



## **FACTUAL HISTORY**

On May 7, 1985 appellant, then a 24-year-old data transcriber, filed a traumatic injury claim alleging that she injured her right wrist while typing data on a computer. Appellant became aware of her condition on April 9, 1985. Her claim was accepted for fracture of the right radius, right wrist de Quervain's disease and the Office authorized three subsequent right hand surgeries. Appellant stopped work on October 18, 1985 and worked intermittently thereafter until resigning in October 1986. She received appropriate compensation benefits for all periods of disability.

Appellant came under the treatment of Dr. Sergio Ilic, a Board-certified orthopedic surgeon, who provided a history of appellant's work-related injury and diagnosed chronic tenosynovitis of the right wrist, de Quervain's disease.<sup>1</sup> On May 16, 1986 he noted performing a release of the abductor pollicis longus and extensor pollicis brevis tendinitis at the right wrist. Appellant continued to experience pain in the right wrist joint and on September 8, 1989 Dr. Ilic performed arthroscopic surgery of the right wrist with debridement of the triangular fibrocartilage and diagnosed synovial proliferation of the right wrist and degeneration of the triangular fibrocartilage.

Thereafter, in the course of developing the claim, she was referred to several second opinion physicians.<sup>2</sup> On June 13, 1995 appellant was referred to a second opinion physician for evaluation. In a report dated June 27, 1995, Dr. O.R. Walker, a Board-certified orthopedist, advised that appellant was not able to return to her preinjury employment but could perform a secretary or clerical position, which did not require keyboard activity. On August 14, 1996 a rehabilitation counselor requested that Dr. Walker review a job analysis for a medical assistant position and comment on the suitability of the position for appellant. Dr. Walker noted that appellant was able to perform the duties of a medical assistant and provided permanent restrictions of no repetitive motions of the right wrist and a 10-minute break every hour.

In a letter dated November 8, 1996, the Office notified appellant that the rehabilitation plan developed by appellant and her counselor for a back office medical assistant position was determined to be within her work limitations with restrictions of no keyboard activity and no repetitious strenuous activity of the right wrist. Appellant participated in the back office medical assistant program commencing October 1996 and ending on July 1998; however, she complained that she felt discomfort in her right wrist in performing the duties of a medical assistant. In a medical report dated June 6, 1997, Dr. Walker advised that appellant could perform the duties of a back office technician and could use her left upper extremity to supplement her right upper extremity.

In a closing report dated October 8, 1998, the rehabilitation counselor noted that appellant's enthusiasm for the job search was limited, that she failed to attend many

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<sup>1</sup> Appellant filed a claim for a schedule award. On June 23, 1987 the Office granted appellant an award of three percent impairment of the right upper extremity for the period April 7 to June 11, 1987.

<sup>2</sup> Appellant was referred for vocational rehabilitation services in July 1990, but after developing a personal conflict with the rehabilitation counselor, in May 1991, she was referred to a second counselor.

appointments and pursued few job leads. In a memorandum dated April 8, 1999, the Office advised that appellant completed training for the back office medical assistant program in July 1998 and received 90 days of placement services but did not obtain employment.

On November 15, 1999 the Office issued a notice of proposed reduction of compensation, finding that appellant was no longer totally disabled. The Office found that she had the capacity to earn wages as a medical assistant at the rate of \$300.00 a week.

In a letter dated December 6, 1999, appellant indicated that she was unable to perform the duties of a medical assistant due to right wrist pain. She indicated that her physician, Dr. Ilic, advised that she was totally disabled. Appellant also noted that she experienced family medical emergencies, which prevented her from fully participating in the job placement.

By decision dated January 12, 2000, the Office adjusted appellant's compensation benefits to reflect her wage-earning capacity as a medical assistant. The wage-earning capacity determination took into consideration such factors as her disability, training, experience, age and the availability of such work in the commuting area in which she lived. Attached to the decision was a notice of appeal rights, specifying the procedures necessary for reconsideration, a hearing before the Office or an appeal to the Board.

In a letter dated June 21, 2000, appellant requested reconsideration and submitted additional medical evidence.

In a decision dated January 17, 2001, the Office denied appellant's request for reconsideration on the grounds that evidence submitted was insufficient to warrant modification of the January 12, 2000 decision of the Office.<sup>3</sup>

Appellant claimed total disability compensation after experiencing a worsening of her right wrist condition. The Office determined appellant was temporarily totally disabled commencing April 12, 2002 until August 28, 2003 and placed her on the periodic rolls. Appellant came under the treatment of Dr. Robert V. Gailliot, Jr., a Board-certified plastic surgeon, who noted in reports dated September 12 and October 3, 2002, that appellant continued to experience ulnar wrist pain and recommended diagnostic wrist arthroscopy. On October 29, 2002 Dr. Gailliot performed a wrist arthrotomy and distal radial ulnar joint arthrotomy with debridement. He diagnosed right wrist arthritis ulnar-sided status postulnar wafer resection, arthritis of the distal ulna with distal radial ulnar joint synovitis thickening of the triangular fibrocartilage complex and synovectomy of the wrist joint. In reports dated October 31 to December 18, 2002, Dr. Gailliot noted that appellant was progressing post surgery but had not reached a permanent and stationary status.

