

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

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**R.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Stillwell, KS, Employer**

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**Docket No. 11-1048  
Issued: January 25, 2012**

*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 May 22, 2011 appellant, through her attorney, filed an appeal of a January 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a recurrence of disability. The appeal was docketed as No. 11-1048. The case was before the Board on two prior appeals.<sup>1</sup> As the Board noted, appellant had stopped working a light-duty job in February 2009 when she received a notice of removal for poor attendance. A grievance settlement agreement resulted in appellant receiving administrative pay through March 12, 2010.

In the present case, appellant filed a Form CA-7, (claim for compensation) for the period commencing May 16, 2010. The employing establishment indicated that appellant was assessed through the National Reassessment Process (NRP) and was sent home on March 12, 2010 as there was no necessary productive work available to her based on her work restrictions. Appellant used leave and then filed CA-7 forms claiming compensation.

FECA Bulletin No. 09-05<sup>2</sup> was issued specifically to provide guidance in situations where a claimant is sent home through the NRP because no light duty is available.<sup>3</sup> OWCP is

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<sup>1</sup> Docket No. 09-1368 (issued January 26, 2010), where the Board found appellant had not established a right shoulder or right trigger finger condition as employment related. In Docket No. 10-1360 (issued February 15, 2011), the Board found that appellant had not established a recurrence of disability as of March 4, 2009.

<sup>2</sup> FECA Bulletin No. 09-05 (issued August 18, 2009).

<sup>3</sup> See also *L.N.*, Docket No. 11-266 (issued September 8, 2011).

provided specific guidance with respect to claims for total disability under these circumstances and the appropriate method of assessing the evidence, depending on whether a loss of wage-earning capacity (LWEC) decision has been issued.<sup>4</sup>

The July 16, 2010 and January 21, 2011 OWCP decisions denying the claim for compensation do not refer to FECA Bulletin No. 09-05 or attempt to follow its provisions. If no LWEC decision is in place, OWCP evaluates the medical evidence to determine if the current evidence establishes that the employment-related residuals continue and, if the medical evidence is not sufficient, the claims examiner should request current medical evidence from both the claimant and the employing establishment. Entitlement to wage-loss compensation would be established if the current evidence establishes employment-related residuals continue, the light duty is no longer available and there is no indication that a retroactive LWEC determination should be made.

The case will be remanded to OWCP for a proper decision in accord with the established guidance. After such further development as OWCP deems necessary, it should issue an appropriate decision.

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 21, 2011 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: January 25, 2012  
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

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<sup>4</sup> The record contains a July 20, 2005 OWCP decision finding no loss of wage-earning capacity. A January 31, 2006 decision, however, stated that a claim for recurrence of disability had been accepted and the LWEC determination had been modified due to a worsening of the employment-related condition.