

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

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**EARTHA PAIGE, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Highland Park, MI, Employer**

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**Docket No. 04-1899  
Issued: June 9, 2005**

*Appearances:*  
*Eartha Paige, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On July 26, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated January 13 and July 26, 2004, wherein the Office determined that her entitlement to compensation for wage loss ended the date she was reemployed with no loss of earning capacity on March 17, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue on appeal is whether the Office properly determined appellant's wage-earning capacity based on her actual earnings.

**FACTUAL HISTORY**

On March 17, 1999 appellant, then a 37-year-old carrier, filed a traumatic injury claim alleging that on March 16, 1999 she injured her right fingers and wrist when she slipped on a step and broke her fall with her hand. On April 15, 1999 the Office accepted her claim for right

wrist/hand sprain. On August 20, 1999 the Office accepted appellant's claim for right carpal tunnel syndrome.

In a medical report dated September 25, 2000, Dr. Reynaldo B. Arceno, a family practitioner, indicated that he treated appellant for right wrist carpal tunnel syndrome causally related to her March 16, 1990 work injury. He also noted that, in approximately May 2000, she started complaining of similar symptoms in her left wrist and that an electromyogram (EMG) of June 16, 2000 revealed a left wrist carpal tunnel syndrome and occupational injury.

On April 12, 2002 the Office issued a schedule award for a 17 percent impairment to appellant's right arm.

Appellant continued to be treated by Dr. Arceno. In an attending physician's report dated April 24, 2002, he indicated that she had total loss of strength and dexterity of bilateral upper extremity, grasping or manual casing of mail or lifting trays. He also indicated, "No computer operation -- must wear wrist splints." In a report dated May 7, 2002, Dr. Arceno indicated that it was his opinion that job duties which involve the twisting use and movement of her hands for manual casing of mail, grasping, moving/lifting mail trays and computer operation would be "dehabilitating" and would precipitate a carpal tunnel crisis. In an October 30, 2002 report, Dr. Arceno reiterated that appellant was unable to manipulate simple tasks. He noted that she could work in a job as long as it did not require repetitive use of her forearms.

By letter dated December 26, 2002, the Office referred appellant to Dr. Norman L. Pollak, a Board-certified orthopedic surgeon, for a second opinion. In a report dated January 8, 2003, he stated that he had "no criteria to indicate the continued activity of the strain of the hand or wrist" and further indicated that he did not have sufficient criteria to diagnose carpal tunnel syndrome of either hand. He noted that there were no objective findings. Dr. Pollak saw no indication for work restrictions and opined that appellant could return to her normal job as a letter carrier. He also noted:

"I feel that [appellant's] history is somewhat inconsistent in that the left symptoms developed subsequent to repetitive use although she was not working. She also demonstrated rather excessive tenderness in areas that would not be expected to be tender even at the time of her injury and continued to be tender nearly four years post injury, including arms, forearms and hands. [Appellant's] sensory testing was inconsistent and grip testing was excessively weak and also inconsistent."

By letter dated January 31, 2003, the Office requested that Dr. Arceno comment on Dr. Pollak's report. Dr. Arceno responded in a medical report dated February 21, 2003. In this report, Dr. Arceno stated:

"I adamantly refuse [Dr. Pollak's] opinion that [appellant] is well enough to return to her regular occupation. I wonder how he could have seen her for such a short period and came to this conclusion, whereas I have been taking care of her since the onset of her injury in 1999. I have had the experience and had shared [appellant's] complaints with you in my previous letters and I hope that this will

suffice any question that you would have regarding her right and left wrist injury which is a result of occupational injury of March 16, 1999. It is my professional opinion that [she] should continue to stay on a restricted[-]work duty where [appellant] would do light[-]duty answering the telephone, greeting customers and also investigating customers complaints would be very ideal for somebody with this type of ailment.”

