

reconsideration request but should be adjudicated as a request for modification of a wage-earning capacity determination.²

Section 8124(a) of FECA provides: OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.³ Its regulations at section 10.126 of Title 20 of the Code of Federal Regulations provide: The decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁴ Moreover, OWCP's procedure manual provides: The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁵

The Board, having duly considered the matter, finds that OWCP's December 28, 2011 decision fails to properly explain the findings with respect to the issue presented. The decision states that a merit review was not conducted yet also sets forth the standard for determining whether a wage-earning capacity determination should be modified. OWCP appears to have both analyzed appellant's request as a timely request for reconsideration, under 5 U.S.C. § 8128(a), for which merit review was not granted and also analyzed the merits of whether the wage-earning capacity determination should be modified. As noted, since the underlying issue is modification of a wage-earning capacity determination, appellant's request should not be treated as a reconsideration request but should be adjudicated as a request for modification of a wage-earning capacity determination. Thus, OWCP, in its December 28, 2011 decision, did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, *i.e.*, whether he met his burden of proof to show modification of the loss of wage-earning capacity determination.

The case must be returned to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding appellant's request for modification of a wage-earning capacity determination. Following this and such further development as OWCP deems necessary, it shall issue an appropriate merit decision.

² See *F.B.*, Docket No.10-99 (issued June 21, 2010); *M.J.*, Docket No. 08-2280 (issued July 7, 2009).

³ 5 U.S.C. § 8124(a); see *Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

⁴ 20 C.F.R. § 10.126. See also *O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005); *M.L.*, Docket No. 09-956 (issued April 15, 2010).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(e) (March 1997).

IT IS HEREBY ORDERED THAT the December 28, 2011 decision be set aside and the matter remanded to the Office of Workers' Compensation Programs for further proceedings consistent with this order of the Board.

Issued: October 25, 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