U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE M. TIMMS and U.S. POSTAL SERVICE,
WILLIAM RICE STATION, Houston, Tex.

Docket No. 95-2861; Submitted on the Record;
Issued January 27, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had a 28 percent loss of wage-earning capacity.

On December 26, 1990 appellant, then a 31-year-old letter carrier, slipped and fell while delivering mail. The Office accepted appellant's claim for contusions of the forehead and hip, lumbosacral strain and herniated L5-S1 disc. On July 17, 1991 appellant underwent surgery for a left-sided L5-S1 laminectomy, discectomy and foraminotomy. She received continuation of pay for the periods December 27 through December 31, 1990 and February 16 through March 24, 1991. The Office began payment of temporary total disability compensation effective March 25, 1991.[1] In a July 18, 1994 decision, the Office found that the position of medical voucher clerk was suitable for appellant and represented her wage-earning capacity both medically and vocationally. The Office therefore reduced her compensation effective July 24, 1994 to compensation for a 28 percent loss of wage-earning capacity. In a June 20, 1995 decision, an Office hearing representative affirmed the July 18 1994 decision of the Office.

The Board finds that the case is not in posture for decision.

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of justifying a subsequent reduction of compensation benefits. Once the medical evidence suggests that a claimant is no longer totally disabled but rather is partially disabled, the issue of wage-earning capacity arises.[2] Wage-earning capacity is a measure of the employee's ability to earn wages in

[1] The Office paid appellant compensation for a loss of wage-earning capacity for intermittent periods between November 24 and January 14, 1993 based on her actual earnings as a security guard. The Office restored appellant to compensation for temporary total disability compensation effective January 14, 1993 on the grounds that appellant had no further employment as a security guard after that date.

[2] *Garry Don Young,* 45 ECAB 621 (1994).

the open labor market under normal employment conditions given the nature of the employee's injuries and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications, and the availability of suitable employment.[3] Accordingly, the evidence must establish that appellant can perform the duties of the job selected by the Office and that jobs in the position selected for determining wage-earning capacity are reasonably available in the general labor market in the commuting area in which the employee lives. In determining an employee's wage-earning capacity, the Office may not select a makeshift or odd lot position or one not reasonably available on the open labor market.[4].

In an August 17, 1993 work restriction evaluation form, Dr. Thomas S. Padgett, a Board-certified orthopedic surgeon, indicated that appellant could sit, walk, lift or stand intermittently for eight hours a day, bend or climb intermittently for four hours a day, and squat, kneel or twist intermittently for one hour a day. He reported that appellant could lift up to 15 pounds. Dr. Padgett noted that appellant would probably have problems with using her left foot in repetitive movements. He concluded that appellant could work eight hours a day. There were no subsequent medical reports which showed any decrease in appellant's physical ability to work. The Office selected the position of medical voucher clerk[5] for determining appellant's wage-earning capacity. The position was described as sedentary, requiring the ability to lift up to 10 pounds. The record shows that appellant therefore had the physical capacity to perform the duties of the position.

The Office indicated that the local job bank indicated that there were 4,662 job openings in appellant's commuting area in the category of computing and account information. The Office, however, did not provide any further breakdown on how many of those positions were medical voucher clerk positions. The information on the availability of the position, therefore, was too general to permit a finding that the specific job of medical voucher clerk was available in sufficient numbers to be considered reasonably available within appellant's commuting area.

The Office also indicated that appellant had a high school diploma with additional training of seven months in medical assisting and two years in computer operations. The Office, however, noted that appellant did not complete the program in medical assisting. Appellant testified at the April 19, 1995 hearing that she went to several interviews for the position of medical voucher clerk and was informed that she needed a certificate to qualify for the position which required some form of medical and voucher training and at least six months of experience. She noted that she had applied for other clerk positions in hospitals but was informed that she needed knowledge of medical terminology. There is an open question, therefore, of whether appellant had the vocational background necessary to obtain a position as a medical voucher clerk.

The case must therefore be remanded for further development. On remand the Office should clarify whether the specific position of medical voucher clerk was reasonably available

[3] *See generally*, 5 U.S.C. § 8115(a); A. Larson *The Law of Workmen's Compensation* § 57.22 (1989).

[4] *Steven M. Gourley*, 39 ECAB 413 (1988); *William H. Goff*, 35 ECAB 581 (1984).

[5] Department of Labor, *Dictionary of Occupational Titles*, DOT No. 214.482.18 (4th ed. 1977).

within appellant's commuting area. The Office should also determine whether the position of medical voucher clerk requires specialized training or knowledge, including the requirement that an applicant must have a certificate to demonstrate his or her ability to perform the duties of the position. If the Office should find that specialized knowledge or training is required, it should determine whether appellant had the knowledge or training required for the position. After further development as it may find necessary the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated June 20, 1995 is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
January 27, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member