United States Department of Labor
Employees' Compensation Appeals Board

HAYDEE N. BONILLA, Appellant	)	
and	)	**Docket No. 04-1965**
	)	**Issued: September 13, 2005**
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, Redstone Arsenal, AL, Employer	)	

Appearances:
Haydee N. Bonilla, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 4, 2004 appellant filed a timely appeal of the June 24, 2004 merit decision of the Office of Workers' Compensation Programs, which determined her wage-earning capacity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.[1]

ISSUE

The issue is whether the Office properly determined that the selected position of reservations agent represented appellant's wage-earning capacity.

[1] Appellant submitted additional medical evidence with her appeal. The Board's review is limited to the evidence in the case record that was before the Office at the time of its June 24, 2004 decision. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

Appellant, a 37-year-old former part-time sales store checker, has an accepted claim for aggravation of a fractured left wrist. The injury occurred on January 23, 2000 when a customer dropped a case of fire logs on her left hand. She underwent a left scaphoid bone graft on August 11, 2000 and on June 19, 2001 appellant underwent a left wrist arthrodesis with iliac crest bone graft. This was followed by a third surgery on April 13, 2002 to remove hardware. The Office placed appellant on the periodic compensation rolls effective April 13, 2002.

On July 1, 2002 appellant's treating physician, Dr. John W. Bacon, a Board-certified orthopedic surgeon, indicated that she had reach maximum medical improvement. He imposed permanent restrictions of no repetitive wrist movements, a one-hour limitation on operating a motor vehicle and one hour of pushing, pulling and lifting with a five-pound weight restriction. The employing establishment could not accommodate appellant's permanent restrictions, therefore, the Office referred appellant for vocational rehabilitation. However, vocational rehabilitation efforts were temporarily suspended while appellant recuperated from a fourth surgical procedure performed on December 13, 2002.

On April 9, 2003 Dr. Bacon advised that appellant had reached maximum medical improvement. He imposed a restriction of no heavy lifting with the left wrist. Appellant was limited to lifting no more than 10 pounds, intermittently up to 2 hours per day. Dr. Bacon also limited climbing to two hours intermittently. The Office resumed its vocational rehabilitation efforts in May 2003.

In a June 20, 2003 report, Dr. Bacon stated that appellant's fusion was solid, but she continued to have pain and swelling of her wrist, which worsened with gripping and lifting activities. Dr. Bacon noted restrictions of no repetitive use of the left extremity and no lifting more than two pounds with the left hand.

On September 8, 2003 appellant agreed to a rehabilitation plan, including job placement assistance, with the objective of obtaining full-time employment as a reservations agent, teacher's aide or customer service clerk. The Office approved the plan, with job placement assistance beginning October 1, 2003 and extending through January 1, 2004. The Office later extended placement services for an additional 30 days.

On April 15, 2004 the Office issued a notice of proposed reduction of compensation. The Office advised appellant that the medical and factual evidence established that she had the capacity to earn weekly wages of $525.00 as a reservations agent, a position consistent with the physical limitations imposed by Dr. Bacon.

By letter dated April 22, 2004, appellant noted her disagreement with the Office's proposal to reduce her wage-loss compensation. The Office also received a March 17, 2004 left-side electromyography and bilateral nerve conduction studies, which revealed no evidence of carpal tunnel syndrome or peripheral neuropathy.

In a decision dated June 24, 2004, the Office determined that the selected position of reservations agent with weekly earnings of $525.00 represented appellant's wage-earning capacity. Accordingly, it reduced appellant's compensation benefits effective July 11, 2004.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[2] An injured employee who is either unable to return to the position held at the time of injury or unable 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.[3]

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 his or her wage-earning capacity. If the actual earnings do not fairly and reasonably represent the employee's wage-earning capacity or if the employee has no actual wages, the wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, the employee's usual employment, age, qualifications for other employment, the availability of suitable employment and other factors and circumstances which may affect wage-earning capacity in his or her disabled condition.[4]

