

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEAN N. PETERSON and U.S. POSTAL SERVICE,
POST OFFICE, Tacoma, Wash.

*Docket No. 96-2680; Submitted on the Record;
Issued November 5, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's monetary compensation benefits based on her ability to perform the duties of a library assistant.

On September 11, 1987 appellant, then a 34-year-old mail handler, sustained a personal injury in the performance of her duties when she had an onset of pain between her shoulder blades while unloading a container from a van with another employee. The Office accepted the claim for cervical and thoracic strain, and later accepted the diagnosis of somatoform pain disorder as arising from this incident. Following intermittent periods of time loss, appellant received compensation for temporary total disability from August 1, 1988 to the present with the exception of a brief period in 1989 when appellant returned to light duty.

On February 5, 1990 appellant underwent a psychiatric evaluation by Dr. Myron Kass, a Board-certified psychiatrist. He diagnosed a conversion disorder and indicated that appellant was capable of working from a psychiatric standpoint.

In a report of December 20, 1990, Dr. Hugo Van Dooren, a psychiatrist, diagnosed somatoform pain disorder. Dr. Dooren concluded that appellant was not disabled for work, although he believed she would be unable to work at the employing establishment where her injury occurred.

An April 29, 1993 physical capacities evaluation concluded that appellant could work in a sedentary occupation.

In a medical note dated June 17, 1993, appellant's attending physician, Dr. Joy L. Ziemann, a Board-certified family practitioner, stated that appellant was capable of working full time in a sedentary occupation.

On March 29, 1996 appellant was evaluated by a team of specialists at the Pain Clinic Northwest, which included a physician, who concluded that she was capable of sedentary occupational activities.

In 1991 appellant was referred for rehabilitation services. After nearly completing a course in library science at Clover Park Technical, appellant was terminated from the program due to her behavior. In a February 16, 1993 closing report, appellant's rehabilitation counselor determined that while appellant did not quite complete all requirements for a certificate as a librarian, she had acquired sufficient skills to qualify for work as a library assistant or library clerk. The counselor conducted a labor market survey and determined that this title was reasonably available in the sedentary work category within appellant's commuting area.

In letters of April 9 and May 13, 1996, appellant wrote the Office concerning her frustration regarding participation in the pain clinic. She stated that the program at the pain clinic aggravates her pain and she does not intend to participate further if it was not mandatory. In her May 13, 1993 letter, appellant wrote "my plan is to await your letter telling me of your plans, if the full-time program is mandatory I [am] going to try that, if it ends up as destructive as the part-time program, I will just withdraw and await your next step." Appellant also addressed other issues which concerned her.

In a May 20, 1996 letter, the Office responded to appellant's letters of April 9 and May 13, 1996. It stated that when payment for the pain clinic was authorized, it was considered to be part and parcel of appellant's rehabilitation plan. It further stated that participation in rehabilitation is mandatory in the sense that wage-loss benefits can be reduced or terminated if a person fails to cooperate with the rehabilitation effort and referred appellant to applicable regulations pertaining to vocational rehabilitation.

On May 21, 1996 the Office issued appellant a notice of proposed reduction of compensation indicating that the medical evidence of record supported that the position of library assistant fairly and reasonably represented her wage-earning capacity. It gave appellant 30 days within which to submit further evidence or argument relevant to the proposed reduction in her compensation benefits.

In a May 27, 1996 letter, which the Office received June 7, 1996, appellant raised numerous issues. Pertinent to the issue at hand, appellant argued that she was incapacitated by pain and could not work except for brief periods.

In a June 20, 1996 letter, the Office addressed appellant's inquiries from her May 27, 1996 letter.

By decision dated June 21, 1996, the Office reduced appellant's compensation finding that the position of library assistant fairly and reasonably represented appellant's wage-earning capacity. In the accompanying memorandum, the Office noted that appellant submitted a letter dated May 27, 1996, which was received on June 7, 1996, in which numerous issues were raised and were addressed by separate letter. Pertinent to the issue at hand, the Office noted that appellant argued that she was incapacitated by pain and cannot work except for brief periods. The Office found that appellant's assertion was contrary to the competent medical evidence and

did not establish that she could not work in the position selected as representative of her earning capacity.

The Board finds that the Office properly reduced appellant's monetary compensation benefits based on her ability to perform the duties of a library assistant.

Once the Office accepted a claim, it has the burden of justifying termination or modification of compensation.¹ If an employee's disability is no longer total, but the employee remains partially disabled, the Office may reduce compensation benefits by determining the employee's wage-earning capacity.²

Under section 8115(a) of the Federal Employees' Compensation Act,³ wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent her wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity, or if the employee has no actual earnings, her wage-earning capacity is determined with due regard to the nature of her injury, her degree of physical impairment, her usual employment, her age, her qualifications, and other factors and circumstances which may affect her wage-earning capacity in his disabled condition.⁴

The Office properly found in its proposed reduction of compensation that appellant was no longer totally disabled for work due to her September 11, 1987 employment injury. The medical evidence of record showed that appellant is capable of sedentary work. In his February 5, 1990 report, Dr. Kass indicated that appellant was capable of working from a psychiatric standpoint. Dr. Dooren, in his December 20, 1990 report, also concluded that appellant was not disabled for work, although he felt appellant was unable to work at the employing establishment where her injury occurred. On June 17, 1993 appellant's attending physician, Dr. Ziemann noted appellant was capable of working full time in a sedentary occupation. The April 29, 1993 physical capacities evaluation concluded that appellant could work in a sedentary occupation. Moreover, the most recent medical evidence of record, a March 29, 1996 report from a team of specialists at the Pain Clinic Northwest, which included a physician, concluded that appellant was capable of sedentary occupational activities.

Following established procedures, the Office referred the case record to a vocational rehabilitation counselor, who selected positions listed in the Department of Labor's *Dictionary of Occupational Titles* to fit appellant's capabilities. The Office authorized training for appellant as a librarian. The rehabilitation counselor submitted a final report on February 16, 1993 indicating that while appellant did not complete all requirements for a certificate as a librarian, she had acquired sufficient skills to qualify for work as a library assistant or library clerk. The counselor provided required information concerning the position descriptions of a library

¹ *Betty F. Wade*, 37 ECAB 556 (1986).

² 20 C.F.R. § 10.303(a).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

worker, the availability of the positions within appellant's commuting area and pay ranges within the geographical area. The Office, therefore, found that, although appellant did not reach the goal of job placement, had she been successful she would have been capable of earning wages as a library assistant and, accordingly, reduced her compensation.

In response to the notice of proposed termination of compensation, appellant submitted a May 27, 1996 letter in which she argued that she was incapacitated by pain and could not work except for brief periods. Extent and degree of disability is primarily a medical issue and the medical evidence of record establishes that appellant can, and does, in her activities of daily living, accomplish light and sedentary activities. Appellant's assertion is therefore contrary to the competent medical evidence and thus does not establish that appellant is unable to perform the duties of a library assistant.

As the medical evidence established that appellant was capable of performing sedentary work, and as the Office followed established procedures for determining the vocational suitability and reasonable availability of the position selected, the Board finds that the Office, having given due regard to the factors specified at section 8115(a) of the Act, properly reduced appellant's monetary compensation on the grounds that she has the capacity to earn wages as a library assistant.

The decision of the Office of Workers' Compensation Programs dated June 21, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 5, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member