

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).