United States Department of Labor Employees' Compensation Appeals Board

L.G., Appellant)
and) Docket No. 10-1614) Issued: May 12, 2011
U.S. POSTAL SERVICE, POST OFFICE, Waltham, MA, Employer)
Appearances: Alan J. Shapiro, Esq., for the appellant Office of Solicitor, for the Director	— , Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On June 2, 2010 appellant, through her representative, filed a timely appeal from the May 4, 2010 merit decision of the Office of Workers' Compensation Programs, which denied modification of a wage-earning capacity determination.¹

The Board has duly considered the matter and finds that the Office's May 4, 2010 decision must be set aside. Once the Office issues a formal decision on wage-earning capacity, the rating should be left in place until the claimant requests resumption of compensation for total wage loss for more than a limited period of disability, in which instance the Office will need to evaluate the request according to the customary criteria for modifying a formal wage-earning capacity determination.²

¹ Appellant, a 51-year-old mail processor, developed carpal tunnel syndrome in the performance of duty. She eventually accepted a limited-duty assignment, the earnings from which, the Office found, fairly and reasonably represented her wage-earning capacity. In a January 10, 2006 decision, the Office reduced appellant's compensation to zero.

² Katherine T. Kreger, 55 ECAB 633 (2004); Sharon C. Clement, 55 ECAB 552 (2004).

Appellant claimed a recurrence of disability on March 9, 2009 when the employing establishment withdrew her limited-duty assignment due to the National Reassessment Process. But she returned to work around August 14, 2009, so the period of disability for which she sought compensation was limited or closed. In such situations, the Office should adjudicate the claim as one of recurrence.³ The Board will therefore set aside the Office's May 4, 2010 decision and remand the case for an appropriate final decision on appellant's recurrence claim.

IT IS HEREBY ORDERED THAT the May 4, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order.

Issued: May 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

³ See id.; Sandra D. Pruitt, 57 ECAB 126 (2005) (the Office is not precluded from adjudicating a limited period of employment-related disability when a formal wage-earning capacity determination has been issued); S.H., Docket No. 07-755 (issued November 9, 2007). In Sharon C. Clement, supra note 2, following a wage-earning capacity determination, the Office accepted a recurrence claim and paid compensation for a period of temporary total disability when the claimant stopped work on the advice of her physician pending carpal tunnel surgery. The surgeon released her to limited duty about a year after surgery. Cf. Elsie L. Price, 54 ECAB 734 (2003) (acceptance of disability for an extended period -- five years -- was sufficient to establish that modification of the wage-earning capacity determination was warranted).