



nerve in her neck as a result of repetitive motion in the course of her employment. When she stopped work on February 20, 2001 her regular work hours were 7:00 a.m. to 4:15 p.m., Monday through Friday. OWCP accepted appellant's claim for permanent aggravation of cervical radiculopathy.

Following her injury, appellant earned wages in various other employment. To calculate her entitlement to wage-loss compensation for each period of employment, OWCP verified the current pay rate for appellant's grade and step on the date of injury. On March 8, 2006 the employing establishment advised that, although appellant's salary on the date of injury was \$47,533.00, "if the claimant's route was still evaluated at 46 hours then her current salary would be \$56,510.00."

OWCP inquired why the current pay rate decreased following the date of injury. The pay rate on the date of injury, \$48,203.00, dropped to \$45,166.00 effective October 3, 2001 and dropped again to \$42,163.00 effective November 16, 2002, before increasing in following years. The employing establishment explained that appellant was a rural carrier and that route reevaluations caused fluctuations in salary.

In a decision dated July 19, 2010, OWCP calculated appellant's entitlement to monetary compensation from February 20, 2001 to April 15, 2007 based on her actual earnings in other employment. Taking information from yearly income tax returns and W2 forms, OWCP determined how much of appellant's income was attributable to wages earned. For each period of employment, OWCP determined that her wage-earning capacity by comparing appellant's wages with the current pay rate for the job she held when injured, then multiplying the percentage by her weekly pay rate when injured. It then multiplied the loss of wage-earning capacity by the compensation rate of 66 2/3 percent, applied any cost-of-living increases, and multiplied by four to find the new compensation rate each four weeks. Because appellant had already collected Office of Personnel Management (OPM) benefits, OWCP made deductions from her compensation to reimburse OPM.

Appellant requested a review of the written record and in a decision dated April 12, 2011 an OWCP hearing representative affirmed the July 19, 2010 decision.

On appeal, appellant's representative argued that OWCP retroactively applied a \$480.00 wage-earning capacity determination to represent earnings from February 20, 2001 to April 15, 2007, and that OWCP should have based appellant's wage-earning capacity on actual wages. He also argued that, even if the pay rate for the date-of-injury position decreased, appellant should receive the benefit of the higher pay rate at the time of injury. Counsel stated that the weekly pay rate for a rural carrier, Step 11, was \$991.42 effective November 16, 2002, which was higher than the rate OWCP applied. He also argued that OWCP "appears to still include income from appellant's receipt of OPM benefits," which was improper.

## LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of 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>

Where injury-related impairments prohibit the employee from returning to the employment held at the time of injury, or from earning equivalent wages, but do not render her totally disabled for all gainful employment, the employee is considered partially disabled and is entitled to compensation for loss of wage-earning capacity.<sup>4</sup>

If the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of the difference between her monthly pay and her monthly wage-earning capacity after the beginning of the partial disability.<sup>5</sup> To satisfy this requirement, compensation for partial disability is computed using the *Shadrick* formula.

In the case of *Albert C. Shadrick*,<sup>6</sup> the Board set forth the principle that if current actual earnings are used as one of the factors in computing an employee’s wage-earning capacity, then the current increased wage for the employee’s original job should also be used to avoid any distortions caused by changes in business conditions since the injury. Following this principle, OWCP established the *Shadrick* formula as the method of computing compensation when determining an injured worker’s wage-earning capacity.<sup>7</sup>

The salaries of rural letter carriers may vary over the life of the claim due to reevaluations of the employee’s route.<sup>8</sup> The “current pay of job held when injured” is defined according to whether the boundaries of the carrier’s route have changed. If not, the hourly rate for the employee’s grade and step when injured is multiplied by the number of hours representing the route’s current evaluation. If so, the date-of-injury job when injured no longer exists. Therefore,

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> 20 C.F.R. § 10.5(f).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.901.15.a (October 2009).

<sup>5</sup> 5 U.S.C. § 8106(a).

<sup>6</sup> 5 ECAB 376 (1953).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.2 (December 1993). For the formula itself, see *supra* note 4, *Computation of Compensation*, Chapter 2.901.15.c. (October 2009).

