U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE J. RAIDLINE and U.S. POSTAL SERVICE,
POST OFFICE, Lehigh Valley, Pa.

Docket No. 97-123; Submitted on the Record;
Issued March 4, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly recomputed appellant's wage-earning capacity based on her actual earnings, which indicated she had sustained no loss of wage-earning capacity due to her employment injury.

On January 24, 1983 appellant, a 25-year-old rural mail carrier, injured her lower back and right leg. Appellant filed a Form CA-1 claim for traumatic injury on January 25, 1983. She stopped work on the date of injury, and the Office accepted appellant's claim for lumbosacral sprain by letter dated August 18, 1983. Although the Office terminated appellant's compensation as of September 30, 1983, the Board, in a decision and order dated December 12, 1990, reversed the Office decision terminating benefits. The Office reinstated compensation for total disability as of October 1, 1983 and continuing.

The Office ultimately referred appellant to a vocational rehabilitation specialist, who was able to locate a suitable limited-duty job for appellant within her physical restrictions, as indicated by her treating physician, Dr. Albert De Franco, a Board-certified family practitioner, in a work capacity evaluation form dated September 20, 1994.

In a letter to the Office dated February 10, 1995, the employing establishment informed the Office that as of February 10, 1995, appellant was offered and had accepted a limited-duty job with the employing establishment which was approved by her treating physician. The letter indicated that appellant would be starting this job on Saturday, February 18, 1995, and specifically stated that "[p]rior to her injury, [appellant] worked 26 days, Saturdays only, for a total of 208 hours per year. Her limited-duty assignment involves working Saturdays, 4 hours per week, for a total of 208 hours per year. Please terminate [appellant's] compensation payments effective [February] 18[,] [19]95."

In an Office status report/memorandum dated February 17, 1995, the Office indicated that it had received a telephone call from appellant's vocational rehabilitation counselor, who

advised that appellant was to become reemployed effective February 18, 1995[1] with the employing establishment as a rural carrier at a salary of approximately $13.71 per hour for four hours per day, one day per week. The memorandum indicated that this was in accordance with her preinjury schedule of working one day a week for eight hours.

In response to the Office's inquiry letter of April 26, 1995, the employing establishment stated in a May 5, 1995 letter that appellant was still working in the described limited-duty position at a rate of pay, $13.71, that was equal to the pay rate she would have received had she not been injured in 1983.

By decision dated August 9, 1995, the Office found that appellant's actual wages of $13.71 per hour as a substitute rural carrier fairly and reasonably represented her wage-earning capacity. The Office noted that since returning to work on February 18, 1995 as a substitute rural carrier at the rate of $13.71 per hour, she had demonstrated her ability to earn wages equal to or greater than those she was currently being paid for the job she held on the date of injury. Appellant was advised that this decision would not affect her entitlement to medical benefits.

In a letter dated September 6, 1995, appellant requested a formal hearing, which the Office scheduled for April 1, 1996 by letter dated March 11, 1996. At the hearing, appellant testified that the Office had based her actual wages on a four-hour, five-day per week work schedule, although she was actually working only one Saturday per week.

In a decision dated June 11, 1996, an Office hearing representative affirmed the Office's August 9, 1995 decision that appellant's actual wages as a rural carrier fairly and reasonably represented her wage-earning capacity, but found that the Office erroneously calculated her entitlement to compensation based on the assumption that she had returned to four hours per day, five days per week. The hearing representative also stated that appellant had established that she was offered employment at only one day per week at four hours per day. The hearing representative therefore remanded the case back to the district office for recalculation of appellant's actual wages based on a one-day per week work week. The hearing representative instructed the Office to apply the formula for computing loss of wage-earning capacity outlined in *Shadrick*[2] and to recalculate appellant's entitlement to compensation retroactive to the date of reemployment.

By letter decision dated July 1, 1996, the Office reinstated its initial computation of appellant's wage-earning capacity based on her actual wages as a substitute rural carrier, as indicated in its August 9, 1995 decision. The Office noted the hearing representative's June 11, 1996 finding that its August 9, 1995 decision had erroneously calculated appellant's wage-earning capacity based on her return to a four-hour per day, five days per week schedule. The Office, however, stated that its finding in that decision was not based on such a schedule (as appellant had claimed at the hearing), but was actually based on the fact that she had returned to

[1] The memorandum states that the date was February 18, 1994, which apparently is a misstatement.