The Office must initially determine appellant's medical condition and work restrictions before selecting an appropriate position that reflects appellant's vocational wage-earning capacity. The medical evidence the Office relies on must provide a detailed description of appellant's condition.[5] Additionally, a wage-earning capacity determination must be based on a reasonably current medical evaluation.[6]

When the Office makes a medical determination of partial disability and of 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's *Dictionary of Occupational Titles*, or otherwise available in the open labor market, that fits the employee's capabilities with regard to his or 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, application of the principles set forth in the *Shadrick* decision will result in the percentage of the employee's loss of wage-earning capacity.[7]

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[2] *James B. Christenson*, 47 ECAB 775, 778 (1996); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

[3] 20 C.F.R. §§ 10.402, 10.403 (1999); *see Alfred R. Hafer*, 46 ECAB 553, 556 (1995).

[4] 5 U.S.C. § 8115(a); *see Mary Jo Colvert*, 45 ECAB 575 (1994); *Keith Hanselman*, 42 ECAB 680 (1991).

[5] *Samuel J. Russo*, 28 ECAB 43 (1976).

[6] *Carl C. Green, Jr.*, 47 ECAB 737, 746 (1996).

[7] *Albert C. Shadrick*, 5 ECAB 376 (1953); 20 C.F.R. § 10.403(d) (1999).

ANALYSIS

The reservations agent position is classified as sedentary, which requires occasional lifting, carrying, pushing and pulling of 10 pounds. There is no climbing, balancing, stooping, kneeling, crouching or crawling. The position also requires frequent reaching, handling and fingering. While the duties can be performed from a seated position most of the time, the job may also involve standing or walking for brief periods of time.

On April 9, 2003 Dr. Bacon imposed a restriction of no heavy lifting with the left wrist. Appellant was limited to lifting no more than 10 pounds, intermittently up to 2 hours per day. Dr. Bacon also limited appellant's climbing to two hours intermittently. In his June 20, 2003 report, Dr. Bacon modified appellant's prior restrictions to include no repetitive use of the left extremity and no lifting more than two pounds with the left hand.

The medical evidence indicates that appellant is right-hand dominant and Dr. Bacon did not impose any restrictions with respect to the use of her right hand. Although appellant contends that she has bilateral upper extremity symptoms, a recent diagnostic study administered on March 17, 2004 was normal and revealed no evidence of carpal tunnel syndrome or peripheral neuropathy. Given that appellant is right-hand dominant, her left hand lifting limitation of 2 pounds would not preclude her from performing the duties of a reservations agent, which include occasional lifting of up to 10 pounds and frequent reaching, handling and fingering. Accordingly, the Office demonstrated that the selected position is medically suitable.

The reservations agent position had a reported full-time weekly salary of $525.00 and the Office rehabilitation specialists reported on February 11, 2004 that positions remained available. The record also revealed that the current part-time (20 hours) weekly pay of appellant's date-of-injury job was $204.80.

The Office considered the proper factors, including the availability of suitable employment, appellant's age and physical limitations, her usual employment and her employment qualifications, in determining that the position of reservations agent represented appellant's wage-earning capacity.[8] As the record establishes that appellant had the requisite physical ability, skill and experience to perform the position of reservations agent and the position was reasonably available within the general labor market of appellant's commuting area, the Board concludes that the Office properly determined that the position of a reservations agent represented appellant's wage-earning capacity. Because appellant was capable of earning $525.00 per week as a reservations agent, the Office properly reduced her wage-loss compensation to zero in accordance with the *Shadrick* formula.[9]

CONCLUSION

The Office properly determined that the selected position of reservations agent represented appellant's wage-earning capacity.

[8] *See Dorothy Jett*, 52 ECAB 246 (2001).

[9] *Albert C. Shadrick, supra* note 7; 20 C.F.R. § 10.403(c), (d) (1999).

ORDER

IT IS HEREBY ORDERED THAT June 24, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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