

By decision dated June 29, 2004, the Office determined that appellant's actual earnings of \$549.00 per week as a part-time mail clerk fairly and reasonably represented her wage-earning capacity. The Office decreased her compensation based on her actual earnings. On July 28, 2004 appellant requested review of the written record. By decision dated December 17, 2004, an Office hearing representative affirmed the June 29, 2004 decision regarding her loss of wage-earning capacity.

On September 15, 2005 appellant filed a claim for a recurrence of disability beginning August 18, 2005. She alleged that she was no longer able to carry mail due to constant pain in her lower back and right leg, resulting from the September 27, 1999 work-related motor vehicle accident. Appellant stopped working on August 19, 2005.

By letter dated September 30, 2005, the Office advised appellant that the evidence submitted was insufficient to establish her recurrence claim and advised her to submit a detailed statement relating the facts and circumstances surrounding her alleged recurrence and a medical report containing a diagnosis and a rationalized opinion relating her current alleged disability to the accepted employment injury.

Appellant submitted numerous unsigned emergency room reports dated August 18, 2005 from Presbyterian Hospital reflecting treatment for back pain, including discharge instructions dated August 19, 2005 noting a diagnosis of "sciatica. The record also contains unsigned reports dated September 22, 2005 from Presbyterian Hospital, including a prescription and notes from Jeffrey Kiser, a physician's assistant; progress notes from Dianna Howell, registered nurse; notes from Mr. Kiser and Dr. R. Nelson, a treating physician, reflecting an impression of acute pain in the lower back and chronic pain in the lumbar area; and discharge instructions reflecting a diagnosis of sciatica.

In a narrative statement dated October 28, 2005, appellant claimed that her back pain escalated when her physician, Dr. Ade Akande, a Board-certified anesthesiologist, discontinued her prescription for perkocet. She stated that on August 18, 2005 her pain became intolerable and that she was unable to work.

By decision dated October 10, 2005, the Office denied appellant's claim for recurrence of disability beginning August 18, 2005 on the grounds that she failed to establish that the claimed recurrence was due to her accepted employment injury.

LEGAL PRECEDENT

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant's ability to earn wages. Compensation payments are based on the wage-earning capacity determination, which remains undisturbed until properly modified.¹

¹ See *Sharon C. Clement*, 55 ECAB ____ (Docket No. 01-2135, issued May 18, 2004).

The Office's procedure manual provides that, "[i]f a formal loss of wage-earning capacity decision has been issued, the rating should be left in place unless the claimant requests resumption of compensation for total wage loss. In this instance the claims examiner will need to evaluate the request according to the customary criteria for modifying a formal loss of wage-earning capacity."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.³ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁴

ANALYSIS

In this case, the Office developed the evidence and determined that the issue presented was whether appellant had established a recurrence of disability on August 18, 2005. Under the circumstances of this case, however, the Board finds that the issue presented was whether the June 29, 2004 wage-earning capacity determination should be modified.

According to the evidence of record, appellant returned to her light-duty assignment on March 20, 2000. She alleged that her accepted condition worsened after she returned to light duty, to the degree that she was unable to perform the duties of her job and she submitted evidence of medical treatment relating to her condition at the time she stopped working. It is clear that the claim in this case was that appellant could not work in the light-duty position, the position that the Office determined had represented her wage-earning capacity, for the foreseeable future. The Board has held that, when a wage-earning capacity determination has been issued and a claimant submits evidence with respect to disability for work, the Office must evaluate the evidence to determine if modification of wage-earning capacity is warranted.⁵

As noted above, the Office's procedure manual directs the claims examiner to consider the criteria for modification when the claimant requests resumption of compensation for "total wage loss." This section of the procedure manual covers the situation when a claimant has stopped working. In this case, appellant submitted evidence of worsening of her condition that allegedly prevented her from working in the light-duty position. The Board finds that the Office should have considered the issue of modification of the wage-earning capacity determination.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995). See *Katherine T. Kreger*, 55 ECAB ____ (Docket No. 03-1765, issued August 13, 2004).

³ See *Katherine T. Kreger*, *supra* note 2. See also *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁴ *Id.*

⁵ See *Katherine T. Kreger*, *supra* note 2.

CONCLUSION

The Board finds that appellant's claim for compensation raised the issue of whether a modification of the June 29, 2004 wage-earning capacity decision was warranted and the case must be remanded for an appropriate decision on this issue.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 10, 2005 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 9, 2006
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board