

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

M.P., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Morgantown, WV, Employer**

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**Docket No. 18-0094
Issued: June 26, 2018**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 16, 2017 appellant, through counsel, filed a timely appeal from an April 24, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly reduced appellant's wage-loss compensation benefits, effective July 24, 2016, based on his capacity to earn wages in the selected position of

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

information clerk; and (2) whether appellant sustained a consequential emotional condition causally related to his accepted employment injury.

FACTUAL HISTORY

On January 29, 2002 appellant, then a 42-year-old correctional counselor, filed a traumatic injury claim (Form CA-1) alleging that on January 23, 2002 he injured his left knee, buttocks, back, right thumb, left elbow, and head when he fell down stairs while in the performance of duty. He stopped work on February 27, 2002. OWCP accepted the claim for an aggravation of spondylolisthesis and paid wage-loss compensation beginning April 13, 2002.

A functional capacity evaluation (FCE) performed on September 10, 2013, indicated that appellant's work level was sedentary. It further indicated that he was unable to return to a modified position.

Appellant received treatment for his injury from Dr. Peter L. Ang, a Board-certified internist. In an August 27, 2014 report, Dr. Ang noted that appellant received benefits from OWCP and disability benefits from the Social Security Administration. He diagnosed acquired spondylolisthesis aggravated by the January 23, 2002 work injury. He asserted that this was permanent and that appellant could only walk short distances and stand or sit for 5 to 15 minutes before changing positions. He could not perform regular duties "or any other work assignments." Dr. Ang noted that a September 2013 FCE indicated a sedentary physical capacity. In an August 27, 2014 work capacity evaluation (OWCP-5c), he indicated that the September 2013 FCE showed that appellant could not "meet the physical demands required for his prior or a modified job. [Appellant's] current physical demand capacities level is considered sedentary." Dr. Ang found that appellant could occasionally walk, stand, bend, stoop, and frequently reach and reach above the shoulder. He further indicated that he could occasionally push up to 84 pounds and pull up to 96 pounds. Dr. Ang found that appellant could lift 25 to 30 pounds.

OWCP, on February 10, 2015, referred appellant to Dr. Victoria M. Langa, a Board-certified orthopedic surgeon, for a second opinion examination.³ In a March 30, 2015 report, Dr. Langa discussed his history of a January 23, 2002 work injury. She noted that September 2013 FCE results showed that appellant had the capacity for sedentary activities, but noted that the FCE report was not included for review. On examination, Dr. Langa found no muscle spasm of the back, but complaints of tenderness. She further found no swelling, atrophy, or motor deficit of the legs, but altered sensation at L5 and S1 in the left leg. Dr. Langa diagnosed a history of grade one spondylolisthesis at L5-S1 with a bulging disc and examination findings suggesting left radiculopathy at L5 and/or S1, noting that diagnostic studies would confirm the diagnosis. She opined that the 1999 and 2002 work injuries permanently aggravated preexisting spondylolisthesis at L5-S1. In a March 30, 2015 work capacity evaluation form (OWCP-5c), Dr. Langa found that appellant could perform full-time sedentary work, sitting eight hours a day and changing positions as necessary. She opined that he could walk, stand, bend, and stoop for one hour per day, push,

³ In the statement of accepted facts, OWCP noted that it had previously accepted that appellant sustained a lumbar strain on June 2, 1999 under File No. xxxxxx822. That claim is not presently before the Board.

pull, and lift up to 10 pounds for two hours per day, and climb stairs for a half hour per day. Dr. Langa indicated that appellant should walk and stand only 10 to 15 minutes consecutively.

OWCP, on June 3, 2015, referred appellant to vocational rehabilitation. In a report dated July 1, 2015, the vocational rehabilitation counselor discussed his prior work experience as a correctional counselor and corrections officer, and noted that the employing establishment had no work available within his restrictions. On August 3, 2015 he identified positions within appellant's capabilities, including information clerk. In an August 28, 2015 plan justification, the vocational rehabilitation counselor indicated that appellant had the skills necessary to perform the position of information clerk, but recommended computer training classes for a month.

