

**United States Department of Labor
Employees' Compensation Appeals Board**

A.F., Appellant)	
)	
and)	Docket No. 16-1488
)	Issued: November 18, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Jamaica, NY, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On July 11, 2016 appellant filed a timely appeal of a March 16, 2016 merit decision and a May 23, 2016 nonmerit decision of the Office of Workers' Compensation Programs¹ (OWCP). The Board docketed the appeal as 16-1488.

The Board has duly reviewed the record and finds that the case is not in posture for decision. By decision dated June 8, 2006, OWCP found that the modified letter carrier position appellant had accepted on March 11, 2006 fairly and reasonably represented his wage-earning capacity in accordance with 5 U.S.C. § 8115. It found appellant had no loss of wage-earning capacity.

Appellant filed a recurrence of disability (Form CA-2a) on January 8, 2016 alleging he sustained a recurrence of total disability as of January 4, 2016 due to his August 6, 2005 employment injury. By decision dated March 16, 2016, OWCP denied the claim for a recurrence of disability finding that the evidence was not sufficient to establish that appellant had established an employment-related recurrence of disability. It did not acknowledge that it had issued a June 8, 2006 wage-earning capacity determination.

¹ The May 23, 2016 decision denied appellant's April 26, 2016 request for a review of the written record as untimely.

Once a wage-earning capacity determination is made, it remains in place until it is modified.² A modification of such 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, in fact, erroneous.³ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁴

Appellant's submission of a recurrence claim on January 8, 2016 for a recurrence of disability on January 4, 2016 should be regarded as a request for modification of the wage-earning capacity determination. The Board has held that, when a wage-earning capacity determination has been issued and appellant submits evidence with respect to disability for work, OWCP must evaluate the evidence to determine if modification of wage-earning capacity is warranted.⁵ OWCP procedures specifically provide that if a formal wage-earning capacity decision has been issued, and the claim is for recurrent disability, it should be processed in accordance with procedures for modifying a formal wage-earning capacity decision.⁶ In this case, in its March 16, 2016 decision, OWCP adjudicated the claim as a recurrence of disability without any reference to the wage-earning capacity determination.

The Board finds that OWCP should have determined whether appellant had established that the wage-earning capacity determination should be modified.⁷ 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.⁸

² See *G.L.*, Docket No. 15-1487 (issued October 13, 2015); *P.Y.*, Docket No. 09-2293 (issued September 1, 2010).

³ *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁴ *Id.*

⁵ *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12 (February 2013).

⁷ *L.J.*, Docket No. 13-1261 (issued November 4, 2013); *F.B.*, Docket No. 09-99 (issued July 21, 2010). See also *M.D.*, Docket No. 12-1317 (issued December 21, 2012).

⁸ In view of the Board's findings, it will not address the May 23, 2016 decision denying the request for a review of the written record.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 16, 2016 is set aside and the case remanded to OWCP for further action consistent with this order of the Board.

Issued: November 18, 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