

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORETTA J. FOSNAUGH and U.S. POSTAL SERVICE,
MUNCIE P & D, Muncie, IN

*Docket No. 98-655; Submitted on the Record;
Issued July 23, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation based upon her actual earnings as a limited-duty clerk.

The Board has reviewed the record and finds that the Office properly reduced appellant's compensation based upon her actual earnings as a limited-duty clerk.

Under section 8115(a) of the Federal Employees' Compensation Act, wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent her wage-earning capacity.¹ Generally, wages actually earned are the best measure of a wage-earning capacity and, in the absence of evidence showing that they do not fairly and reasonably represent the injured employee's wage-earning capacity, must be accepted as such measure.²

In the present case, the Office accepted appellant's claim for crushed right hand/finger, left ankle fracture and left knee strain/sprain. The Office paid appropriate compensation and authorized left knee arthroscopy and partial lateral meniscectomy.³ The record indicates that appellant was hired as a temporary employee for a term of 359 days commencing June 30, 1995 and ending June 23, 1996. Appellant returned to a limited-duty clerk position working four hours per day on December 22, 1995. Appellant worked in this position until her temporary position ended effective July 7, 1997.⁴

¹ 5 U.S.C. § 8115(a).

² *Dennis E. Maddy*, 47 ECAB 259 (1995).

³ Appellant returned to limited-duty work on October 24, 1995 and filed a recurrence of disability claim on October 25, 1995.

⁴ The employing establishment had notified appellant on June 13, 1997 that her temporary casual clerk

The employing establishment informed the Office in a letter dated April 7, 1997, which included copies of payroll records, that appellant's salary without overtime for the period July 7, 1994 to July 6, 1995 was \$23,016.42 and the total number of hours worked during this period was 1,944.88 hours.⁵ For the period July 7, 1995 to March 1, 1997, the employing establishment noted that appellant's salary, without overtime, was \$30,076.67 and the total number of hours worked during this period was 1,934.28.

The Office noted in its September 30, 1997 decision that appellant had worked at least 90 days in her position of limited-duty clerk.⁶ Although the light-duty position was temporary, appellant had been hired as a temporary employee.⁷ As noted above, wages actually earned are generally the best measure of wage-earning capacity. In the absence of any contrary evidence in this case, the Board finds that the Office properly determined that the light-duty job represented appellant's wage-earning capacity.⁸ The position provided a weekly pay rate of \$389.50 which was lower than the pay rate of appellant's date-of-injury position, and thus the Office properly determined that appellant had a loss of wage-earning capacity of \$53.12⁹ per week.

appointment would be terminated effective June 30, 1997. On the back of a CA-8 form dated July 22 and July 31, 1997, the employing establishment indicated that appellant was terminated effective July 7, 1997 while an August 12 and August 25, 1997 CA-8 form indicated that she was no longer in pay status effective July 5, 1997 and a CA-8 form dated September 19, 1997 indicated a terminated date of June 30, 1997.

⁵ Appellant in her appeal stated that she figured her total hours worked prior to her injury was 42.78 per week. However, she has not submitted any evidence to support this argument. In a letter dated December 17, 1997, the Office explained how the average hours per week and salary were calculated, based upon the payroll records submitted by the employing establishment. The Office also informed appellant that the salary and average weekly work hours excluded any overtime she had worked during the period July 7, 1994 to July 6, 1995.

⁶ Under the Office's procedures, a wage-earning capacity determination based on actual wages is made after the claimant has been working for 60 days. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(c) (March 1997).

⁷ When the claimant's date-of-injury job was permanent and the actual wages are from a temporary job, the Office must consider this factor in a wage-earning capacity determination; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(a) (March 1997); *see also* *Jack L. Woolever*, 29 ECAB 111 (1977).

⁸ On appeal appellant stated that the most she could earn with her disability was \$7.20 per hour. As noted in the decision, the Office properly used appellant's actual wages. In addition, she has not submitted any evidence which would support that the loss of wage-earning capacity decision was erroneous or medical evidence establishing a material change in her injury-related condition after September 30, 1997.

⁹ The Board notes that the Office decision notes a wage loss of \$52.12 (handwritten over \$47.97) which appears to be an error as the attached computation of compensation notes a weekly wage loss of \$53.12.

The decision of the Office of Workers' Compensation Programs dated September 30, 1997 is hereby affirmed.

Dated, Washington, D.C.
July 23, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member