U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY K. RIETZ and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Atlanta, Ga.

Docket No. 96-1168; Submitted on the Record;
Issued July 28, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly computed appellant's compensation for the period beginning September 26, 1986 and continuing.

The Board has duly reviewed the case record and finds that the Office properly computed appellant's compensation for the period beginning September 26, 1986 and continuing.

Under the Federal Employees' Compensation Act, compensation is based on an employee's monthly pay, which is defined under section 8101(4) of the Act as the greatest of the rate of pay at the time of injury, the rate of pay at the time disability begins, or the rate of pay at the time compensable disability recurs if the recurrence begins more than six months after an injured employee resumes regular full-time employment with the United States.[1] However, section 8113(a) of the Act provides:

"If an individual --

> (1) was a minor or employed in a learner's capacity at the time of injury; and
>
> (2) was not physically or mentally handicapped before the injury;

"the Secretary of Labor, on review under section 8128 of this title after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the

[1] 5 U.S.C. § 8101(4).

basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity."[2]

In interpreting this section of the Act, the Board has held that "the Act contemplates but one increase in wage-earning capacity upon the learner's completion of training or the minor's reaching the age of majority; but it does not contemplate such factors as future promotions, increases in salary or advancements, as these rest upon a number of indefinite and uncertain contingencies which place the happening of an event in the realm of possibility, not probability."[3] In later cases, the Board continued to interpret section 8113 of the Act as providing that an employee is only entitled to compensation at the pay rate she would have received when she would have completed her training.[4] To reflect this interpretation of the Act, the Office issued FECA Program Memorandum No. 122 (issued May 19, 1970) which stated:

> "In effect, the compensation rate of a learner should be adjusted if the pay rate increased as a result of a change in his learner's status which would have brought him either: (1) to a new level within; or (2) to completion of his learner's program."

In the present case, appellant was injured at work on October 30, 1985 while in the position of an apprentice, *i.e.*, trainee air traffic control specialist, GS-7 level, and received compensation for total disability. On September 28, 1986 appellant returned to work for the employing establishment as an air traffic assistant, GS-5 level; she claimed that she sustained a loss of wage-earning capacity. By decision dated April 28, 1993, the Office determined that appellant was entitled to receive compensation for total disability at the GS-14 level, step 1, based on the assumption that she would have finished her trainee program had she not been injured on October 30, 1985. By decision dated and finalized December 7, 1995, an Office hearing representative affirmed the Office's April 28, 1993 decision.

Upon graduation from her trainee program, appellant would have advanced to the position of journeyman air traffic control specialist at the GS-14 level, step 1.[5] The Office correctly found that appellant's wage-earning capacity under the Act was that of the position of journeyman air traffic control specialist. Appellant argued that her probable wage-earning capacity was that of the position of air traffic control specialist, GS-14 level, step 5, which she would have attained by periodic promotions on the job based on her skill, experience, aptitude and history of work performance. As detailed above, the relevant precedent provides that the

[2] 5 U.S.C. § 8113(a).

[3] *Robert H. Merritt*, 11 ECAB 64, 66-67 (1959).

[4] *See Bruce E. Hickey*, 19 ECAB 98, 99-100 (1967).

[5] The record reveals that appellant would have finished her trainee program effective February 12, 1989.

measure for appellant's wage-earning capacity is the position she would have held upon graduation from her trainee program.[6] Accordingly, the Office properly found that appellant's wage-earning capacity was that of a journeyman air traffic control specialist, the position she would have held upon graduation from her trainee program.[7]

The decision of the Office of Workers' Compensation Programs dated and finalized December 7, 1995 is affirmed.

Dated, Washington, D.C.
July 28, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[6] The Board has long held that the possibility of future promotions or greater earnings, but for the employment injury, does not support a loss of wage-earning capacity; *see Bobbie P. Beck*, 33 ECAB 146, 148 (1981); *Judith Henderson*, 32 ECAB 501, 505 (1981); *Daniel T. Morisky*, 30 ECAB 350, 354 (1979).

[7] The Office properly applied the principles of the *Shadrick* decision to calculate the amount of compensation to which appellant was entitled; *see Albert C. Shadrick*, 5 ECAB 376 (1953).