

Appellant stopped work following the October 1, 2007 employment injury and received wage-loss compensation benefits. OWCP placed her on the periodic rolls beginning September 27, 2009.

On August 10, 2009 OWCP noted that appellant was referred for vocational rehabilitation services and advised that the position of customer service representative was found to be vocationally and medically suitable.

On February 4, 2013 OWCP proposed to reduce appellant's compensation benefits based on her capacity to earn wages of \$400.00 per week as a customer service representative.² It found that her wage-loss compensation should be reduced because she was no longer totally disabled and the position of customer service representative was medically and vocationally suitable, and fairly and reasonably represented her wage-earning capacity. Appellant was provided 30 days to submit evidence and argument challenging the proposed action. She did not respond.

By decision dated March 7, 2013, OWCP finalized the reduction of appellant's wage-loss compensation, effective March 10, 2013. The loss of wage-earning capacity (LWEC) determination was based on the position of customer service representative with the ability to earn \$400.00 a week.

On March 13, 2013 appellant, through counsel, contested the March 7, 2013 decision and requested an oral hearing before an OWCP hearing representative. A hearing was held on July 18, 2013. Appellant submitted various medical reports from her treating physicians in support of her claim for total disability.

Ultimately, by decision dated June 16, 2014, OWCP affirmed the March 7, 2013 LWEC determination.

Following the denial of June 3, 2015 and August 29, 2016 reconsideration requests, on November 21, 2017 appellant requested reconsideration of OWCP's decision and submitted additional medical evidence in support of her claim.

Accompanying the reconsideration request was a brief dated November 14, 2017 wherein counsel argued that OWCP had not met its burden to reduce her compensation benefits as appellant was totally disabled and unable to perform sedentary work. She further argued that the medical evidence submitted demonstrated that appellant was entitled to modification of her wage-earning capacity due to a material change and worsening of her medical condition such that she was incapable of performing the duties of a customer service representative. New medical reports dated from January 26 through November 8, 2017 were also submitted.

By decision dated January 31, 2018, OWCP denied appellant's request for reconsideration.

² 5 U.S.C. § 8115.

The Board, having duly considered the matter, concludes that the case is not in posture for decision and must be remanded for further development.³

It is well established that a claimant may establish that a modification of a wage-earning capacity 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.⁴ Although appellant requested reconsideration and counsel used the term reconsideration in her November 14, 2017 brief, counsel contended that OWCP committed error in its LWEC determination because appellant was incapacitated at the time the determination was issued and had requested a resumption of compensation for total wage loss.⁵ Counsel further argued that the newly submitted medical reports established a material change and worsening of her medical condition which warranted modification of the wage-earning capacity decision.

The Board finds that the November 21, 2016 request for reconsideration and accompanying November 14, 2017 brief from counsel constituted a request for modification of the March 7, 2013 LWEC determination. 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 wage-earning capacity is warranted.⁶

The Board accordingly remands the case to OWCP for proper adjudication, to be followed by a *de novo* decision.⁷

³ *N.M.*, Docket No. 17-0262 (issued July 3, 2017).

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

⁵ *Id.*

⁶ *See W.W.*, Docket No. 09-1934 (issued February 24, 2010).

⁷ *W.R.*, Docket No. 16-0098 (issued May 26, 2016).

IT IS HEREBY ORDERED THAT the January 31, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order.

Issued: March 8, 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