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

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| **T.D., Appellant**<br><br>**and**<br><br>**U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Coppell, TX, Employer** | ) | **Docket No. 20-1088**<br>**Issued: June 14, 2021** |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On April 28, 2020 appellant filed a timely appeal from a November 12, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant has met her burden of proof to modify OWCP's May 29, 2012 loss of wage-earning capacity (LWEC) determination.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

This case has previously been before the Board.[2] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 2, 1997 appellant, then a 28-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained neck and upper extremity injuries as a result of the mail handling duties of her federal employment. OWCP initially accepted her claim for cervical strain, right wrist ganglion cyst, bilateral wrist tendinitis, and bilateral carpal tunnel syndrome (CTS). Appellant underwent OWCP-authorized bilateral CTS release surgeries in 2002 and later returned to work in a limited-duty capacity. OWCP granted schedule awards for a combined 16 percent permanent impairment of the right upper extremity and 12 percent permanent impairment of the left upper extremity. By decision dated May 28, 2009, it accepted that appellant suffered a recurrence of disability beginning January 13, 2009. OWCP also expanded the accepted conditions in her claim to include cervical intervertebral disc displacement, tension headaches (migraines), chronic pain syndrome, and brachial neuritis or radiculitis. It paid appellant wage-loss compensation on the periodic rolls for temporary total disability from work commencing June 6, 2009.[3]

By decision dated May 29, 2012, OWCP reduced appellant's wage-loss compensation effective June 3, 2012 based on her ability to earn weekly wages of $456.00 as an information clerk.[4] It accorded the special weight of the medical evidence to Dr. Dale R. Allen, a Board-certified orthopedic surgeon, serving as an impartial medical specialist, who found that appellant was capable of performing sedentary duty with occasional lifting of up to 10 pounds.

On June 14, 2012 appellant, through her representative, requested a hearing before a representative of OWCP's Branch of Hearings and Review, and argued that she had employment-related emotional conditions, which prevented her from working as an information clerk. Appellant submitted an April 26, 2012 report from Dr. Frank Crumley, a Board-certified psychiatrist, who diagnosed major depressive disorder (severe, recurrent), panic disorder with agoraphobia, generalized anxiety disorder, chronic pain, and migraine pain. In a July 10, 2012 report, Dr. Richard Slaughter, III, a clinical psychologist, diagnosed pain disorder associated with psychological factors and general medical condition, major depression (recurrent, moderate), and moderate psychosocial stressors with occupational and economic problems. He advised that, until

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[2] Docket No. 16-0028 (issued November 28, 2016), *petition for recon. denied,* Docket No. 16-0028 (issued May 15, 2017).

[3] Appellant retired from the employing establishment on disability retirement, effective January 14, 2014.

[4] In August 2011 OWCP referred appellant for vocational rehabilitation services. In November 2011, it developed a rehabilitation plan for placement as a telemarketer, insurance clerk, or information clerk. According to the Department of Labor, *Dictionary of Occupational Titles* (DOT), the identified positions were sedentary in nature. For the position of information clerk, DOT No. 237.367-022, the rehabilitation counselor indicated the weekly earnings were $456.00, and the job was reasonably available in appellant's commuting area. As a sedentary position, the lifting requirements were up to 10 pounds. After 90 days of job placement services, appellant was unable to secure employment, and her OWCP-sponsored vocational rehabilitation program ended as of April 10, 2012.

these issues were addressed, it was unlikely that appellant could return to work even on a sedentary job.

By decision dated December 5, 2012, OWCP's hearing representative affirmed the May 29, 2012 decision.

On October 23, 2013 appellant requested reconsideration of the December 5, 2012 decision. She submitted additional evidence, including September 10 and October 15, 2012, and February 26, 2013 reports from Dr. Robert C. Schwartz, Jr., a Board-certified psychiatrist, who diagnosed major depressive disorder (recurrent, severe) secondary to chronic pain syndrome, tension headaches, neck sprain, cervical disc displacement, bilateral tenosynovitis of the hands/wrists, right tendon ganglion, and bilateral CTS. Appellant also submitted reports dated in 2013 and 2014 from several attending physicians who discussed her physical condition.

By decision dated June 25, 2014, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On November 10, 2014 appellant requested reconsideration, and she submitted additional reports dated in 2014 from attending physicians.

By decision dated December 4, 2014, OWCP determined both that it had issued its June 25, 2014 decision in error as appellant had filed a timely reconsideration request, and it also found that she had not met her burden of proof to modify the May 29, 2012 LWEC determination.

