

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

Y.C., Appellant	)	
	)	
and	)	<b>Docket No. 17-0380</b>
	)	<b>Issued: March 9, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Philadelphia, PA, Employer	)	
	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On December 12, 2016 appellant, through counsel, filed a timely appeal from an October 7, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that modification of her August 15, 2011 loss of wage-earning capacity (LWEC) determination is warranted.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances set forth in the Board's prior decisions are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On April 30, 2001 appellant then a 44-year-old letter carrier, had neck, shoulder, and arm pain at work. OWCP accepted her claim for aggravation of degenerative disc disease of the cervical spine. Appellant stopped work on July 18, 2001. She returned to work on September 26, 2002, and worked intermittently thereafter. OWCP paid appellant wage-loss compensation benefits.

Dr. Steven J. Valentino, an osteopath, saw appellant on June 13, 2001 for cervical degenerative disc disease with neck pain radiating into her right arm which became worse when she carried mail. Appellant's history was significant for carpal tunnel syndrome. Dr. Valentino diagnosed exacerbation of cervical degenerative disc disease with facet strain, and right C6 radiculopathy. He continued to treat appellant and recommend limited-duty work.<sup>4</sup>

On September 15, 2009 appellant was referred for vocational rehabilitation.

Appellant continued to be treated by Dr. Valentino, who indicated that appellant could work full time within restrictions. In an August 24, 2010 work capacity evaluation, Dr. Valentino diagnosed degenerative cervical disc disease and noted that appellant could return to work full-time, sedentary duty with no reaching above the shoulder; driving limited to two hours; repetitive movements of the wrists and elbow limited to four hours; pushing, pulling and lifting limited to 4 hours and 10 pounds with 5-minute breaks three times a day; and one 45-minute break.

In a May 13, 2010 rehabilitation plan, the vocational rehabilitation counselor noted that the employing establishment had no work available within appellant's medical restrictions. A rehabilitation plan was approved with the objective of obtaining a position of accounting clerk or customer service clerk. Those jobs were found to be within appellant's educational capabilities based on vocational testing and were reasonably available in her commuting area. In a September 26, 2010 closure report, the rehabilitation counselor noted that appellant was not cooperative with placement efforts and felt that her former employer should reemploy her.

On June 1, 2011 OWCP again referred appellant to vocational rehabilitation. The rehabilitation counselor provided the current wages and availability for the job of accounting clerk in appellant's commuting area. In a June 9, 2011 report, the rehabilitation counselor

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<sup>3</sup> Docket No. 08-1545 (issued March 10, 2009); Docket No. 12-1407 (issued January 24, 2013); Docket No. 14-1605 (issued November 21, 2014); *Order Remanding Case*, Docket No. 15-1302 (issued October 8, 2015).

<sup>4</sup> On November 14, 2007 appellant filed a claim for a schedule award (Form CA-7). On April 14, 2008 OWCP denied appellant's schedule award claim. Appellant appealed to the Board and, in a March 10, 2009 decision, the Board affirmed the April 14, 2008 decision. Docket No. 08-1545 (issued March 10, 2009). On April 29, 2009 OWCP granted appellant a schedule award for nine percent permanent impairment of the right arm.

advised that the current wages for an accounting clerk (DOT #216.482.010) were \$26,620.00 per year and that such positions were reasonably available in her commuting area.

On June 28, 2011 OWCP proposed to reduce appellant's compensation, finding she was partially disabled and had the capacity to earn wages as an accounting clerk, DOT #216.482.010 at the rate of \$511.92 per week. The position was found to be in compliance with Dr. Valentino's August 24, 2010 restrictions.

In an August 2, 2011 work capacity evaluation, Dr. Valentino opined that appellant was unable to perform her usual job and could not work eight hours per day due to pain, but could work four hours per day with a gradual increase in hours. He noted that appellant could work four hours per day with no reaching or reaching above the shoulder; repetitive movements of the wrist and elbow were limited to two hours and 10 pounds; and pushing, pulling, and lifting were limited to two hours and 10 pounds.

By decision dated August 15, 2011, OWCP reduced appellant's compensation to reflect her wage-earning capacity as an accounting clerk, effective August 28, 2011.<sup>5</sup>

Appellant saw Dr. Scott M. Fried, an osteopath, on August 31, 2011, who diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, radial and medial neuropathy on the right, brachial plexopathy/cervical radiculopathy on the right, thoracic neuritis, scapular winging, right rotator cuff strain, and capsulitis of the shoulder. Dr. Fried opined that appellant had a significant repetitive strain injury and cervical sprain which resulted from her work as a carrier in addition to casing and repetitive hand, wrist, and arm activities with reexacerbations and reaggravations over her work history. He found that appellant could perform sedentary work within certain restrictions. Dr. Fried opined that placing appellant in an accounting job would worsen and aggravate her problem.

