

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

G.F., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
BROCKTON VETERANS ADMINISTRATION
MEDICAL CENTER, Brockton, MA, Employer**

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**Docket No. 19-1478
Issued: March 16, 2021**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On June 28 2019 appellant filed a timely appeal from a January 7, 2019 merit decision and a February 20, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 19-1478.

On October 16, 2012 appellant, then a 32-year-old psychiatric nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2012 she sustained multiple injuries to her face, neck, chest, and stomach when a patient physically assaulted her while in the performance of duty. She stopped work on that date. OWCP accepted appellant's claim for abrasion of the right face and neck and contusion of the right face. It subsequently expanded acceptance of her claim to include post-traumatic stress disorder (PTSD). OWCP paid appellant wage-loss compensation on the supplemental rolls beginning November 19, 2012 and on the periodic rolls, effective May 5, 2013.

¹ Appellant timely requested oral argument before the Board. By order dated July 22, 2020, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Oral Argument*, Docket No. 19-1478 (issued July 22, 2020).

Appellant continued to receive medical treatment. In a work capacity evaluation (Form OWCP-5c) dated July 10, 2014, Dr. Marcy Hersh, a Board-certified family physician, noted that appellant could not return to her date-of-injury job. She noted that appellant could work full-time with restrictions of no in-patient floor work and no situations that required indefinite exposure to patients alone.

OWCP subsequently referred appellant to vocational rehabilitation services and she accepted a job offer for a full-time position as an advanced medical support assistant position as of December 29, 2014. By decision dated March 16, 2015, it issued a formal loss of wage-earning capacity (LWEC) determination, based on her actual earnings, finding that the position of advanced medical support assistant fairly and reasonably represented her wage-earning capacity as she had been working in the position for over 60 days. OWCP further reduced appellant's compensation to \$29.18 every 28 days, effective March 8, 2015, based on her ability to earn wages of \$903.84 per week as an advanced medical support assistant.

On July 9 and October 1, 2018 appellant filed a notice of recurrence (Form CA-2a) on each date claiming that on April 10, 2018 she sustained a recurrence of disability causally related to her August 12, 2012 employment injury. She indicated that her condition was chronic and that she was still receiving medical treatment. On the reverse side of the claim form, appellant noted that she stopped work on April 10, 2018 and returned to work on May 14, 2018.

Appellant submitted a work status note dated May 9, 2018 by Dr. Hersh, who indicated that appellant was off work from April 10 to May 14, 2018. Dr. Hersh reported that due to an ongoing chronic health condition, appellant would require a more controlled, reduced stress environment, such as an office where there was a locked door or a key-entry door with a sliding window between staff areas and patient waiting areas.

OWCP also received a May 14, 2018 letter by Dr. Lyudmila Rakita, a Board-certified psychiatrist, who noted that in April 2018, appellant's PTSD symptoms had increased to severe levels, which required medication adjustment. Dr. Rakita indicated that after appellant's anxiety levels decreased she was able to return to work on May 14, 2018.

By decision dated January 7, 2019, OWCP denied modification of its March 16, 2015 LWEC decision. It found that the evidence of record failed to establish any of the three criteria for modifying an LWEC determination and, as such, there was no entitlement to additional compensation.

On January 22, 2019 appellant requested reconsideration. In a February 20, 2019 decision, OWCP denied her request for reconsideration of the merits of the claim under 5 U.S.C. § 8128(a).

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

The record reflects that on March 16, 2015 OWCP issued a formal LWEC determination and reduced appellant's wage-loss compensation benefits because it found that the position of advanced medical support assistant fairly and reasonably represented her wage-earning capacity. On July 9 and October 1, 2018 appellant subsequently filed recurrence of disability claims alleging that on April 10, 2018 she sustained a recurrence of her August 12, 2012 employment injury. On

the reverse side of the claim form, she noted that she returned to work on May 14, 2018. The Board notes that OWCP developed and adjudicated the claim as a request for modification of an LWEC determination. However, the record reflects that appellant has requested wage-loss compensation for a limited period of disability, due to her accepted August 12, 2012 employment injury.

The Board has held that OWCP may accept a limited period of disability without modification of a formal LWEC determination.² OWCP procedures provides that this occurs when there is a demonstrated temporary worsening of a medical condition of insufficient duration and severity to warrant a modification of an LWEC determination.³ This narrow exception is only applicable for brief periods of medical disability.⁴ If the claimant is off work for a brief period due to his or her temporary inability to perform the duties of the rated position, this period of medical disability can be paid without modification of the LWEC determination.⁵ However, if a formal LWEC determination has been issued, and the claimant requests resumption of compensation for total wage loss, OWCP should evaluate the record according to customary criteria for modifying a formal LWEC determination.⁶

In its January 7, 2019 decision, OWCP evaluated the claim without proper consideration of the standard for a limited period of disability, finding that the evidence of record failed to establish any of the three criteria for modifying an LWEC determination.

As appellant has submitted evidence documenting a claim for wage-loss compensation and medical treatment for a limited period, April 10 to May 14, 2018, in accordance with its procedures OWCP must evaluate the evidence under the standard for a limited period of disability.⁷ On remand OWCP shall determine whether appellant has established that her disability for the period in question was causally related to the accepted August 12, 2012 employment injury. Following such further development of the case as OWCP deems necessary, it shall issue a *de novo* decision.

² *D.R.*, Docket No. 18-1197 (issued April 30, 2020); *S.J.*, Docket No. 16-1195 (issued January 4, 2017); *Katherine T. Kreger*, 55 ECAB 633 (2004).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Modification of Loss of Wage-Earning Capacity*, Chapter 2.1501.10 (June 2013). See *Order Remanding Case, G.P.*, Docket No. 19-1258 (issued July 14, 2020); *T.G.*, Docket No. 18-1064 (issued April 26, 2019).

⁴ *Id.*; *L.T.*, Docket No. 18-0797 (issued March 14, 2019).

⁵ *Supra* note 3; see *J.M.*, Docket No. 18-0196 (issued Jul 12, 2018).

⁶ *Supra* note 3.

⁷ *G.P., Order Remanding Case*, Docket No. 19-1258 (issued July 14, 2020).

IT IS HEREBY ORDERED THAT the January 7, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this order of the Board.

Issued: March 16, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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