Appellant continued to request reconsideration and submit reports of attending physicians, and, by decisions dated April 8 and September 28, 2015, OWCP determined that she had not met her burden of proof to modify the May 29, 2012 LWEC determination.

Appellant submitted an October 28, 2015 report from, Dr. Anthony Moore, a Board-certified psychiatrist, who diagnosed major depression (caused by the "work-related accepted injuries of [April 8, 1997]"); and chronic pain syndrome. In a November 11, 2015 report, Dr. Ronnie Shade, a Board-certified orthopedic surgeon, diagnosed employment-related cervical disc protrusions at C5-6 and C6-7, bilateral CTS (left greater than right), multilevel cervical radiculopathy, and suspected cubital tunnel syndrome or ulnar nerve compression. He found that appellant was totally disabled due to her neck, arm, and wrist complaints, and that her chronic pain and narcotic medication use posed a risk to her and others if she returned to work for the employing establishment. On May 24, 2016 Dr. Shade recommended that OWCP expand the accepted conditions in appellant's claim to include major depressive disorder, anxiety disorder, and lateral epicondylitis of both elbows.

On July 7, 2016 OWCP expanded the accepted conditions in appellant's claim to include lateral epicondylitis of both elbows.

Appellant, through her representative, appealed to the Board and, by decision dated November 28, 2016,[5] the Board affirmed the September 28, 2015 decision. It found that

[5] *Supra* note 2.

Dr. Allen's opinion constituted the special weight of the medical evidence with respect to appellant's capacity to work.

On May 16, 2017 appellant, through her representative, requested reconsideration. She submitted an April 26, 2017 report from Dr. Shade who diagnosed cervical disc protrusions at C5-6 and C6-7, bilateral CTS, multilevel cervical radiculopathy, cubital tunnel syndrome or ulnar nerve compression, and chronic pain syndrome. He reiterated his opinion relative to disability as he had in his previous November 11, 2015 report. In a May 25, 2017 report, Dr. Moore indicated that appellant continued with depression symptoms (sadness, feeling blue/overwhelmed) and recommended that she continue with psychotherapy and medical management.

In a June 6, 2017 report, Dr. Brittany Potter, Board-certified in physical medicine and rehabilitation, diagnosed chronic pain syndrome, disc herniation at C4 through C7, radiculopathy of the cervical region, back muscle spasm, lateral epicondylitis of both elbows, myalgia, sprains of ligaments of the cervical spine, tension-type headaches, and bilateral CTS. In a June 21, 2017 report, Dr. James Currin, a clinical psychologist, noted that appellant related her emotional problems to her employment-related injuries, and he diagnosed unspecified depression and generalized anxiety disorder. He indicated that these conditions should be classified as accepted employment injuries and recommended that appellant undergo psychotherapy. In a July 7, 2017 report, Dr. Shade diagnosed cervical disc protrusions at C5-6 and C6-7, bilateral CTS, multilevel cervical radiculopathy, cubital tunnel syndrome or ulnar nerve compression, chronic pain syndrome, and cervical spinal stenosis. He reiterated his opinion on appellant's total disability as he had provided in his previous May 13 and November 11, 2015, and April 26, 2017 reports.

By decision dated August 14, 2017, OWCP denied modification of its May 29, 2012 LWEC determination.

On August 6, 2018 appellant requested reconsideration of the August 14, 2017 decision. She argued that the medical evidence she submitted after the issuance of the May 29, 2012 LWEC determination demonstrated that her employment-related conditions had worsened. Appellant submitted an August 11, 2016 report from Dr. Shade who diagnosed cervical disc protrusions at C5-6 and C6-7, bilateral CTS, multilevel cervical radiculopathy, and suspected cubital tunnel syndrome or ulnar nerve compression. Dr. Shade reiterated his opinion on appellant's total disability as he had provided in his previous November 11, 2015, and April 26 and July 7, 2017 reports. In a May 23, 2017 report, he reported the findings of a functional capacity evaluation (FCE) performed on that date, noting that appellant lifted/carried a maximum of three pounds. He advised that these tests were stopped for "biomechanical/ psychophysical" reasons. Dr. Shade concluded that the results of the FCE demonstrated that appellant only qualified for "less than sedentary work." In June 28, August 25, November 3, 2017, and January 12, 2018 reports, he diagnosed cervical disc protrusions at C5-6 and C6-7, bilateral CTS, multilevel cervical radiculopathy, cubital tunnel syndrome or ulnar nerve compression, chronic pain syndrome, and cervical spinal stenosis. Dr. Shade provided an opinion on disability, which was similar to those contained in his previous reports.