By letter dated March 13, 2003, the employing establishment informed appellant that the offered limited-duty work of automation clerk was within her restrictions and that she was expected to report to work on March 17, 2003. Her supervisor listed the job duties as follows:

“Performs quality checks on mail in the bins and on shelves of the DBCS Automated Equipment. Randomly selects a bin or tray of mail. Use her left hand to examine a letter. Verify that the letter sorted [sic] correctly. Bring errors to attention of the [s]upervisor for reprocessing. Excluding [two] breaks and lunch. The amount of time is seven and a half hours.”

On March 14, 2003 appellant accepted the limited-duty job offer. The record indicates that the pay rate on March 13, 2003 for her position when injured was \$811.33 and that when her disability began on April 20, 2002 it was \$770.48 per week. Appellant’s weekly salary when she returned to work in the limited-duty position was \$817.31.

Dr. Arceno continued to treat appellant for bilateral wrist carpal tunnel syndrome.

On September 3, 2003 the Office proposed terminating appellant’s compensation and medical benefits on the basis that she had no objective findings to support continued presence of an ongoing work-related condition. By letter dated October 3, 2003, the employing establishment informed the Office that appellant received disability retirement benefits effective September 9, 2003.

By decision dated January 13, 2004, the Office issued a decision finding that appellant’s entitlement to compensation for wage loss ended the date she was reemployed with no loss in wage-earning capacity on March 17, 2003. However, the Office noted that her entitlement to medical benefits continued.

By letter dated February 11, 2004, appellant requested review of the written record.

By letter dated February 13, 2004, the Office referred appellant to Dr. Ahmad Hadied, a Board-certified orthopedic surgeon, to resolve the conflict between Dr. Arceno and Dr. Pollak as to her current level of work-related disability.<sup>1</sup> In a medical opinion dated March 2, 2004, Dr. Hadied diagnosed appellant with “very mild carpal tunnel syndrome on the right and left.” He opined that she was capable of performing some of the duties of the described job that do not

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<sup>1</sup> Dr. Arceno stated that appellant should continue to stay on restricted work duty due to her loss of strength and dexterity in her bilateral upper extremities. Dr. Pollak, the physician selected by the Office for a second opinion examination, indicated that there were no objective findings and no indication for work restrictions and that appellant could return to her normal job as a letter carrier.

require repetitive movements of her hands and wrists. However, Dr. Hadied did not believe that appellant was able to perform her regular job as a postal carrier and suggested that she be assigned a job where there are no repetitive hand or wrist movements involved.

In a medical report dated March 15, 2004, Dr. Arceno noted that appellant was totally disabled from her present job.

In a medical report dated March 16, 2004, Dr. Hadied reviewed the EMG taken on October 10, 2003 by Dr. Paul Olegniczak, a Board-certified physiatrist, and determined that it was negative. Dr. Hadied then opined that appellant was capable of performing the job. He did note that prophylactically she should avoid repetitive work with her hands. Dr. Hadied noted that, if appellant had to sort mail, it would be a good idea to keep her brace on.

In a medical report dated April 5, 2004, Dr. Hadied reviewed an EMG taken on March 10, 2004 by Dr. Olegniczak and concluded that there was no electrodiagnostic evidence of bilateral median neuropathies at the wrists, right ulnar neuropathy at the wrist, bilateral brachial plexopathy or bilateral cervical radiculopathy. He did note a few complex repetitive discharges seen at one muscle group in the right upper extremity without any further abnormalities in a nonspecific, nondiagnostic finding.

In a decision dated June 17, 2004, the hearing representative affirmed the Office's January 12, 2004 decision, finding that the position appellant worked from March to September 2003 fairly and reasonably represented her wage-earning capacity.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup>

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 wage-earning capacity.<sup>3</sup> The Office procedures indicate that a determination regarding whether actual wages fairly and reasonably represent wage-earning capacity should be made after a claimant has been working in a given position for more than 60 days<sup>4</sup> and the Office may determine wage-earning capacity retroactively after the claimant has stopped work.<sup>5</sup>

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<sup>2</sup> *Winton A. Miller*, 52 ECAB 405, 406 (2001).

