



claim on the grounds that the medical evidence was insufficient to establish that her accepted condition had worsened. On August 15, 2012 an OWCP hearing representative affirmed the March 14, 2012 decision.<sup>2</sup> In a merit decision dated January 11, 2013, OWCP denied appellant's recurrence claim.

As noted above, OWCP issued a formal decision on appellant's wage-earning capacity on December 3, 2009. 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.<sup>3</sup> Appellant's submission of a recurrence claim on December 21, 2011 for a recurrence of disability on December 9, 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.<sup>4</sup> In this case, OWCP adjudicated the claim for total disability beginning December 9, 2011 as a recurrence claim.

The Board finds that OWCP should have adjudicated appellant's recurrence claim for total disability compensation beginning December 9, 2011 as whether she had established that the wage-earning capacity determination should be modified.<sup>5</sup> 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.

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<sup>2</sup> The hearing representative noted that appellant made reference to new employment incidents and filed a new claim, adjudicated under file number xxxxxx228.

<sup>3</sup> *P.C.*, 58 ECAB 405 (2007).

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

<sup>5</sup> *F.B.*, Docket No. 09-99 (issued July 21, 2010); *see also M.D.*, Docket No. 12-1317 (issued December 21, 2012).

**IT IS HEREBY ORDERED THAT** the January 11, 2013 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: December 20, 2013  
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