

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of CARLA J. HAMMOND and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, Ohio

*Docket No. 97-78; Submitted on the Record;
Issued December 7, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's actual earnings fairly and reasonably represent her wage-earning capacity.

In the present case, the Office accepted that appellant sustained a lumbosacral strain superimposed on spondylolisthesis, and a herniated L5-S1 disc causally related to factors of her federal employment as a mail processor.¹ Appellant underwent back surgery on September 2, 1993, and she returned to a light-duty position at four hours per day on October 12, 1994. She continued to work at four hours per day based on her physician's restrictions.

By decision dated December 7, 1995, the Office determined that appellant's light-duty position at four hours per day represented her wage-earning capacity, and her continuing compensation would be reduced based on her loss of wage-earning capacity.

The Board has reviewed the record and finds that the case is not in posture for decision.

Under section 8115(a) of the Federal Employees' Compensation Act, wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent her wage-earning capacity.² Generally, wages actually earned are the best measure of a wage-earning capacity and, in the absence of evidence showing that they do not fairly and reasonably represent the injured employee's wage-earning capacity, must be accepted as such measure.³

¹ Appellant also sustained lumbosacral strains in the performance of duty on December 7, 1990 and April 17, 1991.

² 5 U.S.C. § 8115(a).

³ *Dennis E. Maddy*, 47 ECAB __ (Docket No. 93-2365, issued December 11, 1995).

In the present case, the Office issued a formal wage-earning capacity decision based upon appellant's actual earnings. When making a wage-earning capacity determination, the Office must determine whether the actual earnings fairly and reasonably represent appellant's wage-earning capacity. The Office's procedures specifically provide, in discussing the factors considered for determining wage-earning capacity based on actual earnings, that "reemployment may not be considered suitable when: (1) the job is part-time (unless the claimant was a part-time worker at the time of injury) or sporadic; (2) the job is seasonal...; or (3) the job is temporary where the claimant's previous job was permanent."⁴

In this case, the Office made no specific findings with regard to whether the actual earnings fairly and reasonably represented appellant's wage-earning capacity. The December 7, 1995 decision stated that "the evidence in your case indicates that you have a loss of wage-earning capacity as a result of your work-related injury," without making a finding that the position fairly and reasonably represented appellant's wage-earning capacity, and explaining the basis for such a finding. The accompanying memorandum primarily discusses the calculations for the actual amount of loss of wage-earning capacity.

Since the Office's procedures specifically indicate that a part-time job is generally not appropriate for a wage-earning capacity determination, the Office must provide some explanation for the implicit finding that in this case that the part-time position fairly and reasonably represented appellant's wage-earning capacity under 5 U.S.C. § 8115(a). Accordingly, the case will be remanded to the Office for proper findings on the issues presented and an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated December 7, 1995 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
December 7, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment, Determining Wage-Earning Capacity*, Chapter 2.814.7(a) (July 1997).