

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

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D.G., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, DALLAS/FORT WORTH  
INTERNATIONAL AIRPORT, Coppell, TX,  
Employer** )

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) **Docket No. 11-360**  
Issued: October 25, 2011

*Appearances:*

*Michael E. Woods, for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On November 3, 2010<sup>1</sup> appellant, through his representative, filed a timely appeal of a May 10, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)<sup>2</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

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<sup>1</sup> Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. *See* 20 C.F.R. § 501.3(f)(2). As OWCP's merit decision was issued on May 10, 2010, the 180-day computation begins May 11, 2010. 180 days from May 11, 2010 was November 8, 2010. Since using November 30, 2010, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is November 3, 2010, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether OWCP properly reduced appellant's compensation effective August 5, 2007 based on his capacity to earn wages in the constructed position of customer service representative; and (2) whether appellant has met his burden of proof in modifying the wage-earning capacity determination.

## **FACTUAL HISTORY**

On May 27, 2004 appellant then a 32-year-old transportation security screener, filed a traumatic injury alleging that on April 23, 2004 he developed lower back and left leg pains while lifting and bending in the performance of duty. OWCP accepted his claim for lumbar strain and herniated disc at L5-S1. Dr. Paul A. Vaughan, a Board-certified orthopedic surgeon, performed a two-level laminectomy at L4-5 and L5-S1 and bilateral discectomy at L5-S1 on April 4, 2005. On August 22, 2005 appellant underwent a revision microsurgical laminotomy and discectomy at L4-5.

Appellant's attending physician, Dr. Bryan S. Drazner, a physician Board-certified in physical medicine and rehabilitation, completed a report on January 9, 2008 and stated that appellant was capable of full-time gainful employment. He stated that appellant had obvious disability posturing and symptom magnification as well as a rather significant discord between objective findings and subjective complaints. Dr. Drazner stated that a functional capacity evaluation demonstrated that appellant could perform medium physical demand work, cooperating with lengthy periods of sitting, standing and walking as well as crawling, crouching, kneeling, overhead reaching and fine motor skills. He stated that appellant was more limited on climbing, squatting, bending and stooping. Dr. Drazner stated that appellant could lift and carry 48 pounds.

On January 13, 2006 OWCP referred appellant for vocational rehabilitation services. Dr. Drazner completed duty status reports on January 9, February 6 and March 6, 2006 and indicated that appellant could lift 20 pounds intermittently for eight hours a day and 5 pounds continuously. He indicated that appellant could sit for 30 minutes continuously and 6 to 8 hours intermittently; could stand continuously for 90 minutes and intermittently for 4 to 6 hours as well as walking for 2 to 3 hours intermittently. Appellant could not climb, bend or stoop and could kneel for one hour a day. He could twist intermittently for one or two hours and could pull and push 25 pounds intermittently for 2 to 4 hours.

In a letter dated March 15, 2006, OWCP approved a prevocational training plan as a computer operator/bookkeeper. Dr. Drazner expanded appellant's restrictions on April 3, 2006 to include no overhead lifting over 20 pounds. Appellant enrolled in Eastfield College for training in computer operations/bookkeeping beginning June 5, 2006. In a report dated November 5, 2006, the vocational rehabilitation counselor indicated that appellant was not performing well academically and dropping classes. She opined that a different career path would be appropriate. Appellant stated that he wanted to go to truck driving school. The vocational rehabilitation counselor informed him that truck driving would not be in keeping with his sitting restriction and he indicated that he would discuss his abilities with Dr. Drazner.

In a report dated November 13, 2006, Dr. Drazner stated that appellant reported difficulties with his computer certificate training and mentioned his desire to obtain his commercial drivers license. He stated, "I have advised [appellant] due to regulations of the Department of Transportation, he would not be eligible to utilize narcotic analgesic medication and continue driving." Dr. Drazner noted that appellant utilized hydrocodone two to three times a day.

Dr. Wendy E. Goodwin, a physician Board-certified in physical medicine and rehabilitation, and Dr. Drazner's associate, examined appellant on December 15, 2006 and diagnosed degenerative disc disease with multiple levels of lumbar spine involvement and chronic back pain with long-term use of relatively high-dose narcotics. She did not alter appellant's work restrictions. Dr. Goodwin examined appellant on December 29, 2006 and noted his report of depression which he stated was chronic since his injury. Appellant stated that he had thoughts of hurting people all the time. Dr. Goodwin stated, "I do feel that [appellant] is depressed and this is at least partly due to his disability secondary to his back pain." She maintained his work restrictions.

