

500-pound patient from a stretcher to a bed while in the performance of duty. He stopped work on January 26, 2015. OWCP accepted appellant's claim for lumbar herniated nucleus pulposus at L4-5 and subsequently expanded acceptance of his claim to include displacement of lumbar intervertebral disc without myelopathy, osseous and spondylolisthesis of the intervertebral foramina of the lumbar region, and postlaminectomy syndrome. It paid him wage-loss compensation on the supplemental rolls, effective March 12, 2015 and on the periodic rolls, effective April 5, 2015.

On July 12, 2016 the employing establishment offered appellant an alternate light-duty assignment as a registered nurse. The job offer indicated that the duties were within the restrictions specified by Dr. William Dinenberg, a Board-certified orthopedic surgeon and second opinion examiner, in his May 27, 2016 report.

On July 20, 2016 appellant returned to full-time, modified-duty work.

On September 7, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work for the period August 22 through September 3, 2016. On the reverse side of the claim form, the employing establishment verified that he was on leave without pay status from August 22 through September 2, 2016.

In a completed questionnaire signed on October 11, 2016 appellant contended that when he returned to modified-duty work on July 19, 2016 he was supposed to be seated doing admissions and discharges, but in reality he was standing and walking for eight hours per day.

By decision dated October 14, 2016, OWCP denied appellant's claim for a recurrence of disability for the period August 22 through September 3, 2016. It found that the medical evidence of record was insufficient to establish that he was disabled from work during the claimed period due to a material change/worsening of his accepted employment-related conditions.

Appellant, through counsel, requested reconsideration on December 22, 2016, March 22, 2018, and June 19, 2019. By decisions dated March 22, 2017, June 19, 2018, and June 27, 2019, OWCP denied modification of its prior decisions.

On December 13, 2019 appellant appealed the June 27, 2019 OWCP decision to the Board. By decision dated May 17, 2021, the Board set aside OWCP's June 27, 2019 decision and remanded the case for OWCP to request clarification from the employing establishment regarding appellant's limited-duty assignment, followed by a *de novo* decision.

By letters dated July 15 and September 3 and 22, 2021, OWCP requested that the employing establishment address appellant's allegation that, when he returned to modified duty in July 2016, he was standing and walking all day instead of performing work in a seated position. It also requested that the employing establishment clarify whether there was a change in his modified-duty assignment during the period August 22 through September 3, 2016.

In an email dated September 27, 2021, E.R., a nurse manager at the employing establishment, indicated that appellant was on a light-duty assignment from August 22 through September 3, 2016. She reported that his primary duties included reviewing veteran medical records and noted that his work duties and assignments had not changed recently.

By decision dated September 28, 2021, OWCP denied modification of its prior decision. The attached appeal rights listed only the right to request reconsideration or the right to request a Board appeal. It did not include the right to request an oral hearing or the right to request for a review of the written record.

The Board, having duly considered the matter, finds that this case is not in posture for decision.

By decision dated May 17, 2021, the Board set aside OWCP's June 27, 2019 decision and remanded the case for OWCP to request clarification from the employing establishment regarding appellant's limited-duty assignment, followed by a *de novo* decision. As such, the September 28, 2021 decision should have included full appeal rights, including the right to a hearing.³ The September 28, 2021 decision denied modification of the June 27, 2019 recurrence decision; however, the appeal rights attached included only that appellant could request reconsideration or file an appeal with the Board. OWCP did not issue an appropriate *de novo* decision addressing his recurrence claim as so instructed by the Board.

The Board has final authority to determine questions of law and fact. The Board's decisions are binding upon OWCP and must, of necessity, be so accepted and acted upon by OWCP.⁴ As OWCP failed to issue a *de novo* decision, it did not follow the Board's instructions in its May 17, 2021 decision and deprived appellant of his full appeal rights. The case is, therefore, again remanded for OWCP to, following any further development deemed necessary, issue a *de novo* decision with full appeal rights.

Accordingly, the case must be remanded for OWCP to issue a proper *de novo* decision regarding appellant's recurrence claim with full appeal rights.

³ See *P.B.*, Docket No. 21-0723 (issued April 13, 2022); *J.I.*, Docket No. 13-1414 (issued April 24, 2014).

⁴ See *Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84 (1949). See also *J.S.* Docket No. 12-622 (issued September 12, 2012); *L.C.*, Docket No. 09-1816 (issued March 17, 2010) (OWCP did not follow the Board's instructions in ascertaining the information necessary to determine pay rate); *Frank W. White*, 42 ECAB 693 (1991) (the Board's order in a prior appeal imposed an obligation on the Director to take particular actions as directed).

IT IS HEREBY ORDERED THAT the September 28, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 17, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board