

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERTA CARRIE and PEACE CORPS,
Senegal, West Africa

*Docket No. 00-927; Submitted on the Record;
Issued February 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Worker's Compensation Programs properly determined appellant's wage-earning capacity based on her actual earnings.

On August 17, 1997 appellant, then a 52-year-old Peace Corps volunteer, filed a notice of occupational disease, claiming that her vaginal vault prolapse was caused by her federal employment. Appellant was in Senegal, West Africa from March 1995 to May 1998, and stated that she first noticed the problem in 1996. Appellant stated that lifting heavy bags of cement and fencing in and out of trucks, lifting and pulling well water, carrying food from the market, and carrying luggage during travels to and from Dakar caused her vaginal condition. Appellant submitted several doctors' reports and a detailed personal statement.

By letter dated November 11, 1998, the Office accepted appellant's claim. On January 4, 1999 appellant underwent surgery for "bilateral paravaginal repair."

Appellant received compensation for total disability from January 4 to March 1, 1999.

By letter dated July 13, 1999, appellant informed the Office that she was working as a secretary for the Providence Medical Center. Appellant stated: "I am currently working full eight-hour shifts and have been since April 1999. I was rehired as a permanent on-call employee beginning June 20, 1998."

By decision dated September 2, 1999, the Office found that appellant had been reemployed as a secretary with Providence Medical Center, effective June 30, 1998, earning wages of \$640.04 per week. The Office determined that appellant had no loss of wage-earning capacity due to her ability to earn wages in her new position.

The Board finds that the Office did not properly determine appellant's wage-earning capacity based on her actual earnings.

Section 8115(a) of the Federal Employees' Compensation Act¹ provides that, in determining compensation for partial disability, "the wage-earning capacity of an employee is determined by his actual earnings if his earnings fairly and reasonably represent his wage-earning capacity." 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 capacity, must be accepted as such measure.² Office procedures direct that a wage-earning capacity determination based on actual wages be made following 60 days of employment.³ The procedures provide for a retroactive determination where an employee has worked for at least 60 days and the work stoppage following that date was not due to the employment-related condition.⁴

The Office attempted to determine appellant's wage-earning capacity retroactively, based on her full-time earnings beginning June 30, 1998, yet there is no evidence in the record that appellant was working full time as of June 30, 1998. Appellant states in her letter dated July 13, 1999 that she was "rehired as a permanent *on-call* employee beginning June 30, 1998" and as of the date of the letter is "currently working full eight-hour shifts and has been since April 1999." By this statement, it is neither clear nor conclusive that appellant was employed full time as of June 30, 1998.

While the Office wrote to Providence Portland Medical Center on August 4, 1999 inquiring about appellant's history of employment and earnings, no response from the medical center is in the record. As the record is devoid of evidence that appellant earned \$640.04 a week effective June 30, 1998, the Office did not meet its burden of proof to establish appellant's wage-earning capacity.

¹ 5 U.S.C. §§ 8101-8193, 8115(a).

² *Gregory A. Compton*, 45 ECAB 154 (1993).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7a (December 1993).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7e (December 1995).

The September 2, 1999 decision of the Office of Workers' Compensation Programs is hereby reversed.⁵

Dated, Washington, DC
February 6, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ The Board notes that appellant will remain entitled to the payment of medical bills until the Office determines that appellant no longer has residuals causally related to her employment. Also, the Office may again retroactively determine appellant's wage-earning capacity.