

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NAYSRU LY and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Santa Ana, CA

*Docket No. 01-1925; Submitted on the Record;
Issued October 1, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly calculated appellant's compensation, after offsetting her actual earnings.

The case was before the Board on a prior appeal. In a decision dated April 18, 2000, the Board reversed a September 4, 1997 Office decision, finding that the Office could not base a wage-earning capacity determination on appellant's part-time position she had performed since November 1990.¹ With respect to an overpayment of \$15,767.30, the Board affirmed the amount of the overpayment, and reversed on the issue of waiver. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

In a letter dated February 25, 1998, the employing establishment offered appellant a modified flat sorter position at six hours per day. By decision dated August 4, 2000, the Office determined that the position fairly and reasonably represented appellant's wage-earning capacity.

In a decision dated April 23, 2001, an Office hearing representative reversed the August 4, 2000 decision. The hearing representative found that the Office had properly calculated appellant's compensation benefits, after adjusting for her actual earnings.

The Board finds that the Office properly calculated appellant's compensation.

As noted above, the hearing representative reversed the formal wage-earning capacity determination, and that issue is not before the Board. In the absence of wage-earning capacity determination, appellant's compensation is adjusted to reflect her actual earnings during the periods that she actually worked.² Appellant had contended that the Office was improperly

¹ Docket No. 98-957.

² Earnings that do not fairly and reasonably represent wage-earning capacity are offset from appellant's compensation only for periods that appellant is actually working. See *Lawrence D. Price*, 47 ECAB 120 (1995).

calculating her compensation benefits; the hearing representative makes an adverse finding that the compensation benefits are correct.

The formula for adjusting appellant's compensation to offset her actual earnings was developed in the *Albert C. Shadrick* decision³ and has been codified at 20 C.F.R. § 10.403. The initial calculation is to divide the employee's earnings by the "current" pay rate for the date-of-injury position. The resulting percentage is then multiplied by the pay rate for compensation purposes, and the resulting dollar amount is subtracted from the pay rate for compensation purposes.

The employing establishment indicated that on the date of injury appellant was a Level 5C employee, with a base pay of \$471.20 per week, plus she earned an additional .08406 percent of her base pay in night differential pay, and .05949 percent in Sunday premium pay. According to the employing establishment, the current pay rate for a 5C employee, with the appropriate night and Sunday premium pay, was \$753.63 per week.

Appellant contends that the Office should have used a current pay rate based on the position she currently holds, a Grade 5, Step 0 position. It is well established, however, that the *Shadrick* formula is based on a comparison between actual earnings and the current earnings of an employee in the date-of-injury position. Factors such as subsequent promotions are not considered; the only appropriate method of applying *Shadrick* is to use the date-of-injury position, updated to reflect the current earnings of an employee in that position.⁴

Accordingly, proper application of *Shadrick* results in a comparison of actual earnings of \$651.81 per week, with the current date-of injury position earnings of \$753.63 per week. The resulting percentage is then used to calculate appellant's compensation. The Board finds no evidence that the *Shadrick* calculations were in error in this case.

³ 5 ECAB 376 (1953).

⁴ See *Francis J. Carter*, 53 ECAB ____ (Docket No. 00-1789, issued April 11, 2002) (appellant argued that his current pay rate should be based on the position held at time of recurrence of disability, not the date-of-injury position; the Board held that the date-of-injury position is the only appropriate basis for current pay rate).

The decision of the Office of Workers' Compensation Programs dated April 23, 2001 is affirmed.

Dated, Washington, DC
October 1, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member