

# DISABILITY MANAGEMENT OWCPC PERSPECTIVE

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OFFICE OF WORKERS' COMPENSATION PROGRAMS

U.S. DEPARTMENT OF LABOR



# OWCP'S MISSION STATEMENT

- protect the interests of injured workers, their families, and their employers by making timely and accurate decisions on claims
- provide prompt payment of benefits
- **help injured workers return to gainful work as soon as possible**





# PURPOSE OF DISABILITY MANAGEMENT

- OWCP is responsible for prompt payment of benefits and helping claimants return to gainful employment as soon as possible to minimize the period of disability.
- The OWCP is also obligated to ensure benefits do not continue after the effects of the work-related conditions have ceased.



# OVERVIEW

- Disability Management (DM):
  - ❖ Quality Case Management (QCM): up to 30 months
  - ❖ Periodic Roll Management (PRM): 30+ months





# OVERVIEW (CONT.)

- The overall philosophy of DM and the role of the Claims Examiner (CE) in carrying out OWCP's mission
- Basic DM concepts
- The interactions among CEs, employing agency representatives, nurses, and vocational rehabilitation professionals
- Strategies and techniques that allow the CE to effectively manage a disability case

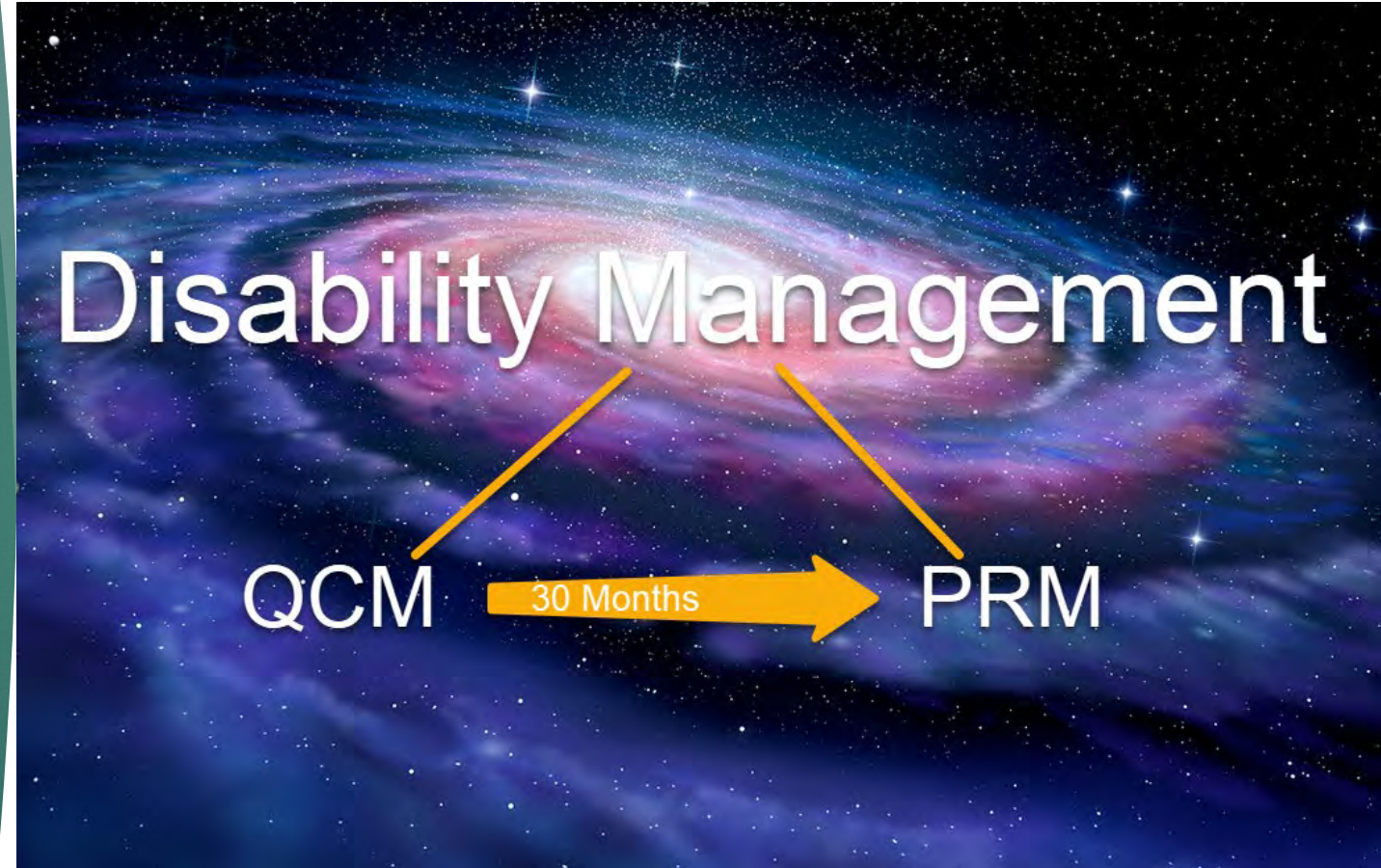


# DISABILITY MANAGEMENT BASICS

Let's review some basic disability management terms and concepts.

## QCM vs. PRM:

- **Quality Case Management (QCM)**: the first 30 months of partial or total disability.
- **Periodic Roll Management (PRM)**: if compensation continues after 30 months.







# DISABILITY MANAGEMENT BASICS

At all times, the CE's goal is to take prompt disability management interventions to maximize medical recovery and minimize the period of disability.

# DISABILITY MANAGEMENT BASICS

## CE's Interventions

- Writing to the Attending Physician (AP) to obtain current medical opinion
- Referring a case for Nurse and Vocational Rehabilitation services
- Completing District Medical Advisor (DMA), Second Opinion, or Referee Referrals
- Requesting a Limited Duty Job Offer from the Employing Agency
- Reviewing and weighing medical evidence to determine whether the evidence supports continuing disability



# EARLY DISABILITY MANAGEMENT (QCM)

- Disability management is a team approach and consists of more than the CE's interventions alone.
- The best outcomes stem from an active team approach where **OWCP, Employing Agency (EA), claimant, Field Nurse (FN), Vocational Rehabilitation Specialist, and the medical providers** use all available tools to ensure speedy recovery and a sustainable return to work.





