

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANCES HEATH and DEPARTMENT OF DEFENSE,  
SUPPLY LOGISTICS AGENCY, Philadelphia, PA

*Docket No. 98-1077; Submitted on the Record;  
Issued November 29, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that the position of medical voucher clerk fairly and reasonably represented appellant's wage-earning capacity effective January 6, 1998, and reduced her compensation accordingly.

The Office accepted that appellant, a 54-year-old seamstress, developed bilateral carpal tunnel syndrome causally related to her employment, for which she underwent corrective surgery in 1994. In October 1996, Office vocational rehabilitation was undertaken.<sup>1</sup>

On July 8, 1997 Dr. A. Lee Osterman, a Board-certified orthopedic surgeon specializing in the upper extremities and appellant's treating physician, completed a work restriction evaluation after a functional work-capacity evaluation was performed,<sup>2</sup> found that appellant had reached maximum medical improvement and opined that she could work at a light-duty job eight hours per day, with restrictions against lifting more than 10 pounds and with restrictions on repetitive assembly, but without restrictions on sitting, walking and standing. Dr. Osterman indicated that appellant could not do repetitive arm activities, and that activities must be self-paced, nonquota.

The rehabilitation counselor assigned to appellant's case reported that she had vocational experience performing clerical duties and had taken a course in computers.<sup>3</sup> The rehabilitation

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<sup>1</sup> Vocational rehabilitation reports of March 17, 1995 indicated that appellant was at that time working as a receptionist on a volunteer basis for the Veterans Administration Hospital.

<sup>2</sup> The functional work-capacity evaluation found that appellant's performance fell in the light-work level with weight handling to an occasional maximum of 20 pounds, avoidance of sustained overhead activity, highly repetitive or forceful arm/hand use, and activities which demand more than occasional stooping and squatting.

<sup>3</sup> Appellant's resumé stated that she had "knowledge of computer to perform word processing functions, knowledge of business math, and ability to operate and maintain office equipment," and had taken vocational

counselor worked with appellant to secure employment in an entry-level position,<sup>4</sup> however, various job possibilities did not materialize and placement was not successful. Three positions which fit appellant's vocational and physical requirements were identified, which included medical voucher clerk, appointment clerk and referral clerk -- temporary help agency. A survey of jobs availability was performed and these positions were found to be being performed in sufficient numbers within appellant's commuting area.

By report dated October 21, 1997, the rehabilitation counselor advised that appellant had the qualifications for the position of medical voucher clerk,<sup>5</sup> that it had been established that this position best represented appellant's wage-earning capacity, that it was available in sufficient numbers within appellant's commuting area.

On December 5, 1997 the Office issued appellant a notice of proposed reduction of compensation finding that the factual and medical evidence of record established that she was no longer totally disabled and that she had the capacity to earn wages as a medical voucher clerk. The Office gave appellant 30 days within which to submit additional evidence or argument relevant to her capacity to earn wages in the identified position.

By letter dated December 22, 1997, appellant responded to the Office stating that she accepted the position of medical voucher clerk on the condition that she would receive training for it as needed. Appellant requested the date and location where she was to begin work.

By response dated January 5, 1998, the Office advised appellant that the proposed reduction in compensation in no way represented a job offer to her, but explained that it was representative of her wage-earning capacity as it had found that the position was suitable for both her medical and vocational requirements.

Nothing further was received from appellant.

By decision dated January 6, 1998, the Office finalized the proposed reduction of compensation finding that the position of medical voucher clerk fairly and reasonably represented appellant's wage-earning capacity. The Office found that the factual and medical evidence of record established that appellant could perform the position of medical voucher clerk

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courses in computer operation, basic office machines and data entry.

<sup>4</sup> The job search included pursuit of positions as a teachers' aid, a crossing guard, a receptionist, entry level clerical worker, day care worker, file clerk, clerical bank positions, clerical hospital positions, clerical assistant and insurance clerical positions.

<sup>5</sup> The *Dictionary of Occupational Titles* (DOT) describes the position of medical voucher clerk as follows: "Examines vouchers forwarded to insurance carrier by doctors who have made medical examination of insured applicants, and approves vouchers for payment, based on standard rates. Computes fees for multiple examinations, using adding machine. Notes fees on form and forwards forms and vouchers to appropriate personnel for further approval and payment." The position's physical requirements were: "Sedentary position, requires the ability to reach, handle, finger, talk, hear, must be able to see, work is inside." Vocational preparation was noted as 30 days to 3 months.

and that it was being performed in sufficient numbers within appellant's commuting area, it noted the weekly pay rate for the position, compared it to the most recent calculated pay rate for the position appellant held when injured,<sup>6</sup> and applied the *Shadrick*<sup>7</sup> formula to determine appellant's loss of wage-earning capacity.

The Board finds that the Office properly reduced appellant's monetary compensation to reflect her ability to earn wages as a medical voucher clerk.