On September 7, 2017 OWCP expanded the accepted conditions in appellant's claim to include major depressive disorder (severe, single episode) without psychotic features.

In a September 26, 2017 report, Dr. Potter diagnosed cervical herniated disc, cervical radiculitis, cervical sprain/strain, chronic pain syndrome, bilateral CTS, tension headaches, lateral epicondylitis of both elbows, muscle pain/myofascial pain syndrome, and muscle spasms. In an October 11, 2017 report, Dr. Albert Vu, an osteopath Board-certified in physical medicine and rehabilitation, diagnosed disc herniation at C4 through C7, radiculopathy of the cervical region, cervical radiculitis, cervical sprain/strain, chronic pain syndrome, bilateral CTS, tension headaches, lateral epicondylitis of both elbows, muscle pain/myofascial pain syndrome, and muscle spasms.

In a December 8, 2017 report, Dr. Shade listed appellant's accepted conditions and provided a summary of Dr. Allen's July 26, 2011 impartial medical examination report. He advised that he agreed with the recommendation of Dr. John Sazy, an attending orthopedic surgeon and neurosurgeon, who reported that appellant needed cervical spine surgery, but disagreed with Dr. Allen's recommendation that she was capable of returning to work performing sedentary duties with multiple diagnoses and emotional conditions. Dr. Shade opined that appellant would be at risk to herself and fellow employees and maintained that, due to "their own natural consequences," her conditions and disabling symptoms had worsened to the point where she was temporarily totally disabled due to the employment "injury of [April 8, 1997]" without any intervening cause. He noted that appellant had complained of increased pain and decreased strength/range of motion in her neck, elbows, and hands since April 8, 1997 and opined that it was impossible for her to work in any capacity until the disabling conditions had improved. Dr. Shade maintained that diagnostic testing and consultations were performed that supported appellant's present diagnoses and her status of temporary total disability.

By decision dated November 23, 2018, OWCP denied modification of the August 14, 2017 decision. On September 25, 2019 appellant requested reconsideration of the November 23, 2018 decision and submitted a September 18, 2019 statement. By decision dated November 12, 2019, OWCP denied modification of the November 23, 2018 decision.

## ***LEGAL PRECEDENT***

Once OWCP accepts a claim it has the burden of proof to justify termination or modification of compensation benefits.[6] An injured employee who is either unable to return to the position held at the time of injury or unable to earn equivalent wages, but who is not totally disabled for all gainful employment, is entitled to compensation computed based on his or her LWEC.[7] An employee's actual earnings generally best reflect his or her wage-earning capacity.[8] If actual earnings do not fairly and reasonably represent the employee's wage-earning capacity or the employee has no actual earnings, then wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, the employee's usual employment, age,

[6] *L.M.,* Docket No. 20-1038 (issued March 10, 2021); *James B. Christenson*, 47 ECAB 775, 778 (1996).

[7] 5 U.S.C. § 8115(a); 20 C.F.R. §§ 10.402, 10.403; *see Alfred R. Hafer*, 46 ECAB 553, 556 (1995).

[8] *Hayden C. Ross*, 55 ECAB 455, 460 (2004). Absent evidence that actual earnings do not fairly and reasonably represent the employee's wage-earning capacity, such earnings must be accepted as representative of the individual's wage-earning capacity. *Id.*

qualifications for other employment, the availability of suitable employment and other factors and circumstances that may affect wage-earning capacity in his or her disabled condition.[9]

OWCP must initially determine the employee's medical condition and work restrictions before selecting an appropriate position that reflects his or her vocational wage-earning capacity.[10] The medical evidence OWCP relies upon must provide a detailed description of the employee's condition and the evaluation must be reasonably current.[11] Where suitability is to be determined based on a position not actually held, the selected position must accommodate the employee's limitations from both injury-related and preexisting conditions, but not limitations attributable to post-injury or subsequently acquired conditions.[12] When OWCP makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to an OWCP wage-earning capacity specialist for selection of a position listed in the DOT or otherwise available in the open labor market that fits the employee's capabilities with regard to his or her physical limitations, education, age and prior experience.[13] Once this selection is made, a determination of wage rate and availability in the open labor market should be made through contact with the state employment service or other applicable service.[14] Finally, application of the principles set forth in the *Shadrick* decision will result in the percentage of the employee's LWEC.[15]

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.[16] The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.[17]

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[9] 5 U.S.C. § 8115(a); *Mary Jo Colvert*, 45 ECAB 575 (1994); *Keith Hanselman*, 42 ECAB 680 (1991).

[10] *M.A.*, 59 ECAB 624, 631 (2008).

[11] *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on a Constructed Position*, Chapter 2.816.4d (June 2013).