# RESPONSIBILITY OF THE CE

While several people may be actively involved in a case, the CE has the sole discretion to determine what actions should be taken and for ensuring that the case reaches an appropriate resolution.

**This authority cannot be delegated to a Field Nurse or a Rehabilitation Counselor.**







# RESPONSIBILITY OF THE CE (CONT.)

The EA should expect the following from the OWCP during the disability management process:

- Information relevant to the return-to-work effort, especially work limitations.
- Pertinent information obtained by the FN and RC that would enable the EA to formulate a job offer.
- Prompt determinations on medical issues and the suitability of job offers.





# WHEN DOES A CASE ENTER THE QCM UNIVERSE?

Any accepted case where the claimant has **not returned to work**, has only returned to **work on a part-time basis**, or is otherwise **losing wages**, should be part of the QCM universe as soon as injury-related lost time or wage loss is verified.



# When Does a Case Enter the QCM Universe?

- Once a Traumatic Injury (TI) claim has been accepted, the QCM record may be created during the Continuation of Pay (COP) period, before a claim for wage loss is filed.
- QCM records may also be created prior to receipt of a wage loss claim when surgery has been approved.






# DOES A CASE REMAIN IN THE QCM UNIVERSE INDEFINITELY?

No, a case will generally remain in QCM **until**:

- The claimant returns to the job held on the date of injury.
- The claimant returns to work in some other capacity and the office makes a **formal** determination regarding their wage-earning capacity (actual or constructed).
- A formal decision is issued regarding the claimant's entitlement to compensation (termination, suspension, or sanction).
- The claimant elects OPM benefits in lieu of their FECA benefits.
- The claimant dies.







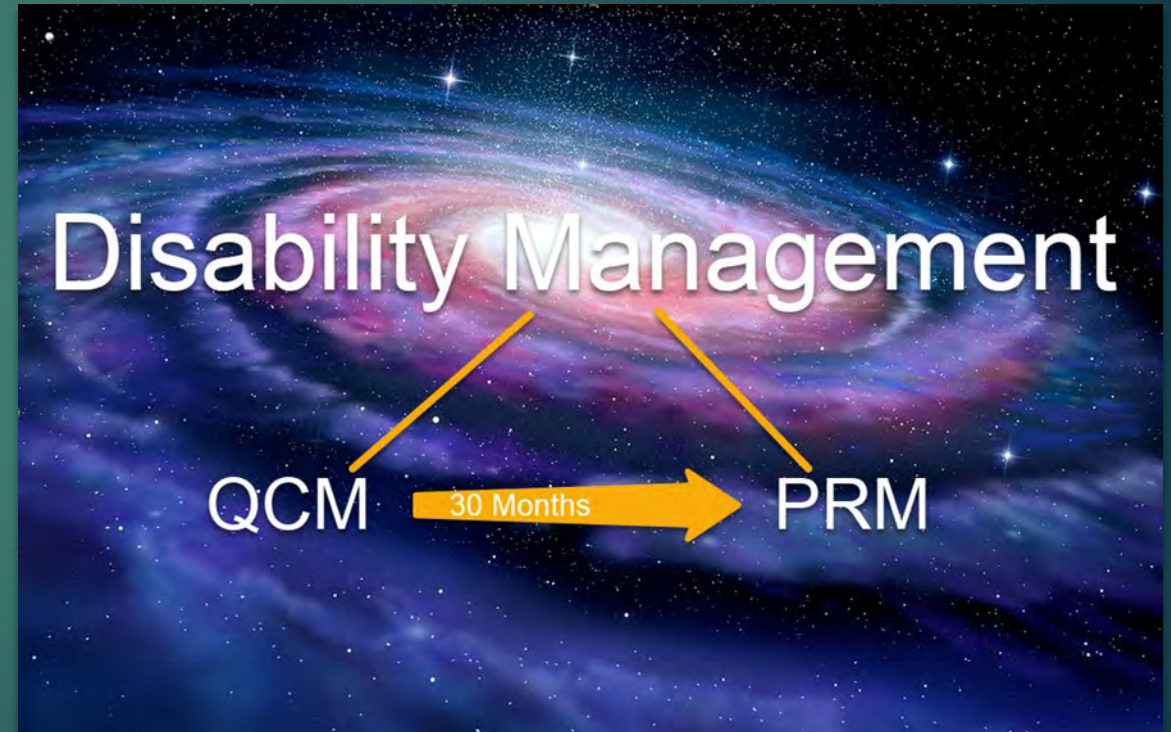
# DOES A CASE REMAIN IN THE QCM UNIVERSE INDEFINITELY?

- A case **leaves** the QCM universe when the period of wage loss due to the work-related injury exceeds 30 months.
- The claimant could be working in a non-DOI position with partial wage loss or not working at all.



# WHEN DOES A CASE ENTER THE PRM UNIVERSE?

- When 30 months have elapsed from the first date of wage loss.
- If a **formal** decision is issued regarding the claimant's wage-earning capacity and we are making payments based on that wage earning capacity.
- Case moves into the PRM universe automatically based on DM coding in iFECS, which we will discuss in detail later.





# WHEN DOES A CASE ENTER THE PRM UNIVERSE?

- If the DM begins **after** 30 months of disability with wage loss have already elapsed, the case will be automatically added to the PRM universe, completely bypassing QCM.
- This may occur if:
  - the case is accepted after multiple appeals or
  - the claimant makes a retroactive election of benefits.



# DOES A CASE REMAIN IN THE PRM UNIVERSE INDEFINITELY?

A case will remain in the PRM universe indefinitely until:

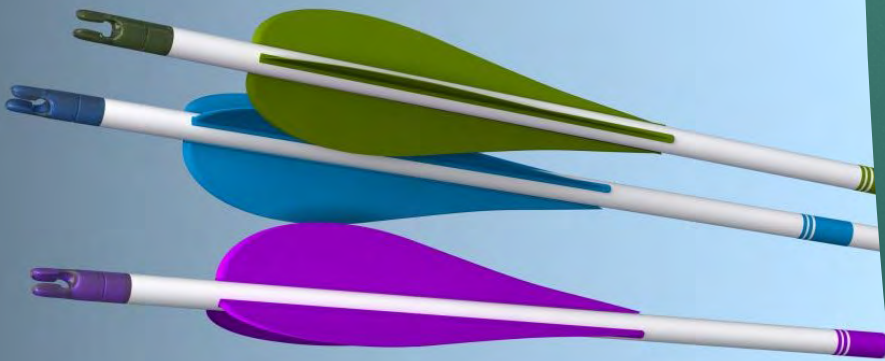
- The claimant returns to the job held on the date of injury.
- The claimant returns to work in some other capacity and the office makes a **formal** determination regarding their wage-earning capacity (actual or constructed).
- A formal decision is issued regarding the claimant's entitlement to compensation (termination, suspension, or sanction).
- The claimant elects OPM benefits in lieu of their FECA benefits.
- The claimant dies.



