chapter 2.814.9c(1)(b).

pushing up to 10 pounds for four hours a day, pulling up to 10 pounds for two hours a day, and lifting up to 10 pounds for two hours a day.

On March 14, 2024, the employing establishment offered appellant a written temporary job offer as a modified carrier technician beginning March 25, 2024 for 20 hours a week. The offered position required casing a route and or any available routes for four hours. The physical requirements of the position included sedentary work for four hours, intermittent pushing no greater than 10 pounds up to four hours; intermittent lifting no greater than 10 pounds up to two hours; and intermittent pulling no greater than 10 pounds up to two hours. It noted that the restrictions were working up to eight hours a day, sedentary duty, no reaching, no reaching above the shoulder, no operating a motor vehicle at work or to and from work, no pushing more than 10 pounds for four hours, no pulling more than 10 pounds for more than two hours, no lifting more than 10 pounds for more than two hours a day, and no climbing. Therefore, the temporary modified carrier technician job requirements did not comply with Dr. Scott's work restrictions which included no pushing, pulling or lifting at all using the right upper extremity.

As the duties of the temporary light-duty assignment exceeded appellant's work restrictions as specified by Dr. Scott, the Board finds that OWCP has failed to establish that appellant was capable of performing the modified job.¹¹

In light of the foregoing, the Board finds that OWCP improperly terminated appellant's wage-loss compensation under 20 C.F.R. § 10.500(a), effective June 5, 2024.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation under 20 C.F.R. § 10.500(a), effective June 5, 2024.

¹¹ See *J.C.*, Docket No. 19-0751 (issued September 3, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2024 decision of the Office of Workers' Compensation Programs is reversed.¹²

Issued: December 18, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹² On return of the case record, OWCP should consider administratively combining appellant's other upper extremity claim files with the present claim.