Appellant decided not to undergo further training and attend school full time. OWCP stated that further training would not be approved and that his placement should be based on transferable skills and medical restrictions.

In a report dated January 12, 2007, Dr. Goodwin stated that appellant reported thoughts of hurting people. She noted that he felt that he was not mentally stable enough to be in school full time, but when at home sat in his computer chair. Dr. Goodwin noted that appellant was emotionally liable becoming angry and aggressive. She stated that he was advised to seek any further medical care from the emergency room and was discharged from the practice.

The vocational rehabilitation counselor identified two positions as within appellant's physical restrictions and vocational training, security officer and customer service representative. She stated that customer service representative positions were performed in sufficient numbers, that physical demands were in the sedentary level of lifting up to 10 pounds, that appellant's seven years experience in dealing with the public while working as a security guard met the specific vocational preparation of five to six months. The vocational rehabilitation counselor listed the weekly wages as \$386.00.

Appellant requested a change of physicians on February 19, 2007. The vocational rehabilitation counselor provided appellant with job leads through April 29, 2007.

In a report dated May 10, 2007, appellant's attending physician, Dr. Robert Chouteau, an osteopath, noted appellant's history of injury and resulting surgeries. He diagnosed traumatic lumbar myositis, bilateral sacroiliac joint lumbar syndrome and failed back syndrome. Dr. Chouteau stated that appellant was functioning at the light capacity, lifting 20 pounds. He noted that appellant had difficulty sitting for long periods which caused pain pattern to the lumbosacral region. Appellant also had problems bending, twisting and sitting for up to five minutes with repetitive motion. Dr. Chouteau examined appellant on June 7, 2007 and stated that he was still experiencing severe depression and anxiety with difficulty sleeping. He recommended pain management.

In a letter dated June 25, 2007, OWCP proposed to reduce appellant's compensation benefits based on his capacity to earn wages as a customer service representative.

Dr. Chouteau examined appellant on July 11, 2007 following a June 29, 2007 magnetic resonance imaging (MRI) scan, which did not demonstrate any change in his condition as appellant continued to have a two millimeter (mm) disc bulge at L4-5 and L5-S1. He stated that appellant was temporarily totally disabled.

By decision dated July 25, 2007, OWCP reduced appellant's compensation benefits based on his capacity to earn wages as a customer service clerk effective August 5, 2007. It found that this position was medically and vocationally suitable and fairly and reasonably represented his wage-earning capacity. OWCP found that appellant was capable of earning \$386.00 per week and that his current pay rate for the date-of-injury position was \$650.76 resulting in 59 percent wage-earning capacity.

Dr. Chouteau examined appellant on August 8, 2007 and reviewed his May 3, 2007 functional capacity evaluation noting that appellant could function at a light 20 pounds physical demand level. He opined that appellant was temporarily totally disabled.

Appellant requested a telephonic hearing on August 23, 2007. He submitted a report from Dr. Chouteau dated September 4, 2007, finding that he was temporarily totally disabled. Appellant returned to part-time work on October 3, 2007 performing maintenance for Aircraft Composte, Inc.

On February 5, 2008 Dr. Steven L Wilson, an associate of Dr. Chouteau, examined appellant and found that he had increasingly progressive problems in his lower back. He stated, "He is encouraged to maintain his work activities at a reasonable pace." In a note dated February 21, 2008, Dr. Wilson stated that appellant was currently employed as maintenance personnel working a 40-hour shift, 8 hours a day.

Appellant began a chronic pain management program as directed by Dr. Matt Sloan, a Board-certified anesthesiologist, with Dr. C.M. Schade, a physician Board-certified in pain management. He underwent a functional capacity evaluation on September 23, 2008, which found that appellant could sit and stand 30 minutes each in an 8-hour workday. The report further stated that appellant could sit for 30 minutes and stand for 15 minutes at a time without needing to change positions. Appellant could lie down for eight hours a day. He could not crawl, climb crouch or kneel and only occasionally bend, squat, reach up and stoop. Appellant's maximum weight for lifting was 20 pounds. His limitations were due to pain to the right leg and lower back. Dr. Schade recommended an additional six weeks of treatment for chronic pain on November 13, 2008. She requested an additional six weeks of pain management on January 8, 2009.

Dr. Robert J. Henderson, a Board-certified orthopedic surgeon, completed a report on April 6, 2009 diagnosing spondylosis, discogenic pain L4-5, L5-S1 with right leg radiculopathy. He stated that appellant was a potential candidate for surgery and recommended a two-level 360 at L4-5 and L5-S1.

Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, examined appellant on April 10, 2009 and noted that appellant had consulted with Dr. Henderson on April 3, 2009 and Dr. Henderson's recommendation of a 360 fusion surgery of the back. He stated that appellant was unable to sit for prolonged periods. On May 18, 2009 Dr. Shade stated that appellant was off work under workers' compensation since 2008 through Dr. Schade. He again noted that appellant was unable to sit for prolonged periods. In a note dated August 19, 2009, Dr. Shade diagnosed lumbar strain, chronic with bilateral lower extremity radiculopathy, failed back and depression.

Appellant testified at the oral hearing on August 28, 2009. He stated that he was unable to perform the assigned vocational rehabilitation plan as he could only sit from 20 to 30 minutes. Appellant stated that he worked part-time light duty for Aircraft Composite from fall 2007 for six or seven months. He had no employment since 2008.

Following the oral hearing, appellant submitted a note from Dr. Shade dated September 23, 2009, which opined that appellant was unable to sit for prolonged periods. He also submitted documentation regarding his psychological condition from a licensed professional counselor.

By decision dated October 23, 2009, the hearing representative found that the wage-earning capacity determination was appropriate.

Appellant requested reconsideration on February 9, 2010. His representative argued that OWCP had failed to consider a change in appellant's condition, the diagnosis of depression as stated by Dr. Chouteau, OWCP failed to provide Dr. Chouteau with the constructed position description and failed to discuss the effect of appellant's failure to complete vocational rehabilitation training. Appellant resubmitted a report dated June 7, 2007 from Dr. Chouteau and a report from Dr. Shade repeating his previous findings and conclusions in a note dated January 15, 2010.

By decision dated May 10, 2010, OWCP found that appellant had not established that the July 25, 2007 decision should be modified.<sup>3</sup>

#### **LEGAL PRECEDENT -- ISSUE 1**

Section 8115 of FECA<sup>4</sup> provides that wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity or the employee has no actual earnings, his wage-earning capacity is determined with due regard to the nature of his injury, the degree of physical impairment, his usual employment, his age, his

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<sup>3</sup> The Board notes that OWCP issued a decision dated October 26, 2010 finding that appellant's compensation benefits should be suspended until he completed a report of earnings. As appellant's representative did not request review of this decision, the Board will not review this decision of OWCP in this appeal.

<sup>4</sup> 5 U.S.C. §§ 8101-8193, 8115.

qualifications for other employment, the availability of suitable employment and other factors or circumstances which may affect his wage-earning capacity in his disabled condition.<sup>5</sup>

When OWCP makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to a vocational rehabilitation counselor authorized by OWCP for selection of a position, listed in the Department of Labor's *Dictionary of Occupational Titles* or otherwise available in the open market, that fits that employee's capabilities with regard to his physical limitations, education, age and prior experience. Once this selection is made, a determination of wage rate and availability in the open labor market should be made through contact with the state employment service or other applicable service. Finally, application of the principles set forth in *Albert C. Shadrick*<sup>6</sup> will result in the percentage of the employee's loss of wage-earning capacity. The basic rate of compensation paid under FECA is 66 2/3 percent of the injured employee's monthly pay.<sup>7</sup>

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.<sup>8</sup> Compensation for loss of wage-earning capacity is based upon loss of the capacity to earn and not on actual wages lost.<sup>9</sup> Compensation payments are based on the wage-earning capacity determination, which remains undisturbed until properly modified.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted appellant's claim for lumbar strain and herniated disc at L5-S1. Appellant underwent two spinal surgeries. The employing establishment was unable to provide an appropriate limited-duty position for him and he underwent vocational rehabilitation. Appellant was unable to obtain employment. On July 25, 2007 OWCP issued a wage-earning capacity determination based on the constructed position of customer service clerk effective August 5, 2007. It determined that this position was medically and vocationally suitable for appellant. OWCP found that appellant was capable of earning \$386.00 per week and he had 59 percent wage-earning capacity. Appellant disagreed with this decision and alleged that the position was neither vocationally or medically suitable.

Appellant's attending physician, Dr. Drazner listed appellant's work abilities as lifting 20 pounds intermittently for eight hours a day and 5 pounds continuously. He indicated that

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<sup>5</sup> N.J., 59 ECAB 171, 175 (2007).

<sup>6</sup> 5 ECAB 376 (1953).

<sup>7</sup> Karen L. Lonon-Jones, 50 ECAB (1999).

