United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 25-0082**
	)	**Issued: December 26, 2024**
U.S. POSTAL SERVICE, ROMEOVILLE POST OFFICE, Romeoville, IL, Employer	)	

Appearances:
Michael J. Watson, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 1, 2024 appellant, through her representative, filed a timely appeal from an October 25, 2024 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 October 25, 2024 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*.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective June 17, 2024, based on her refusal of an offer of a temporary limited-duty assignment, pursuant to 20 C.F.R. § 10.500(a).

FACTUAL HISTORY

On November 10, 2014 appellant, then a 45-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right shoulder and upper arm when she lifted a box while in the performance of duty. She stopped work on that date. OWCP accepted appellant's claim for right shoulder sprain/strain and later expanded its acceptance of the claim to include impingement and capsulitis of the left shoulder and superior glenoid labrum lesion and acromioclavicular (AC) joint sprain of the right shoulder. It paid her wage-loss compensation on the supplemental rolls, effective December 27, 2014, and on the periodic rolls from July 24, 2016 through March 5, 2019.

Appellant returned to work on March 6, 2019. She stopped work again on July 8, 2022 to undergo OWCP-authorized surgery to her left shoulder by Dr. Kevin Tu, a Board-certified orthopedic surgeon and sports medicine specialist, including arthroscopic rotator cuff repair and subacromial decompression. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective July 8, 2022, and on the periodic rolls, effective November 6, 2022.

On December 8, 2022 Dr. Tu noted that appellant related complaints of ongoing pain and weakness in her left shoulder. He performed a physical examination of the left shoulder, which revealed positive Neer and Hawkins signs and reduced strength in the rotator cuff. Dr. Tu recommended that appellant continue physical therapy to strengthen the left shoulder. In a duty status report (Form CA-17) of even date, he indicated that she was totally disabled.

A functional capacity evaluation (FCE) obtained on January 10, 2023 from a physical therapist indicated that appellant was not capable of performing medium-duty work and would benefit from a work conditioning program.

In follow-up reports dated January 12 through July 20, 2023, Dr. Tu documented limitations in appellant's left shoulder during physical examinations. He opined that she was unable to return to work and recommended a work conditioning program.

On July 11, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, for a second opinion examination with Dr. Steven Milos, a Board-certified orthopedic surgeon, to determine her current diagnosis and her work capacity.

In his August 18, 2023 second opinion report, Dr. Milos noted his review of the SOAF and medical record, and that the accepted November 10, 2014 conditions included right shoulder sprain/strain, right superior glenoid labrum lesion, right AC joint sprain, and left shoulder impingement and capsulitis. He performed a physical examination of the right shoulder, which was normal, and a physical examination of the left shoulder, which revealed reduced range of motion (ROM). Dr. Milos opined that appellant's right shoulder conditions had resolved, noting that she had recovered full motion and had good rotator cuff strength on examination. Regarding

the left shoulder, he diagnosed a rotator cuff tear with postoperative adhesive capsulitis, causally related to the November 10, 2014 employment injury. Dr. Milos opined that the left shoulder conditions had not resolved, and that appellant would benefit from additional treatment. He indicated that appellant was not capable of returning to her date-of-injury position due to physical restrictions in the left shoulder. Dr. Milos completed a work capacity evaluation (Form OWCP-5c) on August 18, 2023, noting that she could work eight hours per day with no more than four hours per day reaching and no more than four hours per day pushing, pulling, or lifting up to 10 pounds.

On December 26, 2023 Dr. Tu requested authorization for appellant to undergo a work conditioning physical therapy program.

In a January 18, 2024 follow-up report, Dr. Tu documented physical examination findings in the left shoulder, including reduced ROM and strength and positive Neer and Hawkins signs. He continued to recommend a work conditioning program.

In an attending physician's report (Form CA-20) dated February 5, 2024, Dr. Tu diagnosed a left shoulder rotator cuff tear and indicated that appellant was totally disabled.

On March 8, 2024 the employing establishment provided appellant with an offer of modified assignment (limited duty) as a modified rural carrier. The duties were identified as casing for up to four hours, delivering mail for up to four hours, and lobby assist for up to seven hours. The physical requirements were identified as sitting, standing, and reaching about shoulder for up to four hours, pushing and pulling for up to four hours, intermittent driving for up to four hours, and lifting and carrying up to 10 pounds for up to four hours.

