

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

E.F., Appellant

and

**PEACE CORPS, PEACE CORPS VOLUNTEER
SERVICE, Washington, DC, Employer**

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**Docket No. 11-1567
Issued: January 25, 2012**

Appearances:
Karen G. Forner, 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 June 21, 2011 appellant, through his attorney, filed a timely appeal from an April 22, 2011 decision of the Office of Workers' Compensation Programs (OWCP) that denied his disability claim and a May 18, 2011 decision that denied his request for reconsideration. The Board docketed the appeal as No. 11-1567.¹

The Board has duly reviewed the record and finds that the case is not in posture for decision. By decision dated October 4, 2006, OWCP reduced appellant's compensation to zero based on his capacity to earn wages in the constructed position of forester. On September 10, 2009 it accepted the additional condition of dermatitis due to drugs taken internally.

¹ Appellant, who was born on December 16, 1968, was a Peace Corps volunteer in Senegal, West Africa. In February 1996 he was medically evacuated to Georgetown Hospital in Washington, DC. OWCP accepted that he sustained bipolar disorder with mania and psychosis and anemia. Appellant was hospitalized on multiple occasions from 1996 to 1999 and was placed on the periodic compensation rolls. In 2002 he earned a B.S. degree in forest engineering from the University of Washington.

On February 15, 2011 appellant filed a claim for total disability compensation.² By letter dated March 17, 2011, OWCP informed him of the type evidence needed to modify the formal wage-earning capacity determination. Appellant submitted treatment notes from his attending Board-certified psychiatrist, Dr. Daniel A. Sherman, dated January 20 to April 1, 2011, who described appellant's condition. In a March 30, 2011 letter, Dr. Sherman noted that appellant had been treated by him for bipolar disorder since 1998, and that after a stormy course, he was able to achieve some stability, attended college, and began work for the State of Washington as a natural resource engineer in early 2007 and worked there until January 26, 2011. He noted that throughout the years appellant had always been on medication, and had to stop work due to a gradual increase and worsening of symptoms of his psychiatric condition that led to an inability to perform his work duties. He stated that appellant's recovery would take many months and maintained that his temporary total disability was an exacerbation of his long-standing illness.

By decision dated April 22, 2011, OWCP noted that a formal wage-earning capacity decision was in place but adjudicated the claim as a recurrence, stating that the medical evidence did not show that he sustained a spontaneous recurrence of disability due to the employment-related condition and that his claimed disability was due to his recent employment for the State of Washington. On May 3, 2011 appellant, through his attorney, requested reconsideration and submitted an April 22, 2011 treatment note in which Dr. Sherman described appellant's treatment and condition. In a nonmerit decision dated May 18, 2011, OWCP denied appellant's request for reconsideration on the grounds that appellant had not submitted new relevant evidence or legal contentions.

As noted above, OWCP issued a formal decision on appellant's wage-earning capacity on October 4, 2006. 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.³ Appellant's submission of a claim for compensation beginning February 15, 2011 should thus be regarded as a request for modification of the wage-earning capacity determination. The Board has held that, when a wage-earning capacity determination has been issued and appellant submits evidence with respect to disability for work, OWCP must evaluate the evidence to determine if modification of wage-earning capacity is warranted.⁴ While the April 22, 2011 decision acknowledged that a formal wage-earning capacity determination was in place, OWCP adjudicated the claim for total disability beginning February 15, 2011 as a recurrence claim.

OWCP procedures cover the situation when a claimant has completely stopped working.⁵ The principle is equally applicable to a claim of increased disability which would prevent a claimant from performing the position that was the basis of the wage-earning capacity

² On the claim form appellant checked that he was applying for a schedule award. His attorney clarified that he was claiming total disability compensation effective February 15, 2011.

³ *P.C.*, 58 ECAB 405 (2007).

⁴ *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995).

determination.⁶ The October 6, 2006 wage-earning capacity decision was based on appellant's capacity to earn wages in a full-time position as forester, and Dr. Sherman advised on March 30, 2011 that appellant's bipolar disorder, the accepted condition in this case, had worsened to the degree that he was totally disabled.

The Board finds that OWCP should have adjudicated appellant's claim for total disability compensation as to whether he had established that the wage-earning capacity determination should be modified.⁷ The Board will therefore remand the case to OWCP for proper adjudication, to be followed by an appropriate merit decision to preserve appellant's appeal rights.

IT IS HEREBY ORDERED THAT the April 22, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: January 25, 2012
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

⁶ *D.G.*, Docket No. 10-1666 (issued May 12, 2011).

⁷ *F.B.*, Docket No. 09-99 (issued July 21, 2010).