# ARE QCM GOALS AND PRM GOALS THE SAME?

Yes and no:

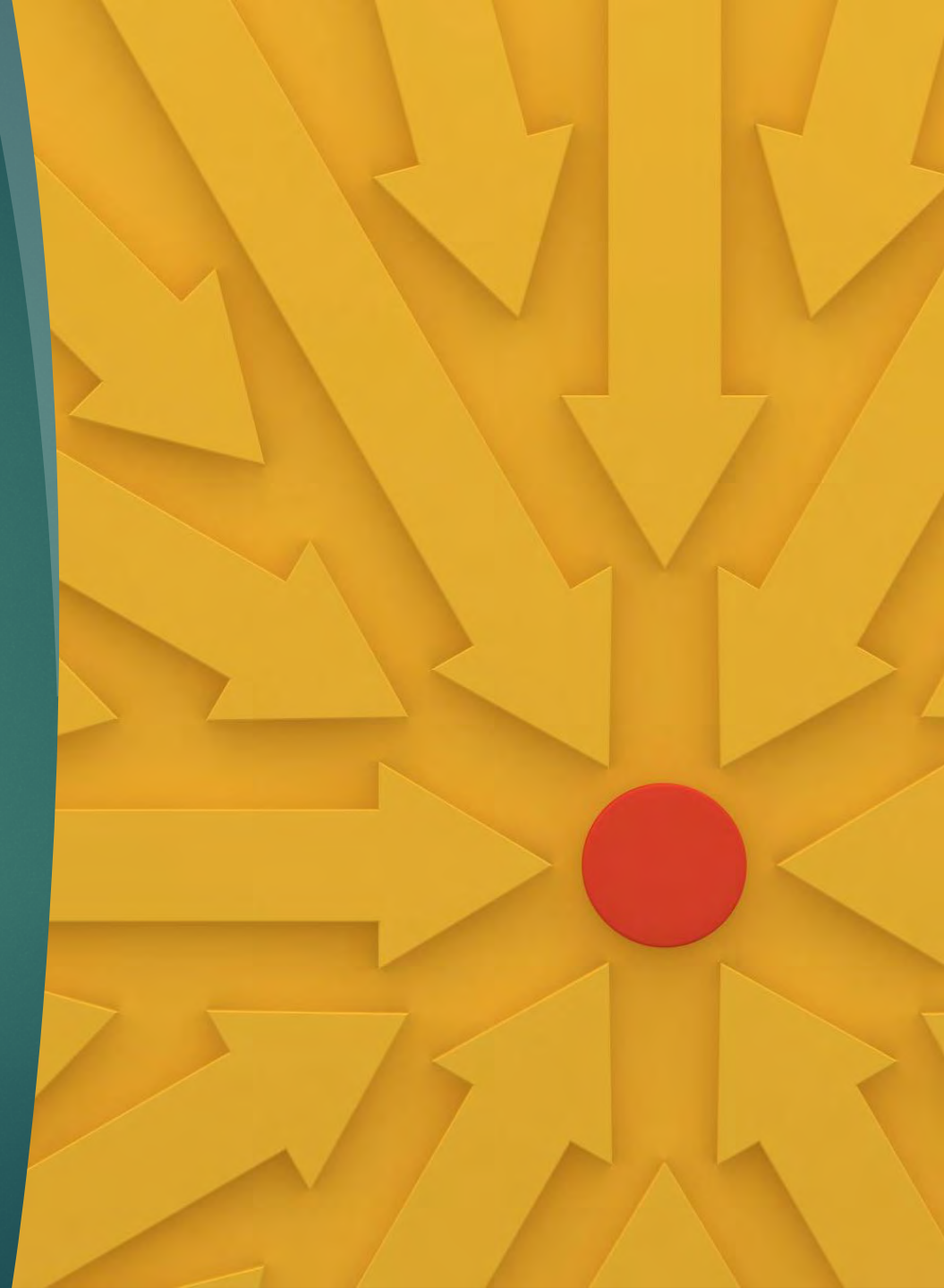
- The **basic goals** of verifying continuing entitlement and assisting the claimant with return to work **are the same**, and the techniques used to achieve these goals are also the same.
- However, the **specific goals** of QCM and PRM, **differ** a bit.
  - Less frequent reviews for PRM cases
  - No Field Nurse Services for PRM cases



# ARE QCM GOALS AND PRM GOALS THE SAME?

**QCM Goals** are geared toward frequent interventions and securing gainful employment as soon as it is feasible to do so.

- **QCM-Focused Interventions** may include:
  - nurse referral
  - Second Opinion exam (SECOP) within one year of wage loss
- **Substantive Actions** are required within 30, 60, 90, or 180 days, depending on the specifics of the case.





