

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ANGELA MADDOX and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, SOUTHEASTERN PROGRAM SERVICE CENTER, Birmingham, Ala.

*Docket No. 96-1075; Submitted on the Record;  
Issued March 20, 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 determined that appellant had no loss of wage-earning capacity, based on her actual earnings beginning October 23, 1995.

The Office accepted that appellant sustained a right knee sprain and a fracture of the right hip on October 6, 1994 when she tripped on a carpet. The Office paid appellant compensation for temporary total disability from October 6, 1994 until she returned to limited duty on June 29, 1995. She worked an average of about six hours per day until she again stopped work on July 7, 1995. Appellant returned to work on July 12, 1995 and averaged about three hours of work per day from that date until September 1, 1995. She again stopped work on September 12, 1995 and returned to full-time work on October 23, 1995, performing the position of lift dispatcher/mail clerk she held when injured on October 6, 1994, but using a motorized scooter provided by the Office.

By decision dated January 10, 1996, the Office found that appellant's earnings of \$268.00 per week in her position as a lift dispatcher/mail clerk at the employing establishment effective October 23, 1995 fairly and reasonably represented her wage-earning capacity, and that she had no loss of wage-earning capacity.

Section 8115(a) of the Federal Employees' Compensation Act, titled "Determination of Wage-Earning Capacity,"<sup>1</sup> provides in part that "the wage-earning capacity of an employee is determined by his actual earnings if his actual earnings fairly and reasonably represent his wage-earning capacity." The Office's procedure manual states, "After the claimant has been working for 60 days, the [Office] will determine whether the claimant's actual earnings fairly and

---

<sup>1</sup> 5 U.S.C. § 8115(a).

reasonably represent his or her WEC [wage-earning capacity].”<sup>2</sup> Once the Office accepts a claim and pays compensation, as here, it has the burden to justify termination or modification of compensation benefits.<sup>3</sup>

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation effective October 23, 1995 based on her actual earnings.

The employing establishment advised the Office on December 6, 1995 that appellant had returned to full-time work at her previous position on October 23, 1995. As appellant had only worked six weeks, the Office’s decision that the position fairly and reasonably represented her wage-earning capacity was premature under the Office’s procedure manual. There is no indication the Office, at any time after December 6, 1995, but before its January 10, 1996 decision, ascertained that appellant continued to work full time in the position of lift dispatcher/mail clerk. Moreover, there is no evidence that appellant actually worked 40 hours per week during the 6 weeks between October 23 and December 6, 1995. The Office should have obtained such information before basing appellant’s wage-earning capacity on her actual earnings, especially given that appellant’s return to work on June 29, 1995, which apparently was intended to be full time, resulted in only part time, intermittent work for less than three months.

The decision of the Office of Workers’ Compensation Programs dated January 10, 1996 is reversed.

Dated, Washington, D.C.  
March 20, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

---

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.804.79(c)(1) (December 1993).

<sup>3</sup> *Mary Jo Colvert*, 45 ECAB 575 (1994).