On January 9, 2003 appellant underwent a functional capacity evaluation (FCE). Appellant demonstrated the physical capacity to perform sedentary and some light physical

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<sup>3</sup> Appellant filed a claim for a schedule award. In a decision dated November 26, 2001, the Office granted appellant an award for a five percent permanent impairment of the right upper extremity for the period February 7 to May 27, 2001.

demand work with her left upper extremity. It was further noted that appellant could sit, stand and walk without limitation and could sustain light-duty work. The examiner noted that appellant's FCE was consistent with a low effort given and cast doubt on the validity of the study.

On January 10, 2003 appellant was referred to a nurse intervention program to assist her in her recovery from her work-related injury. In a letter dated March 4, 2003, the Office advised appellant that she was not cooperating with vocational rehabilitation and further advised appellant of the consequences for failure to cooperate with vocational rehabilitation as set forth in 5 U.S.C. § 8104(a).

Appellant submitted a report from Dr. Gailliot dated January 29, 2003, which noted that, although she was progressing post surgery, her condition was not permanent and stationary. He indicated that appellant could return to work with restrictions. Dr. Gailliot advised that appellant felt the position of medical assistant was too demanding for her. On March 12, 2003 the physician determined that appellant was permanent and stationary and could return to work with restrictions of power gripping, highly repetitive gripping, repetitive right wrist flexion and extension, lifting, pushing or pulling more than four pounds.

In a closure report dated March 13, 2003, the nurse advised that appellant was permanent and stationary and could return to work subject to various restrictions set forth by Dr. Gailliot in his report of March 12, 2003. Appellant submitted a report from Dr. Gailliot dated May 7, 2003, which noted that appellant was permanent and stationary; however, he advised that he did not perform assessments which determine the appropriateness of work and suggested referring appellant to another physician.

On May 12, 2003 the Office referred appellant for a second opinion evaluation to Dr. G.B. Ha'Eri, a Board-certified orthopedic surgeon. The Office provided Dr. Ha'Eri with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties. In a report dated July 2, 2003, Dr. Ha'Eri indicated that he reviewed the records provided to him and performed a physical examination of appellant. He diagnosed de Quervain's tenosynovitis of the right wrist and right wrist strain and note that appellant's right wrist condition has reached maximum medical improvement. Dr. Ha'Eri advised that appellant had undergone vocational rehabilitation for the position of medical assistant. He reviewed the job description of a medical assistant and opined that appellant was able to perform the required duties on a full-time basis subject to restrictions of no repetitive movement of the right wrist more than 1 hour in an 8-hour day, no pushing or pulling and no lifting over 20 pounds up to 2 hours in an 8-hour day and no lifting over 10 pounds up to 2 hours in an 8-hour day.

On July 21, 2003 the Office issued a notice of proposed reduction of compensation, finding that appellant was no longer totally disabled. The Office noted that appellant was partially disabled and had the capacity to earn wages as a medical assistant at the rate of \$300.00 a week.

By decision dated August 28, 2003, the Office adjusted appellant's compensation benefits to reflect her wage-earning capacity as a medical assistant. The wage-earning capacity

determination took into consideration such factors as appellant's disability, training, experience, age and the availability of such work in the commuting area in which she lived.

In a letter dated October 2, 2003, appellant requested reconsideration and submitted a report from Dr. Gailliot dated September 10, 2003. Appellant disagreed with the wage-earning capacity determination and indicated that she experienced right wrist pain due to her accepted work-related injury. In a report dated September 10, 2003, Dr. Gailliot noted that appellant felt she could not perform the position of a medical assistant because she experienced pain in her wrists. He placed appellant on total temporary disability and suggested further vocational rehabilitation and that she be trained for a position other than a medical assistant.

In a decision dated November 24, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the decision dated August 28, 2003.

### **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>4</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 her wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity, or if the employee has no actual earnings, his wage-earning capacity is determined with due regard to the nature of her injury, her degree of physical impairment, her usual employment, her age, her qualifications for other employment, the availability of suitable employment and other factors and circumstances, which may affect her wage-earning capacity in his disabled condition.<sup>5</sup> Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions.<sup>6</sup> The job selected for determining wage-earning capacity must be a job reasonably available in the general labor market in the commuting area in which the employee lives.<sup>7</sup>

When the Office makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to a vocational rehabilitation counselor authorized by the Office or to an Office wage-earning capacity specialist for selection of a position, listed in the Department of Labor's *Dictionary of Occupational Titles* or otherwise available in the open labor market, that fits that employee's capabilities with regard to her physical limitation, education, age and prior experience. Once this selection is made, a determination of wage rate

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<sup>4</sup> *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Gardner*, 36 ECAB 238, 241 (1984).

