



The Board has duly reviewed the record and finds that the case is not in posture for decision. By decision dated May 13, 2014, OWCP reduced appellant's compensation based on her capacity to earn wages in the constructed position of receptionist. By decision dated March 12, 2015, an OWCP hearing representative affirmed the May 13, 2014 decision.

On November 10, 2015 appellant, through counsel, requested reconsideration. In support appellant submitted a personal statement in which she requested that full benefits be reinstated, asserting that she was in constant pain and needed assistance with activities of daily living. She also submitted treatment notes dated May 20 to October 14, 2015 from Dr. Kraig Allan Ward, an attending Board-certified physiatrist and pain medicine specialist. In correspondence dated October 14, 2015, Dr. Ward advised that he began treating appellant in 2006 and opined that she continued to struggle with ongoing disabling back pain. He advised that an electrodiagnostic study demonstrated ongoing denervation, and that she had right lower extremity weakness and pain. By decision dated December 14, 2015, OWCP denied modification of the March 12, 2015 decision. It did not address the criteria for modifying a wage-earning capacity decision.

The Board finds that the issue presented in this case is whether the May 13, 2014 wage-earning capacity determination should be modified. With her November 10, 2015 reconsideration request appellant requested resumption of full wage-loss compensation and submitted evidence regarding her medical condition.

As noted above, OWCP issued a formal decision on appellant's wage-earning capacity on May 13, 2014, prior to the time she requested reconsideration on November 10, 2015. Board precedent directs the claims examiner to consider the criteria for modification when a claimant requests resumption of compensation for total wage loss.<sup>3</sup> The Board finds that OWCP should have adjudicated the issue of modification of the wage-earning capacity determination.<sup>4</sup> If there is a claim for increased disability that would prevent a claimant from performing the position that was the basis for the wage-earning capacity decision, then clearly there is an issue of whether modification is appropriate.<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.

---

<sup>3</sup> *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Modification of Loss of Wage-Earning Capacity Decisions*, Chapter 2.1501 (June 2013).

<sup>4</sup> *F.B.*, Docket No. 09-99 (issued July 21, 2010).

<sup>5</sup> *R.L.*, Docket No. 16-0072 (issued February 11, 2016).

**IT IS HEREBY ORDERED THAT** the December 14, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: July 19, 2016  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board