

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

L.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 10-1146
Issued: April 21, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On March 15, 2010 appellant, through her representative, filed an application for review of a February 22, 2010 decision of an Office of Workers' Compensation Programs' hearing representative who found that appellant did not establish her claim for disability compensation for the period February 28 to August 14, 2009. This was docketed as appeal No. 10-1146.

The Board finds that this case is not in posture for decision. On September 10, 2009 the Office found that appellant's actual earnings as a part-time regular modified mail processing clerk, effective February 28, 2009, fairly and reasonably represented her wage-earning capacity. The Office found that, based on actual earnings, appellant no longer had a loss of wage-earning capacity and reduced her wage-loss benefits to zero. Thereafter, appellant requested a hearing and continued filing claims for wage-loss compensation. The hearing representative's February 22, 2010 decision referenced the September 10, 2009 decision as one that denied claims for wage-loss compensation beginning February 28, 2009 and not as a wage-earning capacity decision which reduced appellant's wage-loss compensation to zero.

The Board has held that once the Office issues a formal decision on wage-earning capacity the rating should be left in place until the claimant requests resumption of compensation for total wage loss for more than a limited period of disability, in which instance the Office will

need to evaluate the request according to the customary criteria for modifying a formal wage-earning capacity determination.¹

The Board finds that appellant's hearing request raised the issue of whether the Office properly determined appellant's loss of wage-earning capacity. The Board will set aside the Office hearing representative's February 22, 2010 decision. As noted, the issue is whether the Office properly determined appellant's wage-earning capacity. The Board will remand the case for the Office to apply the proper standard of review for this issue. After such further development as the Office deems necessary, it should issue an appropriate merit decision.

IT IS HEREBY ORDERED THAT the February 22, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further action consistent with this order of the Board.

Issued: April 21, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹ *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).