

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

M.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 18-1081
Issued: May 22, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

On April 13, 2018 appellant timely filed a timely appeal from a November 1, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 18-1081.

On May 1, 1992 appellant, then a 32-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that her job duties caused pain, weakness, and inflammation in her knees.

OWCP initially accepted the claim for bilateral genu varum, and later accepted congenital deformity of the knee joint, bilateral chondromalacia patellae, and bilateral unspecified internal derangement of the knee. Appellant underwent bilateral knee arthroscopies on July 8, 1992 and right knee surgery on September 18, 1995.

By decision dated January 13, 1995, OWCP determined that appellant's re-employed position as a modified letter carrier at the employing establishment fairly and reasonably represented her wage-earning capacity with zero loss of wage-earning capacity (LWEC).

On April 13, 1995 OWCP accepted appellant's claim for a March 6, 1995 recurrence of disability. It paid intermittent wage-loss compensation from March 6 to June 9, 1995, and by decision dated August 16, 1995, approved leave buy-back for those dates.

In correspondence dated January 8, 2007, appellant informed OWCP that she had resigned her position with the employing establishment in October 1998 and noted that she her knee conditions had been stable. She further noted, however, that she had developed recurrent severe knee pain and problems. Appellant continued to notify OWCP of her knee problems following her retirement and inquired into the availability of further medical coverage. On July 21, 2016 she received a development letter from OWCP noting the deficiencies in her claim for a recurrence of disability and need for medical treatment and informed her of the type of evidence necessary to establish the claim. No further action was taken on the recurrence claim at that time.

On January 25, 2017 submitted a notice of recurrence (Form CA-2a) of disability due to her accepted knee conditions and a request for medical treatment. An additional copy of the claim form was submitted on June 25, 2017. Appellant indicated that her recurrence began on January 26, 2007. She also submitted an itemization of her medical treatment for her knees since 2007, additional medical evidence, and a job history of her employment since leaving the employing establishment. The record also evinces that appellant submitted a CD containing additional evidence in support of her claim.

By decision dated November 1, 2017, OWCP denied appellant's claim for a recurrence of disability. It found the medical evidence of record was insufficient to establish a change or worsening of her accepted conditions, without an intervening cause, to the point that she could no longer work. OWCP noted that this decision did not affect her entitlement to medical benefits for her accepted work-related conditions.

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

Appellant's January 25 and June 25, 2017 notices of recurrence of disability and the need for medical treatment commencing January 26, 2007 indicates that she believed the accepted conditions had materially worsened such that she could no longer work. The claim should therefore have been regarded as a request for modification of the January 13, 1995 LWEC determination. The Board has held that, when an LWEC determination has been issued and a claimant submits evidence with respect to disability for work, OWCP must evaluate the evidence to determine if modification of the LWEC determination is warranted.¹ 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.² In its November 1, 2017 decision, OWCP adjudicated appellant's recurrence claim without proper consideration of the LWEC determination.

The Board finds that OWCP should have determined whether appellant had established that the January 13, 1995 LWEC determination should be modified, based on a worsening of the

¹ A.S., Docket No. 18-0370 (issued March 5, 2019).

² *Id.*; 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).

accepted conditions.³ The Board further finds that OWCP must also consider and rule upon appellant's claim for a recurrence of her need for medical treatment. 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.⁴

IT IS HEREBY ORDERED THAT the November 1, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: May 22, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

³ A.S., *supra* note 1.

⁴ *Id.*