

By decision dated August 14, 2008, OWCP found that the position of modified letter carrier fairly and reasonably represented appellant's wage-earning capacity effective May 29, 2007, the date she was reemployed in that position.¹

On August 19, 2010 the employing establishment made an offer of modified assignment (limited duty) for a position as a modified letter carrier, with different duties. In a letter to appellant dated August 27, 2010, the employing establishment explained that some of the modified job assignment duties that she had been performing no longer existed and therefore her current modified job assignment was no longer valid. The employing establishment noted that, effective August 30, 2010, her current modified job assignment would be rescinded and her status would change from rehabilitation modified employee to limited-duty status. Appellant would still be limited to working four hours a day.

On September 16, 2010 appellant filed a claim for wage loss beginning August 30, 2010. By decision dated November 2, 2010, OWCP denied appellant's claim for compensation benefits beginning August 30, 2010. It found that appellant had not met her burden of proof to modify the loss of wage-earning capacity determination.

The Board finds that OWCP's August 14, 2008 wage-earning decision was erroneous. In determining whether the claimant's work fairly and reasonably represents her wage-earning capacity, OWCP should consider whether the kind of appointment and tour of duty are at least equivalent to those of the job held on the date of injury. "Unless they are, the [claims examiner] may not consider the work suitable."² The record reveals that appellant's date-of-injury job as a city letter carrier was a full-time position for at least 40 hours per week. As OWCP found that the actual earnings in appellant's part-time position fairly and reasonably represented her wage-earning capacity, and a part-time position is not equivalent to a full-time position, the Board finds that OWCP abused its discretion in determining appellant's loss of wage-earning capacity determination.³

Accordingly, the August 14, 2008 wage-earning capacity determination by OWCP was erroneous, as it was based on a part-time position when appellant's date-of-injury position was full time. Therefore, the Board finds that OWCP improperly denied modification of the August 14, 2008 wage-earning capacity determination.

¹ On July 3, 2007 OWCP accepted appellant's claim for a recurrence of partial disability beginning on May 29, 2007 causally related to the January 29, 2003 employment injury.

² *O.V.*, Docket No. 11-98 (issued September 30, 2011); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Cheaper 2.814.7(a) (July 1997).

³ *O.V.*, *id.*

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 2, 2010 is reversed.

Issued: December 16, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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