

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CATHERINE M. SCHWARZMAN and U.S. POSTAL SERVICE,  
POST OFFICE, Broomall, Pa.

*Docket No. 97-1140; Submitted on the Record;  
Issued June 22, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are whether the Office of Workers' Compensation Programs properly determined that appellant had no loss of wage-earning capacity and whether appellant established that her relocation to Arizona was medically necessary, thereby requiring the Office to reimburse her for moving expenses.

The Board has carefully reviewed the record evidence and considered the contentions of appellant on appeal regarding her entitlement to relocation expenses and finds that the November 1, 1996 decision of the Office's hearing representative is in accordance with the facts and the law in this case. The Board, therefore, adopts the findings and conclusions of the hearing representative regarding reimbursement of appellant's relocation expenses.

Following her return to a permanent modified clerk position on June 8, 1996, appellant claimed partial wage-loss compensation from June 8 through December 1996. Appellant's date-of-injury wage was \$406.00 per week, which had increased to \$548.02 per week by June 1996. Appellant began working six hours a day five days a week, which resulted in actual earnings of \$517.21 per week.<sup>1</sup> Thus, the Office found a small loss of wage-earning capacity.

Subsequently, in response to appellant's grievance, the employing establishment informed the Office that appellant should have been offered a higher grade and salary than that stated in the May 30, 1996 job offer. The employing establishment indicated that appellant was entitled to \$17.93 an hour, which increased to \$18.14 an hour on August 31, 1996, and that appropriate retroactive salary adjustments would be made.

On December 17, 1996 the Office determined that appellant had no loss of wage-earning capacity in her modified position because her actual earnings at the adjusted higher hourly rate

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<sup>1</sup> Beginning in September 1996, appellant changed her work schedule to eight hours a day four days a week.

were greater than what she would have earned working full time in her previous job as a mailhandler.<sup>2</sup>

The Board finds that the Office properly determined that appellant had no loss of wage-earning capacity.

Section 8106(a) of the Federal Employees' Compensation Act<sup>3</sup> provides for compensation for the loss of wage-earning capacity during an employee's disability by paying the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability. The implementing regulation provides that "an injured employee who is unable to return to the position held at the time of injury (or to earn equivalent wages) but who is not totally disabled for all gainful employment is entitled to compensation computed on loss of wage-earning capacity."<sup>4</sup>

Section 8115 provides that the wage-earning capacity of an employee is determined by his actual earnings if these fairly and reasonably represent his or her wage-earning capacity.<sup>5</sup> Absent evidence to the contrary, wages actually earned must be accepted as the best measure of an injured employee's wage-earning capacity.<sup>6</sup>

Once loss of wage-earning capacity 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.<sup>7</sup> The burden of proof is on the party attempting to show that modification is warranted.<sup>8</sup>

In this case, appellant's wage as a mailhandler at the time of the injury in June 1987 was \$10.15 an hour. The record shows that the hourly rate for this position in June 1996 was \$14.25. After the employing establishment increased appellant's grade and salary, she was earning an hourly rate of \$17.93, which increased to \$18.14 in August 1996. Thus, her actual earnings after the increase were \$588.48 a week for 32 hours, a greater amount than the \$570.00 per week she would have been earning for full-time work in her date-of-injury job. There is no evidence in this case that the \$18.14 an hour does not fairly and reasonably represent appellant's wage-earning capacity. Nor does the record show that appellant incurred any lost wages during this period.

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<sup>2</sup> The Office computed an overpayment of \$485.16, but this issue is not before the Board.

<sup>3</sup> 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8106(a).

<sup>4</sup> 20 C.F.R. § 10.303.

<sup>5</sup> *Lawrence D. Price*, 47 ECAB 120 (1995).

<sup>6</sup> *Dennis E. Maddy*, 47 ECAB 259, 262 (1995).

<sup>7</sup> *Charles D. Thompson*, 35 ECAB 220, 225 (1983).

<sup>8</sup> *Jack E. Rohrbaugh*, 38 ECAB 186, 190 (1986).

Thus, the Board finds that the Office properly modified its wage-earning capacity determination because of the employing establishment's error,<sup>9</sup> and that appellant had no loss of wage-earning capacity because her actual earnings from a part-time position were greater than what she would have earned working full time in her previous job.<sup>10</sup>

Further, the medical evidence does not demonstrate any material change or worsening of appellant's back condition. To the contrary, Dr. Eric R. Erlbaum, Board-certified in internal medicine and neurology, indicated that while appellant found her back pain to be "a bit worse with the change in the weather," there were "no new findings" on examination on January 15, 1997 and appellant continued to function on a 32-hour, four-day work week.<sup>11</sup>

The December 17, November 1 and June 27, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
June 22, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> See *Elbert Hicks*, 49 ECAB \_\_\_\_ (Docket No. 95-1448, issued January 20, 1998) (finding that the Office correctly computed appellant's loss of wage-earning capacity as a mail and file clerk).

<sup>10</sup> See *Nancy L. Christiansen*, 48 ECAB \_\_\_\_ (Docket No. 95-287, issued July 10, 1997) (finding that the Office properly modified appellant's wage-earning capacity as a nurse's aide, based on her actual earning).

<sup>11</sup> See *Sue A. Sedgwick*, 45 ECAB 211, 216 (1993) (finding that the medical evidence showed improvement in appellant's condition, thus supporting the Office's modification of her loss of wage-earning capacity).