On September 28, 2011 Dr. Valentino reported worsening neck, right shoulder, and arm symptoms as appellant was working on the computer and practicing her typing in an attempt to find a job. He offered diagnoses and advised that appellant was totally disabled. Dr. Valentino continued submitting reports noting appellant's status.

On March 15, 2012 appellant requested reconsideration of the August 15, 2011 LWEC determination as she was not medically able to work as an accounting clerk. She also submitted reports from Dr. Fried. On January 11, 2012 Dr. Fried noted findings from a December 2, 2011 functional capacity evaluation (FCE) revealed diminished ability to manipulate small objects and increased symptoms with lifting and carrying.

Appellant submitted a March 10, 2012 report from Dr. Clancy McKenzie, a Board-certified psychiatrist, who treated her since September 14, 2011 for severe chronic pain and major depression. Dr. McKenzie diagnosed major depression, recurrent, severe with suicidal ideation and chronic pain syndrome, and chronic severe degenerative disc disease. He opined

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<sup>5</sup> Appellant requested a telephonic hearing on August 24, 2011. On December 29, 2011 appellant was notified that she had failed to appear for a hearing scheduled for December 8, 2011 and she had not explained her failure to appear. Therefore, it was determined that she had abandoned her request for a telephonic hearing.

that appellant was 100 percent disabled. Dr. McKenzie opined that appellant's depression was the direct result of her cervical spine injuries.

By decision dated June 13, 2012, OWCP denied modification of its August 15, 2011 LWEC decision. It found that the medical evidence of record did not establish that appellant's depression was due to her employment. Appellant appealed to the Board. By decision dated January 24, 2013, the Board affirmed the June 13, 2012 decision, finding that OWCP properly denied modification its August 15, 2011 loss of wage-earning capacity determination.<sup>6</sup>

Appellant requested reconsideration on September 25, 2013. Medical evidence submitted included reports from Dr. Fried, from February 14 to October 29, 2013, who diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, radial and median neuropathy on the right, brachial plexopathy/cervical radiculopathy on the right, thoracic neuritis, scapular winging, right rotator cuff strain, and capsulitis of the shoulder. Dr. Fried noted that appellant could not return to regular work. An April 12, 2013 FCE, ordered by Dr. Fried, noted that appellant did not meet the full physical demands for sedentary work, including the accounting clerk position, or medium work as a letter carrier. Appellant was symptomatic throughout the evaluation and found totally disabled.

Reports from Dr. Valentino from March 19 to July 23, 2013 diagnosed facet-mediated pain, cervical degenerative disc disease, cervical radiculitis, and spinal stenosis. In a March 21, 2013 report, he opined that the right shoulder injury and rotator cuff tear was work related.

OWCP referred the record to an OWCP medical adviser regarding whether the accepted conditions should be expanded to include right shoulder rotator cuff tear. In a September 22, 2013 report, the medical adviser opined that there was no medical evidence supporting a causal relationship of the right rotator cuff tear to the injury that occurred 11 years prior.

By decision dated December 20, 2013, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant a merit review.

On January 8, 2014 appellant requested reconsideration. She asserted that the wage-earning capacity determination was erroneous as it was based on the accepted condition of aggravation of cervical disc disease when she also had a right shoulder injury causally related to the April 30, 2001 injury. Appellant contended that the LWEC decision was therefore not based on an accurate medical history.

Appellant submitted a July 18, 2013 report from Dr. Fried who reviewed a June 10, 2013 FCE and advised that appellant could not perform sedentary work. Dr. Fried noted that appellant was able to write for .75 minutes before exacerbating symptomology and keying was tolerated for .2 minutes. He recommended vocational rehabilitation and noted that he did not foresee appellant returning to her prior activity level.

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<sup>6</sup> Docket No. 12-1407 (issued January 24, 2013). Among other findings, the Board found that Dr. Fried's opinion did not specifically address the duties of the accounting clerk position or note changes in her accepted condition that would prevent her from performing the duties of that job).

By decision dated April 14, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant merit review.

