

A.N., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Morgan, NY, Employer**

Case Submitted on the Record

ORDER REMANDING CASE

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

On November 26, 2013 appellant, through counsel, filed a timely appeal from a June 12, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as untimely and insufficient to establish clear evidence of error. The Board docketed the appeal as No. 14-322.

OWCP accepted appellant's January 12, 1989 claim for right inguinal hernia. Appellant was placed on the periodic rolls and received appropriate compensation. OWCP accepted appellant's claim for a recurrence of disability on August 13, 2002 and March 6, 2004. On December 5, 2005 it issued a loss of wage-earning capacity (LWEC) decision finding that appellant was reemployed as a modified mail processor effective June 3, 2002 and adjusted her compensation effective November 27, 2005. On January 11, 2006 OWCP denied appellant's claims for a recurrence of disability. On May 1, 2009 and April 7, 2010 it denied modification of the December 5, 2005 LWEC decision. On June 9, 2013 appellant's attorney requested reconsideration. He argued that OWCP did not accept all of the injuries related to the January 12, 1989 work incident. Counsel also argued that a recurrence of total disability commencing on November 30, 2009 occurred while appellant was working in a limited-duty job due to a material worsening of her injuries and conditions related to her January 12, 1989 employment injury. He enclosed additional medical evidence and argued that the medical evidence established clear evidence of error. On June 12, 2013 OWCP denied the request for reconsideration, finding that it was untimely filed and failed to establish clear evidence of error in the April 7, 2010 decision.

The Board has duly reviewed the matter and finds that the case is not in posture for decision. As noted, OWCP issued a formal decision on appellant's wage-earning capacity on December 5, 2005 and denied modification of the decision on April 7, 2010. Board precedent directs OWCP to consider the criteria for modification of a LWEC determination when a claimant requests resumption of compensation for total wage loss.¹ Appellant's counsel argued that the December 5, 2005 decision was in error and submitted additional medical evidence. The Board finds that OWCP should have adjudicated the issue of modification of the LWEC determination.² The Board will therefore remand the case to OWCP for proper adjudication, to be followed by an appropriate merit decision.

IT IS HEREBY ORDERED THAT the June 12, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: June 4, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹ *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Modification of Loss of Wage-Earning Capacity Decisions*, Chapter 2.1501.4(a) (June 2013) (if a claim for wage loss is received, OWCP should review the file to determine whether a formal LWEC is in place, and, if so, the claim should be developed, if necessary, as a request for modification of the LWEC); *Recurrences*, Chapter 2.1500.5 (June 2013) (where a formal LWEC decision is in place, a recurrence claim should be handled as a request for modification of the LWEC).

² 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 2.1501.3(a) (June 2013); 20 C.F.R. § 10.511. See *F.B.*, Docket No. 10-99 (issued July 21, 2010).