

February 6, 2004. OWCP accepted her claim for sprain/strain of the shoulder, upper arm, trapezius and neck on February 15, 2005 under File No. xxxxxx717.

Appellant filed an occupational disease claim on April 20, 2005 alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment; assigned OWCP File No. xxxxxx247, which is the claim under which the current appeal is filed. OWCP accepted her claim on April 28, 2005 for bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on October 14, 2005. She returned to light-duty work on November 8, 2005. On November 28, 2006 OWCP expanded the acceptance of appellant's claim to include right wrist tendinitis as a result of her employment duties. Appellant accepted a light-duty position on January 31, 2007 working as a mail handler. The light-duty position became available on February 17, 2007.

By decision dated April 18, 2007, OWCP found that appellant's position of modified mail handler effective January 17, 2007 fairly and reasonably represented her wage-earning capacity.

Appellant underwent an open subacromial decompression and bursectomy with release of the coracoacromial ligament on November 19, 2009. She was released to full duty for the right shoulder on February 26, 2010.

Appellant filed a notice of recurrence of disability on March 30, 2010 alleging on that date she sustained a recurrence of disability due to her accepted occupational employment injury. She stated that she was told by the employing establishment that there was no work for her based on her restrictions. Appellant's supervisor confirmed this statement. The employing establishment stated that appellant was in the National Reassessment Process (NRP). Appellant filed a claim for compensation requesting leave without pay compensation from March 27 through May 4, 2010.

In a report dated April 5, 2010, appellant's attending physician, Dr. Thomas E. Shockley, Jr., a Board-certified orthopedic surgeon, stated that appellant had bilateral hand and wrist discomforts as well as right elbow pain. He found positive Phalen's and Tinel's signs and recommended left carpal tunnel release.

In a letter dated May 12, 2010, OWCP instructed appellant on the basis for modifying a loss of wage-earning capacity determination and allowed 30 days for a response. Dr. Shockley referred appellant for electrodiagnostic testing which demonstrated recurrent carpal tunnel syndrome on the right and mild to moderate carpal tunnel syndrome on the left.

OWCP issued a decision on February 10, 2012 denying appellant's claim for compensation. It found that appellant had not submitted the necessary evidence to establish modification of the April 18, 2007 wage-earning capacity determination.

Appellant requested an oral hearing before an OWCP hearing representative on February 14, 2012. She testified at the oral hearing on May 16, 2012. Appellant stated that her limited-duty position was being filled by a coworker.

By decision dated July 12, 2012, an OWCP hearing representative found that appellant had not established a recurrence of disability or that the loss of wage-earning capacity

determination was in error or a material change in the nature and extent of her injury-related condition.

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

FECA Bulletin No. 09-05, however, outlines OWCP procedures when limited-duty positions are withdrawn pursuant to NRP. If, as in the present case, a formal wage-earning capacity decision has been issued, OWCP must develop the evidence to determine whether a modification of that decision is appropriate.⁴

ANALYSIS -- ISSUE 2

In its July 12, 2012 decision, an OWCP hearing representative affirmed the February 10, 2012 decision and denied modification of the April 18, 2007 loss of wage-earning capacity determination. He found that the duties of the modified position that was the subject of the original loss of wage-earning capacity decision fairly and reasonably represented appellant's wage-earning capacity.

As noted above, OWCP issued a formal loss of wage-earning capacity decision on April 18, 2007. The employing establishment reassessed appellant's rated position under NRP, resulting in a withdrawal of limited duty and a claim for wage-loss compensation beginning March 27, 2010 filed by appellant. OWCP analyzed the case under the customary criteria for modifying a loss of wage-earning capacity determination, but did not acknowledge FECA Bulletin No. 09-05 or fully follow the procedures outlined therein for claims, such as this, in which limited-duty positions are withdrawn pursuant to NRP.

When a loss of wage-earning capacity decision has been issued, FECA Bulletin No. 09-05 requires OWCP to develop the evidence to determine whether a modification of the decision is appropriate.⁵ FECA Bulletin No. 09-05 asks OWCP to confirm that the file contain documentary evidence supporting that the position was an actual *bona fide* position. It requires OWCP to review whether a current medical report supports work-related disability and establishes that the current need for limited duty or medical treatment is a result of injury-related residuals, and to further develop the evidence from both the claimant and the employing establishment if the case lacks current medical evidence.⁶

² *Harley Sims, Jr.*, 56 ECAB 320 (2005); *Tamra McCauley*, 51 ECAB 375 (2000).

³ *Id.*

⁴ FECA Bulletin No. 09-05 (issued August 18, 2009).

⁵ *Id.*

⁶ *Id.* at § I.A. 1-2.

As OWCP failed to follow the guidelines in FECA Bulletin No. 09-05, the Board will set aside the August 24, 2011 decision and remand the case for further consideration. After proper compliance with FECA Bulletin No. 09-05 guidelines, OWCP shall issue an appropriate *de novo* decision on appellant's entitlement to wage-loss compensation beginning November 7, 2009.⁷

CONCLUSION

The Board finds that the case is not in posture for decision and will be remanded to OWCP for further development.⁸

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 12, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 20, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ See *D.T.* Docket No. 12-217 (issued October 16, 2012); *M.E.*, Docket No. 11-1416 (issued May 17, 2012).

⁸ In view of the disposition of the first issue, the second issue regarding a recurrence of disability is moot.