# ARE QCM GOALS AND PRM GOALS THE SAME?

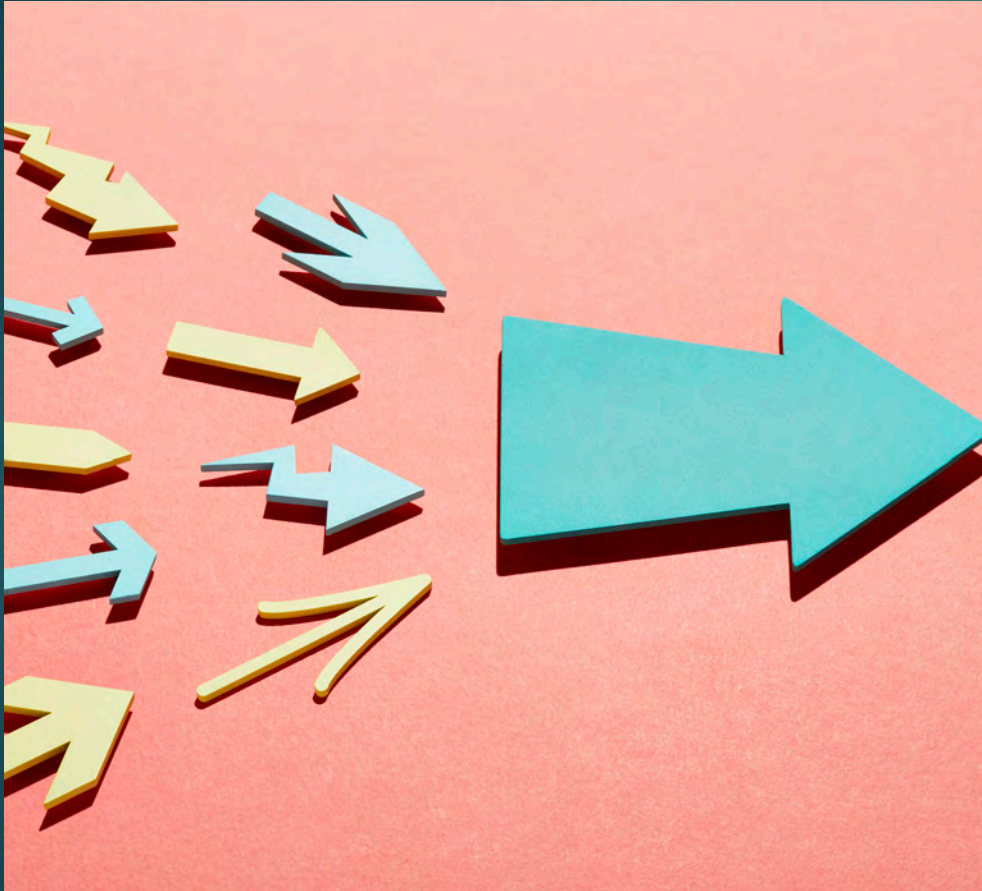
**PRM Goals** are tied to the Periodic Entitlement Review (PER), which must be undertaken annually on all cases receiving compensation on the periodic roll (both QCM and PRM).

- **Form CA-1032 Responses** must be reviewed to determine the claimant's continuing entitlement to compensation benefits and whether the current compensation benefit level should be adjusted.
- **Medical Evidence** in file must also be reviewed routinely to ensure it supports the current compensation benefit level.
  - PR cases (full wage loss) → once a year
  - PW cases (partial wage loss) → every two years
  - PN cases (permanent total disability) → every three years





# OUTCOMES IN DM CASES



- CEs should actively manage a DM case until the claimant:
  - has obtained full medical recovery or
  - reaches maximum medical improvement (MMI), and a resolution is reached regarding the claimant's work capacity.
- The following slides describe the most common outcomes of disability management.





# COMPLETE RECOVERY FROM INJURY-RELATED CONDITIONS

- In cases where the claimant **returns to the job they held when injured**, no formal decision is necessary to stop compensation.
- The DM record will be closed.
- Medical benefits will be terminated with a formal decision **if** the claimant has also been released from medical care.

# COMPLETE RECOVERY FROM INJURY- RELATED CONDITIONS

If the claimant has fully recovered but **does not return** to their date-of-injury position, the claimant has no ongoing entitlement to compensation for wage loss or medical benefits because the injury-related condition has fully resolved.

In these cases, a **formal decision** is necessary to terminate both compensation and medical benefits.





# RECOVERY FROM INJURY-RELATED *DISABILITY*

As in the last scenario, in cases where the claimant has recovered from the work-related **disability** and returns to the job they held when injured, no formal decision is necessary to stop compensation.

If the claimant has returned to the date of injury position but **still requires ongoing medical treatment** for their injury-related condition (the condition has not yet fully resolved), the case remains open for medical benefits only.

# RECOVERY FROM INJURY- RELATED *DISABILITY*

If the medical evidence establishes that the work-related condition no longer prevents the claimant from performing the date-of-injury job but **does not return** to that job, a **formal decision** is necessary to terminate the claimant's entitlement to compensation for wage loss.

However, if the claimant **still requires ongoing medical treatment** for their injury-related condition (the condition has not yet fully resolved), the case remains open for medical benefits only.






# RETURN TO MODIFIED WORK WITHOUT WAGE LOSS

If the claimant returns to a new position or a modified position with the previous employer or returns to work with a new employer at a pay rate **greater than or equal to** the current pay rate for the date-of-injury job, the claimant has **no loss in wage-earning capacity** due to the injury.

Compensation for wage loss is reduced to zero.



# RETURN TO MODIFIED WORK WITHOUT WAGE LOSS

If the claimant has reached MMI and the job fairly and reasonably represents the claimant's Wage-Earning Capacity, the CE will issue a formal **Actual Earnings Zero Loss of Wage-Earning Capacity (LWEC) Decision** once the claimant has satisfactorily performed the job for at least 60 days.

Subsequent claim for recurrence of disability will be adjudicated as request for modification of the Actual Earnings Zero LWEC Decision.



# RETURN TO MODIFIED WORK WITH WAGE LOSS

If the claimant returns to a new position or a modified position with the previous employer, or returns to work with a new employer, and is earning **less than** the current pay rate of the date-of-injury job, the claimant has a **loss in wage-earning capacity** due to the injury.

Compensation for wage loss is reduced based on the ratio between the actual earnings and the current pay rate of the date-of-injury job (Shadrick Formula).

# RETURN TO MODIFIED WORK WITH WAGE LOSS

If the claimant has reached MMI and the job fairly and reasonably represents the claimant's Wage-Earning Capacity, the CE will issue a formal **Actual Earnings Loss of Wage-Earning Capacity (LWEC) Decision** once the claimant has satisfactorily performed the job for at least 60 days.


Subsequent claim for recurrence of disability will be adjudicated as request for modification of the Actual Earnings LWEC Decision.



# WAGE-EARNING CAPACITY DETERMINATION WITHOUT JOB PLACEMENT

If a claimant at MMI cannot return to their date-of-injury position and the EA cannot accommodate their restrictions, the CE may initiate Vocational Rehabilitation services if the claimant is able to perform at least sedentary jobs (handle up to 10lbs of weight).

