



On appeal, appellant's counsel argues that appellant has established that her occupational disease claim was sustained in the performance of duty under File No. xxxxxx674. He also argues that she established a material worsening of this condition under File No. xxxxxx169.

### **FACTUAL HISTORY**

Due to the complex nature of this case which involves two claims and various issues including a recurrence of disability, loss of wage-earning capacity determination, and aggravation of a preexisting emotional condition, a brief synopsis of facts are set forth as follows.

The records from both claims establish that appellant had a preexisting condition of post-traumatic stress disorder (PTSD) due to her being molested as a child. On January 3, 1995 the man accused of molesting appellant entered her work site as a customer. Appellant filed an occupational disease claim and OWCP accepted aggravation of her PTSD under OWCP File No. xxxxxx169. To prevent further possible exposure to the man who molested her, on March 17, 1999 appellant accepted a job transfer to the employing establishment. Appellant worked there until October 5, 2002 when she was exposed at work to a man who she believed was the nephew of the man who molested her as a child. This man shared the same last name, and strongly resembled her molester.<sup>2</sup> Appellant filed a claim for a recurrence of disability under her original claim. OWCP denied the recurrence claim finding that any further aggravation of her PTSD was the result of exposure to new work factors and, thus, unrelated to the accepted work factor, *i.e.* exposure at work to the man who abused her as a child. It also issued a retroactive loss of wage-earning capacity decision based on her actual earnings.

Appellant then filed a new occupational disease claim, assigned OWCP File No. xxxxxx674, alleging that she suffered an aggravation of PTSD when on October 5, 2002 she was exposed to a man with a strong resemblance and same last name as the man who had abused her as a child. OWCP continued to deny appellant's claims for benefits under both claim numbers.

The medical evidence from Dr. Teresa A. Miller, a treating Board-certified psychiatrist, described how appellant's disability on and after October 5, 2002 was due to an aggravation of her PTSD due to her federal employment, *i.e.*, exposure to a man with the same last name and strong resemblance of the man who abused her as a child, prior exposure to the molester at her work, and the associated sensory cues from the original traumatic injury. She explained that the exposure to the man who resembled appellant's molester is not a new incident, but a continuation of the accepted employment incident under appellant's first claim. The facts of the case are set forth below in greater detail.

On October 5, 1998 appellant, then a 47-year-old part-time flexible distribution/window clerk filed an occupational disease claim alleging a post-traumatic stress disorder, anxiety, and depression as the man who had molested her as a child was a daily customer at the employing establishment whom she encountered and interacted with in her capacity as a window clerk. She

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<sup>2</sup> The record, however, is otherwise unclear what relationship this man had to the man who molested appellant as a child.

was working in the Memphis, NY station at the time.<sup>3</sup> Appellant noted that she first became aware of this condition on January 3, 1995, but did not realize it was employment related until May 22, 1998.

On November 2, 1998 the employing establishment offered appellant a part-time flexible hub clerk position in Fulton, New York. It allowed her until November 13, 1998 to accept or decline the offer as it had to fill the position in a timely manner. Appellant ultimately declined the offer.

On March 10, 1999 the employing establishment offered appellant the position of part-time flexible hub clerk in the employing establishment. On March 17, 1999 appellant accepted the job offer.

By decision dated April 30, 1999, OWCP denied appellant's occupational disease claim.

Appellant requested reconsideration and submitted a witness statement from her brother who witnessed the alleged harassment. She also submitted a medical report from Dr. Miller dated December 9, 1998 in which Dr. Miller opined that appellant's condition is directly related to reexposure to the trauma of her childhood. Dr. Miller noted that, prior to the January 3, 1995 incident, appellant had none of her current symptoms and was able to function in her life.

By decision dated February 3, 2000, OWCP vacated its April 30, 1999 decision denying appellant's claim, and accepted the claim for PTSD. It paid her compensation benefits.

By decision dated May 21, 2001, OWCP terminated appellant's wage-loss compensation benefits finding that she had refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c). It explained that the employing establishment had made job offers to appellant, which she had declined.

In a letter dated June 1, 2001, appellant requested an oral hearing before an OWCP hearing representative, which was held on February 26, 2002.

By decision dated August 22, 2002, an OWCP hearing representative affirmed the May 21, 2001 decision.

On November 7, 2002 OWCP received appellant's undated request for reconsideration. By decision dated January 16, 2003, it denied modification.

By letter dated February 27, 2003, appellant again requested reconsideration. In a decision dated October 14, 2004, OWCP denied reconsideration as the evidence submitted was insufficient to warrant further merit review. Appellant appealed that nonmerit decision to the Board.

