



myelopathy, spinal stenosis right thoracic region and spinal stenosis right lumbar region. Appellant received compensation for temporary total disability on the periodic rolls.

After the medical evidence showed that appellant was no longer totally disabled for work, but could work eight hours a day with restrictions, the Office referred her to vocational rehabilitation services. The rehabilitation counselor developed a training plan to return appellant to work as a Medical Billing Clerk, a sedentary position that fit her physical limitations and interests.<sup>1</sup> Appellant completed the Health Information Technology program at Western Career College with an impressive grade point average, after which she undertook an externship at a medical office, where she performed medical billing and coding. When she was unable to find a job with a private employer, the rehabilitation counselor performed a labor market survey. The rehabilitation counselor determined that the position of medical billing clerk was being performed in sufficient numbers so as to make it reasonably available to appellant within her commuting area. She noted that appellant met the specific vocational preparation for the position, having graduated from an accredited vocational school, including externship. The rehabilitation counselor determined that the starting weekly wage for the position was \$734.00.

On January 31, 2007 the Office notified appellant that it proposed to reduce her compensation for wage loss to reflect her capacity to earn wages as a medical billing clerk. The Office informed her that she had 30 days to submit evidence or argument if she disagreed.

In a decision dated March 19, 2007, the Office reduced appellant's compensation for wage loss effective April 15, 2007. The Office found that the position of medical billing clerk was medically and vocationally suitable and fairly and reasonably represented her wage-earning capacity. The Office compared the weekly pay rate of the selected position to the current weekly pay rate of the position appellant held when she was injured (including night differential, Sunday premium and holiday pay) and determined that she had a 99 percent wage-earning capacity, meaning that she was entitled to compensation for the minimal loss of wage-earning capacity remaining from her accepted employment injury.

On appeal, appellant argues that she was having problems obtaining a job because she underwent vocational training in a field in which she had no background experience. She added that she had to live with constant back pain, for which she took medication.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.<sup>2</sup> "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>3</sup>

---

<sup>1</sup> The employing establishment was unable to provide modified duty.

<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> 20 C.F.R. § 10.5(f) (1999).

Section 8115(a) of the Act provides that in determining compensation for partial disability, the wage-earning capacity of an employee is determined by her actual earnings, if her actual earnings fairly and reasonably represent her wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent her wage-earning capacity or if the employee has no actual earnings, her wage-earning capacity as appears reasonable under the circumstances is determined with due regard to the nature of her injury, the degree of physical impairment, her usual employment, her age, her qualifications for other employment, the availability of suitable employment and other factors or circumstances which may affect her wage-earning capacity in her disabled condition.<sup>4</sup> Compensation for loss of wage-earning capacity is based upon loss of the capacity to earn, not on actual wages lost.<sup>5</sup>

When the Office makes a medical determination of partial disability and of the specific work restrictions, it may refer the employee's case to an Office wage-earning capacity specialist for selection of a position, listed in the Department of Labor, *Dictionary of Occupational Titles* or otherwise available in the open labor market, that fits the employee's capabilities in light of her physical limitations, education, age and prior experience. 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, an application of the principles set forth in *Albert C. Shadrick* will show the percentage of the employee's loss of wage-earning capacity.<sup>6</sup>

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>7</sup>

### ANALYSIS

The Office has met its burden of proof to justify the modification of appellant's compensation for wage loss. The medical evidence showed that she was no longer totally disabled for work. In the absence of actual earnings in alternative employment, the Office properly determined her wage-earning capacity as it appeared reasonable under the circumstances and with due regard to the factors specified in section 8115 of the Act, including her excellent coursework in medical information technology and her externship in a medical office. The Office rehabilitation counselor confirmed that the selected position of medical billing clerk was being performed in sufficient numbers so as to be considered reasonably available to appellant within her commuting area. Following standard procedures, the Office compared the weekly wage of the selected position with the current weekly wage of the position appellant held when she was injured. This showed that appellant very nearly had the capacity to earn the wages she was receiving at the time of injury. Although she remains entitled to medical benefits for residuals of her accepted employment injury, but her capacity to earn wages in the

---

<sup>4</sup> 5 U.S.C. § 8115(a).

<sup>5</sup> *Ronald M. Yokota*, 33 ECAB 1629, 1632 (1982).

<sup>6</sup> *Hattie Drummond*, 39 ECAB 904 (1988); see *Albert C. Shadrick*, 5 ECAB 376 (1953).

<sup>7</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

selected position entitles her to little compensation for wage loss. The Board will affirm the Office's March 19, 2007 decision to reduce appellant's compensation for disability.

**CONCLUSION**

The Board finds that the Office has met its burden of proof to justify the modification of appellant's compensation for wage loss. The Office properly determined that she has the capacity to earn wages as a medical billing clerk.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 19, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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