After the Vocational Rehabilitation Counselor (RC) and the CE have made reasonable efforts to return the claimant to work but the claimant does not actually secure employment, the CE will determine whether a formal decision to reduce their compensation for wage loss should be issued to reflect their **constructed wage-earning capacity (CWEC)**, regardless of their actual employment status or any additional disability due to subsequent non-work-related medical conditions.



# WAGE- EARNING CAPACITY DETERMINATION WITHOUT JOB PLACEMENT

If the claimant has reached MMI and the job the RC selects for the claimant is both medically and vocationally suitable for the claimant, the CE will issue a formal **Constructed Loss of Wage-Earning Capacity (CLWEC) Decision** after the Vocational Rehabilitation services end.

The compensation for wage loss is reduced based on the ratio between the constructed earnings and the current pay rate of the date-of-injury job (Shadrick Formula).

Subsequent claim for recurrence of disability will be adjudicated as request for modification of the CLWEC Decision.



# Application of Sanctions



A claimant's failure to cooperate with the OWCP's rehabilitation and/or reemployment efforts may result in the suspension, reduction, or termination of benefits.

Most sanctions issued during disability management will involve a refusal of suitable work, non-cooperation with vocational rehabilitation, and/or obstruction of a medical examination.



# INTERVENTION STRATEGIES

Each interaction between the claimant, EA, AP, FN, RC, and the CE should be used to ensure the claimant's recovery is progressing and to emphasize the goal of return to work.

Brief but timely inquiries and open communication with all involved parties are effective tools in encouraging a successful return to work.



# NURSE INTERVENTION

- The nurse intervention assists the CE with medical management of disability claims and facilitates prompt medical care for the Injured Worker (IW).
- The goal of nurse intervention is medical recovery for the claimant and early return to work.
- The nurse intervention program is comprised of:
  - OWCP Staff Nurses
  - COP Nurses (CN)
  - Field Nurses (FN)





A vintage yellow rotary telephone is shown on a dark wood-grain surface. The phone has a coiled cord and a dial with numbers 1 through 0. The letters on the dial are: 2 (ABC), 3 (DEF), 4 (GHI), 5 (JKL), 6 (MNO), 7 (PQRS), 8 (TUV), 9 (WXYZ). The dial also has a 'PLEASE WAIT FOR DIAL TONE' indicator. The background of the slide is a dark teal color with a red vertical bar on the right side.

# COP NURSE (CN) INTERVENTION

- The CN is assigned to a TI claim prior to case adjudication and works each case **telephonically**.
- The CN contacts the claimant, EA, and AP to obtain work status information and to identify potential return-to-work obstacles.



# COP NURSE (CN) INTERVENTION

A TI case automatically becomes eligible for CN assignment if the following conditions are met:

- (1) The IW stopped work at least 7 days ago;
- (2) The IW stopped work less than 31 days ago;
- (3) The IW has not returned to work;
- (4) The IW is in a COP status; **and**
- (6) The case is a minor administratively approved case or its status is either Unreviewed (UN) or Under Development (UD).

# FIELD NURSE (FN) INTERVENTION



- The CE will initiate FN intervention based on current office criteria:
  - Injury-related wage loss
  - Catastrophic cases
  - Task-based assignments (generally 30 to 60 days)
- The FN is a registered nurse who assists in the management of disability cases in multiple ways.
- The FN's contact is often **in-person** with the IW, the EA, and medical providers.



# FN RESPONSIBILITIES

- Maintain regular **communication** with all parties (including monthly and closure reports to CE) and communicate all relevant updates to CE – changes in medical condition, claim expansion, new injury, RTW, claimant's cooperation, etc.
- Emphasize the **return-to-work** goal with all parties.
- **Assess** the initial extent of the injury and the treatment necessary for recovery.
- **Attend** medical appointments.

# FN RESPONSIBILITIES

- **Identify** potential barriers to return to work
- **Recommend** vocational rehabilitation or a Second Opinion Examination where appropriate.
- **Assist** CE in resolving medical issues.
- **Confirm** closure date with CE prior to closing NI.



# FN INTERACTION WITH THE EA

- **Pre-RTW:** The FN may request to perform an on-site evaluation of the IW's work environment for the purposes of job modification.
- **Post-RTW:** The FN may assist in work site evaluation following a return to work.
- The FN will work with the EA to ensure the physical demands of a modified job comply with restrictions assigned by the AP.



# FN ASSIGNMENT PERIOD

- A FN is generally assigned for 120 days (which can include RTW monitoring, if applicable).
- Extensions may be approved by the CE for certain case situations (medical setbacks, pursuit of a full duty return to work, etc.)
- Automatic Extensions, beyond the 120 days, are granted for return to work (RTW) monitoring.
  - Limited-Duty (LD) Monitoring: 60 days
  - Full-Duty (FD) Monitoring: 30 days

**120  
DAYS**



# FN ASSIGNMENT PERIOD

- Extensions beyond 180 days require supervisory approval **except** when RTW work monitoring will take assignment over 180 days.

Example of extension beyond 180 days **without** supervisor approval:

extension beyond 120 days granted by the CE for pursuit of RTW and the IW returns to LD work on day 130.

RTW monitoring for 60 days will automatically take the nurse assignment to 190 days.

# FN INTERVENTION CLOSURE



- Ideally, FN intervention results in the IW's return to their DOI position on a full-time basis, without limitations (FT/FD).
- If the IW's injury-related condition prevents a FD return to work, a return to work **with the EA**, in a LD position, is the goal.
- If the EA is unable to accommodate the IW's injury related work restrictions, **Vocational Rehabilitation** services may take place to continue the return-to-work effort.



# VOCATIONAL REHABILITATION

▶ If a work-related injury prevents a return to the date-of-injury job and the IW can perform at least a sedentary job, OWCP may initiate **vocational rehabilitation (VR)** services.

- ▶ The **Rehabilitation Specialist (RS)** manages VR referrals from the CEs and oversees Rehabilitation Counselors.
- ▶ The **Rehabilitation Counselor (RC)** works with the IW to assist with the return-to-work effort. RCs are no longer assigned based on the IW's state of residence.