By order dated June 9, 2005, the Board set aside the October 14, 2004 nonmerit decision.<sup>4</sup> The Board found that OWCP had abused its discretion in denying appellant a review

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<sup>3</sup> OWCP assigned File No. xxxxxx169.

<sup>4</sup> *Order Remanding Case*, Docket No. 05-581 (issued June 9, 2005).

of the merits, as it waited approximately 19 months before issuing a nonmerit decision. The Board remanded the case to OWCP for further review consistent with the Board's opinion.

By decision dated October 4, 2005, OWCP denied modification after performing a merit review. On December 2, 2005 appellant again requested reconsideration. By decision dated April 4, 2006, OWCP again denied modification.

In a February 23, 2007 order, the Board reversed OWCP's April 4, 2006 decision, finding that OWCP improperly terminated appellant's compensation under 5 U.S.C. § 8106(c).<sup>5</sup> The Board noted that OWCP failed to follow its procedures as it did not issue a suitability determination on the November 2, 1998 position or issue a 30-day letter informing her that the position was suitable and still available. Additionally, OWCP did not provide appellant an opportunity to either accept the position or provide an explanation for her refusal within the requisite time limitations. Moreover, it did not take into consideration that she had accepted another offered position.

On June 9, 2010 appellant filed a claim for a recurrence of disability due to her accepted January 3, 1995 employment injury. She alleged that her disability began on October 4, 2002 as a result of exposure to the nephew of the man who had abused her as a child. Appellant alleged that she requested limited-duty work, which was denied by the employing establishment.

In support of her claim for a recurrence of disability, appellant submitted an August 12, 2010 report from Dr. Miller under OWCP File No. xxxxxx169. This report was also submitted under OWCP File No. xxxxxx674 in support of her new occupational disease claim as Dr. Miller provided a history and treatment of appellant's condition under both claims. As Dr. Miller references treatment from the original injury to the date of appellant's total disability in 2002, it is relevant to both claims.

Dr. Miller detailed the treatment appellant had received for her PTSD since June 26, 1998 and related that appellant was transferred from her original duty station due to exposure to her childhood abuser at the employing establishment on March 26, 1999. In September 2001 the alleged nephew of appellant's childhood abuser requested that appellant hold his mail so that it could be picked up on Saturday from appellant. Due to the alleged nephew's strong resemblance to appellant's abuser, she began to have a recurrence of her PTSD. Dr. Miller noted that due to PTSD appellant was taken out of work from July 10 to August 6, 2002 and that on September 26, 2002 she recommended that appellant not return to work. She opined that appellant's symptoms had worsened to the extent that she could no longer perform her duties and that she is currently totally disabled.

By decision dated September 1, 2010, OWCP found the evidence insufficient to establish that appellant sustained a recurrence of disability beginning October 5, 2002 causally related to her accepted employment injury.

By decision dated September 2, 2010, OWCP issued a retroactive loss of wage-earning capacity decision (LWEC) based on appellant's actual earnings as a part-time flexible (PTF) hub

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<sup>5</sup> *Order Reversing Case*, Docket No. 06-1155 (issued February 27, 2007).

clerk at the employing establishment. It found that she worked in the position for over three years commencing March 27, 1999; that the employment fairly and reasonably represented her wage-earning capacity; and per the September 1, 2010 decision, the work stoppage “did not occur because of any change in the claimant’s injury-related condition affecting ability to work.”

On September 3, 2010 appellant filed a claim for a recurrence of disability alleging that her request for light-duty work was denied.

On September 21, 2010 appellant elected to receive Civil Service retirement benefits from the Office of Personnel Management in lieu of FECA benefits effective April 1, 2010.

On October 4, 2010 appellant filed an occupational disease claim alleging aggravation of her preexisting employment-related PTSD.<sup>6</sup> She alleged that she first became aware of her condition on January 3, 1995, but did not realize that it was employment related until October 5, 2002. Appellant alleged that her PTSD was aggravated by exposure to a customer who she believed to be the nephew of an individual who had sexually abused her as a child as he shared the same last name and strongly resembled her abuser. On the back of the form, the employing establishment noted that she first reported the condition to a supervisor on November 2, 2010.

By letter dated February 3, 2011, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to establish her claim and was afforded 30 days to provide the requested information. OWCP noted that the evidence currently of record was insufficient to establish that she actually experienced the employment factor she alleged caused her injury.