In a report dated September 15, 2015, Dr. Ang advised that he had reviewed Dr. Langa's March 30, 2015 report and disagreed with the finding that appellant could work full time with restrictions. He noted that a September 2013 FCE report indicated that appellant could not perform his usual employment or a modified position. Dr. Ang related, "[Appellant's] current physical demand capacities level is sedentary. He is currently unable to work [eight] hours a day even with restrictions."

By letter dated November 6, 2015, counsel asserted that a conflict in medical opinion existed between Dr. Ang and Dr. Langa. He also questioned whether Dr. Langa performed examinations for the employing establishment.

OWCP, on December 1, 2015, requested that Dr. Ang clarify whether appellant was totally disabled or could perform sedentary work duties.

On December 4, 2015 the vocational rehabilitation counselor indicated that appellant had taken the required computer training classes and noted that the status had changed from training to placement with a new employing establishment. He discussed the job search for various positions, including information clerk.

The vocational rehabilitation counselor, on February 4, 2016, completed a job classification (Form CA-66) for the position of information clerk. The position was sedentary, requiring occasional lifting of up to 10 pounds. The rehabilitation counselor found that appellant met the specific vocational preparation for the position through his work as a corrections officer and correctional counselor and his high school education. He determined that the position was performed in sufficient numbers to be reasonable available within the commuting area based on information from the state Bureau of Labor Statistics & Department of Commerce/Work Force Information at weekly wages of \$446.73.

In a March 4, 2016 letter, OWCP advised that it proposed to reduce appellant's wage-loss compensation based on his capacity to earn wages as a surveillance systems monitor. It allotted him 30 days to submit additional evidence or argument in response.

On April 3, 2016 counsel again asserted that a conflict in medical opinion evidence existed between Dr. Ang and Dr. Langa. He further maintained that there was no evidence supporting that the surveillance systems monitor position was reasonably available in the appropriate geographical area other than the information provided on the Form CA-66. Counsel asserted that Dr. Langa

based her work restrictions on the results of an FCE that she did not review and failed to provide rationale for her opinion.

By letter dated April 29, 2016, OWCP informed counsel that Dr. Ang's reports were contradictory and that it had requested clarification of his opinion, but received no response. It indicated that the September 2013 FCE was over 17 months old at the time of Dr. Langa's examination and noted that she had reviewed Dr. Ang's report discussing its findings. OWCP further advised that the vocational rehabilitation counselor obtained the labor market data from the state government. It was, however, retracting the March 4, 2016 notice of proposed reduction of compensation, as the position of surveillance system monitor was usually a government position.

On April 29, 2016 OWCP notified appellant of its proposed reduction of his wage-loss compensation benefits based on his capacity to earn wages of \$446.73 per week as an information clerk. It determined that the opinion of Dr. Langa constituted the weight of the evidence and established that the vocationally selected position was within his work restrictions.

In a report dated May 7, 2016, Dr. Lawrence B. Haddad, a clinical psychologist, noted that appellant had multiple medical problems, including lumbar pain, lumbar radiculopathy, osteoarthritis, diabetes, sleep apnea, hypertension, kidney stones, morbid obesity, and aggravation of spondylolisthesis, dizziness, and severe headaches. He noted that he was not able to take pain medication due to side effects and was "quite overwhelmed emotionally by his lack of control over pain and concerns about health issues." Dr. Haddad opined that stress at work "would likely exacerbate well-documented physical and emotional impairments." He determined that appellant was currently unable to "participate in any substantial gainful employment."

Counsel, on May 10 and 26, 2016, requested a copy of the labor market survey used by the vocational rehabilitation counselor.