# REHABILITATION COUNSELOR

The RC's responsibilities include:

- Evaluate the IW's vocational abilities and transferrable skills, and arrange for vocational testing and training, if needed.
- Conduct labor market surveys and formulating a rehabilitation plan.
- Assist the IW with job-seeking skills such as resume building and interview techniques.
- Arrange for specialized ergonomic job modifications.





# PLACEMENT WITH THE PREVIOUS EMPLOYER (PPE)



- ▶ If the FN did not exhaust all attempts to secure a suitable job offer, VR services may begin with return-to-work efforts with the EA.
- ▶ The time frame for placement with the previous employer is a maximum of 90 days.
- ▶ During this time, the RC, EA, and CE all participate in the return-to-work effort.

# PLACEMENT WITH THE PREVIOUS EMPLOYER (PPE) (CONT.)

Benefits of developing a suitable job offer:

- The IW retains status as a Federal employee.
- The EA does not incur the expense and time of separating a current employee and hiring/training a new employee.
- The EA does not bear the costs of additional vocational rehabilitation and/or wage loss compensation.
- If the IW does not return to work during the 90-day PPE phase of the VR process, and the IW has not refused suitable offer of employment, the RS & RC will move on to the next phase – Plan Development.



# PLAN DEVELOPMENT (PD) AND PLACEMENT NEW EMPLOYER (PNE)

During the plan development phase of VR, the RC will develop a plan for the IW's return to work with a new employer. The RC will identify jobs for the claimant based on medical and vocational suitability along with reasonable availability.

After plan development, a 90-day placement with a new employer plan is put into place during which the RC provides placement assistance (e.g.: resume and interviewing skills, job leads, etc.)

# PLAN DEVELOPMENT AND PLACEMENT NEW EMPLOYER (CONT.)

- If the IW secures a job, the RC will follow up for 60 days to ensure a successful RTW.
- If the IW does not secure a job or fails to take advantage of the placement assistance provided, a **constructed** loss of wage-earning capacity decision will be considered based on the jobs identified in the placement plan.



# TRAINING

- If the EA cannot offer a job and the claimant is unemployable in their local labor market with their current skills, a training plan may be pursued if vocational testing shows the IW has the necessary aptitude.
- If training is indicated, **short-term** or pre-vocational training that would serve to upgrade basic skills are the **preferred** options.
- Long term training plans are pursued as a last resort, because returning the IW to work in the shortest time possible is a primary focus of vocational rehabilitation.



# VOCATIONAL REHABILITATION: THE GOAL

- The goal of vocational rehabilitation is to return all IWs to some form of gainful work, with the previous employer or in the private sector. However, there are times when VR efforts are not successful and do not result in a return to work.
- In some situations, OWCP may apply sanctions because the IW refuses a suitable job or fails to cooperate with rehabilitation efforts.
- In other situations, OWCP may determine the IW's wage-earning capacity based on a position deemed suitable, but not actually held.



# THE ROLE OF THE CE

- At all times, during both the nurse and vocational rehabilitation interventions, the CE may need to obtain or clarify the claimant's current medical condition or work tolerance limitations.
- A CE's intervention may involve contact with the Attending Physician or scheduling OWCP- directed Second Opinion or Referee Examinations.



# JOB OFFERS AND RETURN TO WORK



- ▶ An IW who does not work when employment is made available within the established work restrictions is not entitled to disability compensation.
- ▶ The OWCP will make every reasonable effort to arrange for employment of a partially disabled IW with the EA first, considering **all medical conditions (pre-existing, accepted, and subsequent)**. The partially disabled claimant is viewed as a whole person when considering suitability of potential employment.



# PERMANENT VS. TEMPORARY JOB OFFERS

- When an offer of employment is made, and the position is **not temporary** (or if the job is temporary, and the worker held a temporary position at the time of injury), the job offer can be evaluated under **5 U.S.C § 8106(c)**.
- If the offer is for **temporary** work only, and the employee was not a temporary worker at the time of injury, the guidance for Temporary Assignments under **20 C.F.R. §10.500** are followed.

# JOB OFFERS UNDER 5 U.S.C. §8106(C)

“A partially disabled employee who-

- (1) refuses to seek suitable work; or
- (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him; is not entitled to compensation.”

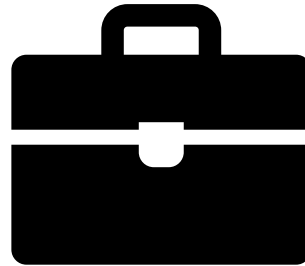
When an offer of employment is made and the position is **not temporary**, the job offer can be evaluated under 5 U.S.C. §8106(c).





# JOB OFFER REQUIREMENTS

- Job title (classification number recommended);
- A description of **SPECIFIC** duties to be performed and **SPECIFIC** physical requirements of the position;
- Organizational and geographical location of the job;
  - If outside of IW's residential area, EA must document that it conducted an unsuccessful employment search within the IW's geographic area;
  - Relocation expenses may be paid.
- Work schedule (including telework, if applicable);
- The date on which the job will be available, and the date by which a response to the job offer is required; and
- Pay information including grade, step and salary.



# JOB SUITABILITY

If the IW accepts a job offer and returns to work, no suitability determination is required **even if the job is not suitable for the IW.**

A suitability determination by the CE is required when:

- The claimant refuses the job offer in writing;
- The claimant does not respond to the job offer by the date a response is required; or
- The claimant accepts the offer by the date a response is required but does not return to work by the expected start date.





# DETERMINING SUITABILITY

- Job offer should be made for the number of hours for which the IW has been released to work;
- If the above is not possible, the EA may offer a job for fewer hours than the IW was released to work if the job offer is for **at least half** of the total hours for which the claimant has been released to work;
- If the medical evidence substantiates that a gradual return to work is necessary, the job offer must specify the dates of the increased hours;
- A job which represents seasonal employment will generally be considered unsuitable unless the claimant was a career seasonal or temporary employee when injured;
- A temporary job will be considered unsuitable for the purposes of 8106(c) unless the claimant was a temporary employee when injured, and the temporary job reasonably represents the IW's WEC.





# DETERMINING SUITABILITY

- The IW must be capable of carrying out the physical requirements of an offered job;
- If a condition has **arisen or worsened** since the compensable injury, and this condition disables the claimant from the offered job, the job will be considered unsuitable.
- The claimant must be vocationally able to perform the duties of the offered position.
- Ideally, the job offer should clearly state whether the offered position is temporary or permanent in nature.



