United States Department of Labor Employees' Compensation Appeals Board

E.S., Appellant)	
and)	Docket No. 10-2403
DEPARTMENT OF VETERANS AFFAIRS,)	Issued: July 12, 2011
VETERANS ADMINISTRATION MEDICAL CENTER, Boston, MA, Employer)	
Annoqueuros.	,	Case Submitted on the Record
Appearances: Appellant, pro se		Case Submitted on the Record
Office of Solicitor, for the Director		

ORDER REMANDING CASE

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

On September 28, 2010 appellant filed an appeal of a September 7, 2010 decision of the Office of Workers' Compensation Programs. The appeal was docketed as No. 10-2403.

The September 7, 2010 OWCP decision finds that appellant submitted an untimely application for reconsideration of a June 23, 2004 wage-earning capacity determination. In the June 23, 2004 decision, OWCP found appellant could earn \$400.00 per week in the selected position of customer service representative and her compensation was reduced under 5 U.S.C. § 8115.

On September 1, 2010 appellant submitted medical evidence regarding disability for work. In a July 17, 2006 report, Dr. Robert Karsch, an orthopedic surgeon, provided a history, results on examination and diagnosed degenerative joint disease in the left knee. He indicated that appellant was disabled for work. In a report dated January 23, 2008, Dr. Karsch diagnosed a left medial meniscus tear and indicated appellant was disabled for work.

¹ The record also contains an August 17, 2010 OWCP decision denying appellant's request for a hearing before OWCP's hearing representative.

It is well established that a claimant may establish that a modification of a wage-earning capacity is warranted if there is a material change in the nature and extent of an injury-related condition, or a showing that the original determination was, in fact, erroneous.² While appellant submitted a form requesting "reconsideration" of the June 23, 2004 OWCP decision, her submission of evidence regarding disability for work should be interpreted as a request for modification of the wage-earning capacity determination. There is no time limitation for a request to modify a wage-earning capacity determination.³ When appellant submits evidence with respect to a disability for work after a wage-earning capacity decision has been issued, the Office must consider whether a modification is warranted.⁴ The case will be remanded to OWCP for a merit decision on the modification of wage-earning capacity issue.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 7, 2010 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: July 12, 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

² Sue A. Sedgwick, 45 ECAB 211 (1993). A modification may also be warranted if the employee has been retrained or otherwise vocationally rehabilitated.

³ See W.W., Docket No. 09-1934 (issued February 24, 2010).

⁴ J.J., Docket No. 10-1379 (issued March 4, 2011); see also L.C., Docket No. 10-827 (issued March 4, 2011).