By decision dated July 15, 2016, OWCP reduced appellant's wage-loss compensation benefits, effective July 24, 2016, based on its finding that he had the physical and vocational capacity to earn wages of \$446.73 per week as an information clerk. It found that Dr. Haddad did not relate the diagnosed psychiatric condition to his work injury and noted that subsequently-acquired conditions were not considered in determining the suitability of a constructed position. OWCP applied the formula set forth in *Albert C. Shadrick*,⁴ in determining appellant's loss of wage-earning capacity.

On July 18, 2016 counsel requested that OWCP expand acceptance of the claim to include a consequential emotional condition, asserting that Dr. Haddad related depression to his pain and limitations.

Counsel, on July 20, 2016, requested a telephone hearing before an OWCP hearing representative. He maintained that the Board, in *R.C.*,⁵ remanded the case because the vocational rehabilitation counselor failed to provide employment data from the appropriate state agency.

⁴ 5 ECAB 376 (1953); as codified by regulation in 20 C.F.R. § 10.403.

⁵ Docket No. 11-0333 (issued October 4, 2011).

Counsel argued that a Form CA-66 was insufficient to constitute a labor market survey. He requested a subpoena for the vocational rehabilitation counselor or that OWCP remand the case to obtain new labor market information. Counsel also asserted that Dr. Langa's report was stale as it was more than one-year old.

On July 25, 2016 OWCP advised counsel that it could not accept an employment-related emotional condition as Dr. Haddad did not provide a reasoned opinion finding that a diagnosed condition was causally related to the accepted injury.

OWCP, on February 22, 2017, denied appellant's request for the issuance of a subpoena for the vocational rehabilitation counselor or to compel submission of the labor market survey. It found that he had not shown that the information needed could not be obtained through other means.

Counsel, on March 13, 2017, requested a review of the written record in lieu of a telephone hearing. He advised that the provided labor market survey was not an actual labor market survey and was insufficient to support reducing compensation as it did not contain the actual data used in reaching the finding that the position was reasonably available. Counsel also maintained that an unresolved medical conflict existed, that appellant could not commute to work if he could only stand or walk for 10 to 15 minutes consecutively. He further argued that Dr. Langa's report was stale, and that Dr. Haddad's report showed a consequential emotional condition.

In an April 24, 2017 decision, OWCP's hearing representative affirmed the July 15, 2016 decision. He found that Dr. Langa's reports represented the weight of the medical evidence, noting that Dr. Ang was not an appropriate specialist for treating spondylolisthesis and his reports were conflicting with regard to appellant's work capacity. The hearing representative found that Dr. Haddad's opinion was insufficient to establish a consequential emotional condition. He also found that the vocational rehabilitation counselor identified available positions and that OWCP had found that the raw data was not necessary to demonstrate the availability of employment.

On appeal, counsel contends that the record did not contain a valid labor market survey with supporting data, citing *R.C.* He further notes that in *R.B.*,⁶ the Board reversed a loss of wage-earning capacity determination when it was not clear which city was used to determine the claimant's geographical area. Counsel also asserts that a conflict in medical opinion exists between Dr. Ang and Dr. Langa. He challenges OWCP's finding that Dr. Ang's opinion was contradictory and maintains that Dr. Langa based her work restrictions on a stale FCE that she did not review. Counsel also questions how appellant could commute to work standing or walking on 10 to 15 minutes at a time and argues that Dr. Langa's report was not reasonably current as it was more than one year old. He also maintains that OWCP should have accepted a consequential emotional condition claim or remand the case for additional development of the issue.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has made a determination that, a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of proof to justify a

⁶ Docket No. 14-1459 (issued December 3, 2015).

subsequent reduction of benefits.⁷ Under section 8115(a), wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings do not fairly and reasonably represent his or her wage-earning capacity, or if the employee has no actual earnings, his wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, his usual employment, age, qualifications for other employment, the availability of suitable employment, and other factors or circumstances which may affect wage-earning capacity in his disabled condition.⁸

When OWCP makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to an OWCP wage-earning capacity specialist for selection of a position listed in the Department of Labor's *Dictionary of Occupational Titles* or otherwise available in the open market, that fits the employee's capabilities with regard to his physical limitations, education, age, and prior experience.⁹ Once this selection is made, a determination of wage rate and availability in the open labor market should be made through contact with the state employment service or other applicable service. Finally, application of the principles set forth in *Albert C. Shadrick*¹⁰ will result in the percentage of the employee's loss of wage-earning capacity.

