



## **FACTUAL HISTORY**

The case has been before the Board on prior appeal. In a decision dated April 18, 2007, the Board reversed Office decisions dated December 30, 2005 and May 10, 2006.<sup>1</sup> While the Office had terminated compensation for wage-loss and medical benefits effective April 27, 1997, the Office failed to acknowledge that it had issued a February 4, 1993 wage-earning capacity determination based on actual earnings as an interviewer. The issue was whether the wage-earning capacity determination should be modified. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

By decision dated June 21, 2007, the Office modified the February 4, 1993 wage-earning capacity determination effective April 27, 1997. It found the medical evidence established a material change in the employment-related condition resulting in no loss of wage-earning capacity. The Office also found appellant was not entitled to medical benefits after April 27, 1997.

## **LEGAL PRECEDENT -- ISSUE 1**

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.<sup>2</sup> The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.<sup>3</sup>

## **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained an undisplaced fracture of the right lunate and hemarthrosis of the right wrist, resulting from a March 29, 1989 employment incident when appellant slipped while climbing down from a bookcase. As the Board noted in its April 18, 2007 decision, the Office referred appellant to Dr. John Fraser, an orthopedic surgeon, for a second opinion examination. In a report dated October 29, 1996, Dr. Fraser provided a history and results on examination. In his report, he found no evidence of muscle wasting in the upper arm or forearm, no motor or sensory deficits and a normal right wrist x-ray showing no evidence of fracture, dislocation or previous trauma. Dr. Fraser reported "no evidence of any pathology in the soft tissue or bony systems at this time. Anyone with significant pathology would have muscle wasting, and seven years post injury would certainly have developed a secondary arthritis in the wrist area or in one of the carpal bones." While Dr. Fraser noted a lack of 15 degrees in the right wrist dorsiflexion and volar flexion, he opined the loss of motion was purely subjective and not secondary to a pathological process.

---

<sup>1</sup> Docket No. 06-1663 (issued April 18, 2007). As the Board noted, there were also two prior appeals regarding overpayment issues that are not currently before the Board. Docket No. 94-1356 (issued April 19, 1996) and Docket No. 97-2642 (issued March 2, 2000).

<sup>2</sup> *Sue A. Sedgwick*, 45 ECAB 211 (1993).

<sup>3</sup> *Id.*

The October 29, 1996 report therefore supports a finding that there had been a material change in the employment-related condition. Dr. Fraser reported no continuing right wrist condition based on his examination and diagnostic testing. There was no other current probative evidence of a continuing employment-related condition. In a note dated November 21, 1996, Dr. Fabio Fiore, an orthopedic surgeon, noted that appellant had right wrist symptoms and was injected with cortical steroids. Dr. Fabio did not discuss causal relationship with employment or provide other pertinent evidence.

The Board therefore finds that the Office met one of the requirements for modifying a wage-earning capacity determination. The weight of the medical evidence established a material change in the nature and extent of the employment-related condition. In addition, the evidence supported the finding that appellant had no loss of wage-earning capacity. Dr. Fraser's report indicated that appellant's condition had resolved and therefore does not support a continuing employment-related disability. Based on the evidence of record, the Office properly modified its wage-earning capacity determination and found that appellant had no loss of wage-earning capacity. It is the Office's burden of proof, and the Office met its burden of proof in this case.

### **LEGAL PRECEDENT -- ISSUE 2**

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

### **ANALYSIS -- ISSUE 2**

As the Board noted in the April 18, 2007 decision, the issue of termination of medical benefits is separate from the modification of wage-earning capacity. The June 21, 2007 decision does make a finding that appellant was not entitled to medical benefits after April 27, 1997. The above discussion indicates that the October 29, 1996 report from Dr. Fraser was probative medical evidence that the employment-related condition had resolved. Based on this evidence, the Office met its burden of proof to terminate medical benefits in this case.<sup>5</sup>

### **CONCLUSION**

The Office met its burden of proof to modify the February 4, 1993 wage-earning capacity determination and find that appellant had no loss of wage-earning capacity as of April 27, 1997. It also met its burden of proof to terminate medical benefits effective April 27, 1997.

---

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>5</sup> By decision dated December 21, 1994, the Office had denied a claim for a recurrence of disability commencing April 22, 1994. The Board notes that the June 21, 2007 Office decision also included legal precedent for claims of a recurrence of disability and found, without further explanation, that appellant had not established a modification of wage-earning capacity in 1994 due to a recurrence of disability. The issue of a modification of the wage-earning capacity determination in 1994 was not before the Board on the prior appeal. If the Office is, on its own motion, reconsidering the issue of disability in 1994, it should issue an appropriate decision with adequate findings.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 21, 2007 is affirmed.

Issued: August 11, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board