# IF JOB OFFER IS SUITABLE

The CE must confirm with the EA that the job remains available to the IW (no sooner than 3-5 days before the suitability letter is issued). Then, the CE advises the IW, in writing, that:

- The job is considered suitable. The CE explains how they determined that the job is suitable and identify the medical evidence which represents the weight of medical opinion with respect to the IW's work capacity;
- The job remains open and available to the IW;
- Compensation will be paid for the difference (if any) between the payrate of the offered job and the current payrate of the IW's date-of-injury job;
- The offered job can still be accepted without penalty; and
- IW has 30 days from the date of the letter to either accept the job offer or provide a written explanation of the reason(s) for refusing the job offer.

# REFUSALS

If the claimant submits evidence and/or reasons for refusing the offered position, the CE determines whether their reasons for refusing the job are valid.

Acceptable reasons include (but are not limited to):

- The offered position was withdrawn.
- The claimant found other work which fairly and reasonably represents their earning capacity.
- The medical evidence establishes that the claimant is unable to travel to the job because of residuals of the injury.
- The claimant provides evidence that their refusal was based upon the attending physician's advice, and that such advice included medical rationale in support of the opinion.



NO!



# REFUSAL BASED ON IW'S PHYSICIAN'S ADVICE

If the RTW effort was based upon the **attending physician (AP)'s work restrictions** and the physician has now changed their opinion, the CE requests that the physician provide a rationalized opinion as to whether the IW can perform the offered job.

- If the AP determines that the IW **can perform** the job, a new 30-day notice is not needed. The CE can proceed with issuing a final **15-day notice**.
- If the AP determines that the claimant **cannot perform** the job, the CE may refer the IW for a **second opinion examination** with an appropriate specialist. If the weight of medical evidence rests with the second opinion physician, who supports that the offered position is suitable, a **new 30-day notice** is required.

# REFUSAL BASED ON IW'S PHYSICIAN'S ADVICE

- If the job offer was based upon a prior **second opinion physician's findings**, and the opinion submitted by the AP does **not alter the weight** of medical evidence determination as provided in the 30-day notice, the CE can proceed with the **15-day notice**.
- If both opinions are of equal weight, then a referral to an impartial medical specialist for a referee examination is necessary. If the **referee's report holds the weight** of the medical evidence and the offered position remains suitable based upon the findings of the referee, a **new 30-day notice** is required.





# REFUSAL ACTIONS AFTER 30 DAYS

- If the IW provides a response to the 30-day notice, but the continued **refusal is unjustified** and the suitable work remains available to the claimant after the 30 days have lapsed, the CE sends the **15-day notice**.
  - After expiration of the 15 additional days, if the refusal continues and the suitable work is still available, the CE issues the 8106(c) sanction decision.
- If the **refusal is justified**, the CE notifies both the IW and the EA in writing. The IW will continue receiving compensation benefits while the CE contacts the EA concerning further attempts at reemployment.



# FINAL DECISION

If the IW's refusal of the offer is not justified and they do not return to work during the 15-day period

OR

The IW does not accept the job and return to work after the original 30-day notice and does not submit any response at all,

THEN:

CE issues a formal 8106(c) decision and terminates compensation as of the date of the final decision.





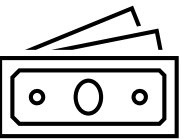
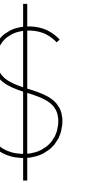
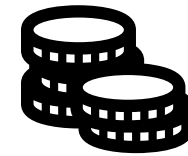
# TEMPORARY JOB OFFERS UNDER 20 C.F.R. §10.500

There may be occasions when the EA is only able to provide a temporary light duty assignment to the IW even though the claimant held a permanent job at the time of injury. *In these instances, the penalty language of Section 8106(c) cannot be applied.*

20 C.F.R. § 10.500 states that benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for a period during which an employee's work-related medical condition prevents them from earning the wages earned before the work-related injury.

# WAGE-EARNING CAPACITY (WEC)

- If the IW is unable to earn the full wages of their date-of-injury (DOI) position, the IW is entitled to compensation for the loss.
- Wage-earning capacity (WEC) refers to the actual (or constructed) wages someone is earning (or capable of earning) from work.
- The Shadrick formula is used for computing the compensation for the IW's loss of wage-earning capacity (LWEC) payable based on a comparison between the IW's actual (or constructed) earnings and the current payrate of their DOI position.





# INFORMAL WEC

- A WEC can be formalized by a decision based on actual or constructed earnings.
- However, we can pay an IW based on their WEC without a formal decision.
- If an IW has been disabled for 90 days and the IW's earnings are consistently within 10% of each other for every period claimed, it would be appropriate to place the IW on the **PR for an informal WEC** (case status would be PR, not PW).
- If the IW stops working, they will be entitled to full TTD compensation again if the WEC has not been formalized.



# FORMAL WEC

- **Constructed WEC:** If PNE services have been provided, but the IW is unable to secure a job or refuses to cooperate, compensation is reduced based on a Constructed LWEC determination.
- **Actual Earnings WEC:** If an IW is at **MMI (stable and established work restrictions)** and the kind of appointment and tour of duty of a new job are at least **equivalent** to those of the DOI position, a formal actual earnings (AE) LWEC decision is issued after 60 days of employment.
- These formalized WECs (PW case status) require medical review **every two years** as part of periodic review of disability cases (PER).



# ACTUAL EARNINGS LWEC

- ▶ For return to work **within** the federal government, a part-time position may fairly and reasonably represent the IW's WEC if their stable and well-defined work restrictions limit them to the number of hours the part-time work involves.
- ▶ For return to work **outside** the federal government **without** VR services, a part-time or a full-time position may fairly and reasonably represent the IW's WEC if the actual earnings are approximately equal to the **average** full-time wage supported by the Labor Market Survey.
- ▶ For return to work **outside** the federal government **through** VR services, a part-time or a full-time position may fairly and reasonably represent the IW's WEC if the actual earnings are approximately equal to the **minimum** full-time wage supported by the Labor Market Survey.





