

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA N. BURNETT and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 03-786; Submitted on the Record;
Issued September 16, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in establishing that appellant had no loss of wage-earning capacity based on her actual wages as a modified mail handler technician.

On January 19, 1999 appellant, then a 51-year-old mail handler technician, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an injury to her arm, hand, fingers, joint and elbow, with the pain mostly in her left hand, as a result of her federal employment. By letter dated May 21, 1999, the Office accepted her claim for left wrist tendinitis. On September 20, 1999 the Office approved surgery for left carpal tunnel release which appellant underwent on October 21, 1999. On March 13, 2001 the Office issued a schedule award for a 14 percent permanent impairment to the left upper extremity. By letter dated January 22, 2002, the Office updated the accepted condition to include aggravation of cervical degenerative disc disease with radiculopathy (affecting the right arm).

On July 31, 2002 the employing establishment made appellant an offer of employment as a "modified mail handler tech[nician]" repairing damaged mail for entry into the mail stream. The proposed position would involve no lifting over five pounds for more than two hours a day; no kneeling, twisting or reaching above the shoulder; no fine manipulation; and no walking, bending, stooping or fine manipulation for more than two hours a day. Appellant accepted this position on August 1, 2002 and commenced work on August 5, 2002. However, she was excused from work by her physician for various periods between August 1 and September 20, 2002 and the Office paid compensation. In response to questions propounded by the Office, on September 17, 2001, the employing establishment indicated that appellant's pay at the time of her injury was \$39,559.00 per year, and that her rate of pay in the modified position was also \$39,559.00 per year. The employing establishment further noted that appellant received a night differential in the modified position of \$20.47 per week.

By decision dated December 12, 2002, the Office noted that appellant had recently been employed as a modified mail handler technician at wages of \$877.73 per week effective

September 24, 2002. The Office then determined that, as her wages of \$877.73 per week met or exceeded the wages of the job she held when injured, she had no loss in earning capacity and her compensation benefits were terminated. The Office noted that the decision did not affect coverage of medical benefits, which were still authorized if needed to treat her accepted work-related condition.

The Board finds that the Office properly determined appellant's wage-earning capacity based on her actual earnings as a modified mail handler technician.

Section 8115(a) of the Federal Employees' Compensation Act provides that the wage-earning capacity of an employee is determined by actual wages if actual earnings fairly and reasonably represent the wage-earning capacity.¹ Generally, 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 wage-earning capacity, must be accepted as such measure.²

In the present case, appellant accepted a position as a modified mail handler technician on August 1, 2002. The position paid greater than the position she had at the date of injury as the new position paid the same rate of pay plus included a night differential. Appellant's successful performance of this position is persuasive evidence that it represents her wage-earning capacity. There is no evidence that this position is seasonal, temporary, less than full-time make shift work designed for appellant's particular needs.³ Her actual wages as a modified mail handler technician fairly and reasonably represent her wage-earning capacity.

¹ 5 U.S.C. § 8115(a).

² *Afegalai L. Boone*, 53 ECAB ____ (Docket No. 01-2224, issued May 15, 2002); *Don J. Mazurek*, 46 ECAB 447 (1995).

³ *Monique L. Love*, 48 ECAB 378 (1997).

The December 12, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 16, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member