

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA K. BLUE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Fort Wayne, IN

*Docket No. 01-1169; Submitted on the Record;
Issued July 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined appellant's wage-earning capacity based on her position as an ambulatory care float nurse.

Appellant, a 45-year-old registered nurse, filed a notice of traumatic injury alleging that she injured her back lifting a laundry bag in the performance of duty. The Office accepted her claim for cervical dorsal sprain. Appellant filed a notice of recurrence of disability on August 2, 2000 and the Office accepted this claim on October 24, 2000 for continuing medical care. The Office expanded appellant's claim to include thoracic sprain on February 12, 2001.

Appellant filed a second claim on January 31, 2000 alleging that on January 26, 2000 she developed low back pain after repeatedly emptying a foley catheter. The Office accepted this claim for lumbar strain on March 29, 2000. The Office also accepted that appellant had sustained an aggravation of herniated discs at L4-5 and L5-S1.

Appellant accepted the light-duty position of ambulatory care float nurse on November 7, 2000. By decision dated February 12, 2001, the Office found that appellant had worked in this position for 60 days and that her earnings in this position represented her wage-earning capacity.¹ In a separate letter dated February 12, 2001, the Office stated that appellant would receive compensation including premium pay since her return to work.

The Board finds that appellant's actual earnings as an ambulatory care float nurse represent her wage-earning capacity.

¹ Appellant appealed the February 12, 2001 decision to the Board on March 13, 2001. Following the February 12, 2001 decision, she submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not consider it on appeal. 20 C.F.R. § 501.2(c).

Section 8115 of the Federal Employees' Compensation Act,² titled "Determination of wage-earning capacity," states in pertinent part:

"(a) 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."

Generally, wages actually earned are the best measure of a wage-earning capacity and in the absence of evidence showing they do not fairly and reasonably represent the injured employee's wage-earning capacity, must be accepted as such measure.³

In the present case, appellant worked as an ambulatory care float nurse from November 13, 2000 to February 12, 2001 earning \$44,268.00 a year. Her performance of this position for 90 days is persuasive evidence that it represents her wage-earning capacity. There is no medical evidence that this position did not fairly and reasonably represent appellant's wage-earning capacity. Furthermore, there is no evidence that this position is seasonal, temporary, less than full-time or makeshift work designed for appellant's particular needs.⁴

The formula for determining loss of wage-earning capacity based on actual earnings, developed in the case of *Albert C. Shadrick*,⁵ has been codified by regulation at section 10.403 of the Office's regulations.⁶ The Office first calculates an employee's wage-earning capacity in terms of percentage by dividing the employee's earnings by the "current" pay rate. The employee's wage-earning capacity in dollars is computed by first multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain loss of wage-earning capacity. Compensation payable is then adjusted by applicable cost-of-living adjustments.

In this case, the employing establishment indicated that appellant's date-of-injury base pay was \$21.28 an hour, that she received Sunday premium pay of \$1,986.11 a year, night differential of \$411.68 a year and holiday premium pay of \$1,228.60 a year.⁷ The Office calculated that appellant's weekly pay rate was \$851.20 a week, or \$21.28 multiplied by 40 hours. The Office then divided each of the date-of-injury premium pays by 52 weeks in the year to reach a weekly Sunday premium pay of \$38.19, a weekly night differential of \$7.92 a week

² 5 U.S.C. § 8115.

³ *Elbert Hicks*, 49 ECAB 283 (1998).

⁴ *Monique L. Love*, 48 ECAB 378 (1997).

⁵ 5 ECAB 376 (1953).

⁶ 20 C.F.R. § 10.403.

⁷ In a letter dated February 12, 2000, the Office stated that appellant would receive compensation for her loss of premium pay since her return to work on August 21, 2000. However, the Office stated that it required additional information from the employing establishment regarding the amount of compensation that appellant received prior to issuing this additional compensation. The Office has not issued a final decision on this issue and the Board will not consider it on appeal. 20 C.F.R § 501.2(c).

and a weekly holiday premium pay of \$23.63 a week. The Office included appellant's pay rate plus night differential, Sunday premium pay and holiday pay in determining her date-of-injury pay rate of \$920.94 for the application of the *Shadrick* formula. The Office determined that appellant was currently earning \$851.31 a week or \$44,268.00 divided by 52. In applying the *Shadrick* formula, dividing \$851.31 by \$921.20, the current pay rate for appellant's date-of-injury position including the pay differentials,⁸ appellant had a wage-earning capacity of 92 percent. The Office then multiplied appellant's date-of-injury pay rate by the percentage of wage-earning capacity or \$920.94 by 92 percent and subtracted the resulting dollar amount of \$847.26 from the pay rate. The Office multiplied the resulting amount of \$73.68 by the appropriate two-thirds compensation rate to reach the amount of \$55.26 for appellant's weekly loss of wage-earning capacity. The Office determined that appellant had a loss of wage-earning capacity of \$55.26 a week or \$221.04 every four weeks. The Board finds that the Office properly computed appellant's compensation.

The February 12, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 10, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

⁸ The Office properly determined the pay differentials for the current pay rate for appellant's date-of-injury position by calculating the appropriate percentages. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.15(d) (December 1995).