In response to questions posed by OWCP, appellant stated that she knows that the individual in question is the nephew of her abuser. She related that as she was the only clerk working on Saturdays she had to interact with the man by handing over mail he asked to be held instead of delivered on Saturdays.

In an August 17, 2010 statement, a retired postmaster noted that appellant worked for him until the fall of 2001. It was at this time that he noticed her becoming teary and anxious as the weekend approached. Appellant informed him “that she was having a difficult time during the week and weekend” due to a man who looked like and was a relative of her abuser. This relative of her abuser was a customer at the post office where appellant worked. The retired postmaster noted that he waited on this individual during the week if appellant was there, but on Saturdays appellant had to have contact by handing over any held mail to him. In concluding, he related that appellant became increasingly distraught and unable to perform her job until she left the employing establishment in 2002.

In a September 24, 2010 report, Dr. Miller indicated that appellant had been under her care since 1998.<sup>7</sup> She related that over the years the employing establishment had “taken on the

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<sup>6</sup> OWCP assigned File No. xxxxxx674.

<sup>7</sup> While this report was submitted under OWCP File No. xxxxxx674, it is relevant to the issues presented in OWCP File No. xxxxxx169.

fact of yet another abuser,” due to the continual rejection of her claims for compensation and lost wages. Dr. Miller disagreed with OWCP’s characterizing appellant’s encounter with the nephew of her abuser as a new incident. She noted that the nephew’s “striking resemblance to the molester (particularly since his current age was near that of the molester’s at the time of the original abuse) perpetuates the original PTSD symptoms.” Thus, Dr. Miller concluded that this was not a new incident, but a continuation of the original incident. She related that appellant “is not responding to the nephew as a new source of PTSD: she is responding to the molester who that nephew so much resembles.”

On March 11, 2011 the retired postmaster stated that appellant informed him that she had no problem with handing mail to the person appellant alleged to be the nephew of her assailant.

By a May 3, 2011 decision, OWCP denied appellant’s claim that she sustained an emotional condition due to exposure to the nephew of the man who had abused her as a child. It found the evidence insufficient to establish that the event or injury occurred as alleged.

In a facsimile dated August 22, 2011 and letter dated August 22, 2011, counsel requested reconsideration on the denial of appellant’s recurrence claim and the September 2, 2010 retroactive LWEC. In support of the request, he submitted medical and factual evidence, including reports dated September 24, 2010 and June 18, 2011 from Dr. Miller.

In a June 18, 2011 report, Dr. Miller noted that appellant was previously diagnosed with PTSD which was undisputed by OWCP. She noted that appellant’s chronic PTSD included all the symptoms as described in Criteria B of the DSM-IV-TR. Dr. Miller related that symptoms of this condition could be aggravated by sensory cues of sight, hearing, smell, taste or touch. According to Dr. Miller, appellant’s increased psychological distress occurred as a result of exposure while working at the employing establishment to a man with a strong resemblance and same last name as the man who had abused her as a child. She explained that appellant’s psychological reaction was due to “the exposure to external cues that symbolize and resemble an aspect of the traumatic event.” Dr. Miller related that appellant transferred to the employing establishment in March 1999, but unfortunately the persistent stimuli continued and “aroused recollections of the original trauma, worsening her PTSD symptoms.” Due to the worsening of appellant’s PTSD, Dr. Miller determined that she was totally disabled from working, with October 4, 2012 as her last workday. In concluding, she opined that the recurrence of appellant’s PTSD “was directly related to the consequential injury of being reexposed to the man who severely sexually abused her as a child while working at the Memphis Post Office, January 3, 1995.”

In a letter dated September 6, 2011, counsel requested reconsideration of the May 3, 2011 OWCP decision and submitted medical and factual evidence.

In a May 10, 2011 statement, appellant disagreed with the retired postmaster’s statement that she had no problem handing mail to the man she believed to be the nephew of her abuser. She also alleged that his March 11, 2011 statement contradicted his earlier statement of August 17, 2010.

In an undated statement, a coworker of appellant at the employing establishment, related seeing appellant become upset and agitated when a customer who was a relative of the man who abused her as a child entered the facility. The coworker noted working with appellant on Saturdays and that appellant had asked her several times to give the man his mail because she did not want to do it.

By decision dated March 23, 2012, OWCP affirmed its May 3, 2011 decision. Appellant appealed this decision to the Board.

In a letters dated May 7, September 12, 2012, March 17 and June 7, 2013, appellant's counsel reiterated appellant's request for reconsideration in File No. xxxxxx169.

