

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

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<b>A.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0370</b>
	)	<b>Issued: March 5, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Coppell, TX, Employer</b>	)	
_____	)	

*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  
ALEC J. KOROMILAS, Alternate Judge

On December 4, 2017 appellant filed a timely appeal from a June 8, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 18-0370.<sup>1</sup>

Appellant has two accepted claims which have been consolidated. In a case adjudicated by OWCP under File No. xxxxxx935, it accepted a March 26, 2001 occupational disease claim (Form CA-2) for neck and right shoulder sprains, brachial plexus lesions, right carpal tunnel syndrome, and other congenital anomalies of muscle, tendon, fascia, and connective tissue on the right. OWCP also accepted a 2006 occupational disease claim, adjudicated under OWCP File No. xxxxxx300, for brachial neuritis or radiculitis and left carpal tunnel syndrome. These claims have been administratively combined with OWCP File No. xxxxxx935 serving as the master file.

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<sup>1</sup> The Board notes that appellant submitted evidence with her appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

By decisions dated March 21, 2006 and July 1, 2009, OWCP determined that appellant's actual earnings as a modified mail processing clerk fairly and reasonably represented her wage-earning capacity. It found that appellant had a zero loss of wage-earning capacity.<sup>2</sup>

Under OWCP File No. xxxxxx935, beginning in September 2016, appellant filed claims for compensation (Form CA-7) for wage loss beginning March 12, 2016 and continuing. In merit decisions dated November 9, 2016 and June 8, 2017, OWCP denied appellant's claims for disability compensation.<sup>3</sup>

The Board has duly reviewed the matter and finds that the case is not in posture for decision.

Appellant's submission of claims for compensation for disability beginning March 12, 2016 and continuing 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 July 1, 2009 loss of wage-earning capacity (LWEC) determination. The Board has held that, when an LWEC 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 LWEC determination is warranted.<sup>4</sup> OWCP procedures specifically provide that if a formal LWEC 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 LWEC decision.<sup>5</sup> In this case, in its June 8, 2017 decision, OWCP adjudicated appellant's claims for disability without any reference to the LWEC determination.

Once the wage-earning capacity of an injured employee is determined, 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.<sup>6</sup> The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.<sup>7</sup>

The Board finds that OWCP should have determined whether appellant had established that the March 21, 2006 LWEC determination should be modified based on a worsening of the

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<sup>2</sup> In a decision dated June 22, 2011, OWCP found that appellant had established that the loss of wage-earning capacity (LWEC) determination should be modified during the time period April 14 through June 3, 2011.

<sup>3</sup> Appellant also filed a recurrence claim (Form CA-2a) alleging a recurrence of disability on March 12, 2016 under File No. xxxxxx300. By decision dated December 20, 2016, OWCP denied this recurrence claim. On February 15, 2017 OWCP denied appellant's request for a hearing from the December 20, 2016 decision. Appellant did not file an appeal with the Board from either decision.

<sup>4</sup> *E.H.*, Docket No. 17-0963 (issued August 24, 2018).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Modification of Loss of Wage-Earning Capacity Decisions, Criteria for Modification*, Chapter 2.1501.3.a.2 (June 2013).

<sup>6</sup> *B.C.*, Docket No. 18-0407 (issued September 17, 2018).

<sup>7</sup> *Id.*

accepted conditions.<sup>8</sup> The Board will therefore remand the case to OWCP for proper adjudication, to be followed by issuance of a *de novo* decision to preserve appellant's appeal rights.<sup>9</sup>

**IT IS HEREBY ORDERED THAT** the June 8, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 5, 2019  
Washington, DC

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

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

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

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<sup>8</sup> *See H.J.*, Docket No. 16-1573 (issued September 5, 2017).

<sup>9</sup> *Id.*