Appellant appealed to the Board. By decision dated November 21, 2014, the Board set aside the April 14, 2014 decision. The Board found that appellant requested modification of the August 25, 2011 LWEC determination and was entitled to a merit review of the wage-earning capacity issue and remanded the matter for further development.<sup>7</sup>

On September 9, 2014 OWCP referred appellant to Dr. Robert F. Draper, Jr., a Board-certified orthopedist, for a second opinion to determine whether appellant had residuals of her work-related condition, whether she sustained a right shoulder injury attributable to the April 30, 2001 work injury, and whether she could work within restrictions. In a September 26, 2014 report, Dr. Draper noted findings that included limited cervical spine range of motion, intact motor function in the arm, intact reflexes in the arms, positive impingement sign of the right shoulder, no thenar or hypothenar atrophy in the right hand, and negative Tinel's sign over the median and ulnar nerve of the right elbow and wrist. He diagnosed aggravation of preexisting degenerative cervical disc disease and right shoulder pain associated with cervical disc disease. Dr. Draper opined that appellant continued to have residuals of the April 30, 2001 work injury. Appellant's right shoulder discomfort was related to the aggravated degenerative cervical disc disease, likely C5-6 levels. Dr. Draper opined that there was no evidence of a separate pathological right shoulder injury which could be related to the April 30, 2001 injury. He opined that the right shoulder complaints were due to the aggravation of the cervical degenerative disc disease and not due to a right shoulder injury. Dr. Draper opined that appellant could work full-time, light duty with no lifting greater than 20 pounds occasionally and 10 pounds frequently, standing and walking for six hours a day and sitting for six hours a day, and avoid excessive overhead use of the right shoulder. In a work capacity evaluation, he noted that appellant could work full time subject to restrictions of no lifting greater than 20 pounds occasionally and 10 pounds frequently.

Dr. Valentino saw appellant on September 23 and November 18, 2014. He noted findings and diagnosed neck pain, facet-mediated pain, cervical degenerative joint disease, cervical radiculitis, and cervical spinal stenosis.

In February 10 and 12, 2015 reports, Dr. Fried diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, radial and median neuropathy on the right, brachial plexopathy/cervical radiculopathy on the right, thoracic neuritis, scapular winging, right rotator cuff strain, capsulitis of the shoulder, and neuralgia of the right side. He noted that appellant could not return to regular work.

A January 22, 2015 FCE, ordered by Dr. Fried, noted that appellant could work sedentary duty, lifting and carrying restricted to 5 pounds, and walking and standing on occasion. Appellant could write and key for .75 minutes. Dr. Fried recommended vocational rehabilitation and advised that he could not foresee appellant returning to her previous activity level. He recommended a headset for telephone use and voice activated computer software.

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<sup>7</sup> Docket No. 14-1605 (issued November 21, 2014).

By decision dated March 19, 2015, OWCP denied modification of its August 15, 2011 LWEC decision.

Appellant was treated by Dr. Fried on April 6 and 16, 2015 and he reiterated his diagnoses and advised that appellant could not return to regular work. In an April 14, 2015 report, Dr. Valentino treated appellant for neck pain localized at C4-7 and right shoulder and arm pain. He diagnosed neck pain, facet-mediated pain, and cervical degenerative joint disease. On June 16, 2015 appellant presented with bilateral L3-S1 pain with radiation into the legs with right knee pain. Dr. Valentino diagnosed sciatica, lumbago and chondromalacia patellae of the left knee.

Appellant appealed to the Board. By October 8, 2015 order, the Board set aside the March 19, 2015 decision, finding that OWCP failed to review all the medical evidence submitted at the time of the March 19, 2015 decision. The Board remanded the case to OWCP for further development.<sup>8</sup>

Appellant submitted a November 10, 2015 report from Dr. Valentino who treated her for neck pain localized at C4-7 and right shoulder and arm pain related to her work injury. Dr. Valentino diagnosed cervical disc degeneration, cervical pain, neck pain, and facet arthritis of the cervical region. Dr. Fried treated appellant on October 27, 2015 and January 4, 2016 for a flare-up of cervical/neck symptoms. He diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, median neuropathy on the right and left side, radial and medial neuropathy on the right. Other problems included brachial plexopathy/cervical radiculopathy on the right, thoracic neuritis, scapular winging, right rotator cuff strain, capsulitis of the shoulder, and neuralgia of the right side. Appellant could not return to regular work.

In a decision dated February 2, 2016, OWCP again denied modification of its August 15, 2011 wage-earning capacity decision.