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained an aggravation of spondylolisthesis on January 23, 2002. It paid him wage-loss compensation for total disability as of April 13, 2002.

On August 27, 2014 Dr. Ang diagnosed spondylolisthesis aggravated by the January 23, 2002 work injury. He noted that a September 2013 FCE indicated that appellant could perform sedentary duties. Dr. Ang opined that appellant could not perform his usual work duties or any other assignments. He completed an August 27, 2014 work capacity evaluation form. Dr. Ang opined that appellant could not perform his usual work or work in a modified position, and that his current physical capacity was sedentary. He found that appellant could occasionally walk, stand, bend, and stoop, and frequently reach and reach above the shoulder, and occasionally push up to 84 pounds, pull up to 96 pounds, and lift 25 to 30 pounds.

OWCP referred appellant to Dr. Langa for a second opinion examination. On March 30, 2015 Dr. Langa reviewed the history of injury and discussed his complaints of back tenderness. She found no swelling, muscle spasms, atrophy, or motor deficit of the legs, but a loss of sensation in the left leg at L5-S1. Dr. Langa diagnosed an employment-related aggravation of preexisting spondylolisthesis at L5-S1. She opined that appellant could work eight hours per day with

⁷ *T.O.*, 58 ECAB 377 (2007).

⁸ *Harley Sims, Jr.*, 56 ECAB 320 (2005); *Karen L. Lonon-Jones*, 50 ECAB 293 (1999); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on a Constructed Position*, Chapter 2.816.3 (June 2013).

⁹ *Mary E. Marshall*, 56 ECAB 420 (2005); *James A. Birt*, 51 ECAB 291 (2000).

¹⁰ 5 ECAB 376 (1953); codified by regulation at 20 C.F.R. § 10.403.

restrictions of sitting for eight hours changing positions as needed, walking, standing, bending, and stooping for one hour per day, pushing, pulling, and lifting up to 10 pounds for two hours per day, and climbing stairs for a half hour per day. Dr. Langa indicated that he could walk and stand only 10 minutes at a time. She provided a detailed description of appellant's condition and found that he was no longer disabled, but could perform modified employment.¹¹ Dr. Langa's opinion, which is rationalized and based on a proper factual background, represents the weight of the evidence and establishes that he is no longer totally disabled and can perform work within the provided work restrictions.¹²

The Board finds that OWCP properly referred appellant for vocational rehabilitation as the opinion of Dr. Langa established that he was no longer totally disabled due to residuals of his employment injury.¹³ OWCP further properly found that he had the capacity to perform the duties of information clerk. The position is sedentary and requires only occasional lifting of up to 10 pounds and is thus within the work restrictions provided by Dr. Langa.

Dr. Ang reviewed Dr. Langa's report on September 15, 2015. He noted that a September 2013 FCE indicated that appellant could not return to his usual work or a modified position. Dr. Ang opined that appellant was at a sedentary activity level, but could not work eight hours per day. OWCP, on December 1, 2015, requested that he clarify whether appellant could perform sedentary work or whether he was totally disabled. Dr. Ang was unresponsive to OWCP's request. He provided inconsistent findings regarding whether appellant was disabled or could perform sedentary work. The Board has held that inconsistent or contradictory reports from a physician reduce the probative value of his opinion.¹⁴ The medical evidence, consequently, establishes that appellant has the requisite physical ability to earn wages as an information clerk.¹⁵

