

decision dated June 21, 2011, the Board remanded the case to OWCP.² The Board noted that OWCP had issued a May 7, 2009 decision finding that the selected position of receptionist/information clerk represented appellant's wage-earning capacity. After the decision, appellant had submitted treatment notes from Dr. Thad Broussard, an orthopedic surgeon, covering the period February 20, 2008 to March 31, 2010. The Board found that he was requesting a modification of the wage-earning capacity determination and the case was remanded for a proper merit decision. The history of the case provided in the Board's prior decision is incorporated herein by reference.

Appellant submitted treatment notes from Dr. Broussard, covering the period July 19, 2010 to May 9, 2011. Dr. Broussard stated that appellant was having difficulty with his opposite knee as well. He stated that appellant had osteoarthritis and the "condition is directly related to the accident and it left him with permanent injury and has resulted in total knee arthroplasty on the right side." Dr. Broussard found appellant permanently disabled from his former occupation. Appellant also submitted physical therapy notes.

In a decision dated October 5, 2011, OWCP denied modification of the existing wage-earning capacity determination, finding that appellant did not meet any of the requirements for modification.

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.³ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁴

Rationalized medical opinion evidence is medical evidence based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the opinion. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS

OWCP determined that the selected position of receptionist/information clerk represented appellant's wage-earning capacity. A claimant must meet one of the requirements noted above to establish that modification of the wage-earning capacity determination was warranted.

² Docket No. 10-2331 (issued June 21, 2011).

³ *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁴ *Id.*

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

Appellant has not argued that he had been retrained or otherwise vocationally rehabilitated.⁶ With respect to whether the original determination is erroneous, he did not provide relevant supporting evidence. Appellant submitted medical notes from Dr. Broussard addressing treatment prior to the May 7, 2009 wage-earning capacity determination. The notes do not establish that appellant was disabled from performing the selected position. Dr. Broussard stated in a July 21, 2008 note that appellant was disabled from his “former occupation” and then addressed the price of fuel and wear and tear on appellant’s vehicle if he was sent for a sedentary position. He did not explain how appellant’s employment-related condition disabled him for the receptionist/information clerk position. Appellant did not provide any relevant evidence or argument establishing error in the May 7, 2009 wage-earning capacity determination.

With respect to a material change in the nature and extent of the injury-related condition, appellant did not submit probative medical evidence. The treatment notes from Dr. Broussard do not provide a complete and accurate history, or a rationalized medical opinion establishing a material change in an employment-related condition. On July 19, 2010 he referred to osteoarthritis as being “directly related” to the “accident.”⁷ Osteoarthritis is not an accepted condition, and it is appellant’s burden of proof to establish causal relationship with employment.⁸ Dr. Broussard did not provide a complete background, detailed results on physical examination or medical rationale in support of his opinion. Moreover, even if the condition was established as employment related, the evidence must show a material change that would disable appellant for the selected position of receptionist/information clerk. Dr. Broussard did not discuss the selected position or appellant’s ability to perform the duties of the position.

The Board finds that appellant did not establish that modification of the wage-earning capacity determination was warranted. He did not show that the original determination was erroneous or establish a material change in an employment-related condition. It is noted that 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 appellant has not established that modification of the May 7, 2009 wage-earning capacity determination was warranted.

⁶ This would typically be argued by OWCP if they were attempting to show appellant’s wage-earning capacity had increased because of retraining or vocational rehabilitation.

⁷ Dr. Broussard discussed osteoarthritis immediately after noting that appellant was having trouble in his “opposite” knee. It is not entirely clear whether he is referring to osteoarthritis in the right knee, left knee or both knees.

⁸ See *Paul Foster*, 56 ECAB 208 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 5, 2011 is affirmed.

Issued: June 1, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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