Appellant subsequently submitted reports from Dr. Valentino, dated January 19 and April 5, 2016, who treated her for neck pain localized at C4-7 and right shoulder symptoms due to her work injury. She had significant limitations in all planes. Dr. Valentino diagnosed cervical disc degeneration, cervical pain, neck pain, facet arthritis of the cervical region, cervical strain, and neck pain. He provided cervical facet injections at C4-7.

In a February 17, 2016 report, Dr. McKenzie treated appellant for major depression caused by pain from work-related physical injuries of the neck, right arm, and right shoulder. Appellant remained depressed as she was unable to get treatment for her shoulder or depression. Dr. McKenzie noted that since her benefits were reduced she has had a financial hardship.

On March 1, 2016 appellant, through counsel, requested that OWCP expand the accepted conditions to include major depression. In a report dated March 28, 2016, Dr. Fried treated appellant for neck and shoulder pain. He noted the cervical spine injections helped her symptoms locally, but she still experienced radiating pain. Dr. Fried diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, median neuropathy

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<sup>8</sup> *Order Remanding Case*, Docket No. 15-1302 (issued October 8, 2015).

on the right and left side, radial and median neuropathy on the right. He noted other problems including brachial plexopathy/cervical radiculopathy on the right, thoracic neuritis, scapular winging, right rotator cuff strain, capsulitis of the shoulder, and neuralgia of the right side. Dr. Fried noted that appellant could not return to regular work. On May 2, 2016 appellant participated in a relaxation and healing enhancement program.

On July 12, 2016 appellant through counsel, requested reconsideration. Counsel asserted that evidence from Dr. McKenzie and Dr. Valentino supported that that her claim should be expanded and that she could not perform the duties of the accounting clerk job.

Appellant submitted a May 25, 2016 report from Dr. McKenzie who opined that, based on the review of the medical record, appellant's claim should be expanded to include a right shoulder injury. He noted that each physician since 2001 acknowledged that the shoulder condition was part of the original injury. Dr. McKenzie noted that appellant carried a mailbag on her right shoulder, delivered mail with her right hand, cased and slotted mail with her right hand, and arm and drove a postal vehicle with manual operation on the right side. He further noted that OWCP reduced her compensation on August 15, 2011 based on a position of accounting clerk without having an examination by an OWCP physician. Dr. McKenzie indicated that appellant's shoulder condition was dormant from May to September 2009 until she began working with a vocational rehabilitation counselor and her shoulder injury was exacerbated by drafting resumes and applying for jobs on the computer. Appellant reported not being able to complete the vocational training due to unbearable pain. Dr. McKenzie noted that appellant has not received right shoulder treatment which caused further depression due to constant pain and mobility limitations. He also asserted that appellant's claim should be expanded to also include her psychological condition.

Appellant submitted reports from Dr. Fried dated June 6 to September 12, 2016 who noted her neck and cervical spine pain radiating down the right arm limiting her activity. Dr. Fried diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, median neuropathy on the right and left side, radial and medial neuropathy on the right. He noted other problems including brachial plexopathy/cervical radiculopathy on the right, thoracic neuritis, scapular winging, right rotator cuff strain, capsulitis of the shoulder, and neuralgia of the right side. Dr. Fried noted that appellant could not return to regular work. He noted that appellant participated in the relaxation and healing enhancement program and recommended massage therapy and acupuncture.

Appellant saw Dr. Valentino on June 7, 2016 for neck pain localized at C4-7 and right shoulder symptoms related to her work injury. Dr. Valentino noted findings and diagnosed cervical disc degeneration, cervical pain, facet arthritis of the cervical region, cervical strain. He provided bilateral cervical facet injections at C4-7. In a separate June 7, 2016 statement, Dr. Valentino noted reviewing Dr. McKenzie's May 25, 2016 report and Dr. Fried's August 3, 2011 report. He advised that Dr. Fried indicated that to send appellant back to an accounting job would worsen and aggravate her problem. Dr. Valentino noted prolonged posturing, repetitive neck, arm and shoulder posturing and repetitive activities of the right upper extremity would progress her problem. He noted that Dr. Fried advised that sedentary capacities with sitting and speaking in the headset of her telephone with minimal keying activities would be reasonable part time, but that appellant was disabled from her carrier job. Dr. Valentino noted agreeing with Dr. Fried. In a report dated September 13, 2016, he treated

appellant for neck and shoulder pain. Dr. Valentino noted diagnoses and advised that he provided bilateral cervical facet injections at C4-7.

