

from February 18 to October 1, 1993 and for the period beginning November 26, 1994. OWCP referred appellant to vocational rehabilitation. Appellant enrolled in paralegal training in April 1996 and completed his training in October 1997. OWCP found on November 18, 1998 that he could perform the duties of a paralegal, resulting in 42 percent LWEC. It reduced appellant's compensation effective December 8, 1998. By an October 12, 1999 decision, an OWCP hearing representative affirmed the November 18, 1998 decision reducing appellant's wage-loss compensation based on his capacity to earn wages in a selected paralegal position. The Board, on November 7, 2001, affirmed the LWEC decision finding that OWCP appropriately considered the proper factors in reducing his monetary compensation, including the availability of paralegal positions and his vocational aptitudes and physical limitations.² The facts of the case, as set forth in the Board's prior decision, are hereby incorporated by reference. The relevant facts are set forth below.

In his August 14, 2014 letter requesting modification of the November 18, 1998 LWEC determination, appellant contended that he was unable to obtain employment as a paralegal from 1997 to the present due to his employment record at the employing establishment and the medication he had been taking since February 16, 1993 which kept him sedated.

In an August 20, 2014 letter, OWCP advised appellant of the criteria necessary for modifying a wage-earning capacity decision. It requested that he submit evidence indicating why the requested modification was warranted based on the given criteria.

In letters dated August 25 and September 6 and 18, 2014, appellant alleged that OWCP's LWEC determination was made in error because OWCP knew that, under the circumstances related to his prior employing establishment, medication, and statements, he would not have been effective as a paralegal. He further alleged that his emotional condition had worsened and he had to take stronger medication to accommodate his condition. Appellant stated that medical reports of record established that he was totally disabled for work.

In an August 26, 2014 medical report, Dr. David A. Frankel, a Board-certified psychiatrist, reported that appellant had informed him that, although he had been retrained as a paralegal, he was unable to perform this job. Appellant stated that his psychiatric problems interfered with his thinking and the side effects of his medications made it difficult to sufficiently concentrate.

By decision dated October 15, 2014, OWCP denied modification of the November 18, 1998 LWEC determination. It found that the evidence submitted was not sufficient to establish modification of its prior LWEC determination.

² Docket No. 00-967 (issued November 7, 2001).

LEGAL PRECEDENT

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant's ability to earn wages. Compensation payments are based on the wage-earning capacity determination.³

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.⁴ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁵

ANALYSIS

In requesting modification of the November 18, 1998 LWEC determination, appellant has alleged that the original determination was, in fact, erroneous. He contended that OWCP knew that, under circumstances related to his prior employing establishment, medication, and statements made, he would not have been effective as a paralegal. Appellant has presented no evidence to support his general allegation of error. There is also no evidence that he was unable to perform the duties of the selected position on the date the LWEC decision was issued. The Board has previously affirmed the reduction of appellant's wage-loss compensation based on his capacity to earn wages in the selected paralegal position. Appellant has not demonstrated that the original determination was erroneous or that he was retrained or otherwise vocationally rehabilitated since the November 18, 1998 decision. The only remaining basis for modification is whether the medical evidence establishes a material change in the nature and extent of the injury-related conditions.

Appellant asserted that he was unable to obtain employment as a paralegal from 1997 to the present due to his medical condition and resultant total disability. He stated that his emotional condition had worsened and the medication he had been taking since February 16, 1993 kept him sedated. Dr. Frankel noted in his August 26, 2014 report that appellant had informed him that, although he had been retrained as a paralegal, he was unable to perform this job because his psychiatric problems interfered with his thinking and side effects of his medicine made it difficult to sufficiently concentrate. This report does not establish a material change in appellant's injury-related emotional conditions such that he would be unable to perform the constructed position. Dr. Frankel did not provide a firm medical diagnosis or provide his own opinion that appellant was totally disabled; rather, he relied on appellant's own representation of disability. The Board will not require OWCP to pay compensation for disability in the absence

³ See *Sharon C. Clement*, 55 ECAB 552 (2004).

⁴ *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁵ *Id.*

of any medical evidence directly addressing disability. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁶

The evidence does not establish that appellant's accepted work-related medical conditions have materially changed, that the original wage-earning capacity determination was in error or that he had been retrained or otherwise vocationally rehabilitated. For these reasons, appellant has not established that the November 18, 1998 wage-earning capacity determination should be modified.

Appellant may request modification of the LWEC determination, supported by new evidence or argument, at any time before OWCP.

CONCLUSION

The Board finds that appellant has not met his burden of proof to modify OWCP's LWEC determination.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ *Selden H. Swartz*, 55 ECAB 272, 278 (2004).