

¹ Appellant had initially requested reconsideration on June 21, 2011 and submitted additional medical evidence. On July 22, 2011 he withdrew the request.

in family medicine, provided examination findings and diagnosed increased lipids, asthma and hypertension. Thereafter, OWCP issued its May 14, 2012 decision denying appellant's request for reconsideration without conducting a merit review of the claim.

The Board has duly reviewed the matter and finds that the case is not in posture for a decision. As noted, OWCP issued a formal decision on appellant's wage-earning capacity on June 2, 2011. Board precedent and OWCP's procedures direct the claims examiner to consider the criteria for modification when a claimant requests resumption of compensation for total wage loss.² While appellant used the term reconsideration in his requests, he argued that the June 2, 2011 decision was in error and submitted additional medical evidence.³ The Board finds that OWCP should have adjudicated the issue of modification of the wage-earning capacity determination.⁴ 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.

² *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995) (if a formal decision on loss of wage-earning capacity is issued, the rating should be left in place unless the claimant requests resumption of compensation for total wage loss, in which instance OWCP will need to evaluate the request according to the customary criteria for modifying a formal loss of wage-earning capacity determination).

³ Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous. *Stanley B. Plotkin*, 51 ECAB 700 (2000); see Federal (FECA) Procedure Manual, *id.* at Chapter 2.814.11 (October 2009).

⁴ *F.B.*, Docket No. 09-99 (issued July 21, 2010).

IT IS HEREBY ORDERED THAT the May 14, 2012 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: November 26, 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