

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

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<b>L.J., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 13-1261</b>
	)	<b>Issued: December 3, 2013</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS ADMINISTRATION MEDICAL</b>	)	
<b>CENTER, New Orleans, LA, Employer</b>	)	

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*Appearances:* *Case Submitted on the Record*  
*Debra Hauser, Esq., for the appellant*  
*Office of Solicitor, for the Director*

**ORDER REMANDING CASE**

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

On April 30, 2013 appellant filed a timely appeal from a February 21, 2013 decision of the Office of Workers' Compensation Programs (OWCP) that denied her recurrence claim. The Board docketed the appeal as No. 13-1261.<sup>1</sup>

The Board has duly reviewed the record and finds that the case is not in posture for decision. By decision dated April 27, 2012, OWCP reduced appellant's compensation based on her actual earnings as a clerk in a modified, sedentary position. On August 6, 2012 she filed a recurrence claim.<sup>2</sup> By decision dated February 21, 2013, OWCP denied appellant's recurrence claim on the grounds that the medical evidence was insufficient to establish that her accepted condition had worsened.

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<sup>1</sup> On April 27, 2005 appellant, a nurse, sustained employment-related lumbar and neck strains while lifting a patient. She received compensation for temporary total disability on the periodic rolls, and on July 20, 2006 received a voluntary separation incentive payment in the amount of \$25,000.00, with a net payment of \$16,760.01. The case has previously been before the Board. In decisions dated December 11, 2007 and May 9, 2008, the Board found that appellant received an overpayment of compensation but that the case was not in posture for decision regarding the amount of the overpayment. *L.J.*, 59 ECAB 264 (2007); Docket No. 08-1958 (issued May 9, 2008). In an October 1, 2010 decision, the Board found that appellant received an overpayment of compensation in the amount of \$20,312.64 and that OWCP properly denied waiver and required repayment of the overpayment by deducting \$250.00 each period from appellant's continuing compensation payments. Docket No. 10-510 (issued October 1, 2010). Appellant returned to work on November 20, 2011 but stopped work on February 28, 2012.

<sup>2</sup> *Id.* The record also indicates that appellant filed a claim for carpal tunnel syndrome, adjudicated separately by OWCP.

As noted above, OWCP issued a formal decision on appellant's wage-earning capacity on April 27, 2012. 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.<sup>3</sup> Appellant's submission of a recurrence claim on August 6, 2012 for a recurrence of disability on February 28, 2012 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.<sup>4</sup> Rather, in this case, in its February 21, 2013 decision, OWCP adjudicated the claim as a recurrence.

The Board finds that OWCP should have determined whether appellant had established that the wage-earning capacity determination should be modified.<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.

**IT IS HEREBY ORDERED THAT** the February 21, 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 3, 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

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<sup>3</sup> *P.C.*, 58 ECAB 405 (2007).

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

<sup>5</sup> *F.B.*, Docket No. 09-99 (issued July 21, 2010). *See also M.D.*, Docket No. 12-1317 (issued December 21, 2012).