

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

R.G., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Providence, RI, Employer**

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**Docket No. 16-0141
Issued: April 19, 2016**

Appearances:
William Shepard, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On November 2, 2015 appellant filed a timely appeal of a June 3, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied her recurrence claim. The Board docketed the appeal as 16-0141.

The Board has duly reviewed the record and finds that the case is not in posture for decision. By decision dated August 5, 2011, OWCP found that the position of information receptionist fairly and reasonably represented appellant's wage-earning capacity in accordance with 5 U.S.C. § 8115. It reduced her entitlement to compensation based on her earnings in this position. Appellant filed a recurrence of disability (Form CA-2a) on November 25, 2013 alleging on November 4, 2013 she sustained a recurrence of total disability due to her September 26, 1999 employment injury. By decision dated July 17, 2014, OWCP denied her claim for a recurrence of disability finding that the evidence was not sufficient to establish that she had established a recurrence of disability. Appellant requested reconsideration in a form dated March 2, 2015 and received by OWCP on March 13, 2015. By decision dated June 3, 2015, OWCP denied modification of its prior decision.

As noted above, OWCP issued a formal decision on appellant's wage-earning capacity on August 5, 2011. It is well established that a claimant may establish that a modification of wage-earning capacity is warranted if there is a material change in the nature and extent of an injury-

related condition, or a showing that the original determination was, in fact, erroneous.¹ Appellant's submission of a recurrence claim on November 25, 2013 for a recurrence of disability on November 4, 2013 should thus be regarded as a request for modification of the wage-earning capacity determination. The Board has held that, when a wage-earning capacity determination has been issued and appellant submits evidence with respect to disability for work, OWCP must evaluate the evidence to determine if modification of wage-earning capacity is warranted.² Rather, in this case, in its June 3, 2015 decision, OWCP adjudicated the claim as a recurrence.

The Board finds that OWCP should have determined whether appellant had established that the wage-earning capacity determination should be modified.³ The Board will therefore remand the case to OWCP for proper adjudication, to be followed by an appropriate merit decision to preserve appellant's appeal rights.

IT IS HEREBY ORDERED THAT the June 3, 2015 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: April 19, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹ *P.C.*, 58 ECAB 405 (2007); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995). *See also* FECA Transmittal 10-01 (issued October 5, 2009).

² *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

³ *L.J.*, Docket No. 13-1261 (issued November 4, 2013); *F.B.*, Docket No. 09-99 (issued July 21, 2010). *See also M.D.*, Docket No. 12-1317 (issued December 21, 2012).