

regarding his current condition, it is not a request for reconsideration but a new request for modification of the wage-earning capacity determination.²

The September 29, 2011 decision denying modification of the July 12, 2001 decision was therefore a decision denying modification of the wage-earning capacity determination, not a denial of modification of the July 12, 2011 decision on reconsideration. As such, the September 29, 2011 decision should have included full appeal rights, including the right to a hearing.³ The record indicates that the September 29, 2011 decision stated only that appellant could request reconsideration or file an appeal with the Board.

The Board accordingly finds that OWCP improperly denied appellant's request for a hearing. The September 29, 2011 OWCP decision did not provide proper appeal rights regarding the right to a hearing and OWCP improperly found that appellant had previously requested reconsideration. The case will be remanded to OWCP to issue a proper decision on the issue presented with full appeal rights.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 30, 2012 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 4, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

² See *M.M.*, Docket No. 13-1832 (issued January 10, 2014) (even though appellant used the term reconsideration, OWCP improperly considered appellant's request for modification of a wage-earning capacity as an untimely reconsideration request); see also *S.B.*, Docket No. 11-460 (issued September 28, 2011).

³ See 20 C.F.R. § 10.126.