

accepted for bilateral carpal tunnel syndrome, cervical strain, and a temporary aggravation of C5-6 and C6-7 disc herniations, OWCP found that the modified administrative support assistant position appellant had accepted on December 5, 2011 fairly and reasonably represented her wage-earning capacity in accordance with 5 U.S.C. § 8115.

Appellant filed a notice of occupational disease (Form CA-2) on September 25, 2013 alleging that her duties on or before August 26, 2013 caused bilateral carpal tunnel syndrome, cervical strain, and a temporary aggravation of C5-6 and C6-7 disc herniations, conditions previously accepted by OWCP.² She contended that these conditions totally disabled her for work as of August 26, 2013. Appellant submitted an attending physician's report holding her off work as of August 26, 2013. She also claimed wage-loss compensation for total disability commencing August 26, 2013. By decision dated July 21, 2016, OWCP denied the occupational disease claim, finding the medical evidence of record was insufficient to establish causal relationship. Additionally, it denied appellant's claims for wage loss from August 26, 2013 onward. OWCP did not acknowledge that it had issued a February 14, 2012 loss of wage-earning capacity determination under File No. xxxxxx908.

Once a loss of wage-earning capacity determination is made, it remains in place until it is modified.³ 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.⁴ The burden of proof is on the party attempting to show a modification of the loss of wage-earning capacity determination.⁵

Appellant's submission of an occupational disease claim on September 25, 2013, with an accompanying claim for wage loss, indicates that she believed the accepted conditions had materially worsened such that she could no longer work. The claim should therefore be regarded as a request for modification of the February 14, 2012 loss of wage-earning capacity determination. The Board has held that, when a loss of 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 the loss of wage-earning capacity determination is warranted.⁶ OWCP procedures specifically provide that if a formal wage-earning capacity decision has been issued, and the claimant subsequently alleges a worsening of the accepted condition or conditions, such claim should be processed in accordance with procedures for modifying a formal wage-earning capacity decision.⁷ In this case, in its July 21,

² See *supra* note 1.

³ See *G.L.*, Docket No. 15-1487 (issued October 13, 2015); *P.Y.*, Docket No. 09-2293 (issued September 1, 2010).

⁴ *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁵ *Id.*

⁶ *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Modification of Loss of Wage-Earning Capacity Decisions, Criteria for Modification*, Chapter 2.1501.3.a.2 (February 2013).

2016 decision, OWCP adjudicated the occupational disease claim without any reference to the loss of wage-earning capacity determination.

The Board finds that OWCP should have determined whether appellant had established that the loss of wage-earning capacity determination should be modified based on a worsening of the accepted conditions.⁸ The Board will therefore remand the case to OWCP for proper adjudication, including combining appellant's accepted upper extremity claims as appropriate, to be followed by issuance of a *de novo* decision to preserve appellant's appeal rights.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 21, 2016 is set aside and the case remanded to OWCP for further action consistent with this order of the Board.

Issued: September 5, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁸ *Id.*