Following its proposed reduction of compensation, appellant also submitted a May 7, 2016 report from Dr. Haddad, who diagnosed major depression with chronic pain and anxiety. Dr. Haddad opined that appellant was unable to work, noting that work stress would aggravate his condition. There is no evidence, however, that appellant had preexisting major depression. Where suitability is to be determined based on a position not actually held, the selected position must accommodate the employee's limitations from both injury-related and preexisting conditions, but not limitations attributable to postinjury or subsequently-acquired conditions.¹⁶

In assessing the claimant's ability to perform the selected position, OWCP must consider not only physical limitations, but also take into account work experience, age, mental capacity,

¹¹ See *J.E.*, Docket No. 16-0006 (issued November 16, 2016) (the medical evidence upon which OWCP relies in reducing a claimant's compensation based on a loss of wage-earning capacity determination must provide a detailed description of the condition).

¹² See *G.A.*, Docket No. 12-1826 (issued June 25, 2013).

¹³ See *N.J.*, 59 ECAB 171 (2007).

¹⁴ See *M.R.*, Docket No. 13-1318 (issued November 15, 2013); *Cleona M. Simmons*, 38 ECAB 814 (1987).

¹⁵ See *supra* note 11.

¹⁶ See *supra* note 8 at Chapter 2.816.4c (June 2013).

and educational background.¹⁷ The vocational rehabilitation counselor determined that appellant had the skills necessary to perform the position of information clerk based on his work and educational history. He further found that the position was reasonably available within the appropriate geographical area at a wage of \$446.73 per week. The Board finds that OWCP considered the proper factors, including the availability of suitable employment, appellant's physical limitations and employment qualifications in determining that he had the capacity to perform the position of information clerk.¹⁸ OWCP further properly determined his loss of wage-earning capacity in accordance with the formula developed in *Shadrick* and codified at 20 C.F.R. § 10.403.¹⁹ It, therefore, properly found that the position of information clerk reflected appellant's wage-earning capacity effective July 24, 2016.²⁰

On appeal counsel argues that the vocational rehabilitation counselor did not provide a proper labor market survey with supporting data, citing *R.C.* and *R.B.* in support of his contention. In *R.C.*, the Board reversed a loss of wage-earning capacity decision as it found that a vocational rehabilitation counselor, in the Form CA-66 job analysis, had not indicated that she had obtained employment data for the state Department of Employment and Workforce or any other employing establishment, but instead provided cited information from one individual and from websites as support for her determination. In *R.B.*, the Board found that the evidence conflicted regarding the hourly wage for the identified position and it was unclear which geographical area was used as the claimant's commuting area, and thus reversed the wage-earning capacity decision. In this case, however, the vocational rehabilitation counselor completed a Form CA-66 and indicated that he based his finding that the job was available in sufficient numbers within appellant's geographical area on labor market data obtained from the state Bureau of Labor Statistics and Department of Commerce Work Force Information. The vocational rehabilitation counselor is an expert in the field of vocational rehabilitation and OWCP may rely on his opinion in determining whether the job is vocationally suitable and reasonably available.²¹ OWCP procedures provide that the rehabilitation counselor should investigate and show the availability of targeted jobs "by citing sources such as the local State employment service, the local Chamber of Commerce, [employing establishment] contacts, and actual job openings."²² The vocational rehabilitation counselor properly provided information from the state employment service on the Form CA-66.

¹⁷ See *supra* note 8.

¹⁸ *Id.*

¹⁹ See *supra* note 4. OWCP divided appellant's employment capacity to earn wages of \$446.73 a week by the current pay rate of the position held when injured of \$1,301.52 per week to find a 34 percent wage-earning capacity. It multiplied the pay rate at the time of injury of \$935.62 by the 34 percent wage-earning capacity percentage. The resulting amount of \$318.11 was subtracted from appellant's date-of-injury pay rate of \$935.62 which provided a loss of wage-earning capacity of \$617.51 per week. OWCP then multiplied this amount by the appropriate compensation rate of three-fourths and applied adjustments, which yielded \$2,484.00 every four weeks.

