

subsequently expanded the acceptance of the claim to include bilateral rotator cuff syndrome of the shoulder and allied disorders, right biceps tendon rupture and contracture of joint, right shoulder region, on June 14, 2013.³ Appellant underwent OWCP-approved surgeries on October 10, 2007 for left carpal tunnel release, on April 2, 2008 for right carpal tunnel release, and on November 23, 2010 for right shoulder arthroscopy. OWCP paid all appropriate compensation and she later returned to work with permanent restrictions.

By decision dated December 3, 2015, OWCP found that the position of modified distribution clerk, which appellant had been working since July 16, 2015, fairly and reasonably represented her wage-earning capacity. As her current earnings either met or exceeded the earnings of her date-of-injury position, OWCP reduced her entitlement to wage-loss compensation to zero due to no loss of wage-earning capacity (LWEC).

Appellant stopped work on August 4, 2021. On August 6, 2021 she filed a claim for compensation (Form CA-7) for total disability from work for the period commencing August 4, 2021. She continued to file CA-7 forms for continuing disability.

In a development letter dated August 18, 2021, OWCP noted that appellant had returned to work in a modified capacity on March 11, 2020 and worked until August 4, 2021, when she stopped work completely. It advised her that her claim for compensation was a claim for a recurrence due to a material change or worsening of her accepted work-related conditions. OWCP requested that she provide additional factual and medical information supporting that her accepted condition worsened such that she was disabled from employment. It afforded appellant 30 days to respond to the request.

In an August 30, 2021 report, Dr. Catalina A. Grijia, an internist, noted the course of appellant's medical treatment, and that she was approved for limited duty with restrictions, but was now off work. She opined that, given appellant's job duties, she had developed progressively worsening pain in her shoulders, and lateral epicondylitis of the elbows and right index trigger finger.

By decision dated September 28, 2021, OWCP denied appellant's recurrence of disability claim for the period commencing August 4, 2021.⁴

On October 3, 2021 appellant requested reconsideration. She submitted additional claims for compensation for the period October 1 through 29, 2021 and for the period November 6 through 12, 2021.

In a September 30, 2021 report, Dr. Grijia elaborated on her August 30, 2021 report. She noted that appellant's June 2021 magnetic resonance imaging (MRI) scan of the right shoulder showed findings of recurrence moderate insertional tendinopathy and peritendinitis of the

³ Under OWCP File No. xxxxxx714 appellant has an accepted rotator cuff syndrome of the left shoulder for a traumatic injury of June 18, 2007. OWCP has administratively combined appellant's claims, with the present case, OWCP File No. xxxxxx731, serving as the master file.

⁴ OWCP noted that it paid appellant wage-loss compensation for 44.00 hours for intermittent medical appointments taken from August 4 through September 3, 2021.

supraspinatus and insertional subscapularis tendinopathy. Dr. Grija stated that, after previous physical therapy treatments, appellant's conditions temporarily improved, but had overall progressively worsened. She opined that, given appellant's job duties, she has had worsening pain and arthritis in her shoulders, hands and elbows as she developed lateral epicondylitis of the elbows and right index trigger finger. Dr. Grija indicated that appellant had been off work since August 4, 2021 due to swelling, numbness, tingling, burning sensations, sharp pains, cramping, weakness and stiffness in her hands, wrists, and right finger (trigger finger). Appellant also had difficulty driving, grabbing and holding onto objects. Dr. Grija opined that appellant could not lift over 10 pounds, could not reach above her shoulders without strain and sharp pain to her neck and shoulders, and she could not push or pull heavy equipment due to her conditions. She concluded that appellant's MRI and her symptoms, proved that her conditions related to bilateral rotator cuff tendinopathy, tennis elbow and carpal tunnel syndrome were chronic and worsening and significantly interfered with activities of daily living. Dr. Grija related that appellant would not recover her full function and would likely need long-term disability, pending a functional capacity evaluation (FCE). A copy of appellant's June 5, 2021 right shoulder MRI scan was also submitted.

By decision dated December 22, 2021, OWCP denied modification of its prior decision.

The Board finds that the case is not in posture for decision.

OWCP developed the evidence and adjudicated the issue as to whether appellant established a recurrence of disability as of August 4, 2021. However, 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.⁵ 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 determination.⁶ In its December 22, 2021 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 December 3, 2015 LWEC determination should be modified, based on a worsening of the accepted conditions.⁷ The Board will, therefore, remand the case to OWCP for proper adjudication, to be followed by issuance of a *de novo* decision.⁸

⁵ *M.J.*, Docket No. 18-1081 (issued May 22, 2020); *A.S.*, Docket No. 18-0370 (issued March 5, 2019); *Katherine T. Kreger*, 55 ECAB 633 (August 13, 2004).

⁶ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Modification of Loss of Wage-Earning Capacity Decisions*, Chapter 2.1501.3a(2) (June 2013).

⁷ *Supra*, note 7.

⁸ *Id.*

IT IS HEREBY ORDERED THAT the December 22, 2021 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: June 27, 2022
Washington, DC

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

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

A handwritten signature in black ink, appearing to read "J. D. McGinley". The signature is written in a cursive style with a large, looping initial "J".

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board