

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON Y. HARRIS and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 00-1682; Submitted on the Record;
Issued January 22, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly adjusted appellant's compensation based upon her actual earnings.

In this case, appellant initially fell and injured her back on February 21, 1985. She later reinjured her back when she fell from a chair to the floor in 1988. The Office accepted the conditions of soft tissue injury, left sprain of ribs, lumbar sprain, herniated disc at L4-5 and permanent aggravation of degenerative disc disease. Appellant worked intermittently from her initial date of injury until she stopped work on June 26, 1991. She returned to work July 15, 1994 for four hours a day. The Office accepted a recurrence of injury on March 21, 1995. Appellant underwent surgery on April 26, 1995 and returned to work on June 25, 1996 on a partial basis of four hours a day. On July 10, 1996 she worked for approximately one hour and then stopped. Appellant suffered a nonwork-related injury May 27, 1997 in which she fractured her distal tibia.

She received appropriate benefits and eventually returned to work on a partial basis of four hours a day.

In a prescription note dated December 8, 1998, Dr. Arthur C. Connor, appellant's treating Board-certified orthopedic surgeon, stated that she could return to work four hours a day with a chair with arms, walking no more than 100 feet, lifting no more than 20 pounds. No repeated bending and lifting. Being able to park within one block of the workplace. Effective December 31, 1998, the employing establishment offered appellant the position of rehabilitation clerk for four hours a day. The physical restrictions included no prolonged standing, ergonomic chair with arm rest, walking 100 feet with rest intermittently; 20 pounds intermittently lifting, no carrying, pushing, pulling, no repetitive bending, no twisting or climbing and parking within one block of workplace. The record reflects that appellant returned to work effective January 2, 1999 and was sent home because of chair issues. Appellant returned to work on February 17,

1999 but left due to blood pressure problems. She returned to work four hours a day on April 5, 1999.

On May 10, 1999 the Office determined that a conflict in medical evidence existed regarding continuing causal relationship, nature and extent of disability and appellant's ability to perform work duties and referred appellant to Dr. David R. Appert, a Board-certified orthopedic surgeon, for resolution of the conflict. In a report dated July 12, 1999, Dr. Appert reviewed the medical evidence of record and set forth his examination findings. Orthopedic diagnoses included: Sero-negative polyarthralgia; degenerative arthritis; degenerative disc disease L4-5 and L5-S1; acute lumbar discopathy L4-5 and L5-S1 with sciatica; status post anterior interbody fusion with L4-5 and L5-S1, with left iliac bone graft; rule out incomplete fusion L4-5; and recurrent back pain with bilateral sciatica distribution L4-5. Dr. Appert opined that, at the date of his examination, appellant continued to suffer residuals of her work-related conditions and was only capable of performing four hours of work a day five days a week. He further opined that she could perform the duties of the modified distribution clerk position with limitations. Appellant was restricted to no prolonged standing; armchair for sitting; walking 100 feet intermittently; lifting, carrying, pushing, and pulling 10 pounds or less intermittently; no stooping, kneeling; turning slowly; reaching when necessary; no bending; and repetitive continuous motion intermittently. Dr. Appert further agreed that, as suggested by appellant's attending surgeon, Dr. Connor, modification of her employment location, where she could park next to her work would be helpful.

Appellant reinjured herself on August 4, 1999 and was rendered totally disabled from August 5 through August 20, 1999. The Office assigned this injury claim number 100490349. The Office combined this new injury with appellant's previous injuries and paid appropriate compensation for the period July 3 through October 8, 1999. On or about September 29, 1999 the employing establishment offered appellant a revised job offer of a rehabilitation clerk, which was originally offered on December 31, 1998. The physical restrictions of the revised position included no prolonged standing, ergonomic chair with armrest, walking 100 feet with rest intermittently; 20 pounds intermittently lifting, no carrying, pushing, pulling, no repetitive bending, no twisting or climbing and parking within one block of workplace.

In an October 4, 1999 report, Dr. Connor noted the results of appellant's examination and advised that she was to continue with a four-hour workweek. He noted that the ergonomic chair had not been obtained yet, but stated that it should help appellant remain in a working status. On or about November 2, 1999 the employing establishment secured an ergonomic chair for appellant.

By decision dated December 30, 1999, the Office determined that appellant was reemployed as a rehabilitation clerk effective December 31, 1998 with wages of \$442.04 per week. The letter noted appellant's physical restrictions and found that the duties of the new position reflected the work tolerance limitations established by the weight of the medical evidence; and that appellant's training, education and work experience had also been considered in determining the suitability of this position. Pursuant to the Federal Employees' Compensation Act, at 5 U.S.C. § 8106 and 5 U.S.C. § 8115, the Office advised that appellant's compensation would be adjusted to reflect her ability to earn actual wages as a rehabilitation clerk.

The Board has duly reviewed the entire case record on appeal and finds that the Office properly adjusted appellant's compensation based upon her actual earnings.

In the December 30, 1999 decision, the Office adjusted appellant's compensation based upon her actual earnings as a rehabilitation clerk. Although appeal rights were attached, this decision did not constitute a formal wage-earning capacity determination, but rather was a reduction of compensation using the *Shadrick*¹ formula. If appellant returns to work and has earnings, she is not entitled to receipt of temporary total disability benefits and actual earnings for the same time period. The Office, therefore, offsets actual earnings pursuant to the *Shadrick* formula. In a prior decision, *Lawrence D. Price*,² the Board explained that if a reduction of benefits based upon actual earnings is not accompanied by a determination that actual earnings "fairly and reasonably" represent wage-earning capacity, an informal reduction of benefits utilizing the *Shadrick* formula is proper rather than a formal loss of wage-earning capacity determination. As the Office in this case did not find in the December 30, 1999 decision that appellant's actual earnings fairly and reasonably represented her wage-earning capacity, the informal reduction of benefits was proper. The Office properly applied the *Shadrick* formula to compute the amount of appellant's adjusted compensation benefits.

The December 30, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 22, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

¹ See *Albert C. Shadrick*, 5 ECAB 376 (1953).

² 47 ECAB 120 (1995).