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

W.R., Appellant	) )
and	) Docket No. 11-1935 ) Issued: June 12, 2012
U.S. POSTAL SERVICE, AIR MAIL CENTER, Atlanta, GA, Employer	) ) ) )
Appearances: Appellant, pro se 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 August 25, 2011 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs (OWCP) dated May 24 and July 14, 2011 denying his claim for recurrence of disability commencing April 2, 2011. The Board assigned Docket No. 11-1935 to the appeal.

On August 25, 2004 appellant, then a 55-year-old mail handler, filed a traumatic injury claim alleging that on that date he reached over the side of a belt to un-jam some mail and felt a pop resulting in an injury to his lower back. On January 25, 2005 OWCP accepted his claim for lumbar strain. Appellant returned to limited-duty work immediately following the injury. He was treated by Dr. William Ross, a Board-certified orthopedic surgeon, and later by Dr. Matthew M. Richardson, a Board-certified physiatrist with a subspecialty in pain management. As appellant's physicians adjusted his work restrictions, the employing establishment accommodated these restrictions with limited-duty work assignments.

By letter dated March 31, 2011, the employing establishment informed appellant that there was no operationally necessary work available for him with his current medical restrictions in the agreed upon search area. The letter informed him that effective April 2, 2011 he would be placed on a leave without pay status. The employing establishment further informed appellant that, in the event that his medical restrictions improve and he becomes able to perform additional

duties other than those set by his physician and those that were relied upon by the National Reassessment Process (NRP) team, he should immediately notify the employing establishment. Appellant filed a claim for compensation for the period commencing April 2, 2011. OWCP denied his claim on May 24 and July 14, 2011.

FECA Bulletin No. 09-05<sup>1</sup> was issued specifically to provide guidance in situations where a claimant is sent home through the NRP because no light duty is available.<sup>2</sup> OWCP is provided specific guidance with respect to claims for total disability under these circumstances and the appropriate method of assessing the evidence, depending on whether a loss of wage-earning capacity decision has been issued.<sup>3</sup> The Bulletin provides:

"1. If the claimant has been on light duty due to an injury[-]related condition without [loss of wage-earning capacity] rating (or the CE [claims examiner] has set aside the [loss of wage-earning capacity] rating as discussed above), payment for total wage loss should be based on the CA-7 as long as the following criteria are met:

"The current medical evidence in the file (within the last 6 months) establishes that the injury[-]related residuals continue;

"The evidence of file supports that light duty is no longer available; and

"There is no indication that a retroactive [loss of wage-earning capacity] should be made. (note – Retroactive [loss of wage-earning capacity] determination should not be made in these NRP [National Reassessment Program] cases without approval from the [d]istrict [d]irector.)"

The record indicates that the employing establishment withdrew light duty pursuant to the NRP. It is well established that a withdrawal of a light-duty position is considered a recurrence of disability under OWCP's regulations.<sup>5</sup> As noted above, FECA Bulletin No. 09-05 was issued specifically to provide guidance when a claimant is sent home through the NRP because light duty is no longer available. The May 24 and July 14, 2011 decisions denying the claim for compensation do not refer to FECA Bulletin No. 09-05 or attempt to follow its provisions. The case will therefore be remanded to OWCP for a proper decision in accord with the established guidance. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

<sup>&</sup>lt;sup>1</sup> FECA Bulletin No. 09-05 (issued August 18, 2009).

<sup>&</sup>lt;sup>2</sup> See R.K., Docket No. 11-1048 (issued January 25, 2012).

<sup>&</sup>lt;sup>3</sup> The Board notes that the record contains no loss of wage-earning capacity decision.

<sup>&</sup>lt;sup>4</sup> FECA Bulletin 09-05 (issued August 18, 2009); see also J.A., Docket No. 11-1592 (issued February 13, 2002).

<sup>&</sup>lt;sup>5</sup> See 20 C.F.R. § 10.5(x); see also J.A., supra note 4.

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 14 and May 24, 2011 are set aside and the case remanded for further action consistent with this order of the Board.

Issued: June 12, 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