By order dated June 25, 2013, the Board set aside the March 23, 2012 decision denying appellant's emotional condition claim and remanded the case for OWCP to combine OWCP File No. xxxxxx674 with OWCP File No. xxxxxx169.<sup>8</sup> The Board found that OWCP failed to follow its procedures when it failed to combine both claims as they involved a similar condition. On remand and after combining the two case records, OWCP was instructed to issue a *de novo* decision on whether appellant established that she sustained an emotional condition in the performance of duty.

On remand OWCP, as instructed by the Board, combined the two OWCP files, with File No. xxxxxx169 serving as the master file.

By decision dated August 16, 2013, OWCP denied modification of the denial of appellant's emotional condition claim under File No. xxxxxx674.

By decision dated October 23, 2013, OWCP denied modification of its September 1 and 2, 2010 decisions under File No. xxxxxx169 regarding the recurrence claim and LWEC, respectively.<sup>9</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

To establish a claim that he or she sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.<sup>10</sup>

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<sup>8</sup> *Order Remanding Case*, Docket No. 12-1854 (issued June 25, 2013).

<sup>9</sup> The Board notes that, following the October 23, 2013 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>10</sup> *V.W.*, 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>11</sup> There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.<sup>12</sup> Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>13</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>14</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleged that her PTSD recurred as the result of being exposed to the nephew of the man who had sexually abused her as a child. OWCP found that she failed to submit sufficient factual evidence supporting her allegation. The issue on appeal is whether appellant has established a compensable factor of employment.

The Board finds that OWCP did not make adequate findings of fact regarding whether the employment factor alleged by appellant constituted a compensable employment factor. In the June 25, 2013 order, the Board instructed it to combine appellant's two emotional condition claims and issue a *de novo* decision on whether appellant established that she sustained an emotional condition in the performance of duty.

However, in its August 16, 2013 determination, OWCP made no specific findings regarding the alleged employment factor and failed to provide a reason why it would not be considered a compensable employment factor. It also failed to conduct a *de novo* review as instructed by the Board. Rather, OWCP merely indicated in a general fashion that the factor alleged by appellant was not accepted as constituting a compensable employment factor and that modification of the denial of her claim was unwarranted. There was no discussion as to whether the allegation was supported by evidence or whether the allegation was outside the scope of coverage under FECA. In addition, the record contains new medical evidence from Dr. Miller which is relevant to the issue of whether appellant established a compensable factor, but it was not considered by OWCP in its determination. The record also contains statements relative to appellant's contention which were not discussed by OWCP.

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP as part of its adjudicatory function must make findings of fact regarding whether working conditions alleged by appellant are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are

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<sup>11</sup> *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>12</sup> *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

<sup>13</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>14</sup> *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

not deemed factors of employment and may not be considered.<sup>15</sup> OWCP's regulations direct that decisions shall contain findings of facts and a statement of reasons.<sup>16</sup> The Board has held that 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. OWCP did not explain why the alleged incident was not compensable or what evidence was required to establish a compensable factor of employment with respect to the alleged incident. In denying appellant's claim, it noted that no new evidence had been submitted and modification was unwarranted.

On remand OWCP shall make findings of fact regarding whether the employment factor alleged by appellant is a compensable employment factor which would bring her claimed emotional condition within the performance of duty and whether the evidence of record establishes the existence of such a factor. After this and such further development as may be deemed necessary, OWCP will issue a *de novo* decision on appellant's claim.

### **LEGAL PRECEDENT -- ISSUE 2**

An injured employee who is either unable to return to the position held at the time of injury or unable to earn equivalent wages, but who is not totally disabled for all gainful employment, is entitled to compensation computed on loss of wage-earning capacity.<sup>17</sup> An employee's actual earnings generally best reflect his wage-earning capacity.<sup>18</sup> Absent evidence that actual earnings do not fairly and reasonably represent the employee's wage-earning capacity, such earnings must be accepted as representative of the individual's wage-earning capacity.<sup>19</sup> Compensation payments are based on the wage-earning capacity determination, and OWCP's finding remains undisturbed until properly modified.<sup>20</sup>

Factors to be considered in determining if a position fairly and reasonably represents the injured employee's wage-earning capacity include: (1) whether the kind of appointment and tour of duty are at least equivalent to those of the date-of-injury job; (2) whether the job is part-time (unless the claimant was a part-time worker at the time of injury) or sporadic in nature; (3) whether the job is seasonal in an area where year-round employment is available; and (4) whether the job is temporary where the claimant's previous job was permanent.<sup>21</sup>

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<sup>15</sup> *V.W.*, 58 ECAB 428 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>16</sup> 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).

