

<sup>1</sup> 5 U.S.C. § 8128(a).

modification of its prior decision and appeal rights indicated that appellant could request reconsideration.

Section 8124 of FECA provides that OWCP shall determine and make a finding of facts and make an award for or against the payment of compensation.<sup>2</sup> Implementing regulations provide that OWCP's decision shall contain findings of fact and a statement of reasons.<sup>3</sup> Further, OWCP procedures state that the reasoning behind OWCP's decision should be clear enough for the reader to understand the precise defect and the kind of evidence that would overcome it.<sup>4</sup>

The Board finds that OWCP's December 16, 2011 decision fails to explain clearly whether OWCP has, on the one hand, reopened appellant's case and reviewed the merits of the claim, or whether it has, on the other hand, denied a reopening of his case without reviewing the merits of his claim on the grounds that his reconsideration request did not meet at least one of the three standards under section 8128(a). The decision is not clear enough for the reader to understand the nature of the decision.

Accordingly, the Board will set aside OWCP's December 16, 2011 decision and return the case to OWCP for a final decision that contains appropriate findings of fact and a clear statement of reasons. In particular, the decision shall make clear whether OWCP is denying appellant's reconsideration request without reopening his case or whether it is granting his reconsideration request and reviewing the merits of his case.<sup>5</sup>

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<sup>2</sup> 5 U.S.C. § 8124(a); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

<sup>3</sup> 20 C.F.R. § 10.126; *see M.L.*, Docket No. 09-956 (issued April 15, 2010); *O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(e) (March 1997).

<sup>5</sup> *See J.J.*, Docket No. 11-1958 (issued June 27, 2012) (order remanding case on the grounds that OWCP denied modification of a wage-earning capacity determination while at the same time finding that the additional evidence was repetitive, duplicative, irrelevant and insufficient to establish clear evidence of error, all elements of a nonmerit review).

**IT IS HEREBY ORDERED THAT** the December 16, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: December 12, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board