



letter, the employing establishment noted the duties included traying and facing mail, hand cancelling letters, verifying postage and other duties.

By decision dated July 9, 1999, OWCP determined that appellant's actual earnings fairly and reasonably represented his wage-earning capacity. It found that he had no loss of wage-earning capacity as his actual earnings of \$842.92 per week equaled the current earnings in his date-of-injury position.

On June 10, 2009 appellant was advised that, pursuant to the National Reassessment Program (NRP), there was no light-duty work available within his restrictions. In a duty status report (Form CA-17) dated July 20, 2009, a physician whose signature is illegible, reported on his continuing work restrictions. The record indicates that on August 13, 2009 appellant was offered and accepted a modified mail handler position at four hours a day. Appellant continued to work four hours day. On March 19, 2010 the employing establishment offered him a full-time modified mail handler position. In a letter dated April 1, 2010, the employing establishment indicated the position was effective April 10, 2010 and appellant had accepted the position.

On April 16, 2010 appellant filed a recurrence of disability (Form CA-2a), claiming compensation as of June 10, 2009. In a May 20, 2010 letter, he stated that his light-duty job had been withdrawn on June 10, 2009 and felt the wage-earning capacity determination should be modified.

By decision dated June 10, 2010, OWCP denied modification of the July 9, 1999 wage-earning capacity determination.

Appellant requested a hearing before an OWCP hearing representative, which was held on November 30, 2010.

By decision dated March 8, 2011, the hearing representative affirmed the June 10, 2010 decision. He found there was no error in the original determination and appellant had not established a material change in an employment-related condition.

### **LEGAL PRECEDENT**

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>2</sup> The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.<sup>3</sup>

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<sup>2</sup> *Sue A. Sedgwick*, 45 ECAB 211 (1993).

<sup>3</sup> *Id.*

## ANALYSIS

In the present case, OWCP issued a July 9, 1999 wage-earning capacity decision based on the modified mail handler position appellant had been performing since approximately 1985. Appellant has argued the wage-earning capacity determination should be modified as the position was withdrawn on June 10, 2009. Although appellant did not appear to argue that the original determination was erroneous, the hearing representative considered the issue of whether the light-duty job had been a makeshift position.<sup>4</sup> In this regard there is no probative evidence that the modified mail handler position was a makeshift position. The position had a title and job description, did not involve overly strict physical limitations, had meaningful tasks and was not a temporary position.<sup>5</sup>

With respect to the withdrawal of the full-time position on June 10, 2009, OWCP did not acknowledge that the position was withdrawn pursuant to the NRP or make any relevant findings on the issue. In this regard, there are specific guidelines for developing the issue of modification of a wage-earning capacity determination when the job has been withdrawn pursuant to NRP.<sup>6</sup> OWCP should review the file to determine whether there is a current medical report regarding employment-related residuals. If there is no current medical evidence then OWCP should request appellant to submit a narrative medical report as to the nature and extent of employment-related residuals. The employing establishment should also be requested to submit relevant medical evidence in its possession. Such requests are “essential where employees may not have been requested to provide recent medical evidence because they have a zero LWEC [loss of wage-earning capacity] rating...”<sup>7</sup>

In this case, the hearing representative did not discuss the medical evidence and stated that appellant did not allege a material change in his condition. Since OWCP had found that appellant had no loss of wage-earning capacity, it should have requested a narrative medical report addressing the nature and extent of employment-related residuals. The modification issue may then properly be considered based on the relevant medical evidence. The case will be remanded to OWCP to properly analyze the modification issue presented in accord with FECA Bulletin 09-05. After such further development as OWCP deems necessary, it should issue an appropriate decision. In view of the Board’s findings, the issue of subpoena of witnesses will not be addressed.

## CONCLUSION

The Board finds that the case is not in posture for decision and will be remanded to OWCP for further development.

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<sup>4</sup> A position that is makeshift in nature is not appropriate for a wage-earning capacity determination. *See Selden H. Swartz*, 55 ECAB 272 (2004).

<sup>5</sup> *Cf. A.J.*, Docket No. 10-619 (issued June 29, 2010).

<sup>6</sup> FECA Bulletin No. 09-05 (issued August 18, 2009).

<sup>7</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 8, 2011 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 11, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board