[12] *N.J.*, 59 ECAB 171, 176 (2007); Federal (FECA) Procedure Manual, *id.* at Chapter 2.816.4c (June 2013).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Vocational Rehabilitation Services*, Chapter 2.813.7b (February 2011).

[14] The job selected for determining wage-earning capacity must be a position that is reasonably available in the general labor market in the commuting area in which the employee resides. *David L. Scott*, 55 ECAB 330, 335 n9 (2004).

[15] 20 C.F.R. § 10.403(d), (e); *see Albert C. Shadrick*, 5 ECAB 376 (1953).

[16] *C.R.,* Docket No. 14-0111 (issued April 4, 2014); *Sharon C. Clement,* 55 ECAB 552 (2004).

[17] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009).

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to modify OWCP's May 29, 2012 LWEC determination.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's September 28, 2015 decision regarding whether the May 29, 2012 LWEC determination should be modified with regard to appellant's orthopedic conditions that had been accepted at the time of the September 28, 2015 decision because the Board considered that evidence in its November 28, 2016 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.[18] The Board has already determined that the May 29, 2012 LWEC determination was not erroneous at the time it was issued and the question becomes whether appellant has submitted medical evidence demonstrating that, after issuance of the May 29, 2012 LWEC determination, there was a material change in the nature and extent of her employment-related conditions such that she could no longer work as an information clerk.[19]

At the time of the issuance of the September 28, 2015 decision reviewed by the Board on November 28, 2016, OWCP had accepted appellant's claim for the following conditions: cervical strain, right wrist ganglion cyst, bilateral wrist tendinitis, bilateral CTS, cervical intervertebral disc displacement, tension headaches (migraines), chronic pain syndrome, and brachial neuritis or radiculitis. After the September 28, 2015 decision, OWCP expanded the accepted conditions to include lateral epicondylitis of both elbows, accepted July 7, 2016, and major depressive disorder (severe, single episode) without psychotic features, accepted September 7, 2017. As the Board has not previously considered whether these work-related conditions worsened and prevented appellant from working as an information clerk, it will do so in the present decision.[20]

With respect to her emotional condition, appellant submitted a July 10, 2012 report from Dr. Slaughter who diagnosed pain disorder associated with psychological factors and general medical condition, major depression (recurrent, moderate), and moderate psychosocial stressors with occupational and economic problems. Dr. Slaughter advised that, until these issues were addressed, it was unlikely that appellant could return to work even on a sedentary job. The Board finds that this report of Dr. Slaughter is of limited probative value regarding appellant's request to modify the May 29, 2012 LWEC determination because his report does not contain adequate medical rationale to demonstrate that appellant's employment-related depression had worsened to the point that she could not perform the sedentary duties as required by the constructed position of information clerk. He did not sufficiently explain why appellant's specific depressive condition prevented her from performing such sedentary work. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining

[18] *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *B.W.*, Docket No. 17-0366 (issued June 7, 2017); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

[19] *See supra* note 16.

[20] *See supra* note 18.

how a given medical condition/level of disability has an employment-related cause.[21] Therefore, this report does not establish appellant's request to modify the May 29, 2012 LWEC determination.

Appellant also submitted September 10 and October 15, 2012, and February 26, 2013 reports from Dr. Schwartz who diagnosed major depressive disorder (recurrent, severe) secondary to chronic pain syndrome. In an October 28, 2015 report, Dr. Moore diagnosed major depression (caused by the "work-related accepted injuries of [April 8, 1997]"); and chronic pain syndrome. On May 25, 2017 he indicated that appellant continued with depression symptoms. In a June 21, 2017 report, Dr. Currin diagnosed unspecified depression and generalized anxiety disorder, and he indicated that these conditions should be classified as accepted employment injuries. However, these reports are of no probative value on the underlying issue of the present case because they do not provide an opinion on appellant's disability from the information clerk position, which served as the basis for OWCP's May 29, 2012 LWEC determination.[22]

With respect to her orthopedic medical condition, appellant submitted reports of Dr. Shade dated November 11, 2015, August 11, 2016, April 26, June 28, July 7, August 25, November 3, and December 8, 2017, and January 12, 2018. In these reports, he collectively diagnosed cervical disc protrusions at C5-6 and C6-7, bilateral CTS, multilevel cervical radiculopathy, cubital tunnel syndrome or ulnar nerve compression, chronic pain syndrome, and cervical spinal stenosis. Dr. Shade noted that appellant's complaints and diagnoses were directly causally related to the employment injury. He opined that appellant was incapable of returning to work, even performing sedentary duty, given her neck, arm, and wrist complaints, and noted that, with her chronic pain and narcotic medication, he believed that appellant would be a risk to herself and also the employing establishment if she returned to work. In his December 8, 2017 report, Dr. Shade further noted that, due to "their own natural consequences," appellant's conditions and disabling symptoms had worsened to the point where she was temporarily totally disabled due to the employment "injury of [April 8, 1997]" without any intervening cause. He advised that appellant had complained of increased pain and decreased strength/range of motion in her neck, elbows, and hands since April 8, 1997 and opined that it was impossible for her to work in any capacity until the disabling conditions had improved.

