

**United States Department of Labor
Employees' Compensation Appeals Board**

T.O., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Philadelphia, PA, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 13-1213
Issued: December 20, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On April 22, 2013 appellant, through counsel, filed a timely appeal from a January 11, 2013 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim for recurrence of disability on December 9, 2011. The Board docketed the appeal as No. 13-1213.¹

The Board has duly reviewed the record and finds that the case is not in posture for decision. By decision dated December 3, 2009, OWCP found that appellant's actual earnings as a medical support assistant fairly and reasonably represented her wage-earning capacity with zero loss. On December 21, 2011 appellant filed a recurrence claim, indicating that she stopped work on December 9, 2011. By decision dated March 14, 2012, OWCP denied her recurrence

¹ On September 26, 2001 appellant, a medical support assistant, sustained an employment-related laceration to the head when she was assaulted by a coworker. The claim was later expanded to include post-traumatic stress disorder (PTSD). Appellant did not return to work following the September 26, 2001 work injury, and was placed on the periodic compensation rolls. After vocational rehabilitation, appellant began private employment as an administrative assistant on July 8, 2005. This employment ended on April 12, 2006. OWCP accepted the recurrence and appellant was returned to the periodic rolls. She had a brief return to work in 2008, and was again placed on the periodic rolls. Appellant relocated to North Carolina and on September 29, 2008 began work as a medical support assistant at a Veterans facility in Raleigh, North Carolina. She stopped work on December 9, 2011.

claim on the grounds that the medical evidence was insufficient to establish that her accepted condition had worsened. On August 15, 2012 an OWCP hearing representative affirmed the March 14, 2012 decision.² In a merit decision dated January 11, 2013, OWCP denied appellant's recurrence claim.

As noted above, OWCP issued a formal decision on appellant's wage-earning capacity on December 3, 2009. It is well established that a claimant may establish that a modification of a wage-earning capacity is warranted if there is a material change in the nature and extent of an injury-related condition, or a showing that the original determination was, in fact, erroneous.³ Appellant's submission of a recurrence claim on December 21, 2011 for a recurrence of disability on December 9, 2011 should thus be regarded as a request for modification of the wage-earning capacity determination. The Board has held that, when a wage-earning capacity determination has been issued and appellant submits evidence with respect to disability for work, OWCP must evaluate the evidence to determine if modification of wage-earning capacity is warranted.⁴ In this case, OWCP adjudicated the claim for total disability beginning December 9, 2011 as a recurrence claim.

The Board finds that OWCP should have adjudicated appellant's recurrence claim for total disability compensation beginning December 9, 2011 as whether she had established that the wage-earning capacity determination should be modified.⁵ 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.

² The hearing representative noted that appellant made reference to new employment incidents and filed a new claim, adjudicated under file number xxxxxx228.

³ *P.C.*, 58 ECAB 405 (2007).

⁴ *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

⁵ *F.B.*, Docket No. 09-99 (issued July 21, 2010); *see also M.D.*, Docket No. 12-1317 (issued December 21, 2012).

IT IS HEREBY ORDERED THAT the January 11, 2013 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: December 20, 2013
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