Appellant refused to accept the March 4, 2024 modified job offer, noting that she did not believe the duties of the position were within her medical restrictions.

Dr. Tu, in a follow-up report and Form CA-17 dated March 14, 2024, indicated that appellant was capable of returning to work eight hours per day with lifting, carrying, pulling, pushing, and reaching above shoulder height up to 10 pounds for up to four hours per day. He continued to recommend a work conditioning program.

On May 9, 2024 the employing establishment indicated that the March 8, 2024 modified rural carrier position remained available to appellant.

In a notice dated May 9, 2024, OWCP proposed to terminate appellant's wage-loss compensation. It advised her that it had reviewed the work restrictions provided by Dr. Milos and determined that the "temporary" position the employing establishment offered her on March 8, 2024 was within her restrictions. OWCP informed appellant of the provisions of 20 C.F.R. § 10.500(a) and advised her that her entitlement to wage-loss compensation would be "terminated indefinitely" if she did not accept the offered "temporary" job or provide a written explanation with justification for her refusal within 30 days.

OWCP thereafter received a May 23, 2024 follow-up report by Dr. Tu, who continued to recommend a work conditioning program for appellant's left shoulder. In a Form CA-17 of even date, Dr. Tu indicated that she "needs [work conditioning] prior to starting [with] restrictions."

By decision dated June 17, 2024, OWCP terminated appellant's wage-loss compensation, effective that date, pursuant to 20 C.F.R. § 10.500(a). It noted that she had not accepted the March 8, 2024 "temporary" modified position which was within the work restrictions provided by Dr. Milos.

On June 18, 2024 appellant, through her representative, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated October 25, 2024, OWCP's hearing representative affirmed the June 17, 2024 decision.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[4]

Section 10.500(a) of the Code of Federal Regulations provides:

> "(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 work 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. (The penalty provision of 5 U.S.C. § 8106(c)(2) will not be imposed on such assignments under this paragraph.)"[5]

OWCP's procedures also provide that if the evidence establishes that injury-related residuals continue and result in work restrictions, that light duty within those work restrictions is available, and 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, since 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.[6] The claims examiner

[4] *See S.V.*, Docket No. 17-1268 (issued March 23, 2018); *I.J.*, 59 ECAB 408 (2008).

[5] 20 C.F.R. § 10.500(a).

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

must provide a pretermination notice if the claimant is being removed from the periodic rolls.[7] When a temporary light-duty assignment either ends or is no longer available, the claimant is entitled to compensation and should be returned to the periodic rolls immediately as long as medical evidence supports any disabling residuals of the work-related condition.[8]

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective June 17, 2024.

The evidence of record contains a written job offer, dated March 8, 2024, for a modified rural carrier position. The duties were identified as casing for up to four hours, delivering mail for up to four hours, and lobby assist for up to seven hours. The physical requirements were identified as sitting, standing, and reaching about shoulder for up to four hours, pushing and pulling for up to four hours, intermitted driving for up to four hours, and lifting and carrying up to 10 pounds for up to four hours. The March 8, 2024 job offer did not indicate that the modified position was temporary. OWCP, however, subsequently issued a notice of proposed termination of wage-loss compensation on May 9, 2024, noting that appellant had been offered a "temporary" light-duty assignment as a modified rural carrier on March 8, 2024.

Pursuant to 20 C.F.R. § 10.500(a), OWCP had the burden of proof to establish that the offered employment position was temporary in nature.[9] As OWCP has not established that the offered modified job was in fact a temporary position, the Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation.[10]

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective June 17, 2024.

[7] *Id*. at Chapter 2.814.9c(1)(b).

[8] *Id*. at Chapter 2.814.9c(1)(d).

[9] *See N.H.*, Docket No. 24-0659 (issued September 19, 2024); *M.B.*, Docket No. 24-0478 (issued June 5, 2024); *A.W.*, Docket No. 21-1287 (issued September 22, 2023); *C.W.*, Docket No. 18-1779 (issued May 6, 2019).

[10] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 26, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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