

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.G., Appellant** )

**and** )

**U.S. POSTAL SERVICE, MORGAN )  
PROCESSING & DELIVERY CENTER, New )  
York, NY, Employer** )

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**Docket No. 10-1666  
Issued: May 12, 2011**

*Appearances:*  
*Thomas R. Uliase, 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 8, 2010 appellant filed an application for review of a February 17, 2010 merit decision of the Office of Workers' Compensation Programs. The appeal was docketed as 10-1666.<sup>1</sup>

The Board notes that the Office, in an August 5, 2004 decision, found that appellant's employment in a full-time modified mail processor position casing letters, effective September 1, 2002, fairly and reasonably represented his wage-earning capacity and that he had no loss of wage-earning capacity.<sup>2</sup> He stopped work August 3, 2007 and did not return. On September 7, 2007 he filed a claim for a recurrence of disability beginning August 7, 2007 attributable to the March 11, 2002 work injury.

On January 17, 2008 the Office accepted appellant's claim for a recurrence beginning August 3, 2007. However, on March 23, 2009 the Office vacated the January 17, 2008 decision. During a video hearing held November 18, 2009, appellant testified regarding the onset of significant low back and right leg pain while lifting a mail tray on August 3, 2007. He also

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<sup>1</sup> On June 8, 2010 appellant also appealed a February 17, 2010 Office decision denying his claim for an August 3, 2007 injury. This appeal was docketed as number 10-1667 and will proceed separately.

<sup>2</sup> The Office referred to the job as that of a letter carrier but the record indicates that he was a mail processor.

testified regarding increased symptoms and disability. He submitted medical evidence from his physician which found that appellant's lumbosacral radiculitis was causally related to his work injury and he was totally disabled. By decision dated February 17, 2010, an Office hearing representative affirmed the March 23, 2009 decision. She denied appellant's claim for a recurrence of disability finding that there was no rationalized medical evidence to support the claimed recurrence was causally related to the accepted work injury.

In this case, the Office developed the evidence and determined that the issue presented was whether appellant had established the claimed recurrence of disability on and after August 3, 2007 was due to the accepted work injury. Under the circumstances of this case, the Board finds that the Office should have developed the issue of whether the August 5, 2004 wage-earning capacity determination should be modified. Appellant stopped work on August 3, 2007 and submitted evidence which indicated that he was totally disabled beginning August 3, 2007 due to his employment injury. It is clear that the claim in this case was that appellant could not work in the modified position for which the Office had rated him for the foreseeable future. The Board has held that, when a wage-earning capacity determination has been issued and appellant submits evidence with respect to disability for work, the Office must evaluate the evidence to determine if modification of wage-earning capacity is warranted.<sup>3</sup>

The Office's procedure manual<sup>4</sup> directs the claims examiner to consider the criteria for modification when the claimant requests a resumption of compensation for total wage loss. This section of the procedure manual covers the situation when a claimant has stopped working, but the principle is equally applicable to a claim of increased disability. If there is a claim for increased disability which would prevent a claimant from performing the position that was the basis for a wage-earning capacity decision, then clearly there is an issue of whether modification is appropriate. In this case, appellant submitted evidence of disability that prevented him from working in the modified position. While the Office hearing representative found the medical evidence was insufficient to support that appellant sustained a recurrence of disability, she never squarely addressed the issue of whether the August 5, 2004 wage-earning capacity determination should be modified. The Board finds that the Office should have considered the issue of modification of the wage-earning capacity determination.

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995). *See Sharon C. Clement*, 55 ECAB 552 (2004); *see also Katherine T. Kreger*, 55 ECAB 633 (2004).

<sup>4</sup> *See id.*

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated February 17, 2010 is set aside and the case remanded for further action consistent with this order of the Board.

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