

**United States Department of Labor
Employees' Compensation Appeals Board**

CONNIE L. POTRATZ-WATSON, Appellant)
and) Docket No. 03-1346
DEPARTMENT OF THE INTERIOR,) Issued: February 8, 2005
NATIONAL PARK SERVICE, Carlsbad, NM,)
Employer)

Appearances:

Connie L. Potratz-Watson, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 9, 2003 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated February 10, 2003, finding that her actual earnings as a visual information specialist fairly and reasonably represented her wage-earning capacity. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly reduced appellant's compensation on the grounds that her part-time actual earnings as a visual information specialist fairly and reasonably represented her wage-earning capacity.

FACTUAL HISTORY

On June 18, 1982 appellant filed an occupational disease claim for compensation (Form CA-2) alleging that her hip condition was causally related to her federal employment as a park ranger. The reverse of the claim form indicated that she had worked light duty from March 6, 1981 and stopped working on December 14, 1981. Appellant's pay rate at the time she stopped

working was \$13,710.00 annually as a GS-5, Step 3 employee. The Office accepted the claim for permanent aggravation of congenital left hip dysplasia.

With respect to appellant's work history, she submitted a September 7, 2001 statement indicating that she worked 40 to 50 hours per week as a park ranger from June 1980 until December 1981, when she stopped working and underwent left hip surgery. The record indicated that the park ranger position offered to her in June 1980 was a career, full-time position for 48 weeks per year. Appellant noted that she subsequently underwent additional hip surgeries and was reemployed with the employing establishment at various locations. As of January 2000, she began working 16 hours per week as a visual information specialist. Appellant received compensation for wage loss based on the remaining 24 hours per week. An Office memorandum dated August 10, 2001 reported that a GS-5, Step 3 employee currently earned \$25,209.00 or \$484.79 per week. The memorandum further indicated that appellant earned \$16,819.77 in the prior year or \$323.46 per week.

In a decision dated August 13, 2001, the Office found that appellant had been employed since January 3, 2000 as a visual information specialist with wages of \$323.46 per week. The Office stated that the duties of the new position reflect the work tolerance limitations established by the medical evidence and, in accord with 5 U.S.C. §§ 8106 and 8115, her compensation was adjusted based on her actual wages. A worksheet indicated that appellant had a 33 percent loss of wage-earning capacity, based on a current pay rate for the date-of-injury job of \$484.79 and \$323.46 in current earnings. Her compensation was reduced to \$699.00 every four weeks.

Appellant requested a hearing before an Office hearing representative, which was held on November 19, 2002. By decision dated February 10, 2003, the hearing representative affirmed the August 13, 2001 decision.

LEGAL PRECEDENT

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury, it has the burden of justifying a subsequent reduction of compensation benefits.¹ Under section 8115(a) of the Federal Employees' Compensation Act, wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent her wage-earning capacity.² 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.³

¹ *Gregory A. Compton*, 45 ECAB 154 (1993).

² 5 U.S.C. § 8115(a).

³ *Dennis E. Maddy*, 47 ECAB 259 (1995).

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[y] 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) 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."⁴

ANALYSIS

In the present case, the record indicates that the date-of-injury job as a park ranger was a full-time job at 40 hours per week. Appellant indicated that she worked full time from June 1980 to December 14, 1981, when she stopped working. The employing establishment indicated that she was working light duty from March 6, 1981, but there is no indication that it was in a part-time position. The actual earnings in this case were based on a part-time position, at 16 hours per week, as a visual information specialist. As the Office procedure manual indicates, in situations where an employee is working full time when injured and is reemployed in a part-time position, a formal wage-earning capacity determination is generally not appropriate. The Board has held that the Office must address the issue and explain why a part-time position is suitable for a wage-earning capacity determination based on the specific circumstances of the case.⁵ The Office did not address this issue in its August 13, 2001 or February 10, 2003 decisions. The decisions make a finding that the visual information specialist position represented appellant's wage-earning capacity, without acknowledging that the actual earnings were based on a part-time position and appellant was not a part-time employee when injured. The Board finds that the Office failed to meet its burden of proof in determining her wage-earning capacity.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7 (July 1997).

⁵ See *Ollie Hoque*, Docket No. 98-1779 (issued June 26, 2000).

CONCLUSION

The Board finds that the Office failed to explain why it was appropriate to use actual earnings in a part-time position when the evidence indicated that appellant was a full-time employee at the time of injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 10, 2003 is reversed.

Issued: February 8, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member