[2] *Albert C. Shadrick*, 5 ECAB 376 (1953).

work at a higher rate of pay than she was earning as of the date of injury, and therefore she sustained no loss of wage-earning capacity due to her employment injury.

The Office noted it had received a letter from the employing establishment dated February 10, 1995 which indicated that in the year prior to her injury, appellant worked as a substitute carrier on 26 Saturdays, 8 hours per day, for a total of 208 hours. The Office stated that, since accepting the job in February 1995, appellant had been paid at a higher rate of pay as a substitute rural carrier than that which she had been earning at the time of injury. The Office indicated that this pay rate was based on a schedule of working every Saturday, 4 hours per day, or a total of 208 hours per year -- the same amount she had worked in the year prior to injury. The Office concluded that, based on the above information, it was correct in finding that she had sustained no loss of wage-earning capacity and appellant was not entitled to continuing wage-loss compensation. The Office reinstated its wage-earning capacity finding of August 9, 1995.

The Board finds that the Office properly recomputed appellant's wage-earning capacity based on her actual earnings, which indicated she had sustained no loss of wage-earning capacity due to her employment injury.

Where an employee sustains an injury-related impairment that prohibits the employee from returning to the employment held at the time of injury, or from earning equivalent wages, but that does not render the employee totally disabled for all gainful employment, the employee is considered partially disabled and is entitled to compensation for his loss of wage-earning capacity as provided for under section 8115 of the Federal Employees' Compensation Act.[3] Thus, if an employee is not totally disabled for all gainful employment, the threshold question which must be addressed before a loss of wage-earning capacity determination is required is whether appellant is prohibited by her injury from returning to her employment held at the time of injury or from earning equivalent wages.[4]

In the instant case, the record clearly indicates that appellant returned to a job substantially similar to the one she held prior to her injury,[5] that of substitute rural carrier, and that she worked the same number of hours at that job at the rate she would have earned had she not been injured. In its August 9, 1995 decision finding that appellant had sustained no loss of wage-earning capacity, the Office relied on the employing establishment's February 10, 1995 letter which stated that prior to her injury, appellant worked 26 days, Saturdays only, for a total of 208 hours per year, and that -- contrary to appellant's misleading assertion at the hearing, which the hearing representative accepted -- her newly accepted limited-duty job involved working all Saturdays, 4 hours per week, for a total of 208 hours per year, the same amount she had worked prior to her injury. Further, the employing establishment's May 5, 1995 letter clearly stated, in response to the Office's inquiry, that appellant was still working in the

[3] 5 U.S.C. § 8115.

[4] *See Sue A. Sedgwick*, 45 ECAB 211 (1993).

[5] The job description of appellant's limited-duty assignment which she accepted on February 18, 1995 was modified to conform with her physical restrictions.

described position at a rate of pay, $13.71, which was equal to the pay rate she would have received had she not been injured in 1983.[6]

Accordingly, the Office properly reinstated its August 9, 1995 determination that appellant sustained no loss of wage-earning capacity, and that therefore her wage-earning capacity should be based on her actual wages from the rural carrier position at which she commenced reemployment on February 18, 1995.[7] The Board therefore finds that the Office properly computed appellant's compensation based on her actual wages on July 1, 1996.

The decision of the Office of Workers' Compensation Programs dated July 1, 1996 is affirmed.

Dated, Washington, D.C.
March 4, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[6] The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence; *see generally Sedgwick, supra* note 4; *see generally* 20 C.F.R. § 10.140.

[7] The Office erroneously stated in its August 9, 1995 decision that the salary for a substitute rural carrier as of February 18, 1995 was $7.65 per hour. This statement contradicts the employing establishment's assertion in its May 3, 1995 letter that appellant's current pay rate, $13.71 per hour, was equal to the pay rate she would have received had she not been injured. This error is harmless, however, as the Office's determination that appellant's wage-earning capacity should be based on her actual wages is supported by substantial evidence in the record.