<sup>8</sup> 5 U.S.C. § 8115(a); K.R., Docket No. 09-415 (issued February 24, 2010); *Lee R. Sires*, 23 ECAB 12, 14 (1971) (the Board held that actual wages earned must be accepted as the measure of a wage-earning capacity in the absence of evidence showing they do not fairly and reasonably represent the employee's wage-earning capacity).

<sup>9</sup> K.R., *supra* note *id.*; *Ernest Donelson, Sr.*, 35 ECAB 503, 505 (1984); *Roy Matthew Lyon*, 27 ECAB 186, 190 (1975).

<sup>10</sup> See *Sharon C. Clement*, 55 ECAB 552, 557 (2004).

appellant could sit for 30 minutes continuously and six to eight hours intermittently; could stand continuously for 90 minutes and intermittently for four to six hours as well as walking for two to three hours intermittently. Dr. Drazner found that appellant could not climb, bend or stoop and could kneel for only one hour a day. He stated that appellant could twist intermittently for one or two hours and could pull and push 25 pounds intermittently for two to four hours. Dr. Drazner and his associate Dr. Goodwin supported these restrictions through December 15, 2006.

Following the dissolution of appellant's relationship with Dr. Drazner, appellant's physician, Dr. Chouteau, found on May 10, 2007 that appellant was functioning at the light capacity, lifting 20 pounds. He noted that appellant had difficulty sitting for long periods and problems bending, twisting and sitting for up to five minutes with repetitive motion. Dr. Chouteau examined appellant on June 7, 2007 and stated that he was still experiencing severe depression and anxiety with difficulty sleeping. On July 11, 2007 he reviewed appellant's June 29, 2007 MRI scan and noted that appellant continued to have a two mm disc bulge at L4-5 and L5-S1. Dr. Chouteau stated that appellant was temporarily totally disabled. He did not explain how appellant's condition had changed and did not offer any explanation for his opinion that appellant was totally disabled.

The vocational rehabilitation counselor identified the position of customer service representative as within appellant's physical and vocational abilities. She concluded that customer service representative positions were performed in sufficient numbers in appellant's commuting area to make the position reasonably available. The vocational rehabilitation counselor noted that the physical demands of the position were in the sedentary level of lifting up to 10 pounds which was within his work restrictions. She further found that appellant's seven years experience in dealing with the public while working as a security guard met the specific vocational preparation of five to six months. The vocational rehabilitation counselor listed the weekly wages as \$386.00.

The Board finds that the July 25, 2007 wage-earning capacity was determined with due regard to the nature of appellant's injury, the degree of physical impairment, his usual employment, his age, his qualifications for other employment and the availability of suitable employment. The medical evidence from Dr. Drazner as well as that initially received from Dr. Chouteau supported that appellant was capable of sedentary work. The Board notes that Dr. Chouteau did not explain why or how he felt that appellant's condition had worsened between June 7 and July 11, 2007 such that he was no longer capable of performing any work. Without some medical explanation of the changes in appellant's condition, the Board finds that the July 11, 2007 note is not sufficient to establish that the constructed position was not without his physical abilities. A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty and must be supported by medical rationale explaining the opinion offered.<sup>12</sup> As Dr. Chouteau did not provide any medical reasoning in support of his conclusion that appellant was temporarily totally disabled and due to this deficiency this report is of limited probative value.

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<sup>11</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>12</sup> *A.D.*, 58 ECAB 149 (2006).

The Board further finds that the record establishes that appellant met the specific vocational requirements of the position of customer service representative through his prior employment working with the public as a security guard. In addition, the Board notes that the vocational rehabilitation counselor found that the position was reasonable available in appellant's commuting area.

Before the hearing representative, appellant argued that he was not capable of performing the constructed position of customer service representative as he could not sit for more than 30 minutes. He submitted additional medical reports from Dr. Chouteau dated August 8 and September 4, 2007 stating that appellant was totally disabled. However, Dr. Chouteau reviewed appellant's May 3, 2007 functional capacity evaluation and stated that appellant could function at a light 20 pounds physical demand level. The Board is again unable to determine why and how Dr. Chouteau reached the conclusion that appellant was totally disabled.