By decision dated October 7, 2016, OWCP denied modification of its February 2, 2016 decision.

**LEGAL PRECEDENT**

A wage-earning capacity determination is a finding that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant's ability to earn wages.<sup>9</sup> Actual wages earned is generally the best measure of wage-earning capacity.<sup>10</sup> In the absence of evidence showing that actual earnings do not fairly and reasonably represent the injured employee's wage-earning capacity, such earnings must be accepted as representative of the individual's wage-earning capacity.<sup>11</sup> Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.<sup>12</sup>

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless it meets the requirements for modification.<sup>13</sup> OWCP procedures at section 2.1501 contain provisions regarding the modification of a formal LWEC.<sup>14</sup> The relevant part provides that a formal LWEC will be modified when: (1) the original rating was in error; (2) the claimant's medical condition has materially changed; or (3) the claimant has been vocationally rehabilitated.<sup>15</sup>

The burden of proof is on the party attempting to show modification.<sup>16</sup> There is no time limit for appellant to submit a request for modification of a wage-earning capacity determination.<sup>17</sup>

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<sup>9</sup> 5 U.S.C. § 8115(a); see *Mary Jo Colvert*, 45 ECAB 575 (1994); *Keith Hanselman*, 42 ECAB 680 (1991).

<sup>10</sup> *Hayden C. Ross*, 55 ECAB 455, 460 (2004).

<sup>11</sup> *Id.*

<sup>12</sup> 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. *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

<sup>13</sup> *Sue A. Sedgwick*, 45 ECAB 211 (1993).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Modification of Wage-Earning Capacity*, Chapter 2.1501.3(a) (June 2013).

<sup>15</sup> *Id.*

<sup>16</sup> *Darletha Coleman*, 55 ECAB 143 (2003).

<sup>17</sup> *W.W.*, Docket No. 09-1934 (issued February 24, 2010); *Gary L. Moreland*, 54 ECAB 638 (2003).



## ANALYSIS

Appellant filed a traumatic injury claim alleging that on April 30, 2001 she experienced neck, shoulder and arm pain while performing her letter carrier duties. OWCP accepted the claim for an aggravation of degenerative disc disease of the cervical spine. On August 15, 2011 it found that appellant could perform the duties of an accounting clerk and reduced her compensation to reflect her wage-earning capacity in this job. In its January 24, 2013 decision, the Board previously found that appellant had not established a basis to modify the LWEC determination.<sup>18</sup> Following a later request for review, OWCP again denied modification of the LWEC determination. The issue is whether she established that the August 15, 2011 LWEC decision should be modified.

After OWCP found that appellant could perform the duties of an accounting clerk, the pertinent medical issue is whether there had been any change in her condition that would render her unable to perform those duties.<sup>19</sup> For a physician's opinion to be relevant on this issue, the physician must address the duties of the constructed position.<sup>20</sup>

Appellant did not allege that she had been retrained or otherwise vocationally rehabilitated nor has she shown how the original rating was in error. She has contended that reports from Drs. Valentino, Fried, and McKenzie establish that she was no longer able to work because of her physical conditions including a right shoulder injury and a psychiatric condition which she asserts were caused by the April 30, 2001 work injury. The Board finds that the record does not contain medical evidence establishing that appellant's accepted work-related condition, aggravation of degenerative disc disease of the cervical spine, had materially changed so as to render her unable to perform the accounting clerk duties.

Appellant submitted evidence from her psychiatrist, Dr. McKenzie. On May 25, 2016 Dr. McKenzie opined that, based on the review of the medical record, appellant's claim should be expanded to include a right shoulder injury and a psychological condition as causally related to the original injury. He asserted that appellant's work duties included much use of her right arm and shoulder, and that her shoulder condition was dormant until September 2009 when it was exacerbated by drafting resumes as part of vocational rehabilitation. Dr. McKenzie noted that the lack of treatment for her right shoulder condition caused further depression. On February 17, 2016 he advised that appellant's major depression was caused by pain in the neck, right arm and right shoulder from work injury. However, these reports are insufficient to establish a material change in appellant's accepted conditions as Dr. McKenzie attributes appellant's disability to a shoulder and emotional conditions not accepted by OWCP as being employment related.<sup>21</sup> Dr. McKenzie has not sufficiently addressed how appellant's accepted degenerative disc disease of the cervical spine prevented her from performing the duties of the

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<sup>18</sup> *Supra* note 5.

<sup>19</sup> *Phillip S. Deering*, 47 ECAB 692 (1996).

