

August 4, 2002 through October 16, 2009. It stated, “As the claimant failed to provide rationale for total temporary disability, the claim for wage loss for total disability cannot be paid.”

The Board has clearly held that modification of a standing loss of wage-earning capacity determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was erroneous.³ OWCP’s procedures provide that, if a formal loss of wage-earning capacity decision has been issued, the rating should be left in place unless the claimant requests resumption of compensation for total wage loss. In this instance, the claims examiner will need to evaluate the request according to the customary criteria for modifying a formal loss of wage-earning capacity.⁴ The burden of proof is on the party attempting to show a modification of the loss of wage-earning capacity determination.⁵

In this case, the Board is unable to determine if OWCP applied the customary criteria in denying modification of appellant’s wage-earning capacity determination.

Section 8124(a) of Federal Employees’ Compensation Act provides: OWCP shall determine and make a finding of fact and make an award for or against payment of compensation....⁶ Section 10.126 of Title 20 of the Code of Federal Regulations provides: The decision shall contain findings of fact and a statement of reasons.⁷ Moreover, OWCP’s procedures provide: 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.⁸

The case must be returned to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding whether appellant has met his burden of proof under the customary standards to establish modification of his wage-earning capacity determination. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

³ *Sue A. Sedgwick*, 45 ECAB 211, 215-16 (1993); *Elmer Strong*, 17 ECAB 226, 228 (1965).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995). *See also* FECA Transmittal 10-01 (issued October 5, 2009).

⁵ *Selden H. Swartz*, 55 ECAB 272, 278 (2004).

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

⁷ 20 C.F.R. § 10.126. *See O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005); *Tonja R. Hiebert*, 55 ECAB 706 (2004) (it is a well-established principle that OWCP must make proper findings of fact and a statement of reasons in its final decisions).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(e) (March 1997).

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for action consistent with this order of the Board.

Issued: January 8, 2014
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