<sup>3</sup> 5 U.S.C. § 8115(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-earning Capacity*, Chapter 2.184.7(a) (April 1995); see *William D. Emory*, 47 ECAB 365 (1996).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims: *Reemployment: Determining Wage-earning Capacity*, Chapter 2.814.7(e) (April 1995).

Section 8123(a) of the Act<sup>6</sup> provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>7</sup>

### ANALYSIS

In the present case, appellant worked as a carrier at the time of her injury on March 16, 1999. She stopped and returned to work on several occasions. On March 13, 2003 the employing establishment offered appellant a position as a limited-duty automation clerk. On March 14, 2003 she accepted this position and commenced work on March 17, 2003 at a salary greater than her date-of-injury salary, \$817.31 *versus* \$770.48 in her letter carrier position when disability began on April 20, 2002. As stated *supra*, Office procedures indicate that a determination regarding whether actual wages fairly and reasonably represent appellant's wage-earning capacity should be made after a claimant has been working in a given position for more than 60 days.<sup>8</sup> As appellant held this job from March 17, 2003 until her date of retirement on September 9, 2003, the Board finds that she successfully worked for over 60 days and the Office could proceed to determine whether these earnings represented her wage-earning capacity.

Appellant's physician, Dr. Arceno, indicated in a February 21, 2003 report that he disagreed with Dr. Pollak that appellant could return to her regular occupation. However, Dr. Arceno did indicate that she could work restricted work duty. Dr. Arceno had previously indicated that appellant could work in a job as long as it did not require repetitive use of her forearms. The description of the position of automation clerk indicated that it was a limited-duty assignment within her restrictions and that she could use her left hand to examine the letters. The Board notes that this case has only been accepted for carpal tunnel syndrome in appellant's right wrist and she has not established that there was any other condition causally related to the March 16, 1999 employment injury.<sup>9</sup>

Furthermore, the Board finds that the Office properly referred appellant to Dr. Hadied to resolve the conflict between Dr. Arceno and Dr. Pollak with regard to the extent of her disability. Dr. Hadied indicated that appellant could perform her job but should prophylactically avoid repetitive work with her hands, noting that, if appellant had to sort mail, she should use her hand brace. He also noted that there was no electrodiagnostic evidence of bilateral median neuropathies at the wrist, right ulnar neuropathy at the wrist, bilateral brachial plexopathy or bilateral cervical radiculopathy. As Dr. Hadied was appointed as the impartial medical

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<sup>6</sup> 5 U.S.C. § 8123(a).

<sup>7</sup> *Gloria E. Godfrey*, 52 ECAB 486 (2001).

<sup>8</sup> *Id.*

<sup>9</sup> The Board has held that appellant has the burden of proof to establish that a condition not accepted by the Office as employment related. See *Charlene R. Herrera*, 44 ECAB 461 (1993).

specialist, his opinion that appellant could perform her job is entitled to special weight.<sup>10</sup> Accordingly, the Board finds that the position of automation clerk that appellant held commencing March 17, 2003 was an appropriate limited-duty job.

As appellant was paid more on the limited-duty job, \$817.31 per week, than the \$770.48 per week of the job she held when injured, the Board finds that the Office properly determined that such employment fairly and reasonably represented her wage-earning capacity and, as she had no loss of wage-earning capacity, she was not entitled to compensation for wage loss.

**CONCLUSION**

The Board finds that the actual earnings of automation clerk fairly and reasonably represent appellant's wage-earning capacity. The Board notes that as she earned greater wages in the limited-duty position than in the date-of-injury job, no further compensation benefits are required.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 26 and January 13, 2004 are hereby affirmed.

Issued: June 9, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> *Viola Stanko*, 56 ECAB \_\_\_\_ (Docket No. 05-53, issued April 12, 2005).