



loss of wage-earning capacity (LWEC) as a modified job with the employing establishment represented his wage-earning capacity. By decision dated March 16, 2000, OWCP issued a schedule award for a six percent right arm impairment. In a decision dated June 14, 2006, it denied a claim for a recurrence of disability commencing January 26, 2004. Appellant filed an appeal with the Board and, by order dated March 2, 2007, the appeal was dismissed.<sup>3</sup> The Board noted that the evidence indicated that the June 14, 2006 decision had been vacated.

On August 20, 2010 appellant filed a claim for a recurrence of disability commencing July 16, 2010.<sup>4</sup> He noted that he had a claim for a left shoulder injury, and had injured his right shoulder while performing physical therapy as a result of the left shoulder condition. By decision dated October 12, 2010, OWCP denied the recurrence of disability claim.

Appellant requested an oral hearing before an OWCP hearing representative, which was held on March 31, 2011. In a report dated May 3, 2011, Dr. Marc Suffis, a Board-certified orthopedic surgeon, provided a history of injury and results on examination. He stated that appellant had been seen on July 27, 2010 for a reinjury of his right shoulder while doing physical therapy to rehabilitate his left shoulder. Dr. Suffis opined that appellant had recurrent rotator cuff tears that were secondary to the initial injury.

In a decision dated July 21, 2011, the hearing representative set aside the October 12, 2010 OWCP decision and the case was remanded for further development of the medical evidence. OWCP referred appellant for a second opinion examination by Dr. William Dinenberg, a Board-certified orthopedic surgeon. The statement of accepted facts (SOAF) noted that appellant had an accepted left shoulder claim for a January 26, 2004 employment injury. In addition, the SOAF indicated that appellant had worked in private employment since 2005 as a truck driver.

In a report dated September 27, 2011, Dr. Dinenberg reviewed the history of injury, reviewed the medical evidence and provided results on examination. He opined that appellant had developed a right rotator cuff arthropathy that was employment related and had not resolved. Dr. Dinenberg advised that appellant could work full time with restrictions, and he completed an OWCP-5c work capacity evaluation.

On November 2, 2011 OWCP accepted aggravation of right shoulder rotator cuff arthropathy. Appellant was advised to submit claims for compensation (Form CA-7) for periods of disability.

By letter dated January 10, 2012, the employing establishment indicated that appellant's employment had been terminated on March 30, 2004 for misconduct. In a report dated February 27, 2012, Dr. Suffis opined that appellant could not work as a truck driver. He stated that appellant had been released to sedentary work.

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<sup>3</sup> Docket No. 07-107 (issued March 2, 2007).

<sup>4</sup> Appellant also filed a claim for compensation (Form CA-7) on December 12, 2011 claiming wage-loss compensation commencing July 16, 2010.

In a decision dated November 1, 2012, OWCP denied the claim for wage-loss compensation commencing July 16, 2010. It found that the evidence was not sufficient to establish that he could not do a light-duty job. OWCP noted that he continued to work, “but for the termination for cause the agency would have offered you a light-duty position.”

### **LEGAL PRECEDENT**

OWCP procedures indicate that when a claimant has filed more than one claim there are circumstances where multiple claims should be combined into a single case.<sup>5</sup> For example, when adjudication of a case will require frequent reference to another case, the claims should be doubled.<sup>6</sup>

### **ANALYSIS**

In the present case, appellant claimed wage-loss compensation commencing July 16, 2010. The current claim is for a right shoulder injury resulting from an August 20, 1998 incident, accepted for right shoulder strain, rotator cuff tear and aggravation of rotator cuff arthropathy.

OWCP denied the claim on the grounds that appellant’s employment had been terminated in 2004 for cause, and appellant would have been offered a light-duty job with his work restrictions if his employment had not been terminated. It did not cite specific evidence from the employing establishment or Board case law in support of its decision.

The Board finds that the case must be remanded for proper adjudication of appellant’s claim for compensation. Appellant referred to a right shoulder injury resulting from physical therapy related to his left shoulder injury, but his left shoulder claim has not been doubled with the present claim. As noted, under OWCP procedures such claims should be combined for proper adjudication. Moreover, appellant alleged that a loss of wage-earning capacity determination (LWEC) was made pursuant to the left shoulder claim. If an LWEC decision was in place as of July 16, 2010, then OWCP should consider the claim for compensation with respect to a modification of an LWEC.<sup>7</sup>

The case will accordingly be remanded to OWCP for consolidation of the right and left shoulder claims. OWCP should further adjudicate appellant’s claim for compensation commencing July 16, 2010 and issue an appropriate decision.

### **CONCLUSION**

The Board finds the case must be remanded to OWCP for administrative doubling of case records and an appropriate decision.

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<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8 (February 2000).

<sup>6</sup> *Id.*

<sup>7</sup> See *Katherine T. Kreger*, 55 ECAB 633 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 1, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: November 22, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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