<sup>17</sup> 5 U.S.C. § 8115(a); 20 C.F.R. §§ 10.402, 10.403; see *W.B.*, Docket No. 09-934 (issued January 11, 2010); *Alfred R. Hafer*, 46 ECAB 553 (1995).

<sup>18</sup> *H.N.*, Docket No. 09-1628 (issued August 19, 2010); *J.C.*, 58 ECAB 700 (2007); *Connie L. Potratz-Watson*, 56 ECAB 316 (2005); *Hayden C. Ross*, 55 ECAB 455 (2004).

<sup>19</sup> *Id.*

<sup>20</sup> See *Harley Sims, Jr.*, 56 ECAB 320 (2005); *Katherine T. Kreger*, 55 ECAB 633 (2004).

<sup>21</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.815.5 (June 2013).

Additionally, a makeshift or odd-lot position designed to meet an injured employee's particular needs will not be considered representative of one's wage-earning capacity.<sup>22</sup>

Assuming the position is both vocationally and medically suitable and conforms to the above-noted criteria, the position will generally be deemed to represent the employee's wage-earning capacity after she has successfully performed the required duties for at least 60 days.<sup>23</sup>

### **ANALYSIS -- ISSUE 2**

OWCP accepted appellant's claim for PTSD in OWCP File No. xxxxxx169. The question that arises is whether it was appropriate for OWCP to issue a retroactive LWEC determination on September 3, 2010 when appellant stopped work on October 5, 2002. On appeal, counsel argues that the medical evidence establishes that appellant's work stoppage on October 5, 2002 was due to a worsening in appellant's condition which was not considered.

In reaching its LWEC determination on September 3, 2010, OWCP found that appellant had received actual earnings as a part-time flexible clerk beginning March 27, 1999, that she stopped work on October 5, 2002, and that she retired on medical disability. Prior to the decision appellant filed an August 12, 2010 medical report from Dr. Miller who opined that appellant's condition had worsened so that she was unable to work. Appellant filed claims for a recurrence of disability beginning October 5, 2002 alleging that her work-related condition had materially worsened so that she was totally disabled.

There are situations when a retroactive LWEC determination may be appropriate. As noted above, OWCP's procedure manual provides that a retroactive determination may be made where the claimant worked in the position for at least 60 days, the employment fairly and reasonably represented the wage-earning capacity, and the work stoppage did not occur because of any change in the claimant's injury-related condition affecting her ability to work.<sup>24</sup>

In the current case, OWCP issued its LWEC determination after it received evidence that appellant's ability to work had changed such that she was totally disabled. In an August 12, 2010 report, Dr. Miller opined that appellant's work-related condition had worsened to the extent that she was totally disabled from working at the employing establishment. Thus, appellant alleged that her work stoppage and retirement on medical disability effective October 5, 2002 had occurred as a result of a change in her injury-related condition. The Board notes that the procedure manual directs the claims examiner to request information from the claimant regarding the work stoppage and develop the record appropriately.<sup>25</sup> There is no evidence that this necessary request occurred in this matter. OWCP should have adjudicated the recurrence claim

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<sup>22</sup> *A.J.*, Docket No. 10-619 (issued June 29, 2010) (a makeshift/odd-lot position generally lacks a position description with specific duties, physical requirements and a work schedule).

<sup>23</sup> *Supra* note 19 at Chapter 2.815.5(e) (June 2013).

<sup>24</sup> *Juan A. DeJesus*, 54 ECAB 712 (2003).

<sup>25</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on Actual Earnings*, Chapter 2.815.7(c) (June 2013).

for disability compensation on and after October 5, 2002, the date appellant retired on medical disability, based on the relevant medical evidence, rather than issuing a retroactive LWEC determination. Accordingly, the Board finds that it did not properly determine appellant's LWEC in its September 3, 2010 determination.<sup>26</sup>

**CONCLUSION**

The Board finds the case is not in posture for a decision on the issue of whether appellant established that she sustained an emotional condition in the performance of duty under File No. xxxxxx674. Under File No. xxxxxx169, the Board finds that OWCP erroneously issued a retroactive wage-earning capacity decision after appellant submitted evidence supporting a change in her work-related condition and after she filed a recurrence claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 23, 2013 is remanded and the August 16, 2013 decision is set aside and remanded for further proceedings consistent with the above opinion.

Issued: January 12, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>26</sup> The Board finds that issue of whether appellant established a recurrence of disability under OWCP File No. xxxxxx169 is premature in light of the disposition of issue two, concerning a retroactive LWEC determination.