

duties other than those set by his physician and those that were relied upon by the National Reassessment Process (NRP) team, he should immediately notify the employing establishment. Appellant filed a claim for compensation for the period commencing April 2, 2011. OWCP denied his claim on May 24 and July 14, 2011.

FECA Bulletin No. 09-05¹ was issued specifically to provide guidance in situations where a claimant is sent home through the NRP because no light duty is available.² OWCP is 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 decision has been issued.³ The Bulletin provides:

“1. If the claimant has been on light duty due to an injury[-]related condition without [loss of wage-earning capacity] rating (or the CE [claims examiner] has set aside the [loss of wage-earning capacity] rating as discussed above), payment for total wage loss should be based on the CA-7 as long as the following criteria are met:

“The current medical evidence in the file (within the last 6 months) establishes that the injury[-]related residuals continue;

“The evidence of file supports that light duty is no longer available; and

“There is no indication that a retroactive [loss of wage-earning capacity] should be made. (note – Retroactive [loss of wage-earning capacity] determination should not be made in these NRP [National Reassessment Program] cases without approval from the [d]istrict [d]irector.)”⁴

The record indicates that the employing establishment withdrew light duty pursuant to the NRP. It is well established that a withdrawal of a light-duty position is considered a recurrence of disability under OWCP’s regulations.⁵ As noted above, FECA Bulletin No. 09-05 was issued specifically to provide guidance when a claimant is sent home through the NRP because light duty is no longer available. The May 24 and July 14, 2011 decisions denying the claim for compensation do not refer to FECA Bulletin No. 09-05 or attempt to follow its provisions. The case will therefore be remanded to OWCP for a proper decision in accord with the established guidance. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

¹ FECA Bulletin No. 09-05 (issued August 18, 2009).

² See *R.K.*, Docket No. 11-1048 (issued January 25, 2012).

³ The Board notes that the record contains no loss of wage-earning capacity decision.

⁴ FECA Bulletin 09-05 (issued August 18, 2009); see also *J.A.*, Docket No. 11-1592 (issued February 13, 2002).

⁵ See 20 C.F.R. § 10.5(x); see also *J.A.*, *supra* note 4.

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 14 and May 24, 2011 are set aside and the case remanded for further action consistent with this order of the Board.

Issued: June 12, 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