

attached medical records from the Department of Veterans Affairs (VA) describing appointments in November 2008 and May, June and July 2009. The included a June 30, 2009 neurology diagnostic study report that Dr. Tulio E. Bertorini, a Board-certified neurologist, interpreted as abnormal, demonstrating right median and ulnar neuropathy, secondary to polyneuropathy. Appellant maintained that he could not work and that the VA results contradicted those of Dr. Carl W. Huff, an Office referral physician who is Board-certified in orthopedic surgery.

By decision dated May 14, 2010, the Office denied appellant's request for merit review, stating that the medical documents submitted had previously been reviewed.

As noted above, the Office had issued a formal decision on appellant's wage-earning capacity on October 7, 2008, prior to the time he requested reconsideration on December 21, 2009 and prior to the dates of the medical appointments at the VA. Board precedent and the Office's procedural manual direct the claims examiner to consider the criteria for modification when a claimant requests resumption of compensation for total wage loss.³ While appellant used the term reconsideration in his December 21, 2009 correspondence, he asserted that the previous decisions were in error and his condition had worsened. The Board finds that the Office should have adjudicated the issue of modification of the wage-earning capacity determination.⁴ The Board will therefore remand the case to the Office for proper adjudication, to be followed by an appropriate merit decision to preserve appellant's appeal rights.

³ *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 the Office will need to evaluate the request according to the customary criteria for modifying a formal loss of wage-earning capacity determination).

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

IT IS HEREBY ORDERED THAT the May 14, 2010 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: April 21, 2011
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