

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

S.M., Appellant)	
)	
and)	Docket No. 24-0318
)	Issued: May 8, 2024
U.S. POSTAL SERVICE, ROCKY MOUNT)	
PROCESSING & DISTRIBUTION CENTER,)	
Rocky Mount, NC, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 5, 2024 appellant filed a timely appeal from an August 10, 2023 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 August 10, 2023 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 August 10, 2023, 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 October 20, 2011 appellant, then a 49-year-old mail processing machine operator clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 19, 2021 she sustained carpal tunnel syndrome of the right hand due to repetitive activities while in the performance of duty. OWCP subsequently converted her claim to an occupational disease claim and accepted it for bilateral carpal tunnel syndrome. It paid appellant wage-loss compensation on the supplemental rolls as of November 5, 2011 and on the periodic rolls as of October 21, 2012. On April 25, 2018 OWCP reduced her wage-loss compensation based on her constructed loss of wage-earning capacity (LWEC) as a receptionist.

In a progress report dated October 10, 2022, Dr. Alexia Soria, Board-certified in orthopedic surgery, noted appellant's physical examination findings and diagnosed bilateral carpal tunnel syndrome, chronic. She provided work restrictions of no lifting, pushing, or pulling greater than 20 pounds.

On January 6, 2023 appellant accepted a modified assignment (limited-duty) job offer for a sales and service customer clerk and accountable clerk position, which noted work restrictions of no repetitive motion, and no lifting over 20 pounds.

On January 27, 2023 the employing establishment provided appellant with an offer of modified assignment (limited-duty) job as a modified mail processing clerk. The duties were identified as casing and working manual flats and letters for six hours and back up expediting scanning two hours. The physical requirements were identified as lifting up to 20 pounds, standing and walking for approximately 7 hours and 30 minutes, sitting for approximately 1 hour, reaching above shoulder for approximately 2 hours, and kneeling, bending, stooping, and twisting for approximately 2 hours. The employing establishment also explained that the assignment would be subject to revision based on changes in appellant's physical restrictions and the availability of work. If revision was necessary appellant would be provided a revised written modified assignment.

On January 29, 2023 appellant declined the job offer. She noted that Dr. Soria's October 10, 2022 medical report had mistakenly left off her previous restriction of no repetitive hand movement. However, Dr. Soria's previous medical reports had noted this restriction for appellant's accepted carpal tunnel syndrome condition which was caused by excessive repetitive hand movement.

In a letter dated February 15, 2023, the employing establishment notified OWCP that appellant had refused the January 27, 2023 modified job offer and noted that it was based upon the October 10, 2022 report of Dr. Soria.

On March 9, 2023 OWCP confirmed with the employing establishment that appellant refused the job offer, and that it remained available, was temporary in nature, and would continue as long as the restrictions remained the same. It also confirmed that her current salary was the same as the temporary modified job offer of \$72,956.00.

In a notice dated March 10, 2023, OWCP proposed to terminate appellant's wage-loss compensation. It advised her that it had reviewed the work restrictions provided by Dr. Soria and determined that the temporary position offered to appellant 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, if she did not accept the offered temporary assignment or provide a written explanation with justification for her refusal within 30 days. It noted that, upon acceptance of the position, her pay would be equal to or greater than the current pay of the job held on the date of injury and she would have no LWEC.

OWCP thereafter received additional evidence, including copies of previous job offers, accommodating appellant's restrictions.

In a report dated March 2, 2023, Dr. Soria updated appellant's work restrictions to include no lifting, pushing, or pulling greater than 20 pounds, and no repetitive motion. In progress notes dated March 27, 2023, she noted appellant's current physical examination findings, which included positive Tinel's and Durkan's compression tests of the bilateral wrists. Dr. Soria diagnosed bilateral carpal tunnel syndrome, right greater than left, and indicated that she had discussed carpal tunnel syndrome with appellant, which was caused by pressure or swelling of the median nerve, with risk of weakness, and permanent nerve damage with continued compression of the nerve over time. She related appellant's restrictions as no lifting, pushing, or pulling greater than 20 pounds, and no repetitive motion.

On May 2, 2023 OWCP referred appellant for a second opinion examination with Dr. William Huff, a Board-certified orthopedic surgeon, to determine her current diagnosis, and her work capacity.

In a June 13, 2023 report, Dr. Huff recounted appellant's history of injury and medical course. He also related her physical examination, noting that she had positive bilateral Tinel's and Phalan's tests. Dr. Huff opined that appellant's current disability was due to the work injury. He explained that she was unable to perform her work as a processing machine operator/clerk as she was unable to meet the requirements of lifting up to 70 pounds on occasion, and that this condition was permanent. Dr. Huff opined that appellant could work full time in the medium-duty capacity, exerting between 20 to 50 pounds of force. He opined that the offer of the January 27, 2023 temporary modified-duty assignment was acceptable and explained that casing and working manual flats of letters, backup expediting/scanning, lifting up to 20 pounds, walking, standing, sitting, reaching above the shoulder, kneeling, bending, stooping, and twisting, were all within appellant's work restrictions. Dr. Huff completed a work capacity evaluation (Form OWCP-5c), noting medium restrictions.

By decision dated August 10, 2023, OWCP terminated appellant's wage-loss compensation, effective August 10, 2023, in accordance with 20 C.F.R. § 10.500(a). It noted that

she had not accepted the January 27, 2023 temporary modified position which was within the work restrictions provided by Dr. Huff.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.³

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.)”⁴

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.⁵ The claims examiner must provide a pretermination notice if the claimant is being removed from the periodic rolls.⁶ 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.⁷

³ See *S.V.*, Docket No. 17-1268 (issued March 23, 2018); *I.J.*, 59 ECAB 408 (2008).

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)(a) (June 2013).

⁶ *Id.* at Chapter 2.814.9c(1)(b).

⁷ *Id.* at Chapter 2.814.9c(1)(d).

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective August 10, 2023, based on her offer of a temporary limited-duty assignment, pursuant to 20 C.F.R. § 10.500(a).

OWCP received a March 2, 2023 report from Dr. Soria, who updated appellant's restrictions to include no repetitive motion. It also received a March 27, 2023 report wherein Dr. Soria noted appellant's positive Tinel's and Durkan's compression tests of appellant's bilateral wrists. Dr. Soria indicated that she had discussed with appellant that carpal tunnel syndrome was caused by pressure or swelling of the median nerve, with risk of weakness and permanent nerve damage with continued compression of the nerve over time. She related appellant's restrictions as no lifting, pushing, or pulling greater than 20 pounds, and no repetitive motion.

The second opinion physician, Dr. Huff, on the other hand, noted that appellant was unable to perform her work as a processing machine operator/clerk, as she was unable to meet the requirements of lifting up to 70 pounds on occasion. He opined that the offer of modified assignment was acceptable as she could perform medium level work. Dr. Huff explained that casing and working manual flats of letters, backup expediting/scanning, and lifting up to 20 pounds were within appellant's work capacity.

Thus, the Board finds that a conflict in medical opinion exists between Dr. Soria and Dr. Huff as to appellant's ability to perform work duties requiring repetitive hand motion.

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ Consequently, the Board finds that OWCP failed to adequately develop the medical evidence prior to terminating appellant's wage-loss compensation.⁹ Thus, the Board finds that OWCP failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective August 10, 2023.

⁸ 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019).

⁹ *L.T.*, Docket No. 22-0963 (issued November 14, 2022).

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 8, 2024
Washington, DC

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

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

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