

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

S.B., Appellant)	
)	
and)	Docket No. 18-1686
)	Issued: August 15, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Newport, WA, 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
JANICE B. ASKIN, Judge

On September 6, 2018 appellant filed a timely appeal from a June 11, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1686.

The Board has duly considered the matter and notes that in an August 7, 2017 decision, OWCP reduced appellant's wage-loss compensation benefits based upon his actual earnings as an auto sales branch manager. The record reflects that appellant disagreed with the loss of wage-earning capacity (LWEC) determination and, on March 20, 2018, formally requested modification of the LWEC determination. On May 1, 2018, appellant requested reconsideration of OWCP's August 7, 2017 LWEC determination. By decision dated June 11, 2018, OWCP denied appellant's reconsideration request.

The Board finds that OWCP improperly reviewed the case under the standard for a timely reconsideration request.¹ While appellant used the term reconsideration in his May 1, 2018 correspondence, he contended that OWCP committed error in its August 7, 2017 LWEC

¹ A.C., Docket No. 15-0710 (issued June 5, 2015). *See also K.J.*, Docket No. 14-1874 (issued February 26, 2015).

determination and requested a resumption of compensation for total wage loss.² The Board thus finds that appellant's May 1, 2018 request constituted a request for modification of the August 7, 2017 LWEC determination.³

The Board has held that, when an LWEC determination has been issued, and appellant submits evidence with respect to one of the criteria for modification, OWCP must evaluate the evidence to determine if modification of LWEC determination is required.⁴ A claimant may establish that a modification of an LWEC determination is warranted if there is a material change in the nature and extent of an injury-related condition, or a showing that the original determination was, in fact, erroneous.⁵

The case must therefore be remanded to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding whether appellant has met his burden of proof to establish modification of the August 7, 2017 LWEC determination. The Board consequently remands the case to OWCP for proper adjudication, to be followed by a *de novo* decision.⁶ Accordingly,

² *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

³ *See R.Z.*, Docket No. 17-1455 (issued February 15, 2019).

⁴ *Id.*

⁵ 20 C.F.R. § 10.511; *see P.C.*, 58 ECAB 405 (2007).

⁶ *Y.C.*, Docket No. 14-1605 (issued November 21, 2014); *W.W.*, Docket No. 09-1934 (issued February 24, 2010); *Gary L. Moreland*, 54 ECAB 638 (2003); *see also Daryl Peoples*, Docket No. 05-0462 (issued July 19, 2005); *Emmit Taylor*, Docket No. 03-1780 (issued July 21, 2004) (The Board found that requests for reconsideration of an LWEC determination constituted requests for modification of such decision. The Board therefore set aside OWCP decisions denying the claimant's reconsideration request and remanded for adjudication of the issue of modification of LWEC determination).

IT IS HEREBY ORDERED THAT the June 11, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.⁷

Issued: August 15, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁷ The Board notes that, by decision dated September 18, 2018, OWCP denied modification of its August 7, 2017 LWEC decision. However, appellant filed the appeal to the Board on September 6, 2018, prior to the September 18, 2018 decision. The Board notes that during the pendency of this appeal, OWCP issued a September 18, 2018 decision, that decision is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See Terry L. Smith*, 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).