<sup>20</sup> *Id.*

<sup>21</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury).

accounting clerk position. Furthermore his opinion is of diminished probative value with regard to physical conditions as his area of expertise is psychiatry. The Board has held that opinions of physicians who have special training and knowledge in a specialized medical field have greater probative value in determining the causal relationship of a condition germane to that field than the opinions of nonspecialists or others who have no training in the particular field.<sup>22</sup>

Appellant submitted evidence from Dr. Valentino. In January 19, April 5, June 7, and September 13, 2016 reports, Dr. Valentino noted appellant's treatment for neck pain localized at C4-7 and right shoulder symptoms related to her work injury. However, he did not provide sufficient medical rationale<sup>23</sup> explaining how appellant's injury-related conditions would disable her from the accounting clerk position. On June 7, 2016 Dr. Valentino noted his concurrence with Dr. Fried's August 31, 2011 opinion that appellant performing an accounting job would worsen her condition. He did not provide his own medical rationale to explain how appellant's accepted degenerative disc disease of the cervical spine would disable her from the accounting clerk position.<sup>24</sup> Dr. Valentino did not clearly explain the medical reasons why a material change in the accepted condition caused increased disability and an inability to work greater than part time. The Board notes that this is important as Dr. Valentino's prior work restrictions, contemporaneous with the LWEC determination, were consistent with the accounting clerk position. Dr. Valentino did not specifically address the duties of the accounting clerk or note any change in appellant's injury-related condition that would render her unable to perform the position of accounting clerk.<sup>25</sup> His reports are insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Fried through September 28, 2016, who treated her for neck and shoulder pain. Dr. Fried offered diagnoses, including conditions not accepted as employment related,<sup>26</sup> and asserted that appellant could not return to regular work. However, the issue before the Board does not involve whether appellant can perform the duties of her date of injury letter carrier position; it involves whether appellant has established that the wage-earning capacity decision, in which she was found able to perform the duties of an accounting clerk, should be modified. Dr. Fried's opinion does not address the job duties of the accounting clerk position or provide a rationalized medical opinion explaining how residuals of the accepted aggravation of degenerative disc disease of the cervical spine condition had materially changed such that she no longer could perform the duties of an accounting clerk. Thus, this evidence is insufficient to show a material change in the nature and extent of the injury-related condition.

The Board finds that there is no medical evidence of record which establishes a change in appellant's employment-related condition such that a modification of OWCP's LWEC

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<sup>22</sup> See *Effie Davenport (James O. Davenport)*, 8 ECAB 136 (1955).

<sup>23</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>24</sup> As noted, *supra* note 5, the Board previously found that this opinion from Dr. Fried was insufficient to show that appellant could not perform the duties of an accounting clerk.

<sup>25</sup> Dr. Valentino also attributed disability to several conditions not accepted by OWCP as being employment related. For conditions not accepted by OWCP as being employment related, appellant has the burden of proof to establish causal relationship. See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>26</sup> See *supra* note 20.

determination would be warranted. The evidence from Drs. Valentino, Fried, and McKenzie do not establish that the position of accounting clerk was improper. Appellant also did not otherwise establish a basis for modification by submitting evidence establishing that she had been retrained or otherwise vocationally rehabilitated.

On appeal appellant asserts that OWCP failed to consider her right shoulder and depression in determining the suitability of the accounting clerk position.<sup>27</sup> As explained above, she has not submitted sufficient evidence to support modification of the August 15, 2011 LWEC determination. Appellant failed to establish a material change in the nature and extent of the injury-related condition, that she has been retrained or otherwise vocationally rehabilitated, or that the original determination was erroneous. Her physicians did not provide sufficient rationale to explain why appellant had a material change in the nature and extent of the injury related conditions. Consequently, appellant has failed to meet her burden of proof.

**CONCLUSION**

The Board finds that has not established that modification of the August 15, 2011 loss of wage-earning capacity determination is warranted.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.<sup>28</sup>

Issued: March 9, 2018  
Washington, DC

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

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

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<sup>27</sup> OWCP has not issued a final decision on the issue of whether her claim should be expanded to include additional conditions and therefore the Board does not have jurisdiction over that matter. *See* 20 C.F.R. § 501.2(c). Furthermore, with respect to the shoulder condition, OWCP previously referred appellant to Dr. Draper who, in a September 26, 2014 report, opined that there was no evidence of a separate pathological right shoulder injury attributable to the April 30, 2001 injury.

<sup>28</sup> Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.