

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIVA L. ALSTON and DEPARTMENT OF THE AIR FORCE,
HILL AIR FORCE BASE, Ogden, Utah

*Docket No. 96-670; Submitted on the Record;
Issued November 10, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant's disability following her separation on May 13, 1994 is causally related to her accepted employment injury of July 2, 1990.

On July 2, 1990 appellant, a sandblaster,¹ filed a claim asserting that she developed numbness and tingling in her right hand as a result of her federal employment. The Office of Workers' Compensation Programs accepted her claim for bilateral carpal tunnel syndrome, authorized surgery and paid compensation for temporary total disability. Appellant also received scheduled compensation for permanent partial impairment to her upper extremities.

On August 21, 1991 appellant returned to light duty without wage loss answering telephones, filing documents, inputting and extracting information from databases and annotating handwritten forms or tags. On June 2, 1992 she accepted the following light-duty assignment:

"This is written confirmation of the light duty made available to you upon return to duty on 2 June 92.

"Based on the physical limitations, the light duties listed below will continue until such time as you are released by your private physician to return to regular duty, or you are physically disqualified from your regular duties and placed on the Physically Disqualified Program and action taken by the base Handicap Monitor:

"Answer phones and check badges in enclosed visitor control area. Direct visitors to proper area and personnel. No lifting over 15 pounds."

On February 7, 1994 the employing establishment advised appellant that it had been trying, since she had been physically disqualified from her position as an aircraft mechanical

¹ Appellant was reassigned as an aircraft mechanical parts worker on September 9, 1990 because of a modification of qualification requirements.

parts worker, to find a job she could perform without further detriment to her health. A job had been located, the employing establishment advised, and appellant was being offered the permanent position of clerk, GS-303-4, with an annual salary of \$26,943.00. The employing establishment further advised that acceptance of the medical placement position might void her eligibility for disability retirement based on her current medical condition as it disqualified her for her current position of aircraft mechanical parts worker, WG-8840-07. Appellant declined the offer.

On March 22, 1994 the employing establishment issued a notice of proposed separation for disability. It was noted that on April 13, 1992 appellant was permanently restricted from certain functional requirements of her position as an aircraft mechanical parts worker; that a decision was made to medically disqualify her from her position; that steps were taken to loan her temporarily; that it was infeasible to restructure her position to accommodate her medical restrictions; and that there were no vacant positions available for which she was qualified at her current grade.

On March 28, 1994 the employing establishment's injury compensation administrator advised the Office that appellant had been performing the duties of the clerk position since June 2, 1992 without difficulty.

On April 5, 1994 the employing establishment issued a decision to separate appellant for disability effective May 13, 1994. On May 12, 1994 appellant filed a claim for wage loss beginning May 16, 1994.

In a decision dated September 2, 1994, the Office found that appellant had recently been reemployed as a clerk effective February 7, 1994 with wages of \$518.13 per week and that this position fairly and reasonably represented her wage-earning capacity.² The Office reduced appellant's monetary compensation to zero effective the date of her reemployment as a clerk based on her ability to earn wages in her new position. On September 18, 1995 the Office denied modification of its September 2, 1994 decision. The Office now indicated that its initial decision was based on the clerk position appellant performed for a period of approximately two years.

The Board finds that this case is not in posture for a determination of whether appellant's recurrence of disability following her separation on May 13, 1994 is causally related to her accepted employment injury of July 2, 1990.

The Office's procedure manual in effect at the time of the 1994 decision, states that where a claimant stops work after reemployment and "no formal loss of wage-earning capacity decision has been issued, the [Office] must ask the claimant to state his or her reasons for ceasing work and make a suitability determination on the job in question. If the job is suitable, ... the claimant has the burden of proving total disability and [the Office should] invite the claimant to submit a Form CA-2a," notice of employee's recurrence of disability and claim for pay/compensation. "If the reasons stated by the claimant amount to an argument for a

² The record is clear that appellant was not reemployed as a clerk effective February 7, 1994.

recurrence, the [Office] should develop and evaluate the medical and factual evidence upon receipt of the Form CA-2a.”³

The Board finds that under the circumstances of this case the Office should have complied with its own procedures and analyzed appellant’s claim as a case of recurrence, not one of loss of wage-earning capacity. The Office’s procedure manual correctly notes that in *Terry R. Hedman* the Board held that a partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty, if a recurrence of total disability is claimed. The Board held that the claimant must show a change in the nature and extent of the injury-related condition or a change in the nature or extent of the light-duty job requirements.⁴

The evidence in this case of appellant’s separation for disability is sufficient to establish that appellant has *prima facie* met her burden of proof under *Hedman* to show a change in the nature or extent of her light-duty job requirements. The Board will therefore set aside the Office’s loss of wage-earning capacity decision of September 18, 1995 and remand the case for proper development in accordance with Office procedures. After such further development as may be necessary, the Office shall issue an appropriate final decision on whether appellant’s disability following her separation on May 13, 1994 is causally related to her accepted employment injury of July 2, 1990.

The September 18, 1995 decision of the Office of Workers’ Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
November 10, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(b) (December 1995).

⁴ 38 ECAB 222 (1986).