<sup>8</sup> *Id.* at Chapter 2.901.15.f(2).

the current pay for the grade and step when injured should be multiplied by the number of hours representing the route's evaluation at the time of injury.<sup>9</sup>

### ANALYSIS

A thorough review of OWCP's July 19, 2010 decision shows that OWCP applied the *Shadrick* formula to determine appellant's wage-earning capacity based on actual earnings for particular periods.<sup>10</sup> The Board notes that appellant's pay rate on February 19, 2001 appears unsettled. OWCP found that appellant's weekly pay rate when injured was \$925.06, or \$48,103.00 a year. This is the figure shown on a January 8, 2004 Form CA-7. An April 13, 2001 Form CA-3, however, listed appellant's current pay rate as \$47,533.00. Indeed, the employing establishment later confirmed that appellant's pay rate on the date of injury was \$47,533.00, a pay rate that was effective on November 4, 2000.

This is critical to the proper calculation of appellant's loss of wage-earning capacity. The Board will remand the case for clarification of appellant's pay rate on February 19, 2001 (step 1 of the *Shadrick* formula). OWCP must obtain documentation from the employer verifying appellant's salary.

OWCP's procedure manual also explains that the salaries of rural letter carriers may vary over the life of the claim due to reevaluation of the employee's route. The employing establishment noted this when OWCP inquired why the pay rate for appellant's position decreased after the date of injury. The procedure manual further explains that for a rural letter carrier, the "current pay of job held when injured" is defined according to whether the boundaries of the carrier's route have changed. It appears from the record that this was the case, resulting in a pay rate decrease on October 3, 2001 and November 16, 2002 and a pay rate increase in following years. Accordingly, the date-of-injury job when injured is considered no longer to exist. OWCP must multiply the current pay for the grade and step when injured by the number of hours representing the route's evaluation at the time of injury. Appellant's claim form shows that she worked more than 40 hours a week. The employing establishment advised on March 8, 2006 that appellant's route was evaluated at 46 hours.

The July 19, 2010 decision gives no indication that OWCP considered the number of hours representing appellant's route evaluation at the time of injury. The Board will therefore remand the case for clarification of those hours and for a proper determination of the various current pay rates for the job and step when injured (step 2 of the *Shadrick* formula).

Appellant argued that OWCP retroactively applied a \$480.00 wage-earning capacity determination to represent earnings from February 20, 2001 to April 15, 2007. This is not the case. OWCP based appellant's wage-earning capacity on actual wages. For each period, it compared actual wages, which varied from period to period, to the current pay rate for the job

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<sup>9</sup> *Id.* at Chapter 2.901.15.f(2)(d).

<sup>10</sup> Although it is not shown in each calculation, the record confirms that OWCP increased the Step 7 compensation rate by applicable cost-of-living increases before multiplying by 4 to obtain the Step 8 new compensation rate each four weeks.

and step when injured. This resulted in a wage-earning capacity that varied from period to period with her actual wages.

Appellant's representative argued that even if the pay rate for the date-of-injury position decreased, appellant should receive the benefit of the higher pay rate at the time of injury. OWCP's procedure manual is specific on this point. When the carrier's route is reevaluated, the current pay for the grade and step when injured is multiplied by the number of hours representing the route's evaluation at the time of injury. At step 2 of the *Shadrick* formula, appellant will receive the benefit of her route's evaluation at the time of injury, but this must be applied to the current pay of the date-of-injury job, which may vary due to reevaluations.

As for the assertion that the weekly pay rate effective November 16, 2002 was in fact higher than the rate OWCP used, appellant's representative offers no authority for the information. OWCP used figures obtained from the employing establishment. If appellant disagrees with those figures, he may attempt to resolve the matter after the case is remanded for further development.

Appellant's representative asserts that OWCP "appears to still include income from appellant's receipt of OPM benefits," but offered no further detail. He does not point to any particular evidence to support the assertion. The Board is unable to identify an error. Again, appellant may attempt to resolve the matter with OWCP on remand.

#### **CONCLUSION**

The Board finds that this case is not in posture for decision. Further development of the evidence is warranted.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 12, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: March 15, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board