



November 11, 2011 report in which Dr. Barry Oliver, an attending Board-certified orthopedic surgeon, described work restrictions, including no engaging in lifting for more than two hours per day, no continuous lifting of more than 5 pounds and no intermittent lifting of more than 15 pounds.<sup>2</sup> By decision dated May 7, 2012, OWCP denied appellant's request for merit review on the grounds that the submitted evidence was irrelevant and cumulative of previously submitted evidence.

As noted above, OWCP had issued a formal decision on appellant's wage-earning capacity on May 7, 2006, prior to the time he requested reconsideration on April 18, 2012. Board precedent and OWCP's procedures direct the claims examiner to consider the criteria for modification when a claimant requests compensation for wage loss in this circumstance.<sup>3</sup> Appellant submitted medical evidence in connection with his request for reconsideration of OWCP's October 14, 2011 decision which affirmed the denial of his request to modify OWCP's March 7, 2006 wage-earning capacity determination.<sup>4</sup> The Board finds that OWCP should have adjudicated the issue of modification of the wage-earning capacity determination.<sup>5</sup> The Board will therefore remand the case to OWCP for proper adjudication, to be followed by an appropriate merit decision to preserve appellant's appeal rights.<sup>6</sup>

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<sup>2</sup> Appellant also submitted a number of records concerning claims for lost wages on various dates.

<sup>3</sup> *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995) (if a formal decision on loss of wage-earning capacity is issued, the rating should be left in place unless the claimant requests resumption of compensation for total wage loss, in which instance OWCP will need to evaluate the request according to the customary criteria for modifying a formal loss of wage-earning capacity determination).

<sup>4</sup> 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. *Stanley B. Plotkin*, 51 ECAB 700 (2000); see Federal (FECA) Procedure Manual, *id.* at Chapter 2.814.11 (October 2009).

<sup>5</sup> *F.B.*, Docket No. 09-99 (issued July 21, 2010).

<sup>6</sup> In adjudicating the issue of modification of the wage-earning capacity determination, OWCP should consider FECA Bulletin No. 09-05 (issued August 18, 2009) which outlines OWCP procedures when limited-duty positions are withdrawn pursuant to NRP.

**IT IS HEREBY ORDERED THAT** the May 7, 2012 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: November 26, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board