On February 5 and 21 2008 Dr. Wilson examined appellant and found that he had increasingly progressive problems in his lower back. However, he stated that appellant was currently employed as maintenance personnel working a 40-hour shift 8 hours a day. Appellant also underwent an additional functional capacity evaluation dated September 23, 2008 found that he could only sit and stand for 30 minutes a day during an 8-hour workday and that he could sit for 30 minutes and stand for 15 minutes without needing to change positions. He was unable to crawl, climb crouch or knee and only occasionally bend, squat, reach up and stoop. Appellant was limited to lifting 20 pounds. Dr. Shade completed reports on April 10, May 18 and August 19, 2009 and stated that appellant was unable to sit for prolonged periods. Due to appellant's employment in the private sector as a maintenance employee, the Board is unable to conclude his increased work restrictions and described in the functional capacity evaluation and reports from Drs. Wilson and Shade are due to the original injury rather than related to his new employment. Without a complete and accurate history and opinion regarding the relationship of appellant's current condition to his accepted employment injury, these reports are not sufficient to establish that the wage-earning determination issued on July 25, 2007 was in error.

Appellant also submitted medical evidence from Drs. Henderson and Shade diagnosing spondylosis, discogenic pain L4-5, L5-S1 with right leg radiculopathy and recommending a two-level 360 at L4-5 and L5-S1. Dr. Shade also opined that appellant was unable to sit for prolonged periods. As noted above, these reports do not provide a complete history of injury including appellant's private sector employment and offer a detailed statement that his current condition was rendered him incapable of performing the selected position. As these reports do not contain the necessary factual basis and medical reasoning, the reports are not sufficient to establish that the July 25, 2007 wage-earning capacity determination was erroneous.

#### **LEGAL PRECEDENT -- ISSUE 2**

Modification of a standing wage-earning capacity 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 erroneous.<sup>13</sup> OWCP's procedure manual provides that, if a formal loss of wage-earning capacity

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<sup>13</sup> *Sue A. Sedgwick*, 45 ECAB 211, 215-16 (1993); *Elmer Strong*, 17 ECAB 226, 228 (1965).

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.<sup>14</sup> The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.<sup>15</sup>

## **ANALYSIS -- ISSUE 2**

Following the hearing representative's October 23, 2009 decision finding that, the July 25, 2007 wage-earning capacity determination was appropriate, appellant requested reconsideration. Appellant's representative argued that appellant had sustained a material change in the nature and extent of his injury-related condition as he had developed depression. His representative also argued that OWCP failed to provide Dr. Chouteau with the constructed position description and failed to discuss the effect of appellant's failure to complete vocational rehabilitation training. By decision dated May 10, 2010, OWCP reviewed the merits of appellant's claim and found that he had not established that the July 25, 2007 decision should be modified.

In support of his request for reconsideration, appellant alleged that the original wage-earning capacity determination was in error as Dr. Chouteau had not reviewed the position description for the constructed position and as OWCP failed to discuss the implications of appellant's failure to complete vocational rehabilitation training. The Board finds that appellant has not established that the original decision was in error. While OWCP did not provide Dr. Chouteau with the physical requirements of the selected position, he initially supported appellant's ability to perform light-duty work and returned to this conclusion after OWCP issued the wage-earning capacity determination. As noted above, it was only for a brief period of time from July to August that Dr. Chouteau indicated that appellant was totally disabled and he did not provide medical reasoning supporting his change in work restrictions. Furthermore, appellant returned to light-duty work on October 3, 2007. As Dr. Chouteau did not provide any support medical reasoning or physical findings as the basis for his opinion, the Board finds that appellant has not established that the original wage-earning capacity determination was in error.

Appellant has also alleged a change in the nature and extent of his injury-related condition asserting that he developed depression as a result of his accepted employment injury and that this condition preventing him from performing the selected position. Drs. Drazner and Goodwin initially diagnosed appellant with depression in December 29, 2006. These physicians did not alter appellant's work restrictions or otherwise indicate any disability associated with this condition. Dr. Chouteau examined appellant on June 7, 2007 and included a diagnosis of depression. At this time he continued to support appellant's ability to work with restrictions. Appellant's diagnosis of depression does not represent a material change in his injury-related condition not considered by OWCP. At the time of the original wage-earning capacity determination, he had received this diagnosis and his treating physicians did not find this

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<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995). See also FECA Transmittal 10-01 (issued October 5, 2009).

<sup>15</sup> Selden H. Swartz, 55 ECAB 272, 278 (2004).

condition disabling. The Board finds that appellant has not submitted the necessary medical evidence to establish that this condition is causally related to his accepted employment injury and constitutes a material change in the nature and extent of his injury-related condition.

Appellant may request modification of the wage-earning capacity determination, supported by new evidence or argument, at any time before OWCP.

**CONCLUSION**

The Board finds that OWCP properly reduced appellant's compensation benefits based on his capacity to earn wages as a customer service representative. The Board further finds that he has not met his burden of proof to modify the July 25, 2007 wage-earning capacity determination.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 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