



It is well established that either a claimant or OWCP may seek to modify a formal loss of wage-earning capacity determination. 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.<sup>1</sup> The burden of proof is on the party attempting to show modification.<sup>2</sup>

Although appellant's September 29, 2010 request and letter used the term reconsideration, her letter contained arguments that related to a request for modification of the April 21, 2010 wage-earning determination. Her arguments included that she was not qualified for the selected position as she did not have the necessary license or the training needed to obtain a license. The Board finds that appellant's letter is a request for modification of OWCP's April 21, 2010 wage-earning capacity determination.<sup>3</sup> This request for modification is not a request for review of OWCP's April 21, 2010 decision under 5 U.S.C. § 8128(a). Therefore, OWCP improperly characterized appellant's letter as a request for reconsideration under 5 U.S.C. § 8128(a). The case will be remanded to OWCP to adjudicate appellant's request for modification of the wage-earning capacity determination and issue an appropriate decision in the case.

---

<sup>1</sup> *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

<sup>2</sup> *Darletha Coleman*, 55 ECAB 143 (2003). There also is no time limit for a claimant to submit a request for modification of a wage-earning capacity determination. *W.W.*, Docket No. 09-1934 (issued February 24, 2010).

<sup>3</sup> *See Gary L. Moreland*, 54 ECAB 638 (2003).

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 2, 2010 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: December 12, 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