

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA ARCHIE and CORP. FOR NATIONAL SERVICE, VISTA
VOLUNTEERS LITERACY CORP., Wellington, TX

*Docket No. 00-1711; Submitted on the Record;
Issued November 17, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation on the grounds that the position of an admissions clerk represented her wage-earning capacity.

On June 7, 1996 appellant, then a 31-year-old Vista volunteer, filed a notice of traumatic injury and claim for compensation alleging that she sustained an injury to her neck as the result of lifting a box of office materials in the performance of duty. The Office accepted the claim for a cervical strain. Appellant continued to work until she was terminated on June 18, 1996. Appellant subsequently worked in a nursing center but stopped work entirely on January 22, 1997.

Appellant was treated for her back condition by Dr. William T. Price, a Board-certified orthopedic surgeon. The Office authorized Dr. Price to perform an anterior cervical discectomy with fusion at C5-6 with a bone graft.

In an (OWCP-5) work evaluation form dated October 31, 1997, Dr. Price released appellant for full-time work, 8 hours per day with a 10-pound lifting restriction.

Because appellant did not have a job to return to, the Office referred appellant for vocational training and rehabilitation services with the goal of job placement with an alternative employer. Appellant underwent intermittent training with Goodwill Industries in Amarillo, Texas, but the rehabilitation specialist noted poor attendance. Appellant later moved back to Wellington, Texas and job placement continued there for a skilled clerical position.

Appellant came under the care of Dr. Grace Stringfellow in December 1998. Dr. Stringfellow ordered a functional capacity evaluation that was performed on July 27, 1999. The test results indicated that appellant could perform sedentary work with a sitting tolerance of 15 to 30 minutes, walking and standing tolerance of 15 to 20 minutes and a lifting restriction of 20 pounds.

In a report dated September 21, 1999, appellant's rehabilitation counselor related that appellant's program period had expired without a successful return to work. He stated that appropriate jobs, within appellant's medical restrictions and work abilities had been located within her commuting area. Appellant's rehabilitation counselor provided a job description for the position of an admissions clerk, which he considered to be the most appropriate for rating appellant's wage-earning capacity. The position (DOT¹ 205-362018) was described as sedentary requiring occasional lifting of 10 pounds. He further noted that appellant met the vocational requirements needed to qualify for the selected position as she had substantially more than three months of job experience and vocational training in the clerical field. Appellant's rehabilitation counselor concluded that the job was reasonably available as verified by the state employment service.

In a notice dated September 27, 1999, the Office advised appellant that it proposed to reduce her compensation because she was no longer totally disabled and had the capacity to earn the wages of an admissions clerk at the rate of \$240.00 per week. Appellant was advised to submit additional evidence or argument if she disagreed with the proposed reduction.

Appellant submitted a series of progress notes from Dr. Stringfellow dated January 17, 2000, December 3, November 2 and September 27, 1999. She noted appellant's limited capacity for lifting, but did not address whether appellant was able to work as an admissions clerk.

In a decision dated March 8, 2000, the Office reduced appellant's compensation benefits effective March 11, 2000.

The Board finds that the Office properly reduced appellant's wage-loss compensation.

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.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 wage-earning capacity. Or if the employee has no actual earnings, his or her wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, age, qualifications for other employment, the availability of suitable employment and other factors and circumstances which may affect wage-earning capacity in the employee's disabled condition.⁴ Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions.⁵ Where vocational

¹ Department of Labor, *Dictionary of Occupational Titles*.

² *James B. Christenson*, 47 ECAB 775 (1996); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

³ 5 U.S.C. § 8115(a).

⁴ *See Richard Alexander*, 48 ECAB 432 (1997); *Pope D. Cox*, 39 ECAB 143 (1988).

⁵ *Id.*

rehabilitation is unsuccessful, the rehabilitation counselor will prepare a final report which lists two or three jobs, which are medically and vocationally suitable for the employee, and proceed with information from a labor market survey to determine the availability and wage rate of the position.⁶

The Office procedures pertaining to vocational rehabilitation services emphasize returning partially disabled employees to suitable employment.⁷ If the employment injury prevents the injured worker from returning to the job held at the time of injury, vocational rehabilitation services are provided to assist the employee in placement with the previous employer in a modified position or, if not feasible, developing an alternative plan based on vocational testing which may include medical rehabilitation, training and/or placement services.⁸

In a report dated September 21, 1999, appellant's rehabilitation counselor determined that appellant was able to perform the position of an admissions clerk, that the position was available in sufficient numbers so as to make it reasonably available within appellant's commuting area and that the minimum wage of the position was \$240.00 per week. He provided a job description for the position, indicating that it was sedentary and consistent with appellant's medical restrictions.

The Board finds that the Office considered the proper factors, such as availability of suitable employment and appellant's physical limitations, usual employment, and age and employment qualifications, in determining that the position of admissions clerk represented appellant's wage-earning capacity. The weight of the evidence of record establishes that appellant had the requisite physical ability, skill and experience to perform the position of caseworker and that such a position was reasonably available within the general labor market of appellant's commuting area. Therefore, the Office properly determined that the position of admissions clerk reflected appellant's wage-earning capacity effective March 11, 2000.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*, Chapter 2.814.8 (December 1993).

⁷ *Id.*

⁸ *Id.* at Chapter 2.813.6(b); *see Sylvia Bridcut*, 48 ECAB 162 (1996); *Clayton Varner*, 37 ECAB 248 (1985).

The decision of the Office of Workers' Compensation Programs dated March 8, 2000 is hereby affirmed.

Dated, Washington, DC
November 17, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member