The Board finds that these reports of Dr. Shade are of limited probative value regarding appellant's request to modify the May 29, 2012 LWEC determination because he did not provide sufficient medical rationale in support of his opinion that appellant's employment-related conditions had worsened after the May 29, 2012 LWEC determination. He did not sufficiently explain why appellant could not perform any work and, therefore, could not perform the sedentary duties required by the constructed position of information clerk. Dr. Shade did not describe appellant's accepted employment conditions in detail or explain the medical processes that would have rendered her totally disabled from all work. He appears to have primarily based his opinion on disability on appellant's own self-reported symptoms and beliefs about her ability to work. The Board has held that a report is of limited probative value regarding causal relationship if it does

[21] *See T.T.,* Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[22] *T.H.,* Docket No. 18-0704 (issued September 6, 2018). *See also L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018)*;Charles H. Tomaszewski*, 39 ECAB 461 (1988).

not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.[23] Therefore, these reports of Dr. Shade are insufficient to require modification of OWCP's May 29, 2012 LWEC determination.

In a May 24, 2016 report, Dr. Shade recommended that OWCP expand the accepted conditions in appellant's claim to include major depressive disorder, anxiety disorder, and lateral epicondylitis of both elbows. However, this report contains no opinion on disability and, therefore, is of no probative value regarding the modification of OWCP's May 29, 2012 LWEC determination.[24] In a May 23, 2017 report, Dr. Shade reported the findings of a FCE performed on that date, noting that appellant lifted/carried a maximum of three pounds. He noted that these tests were stopped for "biomechanical/psychophysical" reasons. Dr. Shade concluded that the results of the FCE demonstrated that appellant only qualified for "less than sedentary work." This report also is of limited probative value on the underlying issue of this case because it does not contain sufficient medical rationale explaining why, due to specific employment-related conditions, appellant was totally disabled or could only perform less than sedentary work.[25]

Appellant also submitted numerous reports in which attending physicians diagnosed various conditions, some of which have been accepted by OWCP. In reports dated September 10 and October 15, 2012, and February 26, 2013, Dr. Schwartz diagnosed chronic pain syndrome, tension headaches, neck sprain, cervical disc displacement, bilateral tenosynovitis of the hands/wrists, right tendon ganglion, and bilateral CTS. In June 6 and September 26, 2017 reports, Dr. Potter diagnosed chronic pain syndrome, disc herniation at C4 through C7, radiculopathy of the cervical region, cervical radiculitis, lateral epicondylitis of both elbows, myalgia, sprains of ligaments of the cervical spine, cervical strain, tension-type headaches, bilateral CTS, muscle pain/myofascial pain syndrome, and back muscle spasms. In an October 11, 2017 report, Dr. Vu diagnosed disc herniation at C4 through C7, radiculopathy of the cervical region, cervical radiculitis, cervical sprain/strain, chronic pain syndrome, bilateral CTS, tension headaches, lateral epicondylitis of both elbows, muscle pain/myofascial pain syndrome, and muscle spasms. However, these reports are of no probative value on the underlying issue of the present case because they do not provide an opinion on appellant's disability from the information clerk position, which served as the basis for OWCP's May 29, 2012 LWEC determination.[26]

For these reasons, appellant has not shown that OWCP's May 29, 2012 LWEC determination was erroneous when issued or that there was a material change in the nature and extent of her injury-related condition. The Board further finds that the record does not show that appellant was vocationally rehabilitated after OWCP adjusted her compensation per its May 29, 2012 LWEC determination and; therefore, she has not demonstrated that modification of the

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[23] *See supra* note 21.

[24] *T.H.,* Docket No. 18-0704 (issued September 6, 2018). *See also L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018)*;Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[25] *See supra* note 21.

[26] *See id*.

May 29, 2012 determination would be warranted on one or more of these three bases.[27] She may request modification of the LWEC determination, supported by new evidence or argument, at any time before OWCP.

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to modify OWCP's May 29, 2012 LWEC determination.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the November 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[27] *See supra* note 16.