²⁰ See *V.R.*, Docket No. 17-0085 (issued April 20, 2017).

²¹ See *D.P.*, Docket No. 16-1198 (issued August 22, 2017).

²² See *supra* note 8 at Chapter 2.816.6a (June 2013).

Counsel further asserts that a conflict exists between Dr. Ang and Dr. Langa. As noted, however, Dr. Ang provided inconsistent and contradictory findings, and thus his opinion is of insufficient probative value to create a conflict with Dr. Langa. Counsel also argues that Dr. Langa's opinion was stale and based upon an outdated FCE that she did not review. There is no indication, however, that she based her work restrictions on the FCE. Additionally, Dr. Langa's March 30, 2015 evaluation was reasonably current when OWCP issued its July 15, 2016 loss of wage-earning capacity, and thus not considered to be stale under the facts of this case.²³ Regarding counsel's questioning how appellant could commute given his restrictions, the Board notes that he has not submitted any evidence showing an inability to travel to work.

Appellant may request modification of the loss of wage-earning capacity determination, supported by new evidence of argument, at any time before OWCP.

LEGAL PRECEDENT -- ISSUE 2

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.²⁴

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.²⁵

²³ See *supra* note 21; *G.M.*, Docket No. 16-1043 (issued January 4, 2017). The Board notes that counsel, on appeal, cites numerous Board cases which he alleges demonstrates that Dr. Langa's report was not reasonably current. Counsel cited *Henry J. Heier*, Docket No. 93-2289 (issued May 16, 1995). In *Heier*, however, the Board noted that appellant's condition had deteriorated since a physician completed a work restriction form a year and a half earlier. Counsel also cited a case where the Board found that an opinion was stale as it was 18 months old and a case where the Board found OWCP properly referred a claimant to another physician on the issue of whether his compensation should be terminated as it was more than one year since the prior examination. In this case, however, Dr. Langa's report was just over 15 months prior to the reduction of compensation.

²⁴ See *S.S.*, 59 ECAB 315 (2008); *Debra L. Dillworth*, 57 ECAB 516 (2006).

²⁵ *Charles W. Downey*, 54 ECAB 421 (2003).

ANALYSIS -- ISSUE 2

Counsel requested that OWCP expand acceptance of his claim to include a consequential emotional condition. The Board finds, however, that the medical evidence of record is insufficient to establish that he sustained major depression with chronic pain and anxiety as a result of his January 23, 2002 employment injury.

On May 7, 2016 Dr. Haddad described appellant's medical conditions, which he advised included lumbar pain, lumbar radiculopathy, osteoarthritis, diabetes, sleep apnea, hypertension, kidney stones, morbid obesity, aggravation of spondylolisthesis, dizziness, and severe headaches. He opined that appellant was overwhelmed by his failure to control his pain and health concerns. Dr. Haddad determined that appellant was totally disabled from work, noting that stress would aggravate his physical and emotional conditions. He diagnosed major depression with chronic anxiety and pain. Dr. Haddad, however, did not address the cause of appellant's major depression or attribute it to the January 23, 2002 work injury and thus his opinion is of little probative value.²⁶

On appeal counsel contends that OWCP should have accepted or further developed the issue of a consequential emotional condition. Appellant, however, has the burden of proof to establish a consequential condition. He failed to provide the necessary evidence to support his claim, and thus failed to meet his burden of proof.²⁷

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly reduced appellant's wage-loss compensation benefits, effective July 24, 2016, based on his capacity to earn wages in the constructed position of information clerk. The Board further finds that he has not established a consequential emotional condition causally related to his accepted employment injury.

²⁶ See *V.L.*, Docket No. 07-1091 (issued September 6, 2007).

²⁷ See *C.C.*, Docket No. 15-1056 (issued April 4, 2016).

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2018
Washington, DC

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

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

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