# LWEC BASED ON A CONSTRUCTED POSITION

- If Vocational Rehabilitation (VR) efforts are unsuccessful, the IW's WEC must be based a position deemed suitable but not actually held.
- Factors Considered:
  - Medical Suitability,
  - Vocational Suitability, and
  - Reasonable Availability





# LWEC BASED ON A CONSTRUCTED POSITION

## Medical Suitability:

- stable and well-defined work restrictions.
- only consider accepted conditions and pre-existing conditions.
- CLWEC may still be issued even if the IW is TTD due to a non-work-related **subsequent** condition.



# LWEC BASED ON A CONSTRUCTED POSITION

## Vocational Suitability:

- the claimant's past employment experience and/or education must qualify them to perform the selected position on an entry level basis.





# LWEC BASED ON A CONSTRUCTED POSITION

## Reasonable Availability:

- The RC documents availability of targeted jobs by citing sources such as the local State employment service, the local Chamber of Commerce, employer contacts, and actual job postings.
- Lack of current job openings does not equate to a finding that the position was not **performed in sufficient numbers** to be considered reasonably available.



# CRITERIA FOR LWEC MODIFICATION

The three criteria for modification of a formal LWEC decision:

1) The original rating was in error.

2) The claimant's medical condition has materially changed:

- (a) a worsening of the accepted medical condition with no intervening injury resulting in new or increased work-related disability (recurrence of disability), or
- (b) that the work-related condition has improved, and disability has decreased.

3) The claimant has been vocationally rehabilitated:

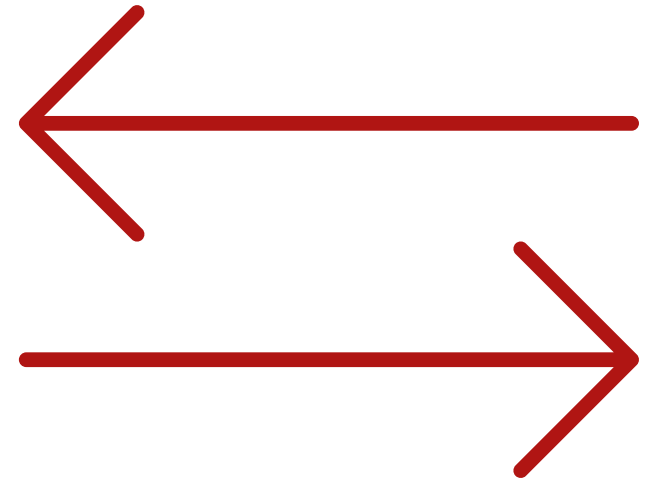
The IW has been retrained through vocational training or has been self-rehabilitated.

- ▶ If the offered job is suitable and the LWEC is in posture for modification (reduction in compensation) based on improved medical condition, the CE prepares the 30-day notice of suitability and a 30-day proposal to modify the prior LWEC simultaneously.



# MODIFICATION OF LWEC

- When an IW with a prior formal LWEC rating accepts a position with **no wage loss** and returns to work, no employment-related disability or wage-loss entitlement continues, and the CE **terminates compensation** on the basis that there is no disability within the meaning of the Act even though a formal LWEC decision is in place.
- Because the IW was previously receiving compensation based a formal LWEC decision, the termination is made prospectively so that no overpayment results. The prior LWEC is then reviewed to determine if modification is necessary.








# RECURRENCE

- Recurrence of disability:  
inability to work (or change in disability status) after returning to work, *caused by a spontaneous change* in an accepted condition *without an intervening injury or new exposure* to the work environment.
- Recurrence of medical condition:  
a documented need for further medical treatment after release from treatment for the accepted condition when there is **no** accompanying **work** **stoppage**.



- 
- Recurrence of disability also includes inability to work due to:
    - the withdrawal of a limited duty job, or
    - alterations in the physical requirements of the job that exceed the IW's established work restrictions.
  
  - A recurrence of disability **DOES NOT** apply when a light-duty assignment is withdrawn for reasons of misconduct, non-performance of job duties or other downsizing or where a formal loss of wage-earning capacity determination as provided by 5 U.S.C. 8115 is in place.

# RECURRENCE OF DISABILITY

# RECURRENCES WITHIN 90 DAYS

Lesser burden in scenarios where the alleged recurrence has occurred within 90 days:

- **Recurrence of medical condition within 90 days** of release from care:

AP's statement supporting causal relationship between the IW's current condition and the accepted condition (no medical rationale necessary)

- **Disability recurrence within 90 days** of RTW:

AP's description of any duties the IW cannot perform and the objective findings that form the basis for renewed disability (no medical rationale necessary)





# RECURRENCE CLAIMS WITH PRIOR DECISIONS IN PLACE

- Prior termination/sanction decision in place:  
The injured worker will be referred to the appeal rights of the termination decision and no action will be taken on the recurrence claim.
- Prior formal LWEC decision in place:  
Recurrence claim will be treated as a request for modification of the LWEC.

# Scenarios NOT Considered Recurrence

Termination of a temporary appointment;

Cessation of special funding for a particular position or project;

True reductions in force (RIFs);

Closure of a base or other facility;

**A condition which results from a new injury. This is usually the most misunderstood factor.**



# Recurrence – Termination of Employment for Cause

- ▶ To be compensable as a recurrence under the FECA and its implementing regulations defining recurrence, ECAB has stated that “this withdrawal must have occurred for reasons other than misconduct or non-performance of job duties. When a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of the FECA.”
- ▶ John W. Normand, 39 ECAB 1378 (1988): Employee was terminated from his light-duty job due to disciplinary issues; ECAB affirmed office decision that he was not entitled to compensation.

# Highlights

OWCP-EA communication is key throughout Disability Management to maximize return to work potential;

EA should inform OWCP as soon as possible when an injured worker has returned to work (preferably via Form CA-3) or has stopped work after a RTW (potential recurrence, new injury, etc.);

OWCP should clearly and timely inform the EA when valid work restrictions become available from the weight of medical evidence in file;

EA should make every effort to ensure job offers meet all requirements prior to providing to clmt, while OWCP should make prompt suitability decisions when a clmt refuses a job offer/does not return to work;

OWCP to take timely and appropriate actions when necessary to move case forward (nurse referrals, VR referrals, SECOP/IME/DMA referrals, development to treating physician, clarification/completion requests for 1032s, etc.).





Questions?