

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REBECCA S. TERRIBLE and U.S. POSTAL SERVICE,  
POST OFFICE, Grove City, OH

*Docket No. 00-2129; Submitted on the Record;  
Issued May 17, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly found that the position of graduate administrative associate fairly and reasonably represented appellant's wage-earning capacity effective June 1, 1999.

The Board has duly reviewed the record in the present appeal and finds that the Office improperly reduced appellant's compensation in this case.

Section 8115(a) of the Federal Employees' Compensation Act provides that, in determining compensation for partial disability, "the wage-earning capacity of an employee is determined by [her] actual earnings if [her] earnings fairly and reasonably represent [her] wage-earning capacity."<sup>1</sup> Office procedures indicate that a determination regarding whether actual wages fairly and reasonably represent wage-earning capacity should be made after a claimant has been working in a given position for more than 60 days.<sup>2</sup>

On November 9, 1995 appellant, then a 45-year-old full-time supervisor, filed a claim for an occupational disease alleging that she developed an esophageal spasm caused by stress due to harassment by a coworker and stopped work on November 6, 1995.<sup>3</sup> On February 11, 1999 the Office accepted the claim for major depression with anxiety.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8115(a).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(a) (July 1997); see *William D. Emory*, 47 ECAB 365 (1996).

<sup>3</sup> In a prior appeal, the Board set aside the Office's denial of appellant's claim and remanded the case for further development. (Docket No. 96-2136, issued November 25, 1998).

<sup>4</sup> Appellant retired from the employing establishment effective September 27, 1996. On May 7, 1999 appellant elected to be covered by the Act.

In the present case, the record contains letters from Ohio State University verifying that appellant worked part time 20 hours per week as a graduate administrative associate since August 1997 as well as a letter and a February 19, 1999 Form CA-1032 submitted by appellant. A February 15, 1999 letter from the University indicated appellant's rate of pay for the period November 1997 through August 1998 as \$885.00 per month and \$885.00 per month for the period August 1998 to the present. Appellant quit the position of graduate administrative associate in August 1999 and returned to a part-time temporary position as an academic advisor effective January 1, 2000.

In a decision dated September 13, 1999, the Office concluded that her wages as a graduate administrative associate fairly and reasonably represented her wage-earning capacity. Appellant requested an oral hearing which was held on January 24, 2000. By decision dated April 14, 2000, the hearing representative affirmed the Office's loss of wage-earning determination.

In reviewing whether actual wages fairly and reasonably represent wage-earning capacity, the Board examines the record for evidence that the employment "constitutes part-time, sporadic, seasonal or temporary work."<sup>5</sup> The Office's procedure manual provides guidelines for determining wage-earning capacity based on actual earnings:

"a. *Factors considered.* To determine whether the claimant's work fairly and reasonable represents his or her WEC [wage-earning capacity], the CE [claims examiner] should consider whether the kind of appointment and tour of duty (see FECA PM 2.900.3) are at least equivalent to those of the job held on date of injury. Unless they are, the CE may not consider the work suitable.

"For instance, reemployment of a temporary or casual worker in another temporary or casual (USPS) [United States Parcel Service] position is proper, as long as it will last at least 90 days, and reemployment of a term or transitional USPS worker in another term or transitional position is likewise acceptable. However, the reemployment may not be considered suitable when:

- (1) *The job is part-time* (unless the claimant was a part-time worker at the time of injury) or sporadic in nature;
- (2) *The job is seasonal* in an area where year-round employment is available....
- (3) *The job is temporary* where the claimant's previous job was permanent."<sup>6</sup>

It is evident that in this case appellant's job was both part time; she indicated that she worked 20 hours per week and letters from her employer state that the position was part time.

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<sup>5</sup> See *Monique L. Love*, 48 ECAB 378 (1997).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7 (July 1997).

Her date-of-injury position was a full-time position as a supervisor. As the above provision indicates, a part-time position is generally not considered appropriate for a wage-earning capacity determination unless the date-of-injury position was also part time. The Office made no reference to this provision or otherwise attempted to explain why a part-time position was appropriate in this case. The Board finds that the Office did not follow its own procedures in determining appellant's wage-earning capacity. It is the Office's burden to reduce compensation, and they failed to meet their burden in this case.

The decision of the Office of Workers' Compensation Programs dated April 14, 2000 is reversed.

Dated, Washington, DC  
May 17, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member