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of justifying a subsequent reduction of benefits.<sup>8</sup>

The Office properly found in its proposed reduction of compensation, which was finalized on January 6, 1998, that appellant was no longer totally disabled for work due to the effects of her carpal tunnel syndrome. Appellant's treating orthopedic surgeon, Dr. Osterman, reported on July 8, 1997 that appellant could perform light duty eight hours per day with restrictions on lifting more than 10 pounds and restrictions on repetitive assembly or repetitive arm activities, and that she had reached maximum medical improvement.

When rehabilitation placement efforts proved unsuccessful, the rehabilitation counselor assigned to assist appellant in placement efforts identified three positions listed in the DOT which were appropriate for appellant vocationally and physically, and advised the Office of these positions. The rehabilitation counselor provided the required information concerning the positions descriptions, their availability and pay rates, and the fact that they were being performed in sufficient numbers within appellant's geographical commuting area as confirmed by State officials.

The Office then properly selected the position of medical voucher clerk and followed the established procedures for determining appellant's employment-related loss of wage-earning capacity.

Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions given the nature of the employee's injuries and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications, and the availability of suitable employment.<sup>9</sup> Accordingly, the

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<sup>6</sup> Appellant's seamstress position was eliminated on September 30, 1994, and there currently is no position in the country in any agency which corresponds to it. The pay rate for the position at the time of elimination was \$7.19 per hour. The Office increased the \$7.19 by COLAs for the intervening years, multiplied it by appellant's base rate and the product was added to it, and then an additional 45.7 percent was added onto the final hourly wage representing appellant's piece meal rate, for a final calculated hourly rate of \$11.39.

<sup>7</sup> *Albert C. Shadrick*, 5 ECAB 376 (1953).

<sup>8</sup> *Phillip S. Deering*, 47 ECAB 692 (1996); *Harold S. McGough*, 36 ECAB 332 (1984); *Samuel J. Russo*, 28 ECAB 43 (1976).

<sup>9</sup> See generally, 5 U.S.C. § 8115(a); A. Larson *The Law of Workmen's Compensation* § 57.22 (1989); see also *Betty F. Wade*, *supra* note 3. Section 8115(a) of the Act, which provides: "Wage-earning capacity of an employee

evidence must establish that jobs in the position selected for determining wage-earning capacity are reasonably available in the general labor market in the commuting area in which the employee lives. In determining an employee's wage-earning capacity, the Office may not select a makeshift or odd lot position or one not reasonably available on the open labor market.<sup>10</sup>

The Office properly identified the position of medical voucher clerk from the three positions listed by the rehabilitation counselor, that was the most consistent with appellant's background as demonstrated by the factual evidence of record, and, using the information provided by the rehabilitation counselor regarding the prevailing wage rate in the area of a medical voucher clerk, properly determined that such a position fairly and reasonably represented appellant's wage-earning capacity.

While appellant contended that no actual position for a medical voucher clerk was offered to her, that she had been unable to secure employment, and that she was not vocationally prepared to perform the position without training, the Board notes that the Office is not obligated to actually secure employment for appellant.<sup>11</sup> Additionally, the Board notes that the mere perception that appellant would not be hired for a selected position is not a basis for finding that the selected position does not represent her wage-earning capacity.<sup>12</sup> Further, the Board notes that, based upon the job description in the DOT, appellant already had the vocational skills necessary for the position, as her resume revealed that she had knowledge of computers to perform word processing functions and a knowledge of business math, and had taken courses in vocational computer operation, basic office machines and data entry, such that the vocational requirements of the position were met and the need for additional training would be minimal and in the form of job familiarization only.

Thereafter, the Office properly applied the principles set forth in *Shadrick* and determined appellant's loss of wage-earning capacity. Accordingly, the Board finds that the Office has met its burden of justifying a reduction in appellant's compensation for total disability to reflect her ability to earn the wages of a medical voucher clerk.

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 6, 1998 is hereby affirmed.

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is determined by his actual earnings if his actual earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or if the employee has no actual earnings, his wage-earning capacity as appears reasonable under the circumstances is determined with due regard to: (1) the nature of his injury; (2) the degree of physical impairment; (3) his usual employment; (4) his age; (5) his qualifications for other employment; (6) the availability of suitable employment; and (7) other factors or circumstances which may affect his wage-earning capacity in his disabled condition."

<sup>10</sup> *Steven M. Gourley*, 39 ECAB 413 (1988); *William H. Goff*, 35 ECAB 581 (1984).

<sup>11</sup> *See Samuel J. Chavez*, 44 ECAB 431 (1993); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1993).

<sup>12</sup> *Id.* The fact that a claimant has been unsuccessful in obtaining jobs in the selected position did not establish that the work was unavailable or unsuitable.

Dated, Washington, D.C.  
November 29, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member