<sup>5</sup> *See Pope D. Cox*, 39 ECAB 143, 148 (1988); 5 U.S.C. § 8115(a).

<sup>6</sup> *Albert L. Poe*, 37 ECAB 684, 690 (1986); *David Smith*, 34 ECAB 409, 411 (1982).

<sup>7</sup> *Id.*

and availability in the open labor market should be made through contact with the state employment service or other applicable service.

### ANALYSIS

The Board finds that the Office met its burden of proof to establish that appellant's wage-earning capacity was represented by her ability to work as a medical assistant effective August 28, 2003.<sup>8</sup>

On January 10, 2003 appellant was referred to a nurse intervention program. Thereafter, on January 9, 2003 appellant underwent an FCE, which indicated that appellant demonstrated the physical capacity to perform sedentary and some light physical demand work with her left upper extremity. It was further noted that appellant could sit, stand and walk without limitation and could sustain light-duty work. In a closure report dated March 13, 2003, the nurse advised that appellant was permanent and stationary and could return to work and deferred to Dr. Gailliot as to the appropriateness of the medical assistant position. On March 12, 2003 Dr. Gailliot advised that he did not perform assessment evaluation for the appropriateness of returning to work and appellant would have to be referred to another physician.

On May 12, 2003 the Office properly referred appellant for a second opinion evaluation to Dr. Ha'Eri to determine the suitability of the constructed position of medical assistant. The well-rationalized opinion of Dr. Ha'Eri showed that appellant could perform the medical assistant position. In a report dated July 2, 2003, Dr. Ha'Eri provided a detailed discussion of appellant's factual and medical history. He reported the results of his examination and diagnosed de Quervain's tenosynovitis of the right wrist and right wrist strain and noted that appellant's right wrist condition has reached maximum medical improvement. Dr. Ha'Eri reviewed the job description of a medical assistant and opined that appellant was able to perform the required duties on a full-time basis. Dr. Ha'Eri provided work limitations in his report including no repetitive movement of the right wrist more than 1 hour in an 8-hour day, no pushing or pulling and no lifting over 20 pounds up to 2 hours in an 8-hour day and no lifting over 10 pounds up to 2 hours in an 8-hour day, which were well within those necessitated by the duties of the constructed position of medical assistant. He explained that appellant had some residuals of his employment-related condition which prevented her from lifting, but that the nature of her condition was not so severe that it prevented her from performing less demanding work.

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<sup>8</sup> Pursuant to Office procedures, if a formal loss of wage-earning capacity decision has been issued, the rating should be left in place unless the claimant requests resumption of compensation for total wage loss. In this instance, a formal wage-earning capacity decision was issued on January 12, 2000. The record shows that appellant had a worsening of her right wrist condition and on October 29, 2002 she underwent a wrist surgery. The Office found appellant was totally disabled commencing April 12, 2002 until August 28, 2003. Because appellant requested resumption of compensation for total disability commencing April 12, 2002, it was proper for the Office to issue a new loss of wage-earning capacity determination upon evaluation of the medical evidence following her October 29, 2002 surgery. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995).

The Board finds that appellant's contention that she could not perform the duties of a medical assistant due to right wrist pain is not supported by the medical evidence. She submitted a September 10, 2003 report from Dr. Gailliot, who noted that appellant "feels that she will never perform the functions of a MA [medical assistant]..." He placed appellant on total temporary disability and suggested further vocational rehabilitation and that she be trained for a position other than a medical assistant. However, Dr. Gailliot merely noted appellant's opinion as to her ability to perform the medical assistant position without providing his own opinion regarding whether she was disabled from the position of medical assistant. To the extent that the physician is providing his own opinion, the physician does not provide any reasoning or rationale explaining why appellant's employment injury precluded her from working in the position as a medical assistant.<sup>9</sup>

The evidence of record shows that the Office properly considered all the relevant factors as set forth in 5 U.S.C. § 8115(a) and found that the position of medical assistant was medically and vocationally suitable and fairly and reasonably represented appellant's wage-earning capacity. For these reasons, the Office met its burden of proof to establish that appellant's wage-earning capacity was represented by her ability to work as a medical assistant effective August 28, 2003.

### **CONCLUSION**

The Board finds that the Office properly determined that the position of medical assistant reflects appellant's wage-earning capacity effective August 28, 2003, the date it reduced her compensation benefits.

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<sup>9</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated November 24 and August 28, 2003 are affirmed.

Issued: March 25, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member