

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY R. BAKER and DEPARTMENT OF VETERANS AFFAIRS,
HINES VETERANS HOSPITAL, Hines, Ill.

*Docket No. 97-37; Submitted on the Record;
Issued August 14, 1998*

DECISION AND ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly computed the amount of appellant's compensation check after she returned to work on modified duty.

Appellant's claim, filed on March 10, 1994, was accepted by the Office for a low back strain and herniated disc at L4-5. Appellant, a registered nurse, stopped work on April 4, 1994 and underwent extensive physical therapy. Subsequently, appellant returned to light duty for four hours and then eight hours a day, missing intermittent days due to medical treatment.

On February 23, 1996 appellant accepted the modified position of medical clerk, which had been approved by her treating physician, Dr. Matthew J. Ross, a Board-certified neurosurgeon.

On June 3, 1996 the Office issued a determination that the medical clerk position represented appellant's wage-earning capacity and computed her compensation. The Office noted that appellant's position paid \$26,698.00 annually and the nursing position she held on the date of injury now paid \$46,916.00 annually. The Office determined that her loss of wage-earning capacity was 56 percent or \$946.00 every 4 weeks.

The Board has reviewed the Office's computation of appellant's loss of wage-earning capacity and finds that its determination is correct.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim and paid compensation benefits, it has the burden of proof to establish that an employee's disability has ceased or lessened, thus justifying termination or modification of those benefits.²

¹ 5 U.S.C. §§ 8101-8193.

² *James B. Christenson*, 47 ECAB ____ (Docket No. 95-1106, issued September 5, 1996).

An injured employee who is unable to return to the position held at the time of injury or to earn equivalent wages but who is not totally disabled for all gainful employment is entitled to compensation computed on the loss of wage-earning capacity.³

Wage-earning capacity is the measure of the employee's ability to earn wages in the open labor market under normal employment conditions.⁴ Section 8106(a)⁵ of the Act provides for compensation for the loss of wage-earning capacity during an employee's disability by paying the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability. Section 8115 provides that the wage-earning capacity of an employee is determined by his actual earnings if these fairly and reasonably represent his or her wage-earning capacity.⁶

Appellant argues that her compensation check of \$953.59 for the period from March 18 through April 27, 1996 was miscalculated, noting that the extra \$7.59 above the 4-week amount was "obviously incorrect."

The record shows that the Office computed appellant's compensation for the period in question at \$1,087.90 but subtracted from this sum the amount of \$134.31, which was paid to appellant as part of her disability compensation on April 5, 1996 because she missed work for medical treatment on March 19, 1996. Thus, the Office did not err in issuing a check for \$953.59 for the March 18 through April 27, 1996 period.

³ 20 C.F.R. § 10.303(a); *Alfred R. Hafer*, 46 ECAB 553, 556 (1995).

⁴ *Dennis D. Owen*, 44 ECAB 475, 479 (1993); *Hattie Drummond*, 39 ECAB 904, 907 (1988).

⁵ 5 U.S.C. § 8106(a).

⁶ 5 U.S.C. § 8115(a); *Lawrence D. Price*, 47 ECAB ____ (Docket No. 93-2007, issued October 4, 1995).

The June 3, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 14, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member