

Effective July 15, 2000 appellant was placed on the periodic compensation rolls in receipt of temporary total disability.

In a September 6, 2001 report, Dr. R. Tyler Boone, appellant's attending orthopedic surgeon, indicated that she was capable of performing sedentary work for eight hours a day.

The employing establishment stated in a September 27, 2001 letter that it could not reemploy appellant. The Office subsequently referred her to a vocational rehabilitation counselor. In reports dated October 24, 2001 to August 11, 2004, the rehabilitation counselor noted that Dr. Boone had restricted appellant to sedentary work. The counselor provided an analysis of appellant's educational background, training, age and work experience, job skills and the results of vocational and aptitude testing. She stated that appellant would do well in a training program for a clerical position and the Office approved appellant's enrollment in computer, clerical and accounting courses at Tulsa Technology Center. An October 27, 2003 rehabilitation report indicated that appellant had earned A's in her current classes. The vocational rehabilitation counselor provided a description of the position of accounting clerk, including physical and vocational requirements. She determined that appellant was physically and vocationally qualified for the position of accounting clerk. The counselor noted that the state employment service had confirmed that the position was performed in sufficient numbers so as to make it reasonably available to appellant within her commuting area and the position paid weekly wages of \$492.31.

In a February 27, 2004 report, Dr. Boone provided findings on examination and indicated that there was no change in his opinion that appellant was capable of sedentary work.

In a final report dated August 16, 2004, a vocational rehabilitation counselor indicated that appellant's rehabilitation file was closed and stated that appellant was capable of performing the duties of an accounting clerk.

On September 21, 2004 the Office advised appellant that it proposed to reduce her wage-loss compensation to zero based on her wage-earning capacity as an accounting clerk which was equal to or greater than the current pay of her job at the employing establishment. The Office noted that the medical evidence from Dr. Boone established that she was capable of performing sedentary work for eight hours a day that the accounting clerk position was medically suitable.

Appellant responded that she did not feel that she had enough accounting training to be an accounting clerk and that no one would hire her due to her age (65) and lack of experience.

By decision dated October 26, 2004, the Office reduced appellant's wage-loss compensation to zero effective October 31, 2004 based on her capacity to earn wages as an accounting clerk. The Office determined that the accounting clerk position was medically and vocationally suitable and took into consideration such factors as her disability, training, age and experience and the availability of such work in the commuting area in which she lived.

Appellant requested reconsideration and submitted additional evidence. In a February 23, 2005 report, Dr. Boone provided findings on examination and reiterated his opinion that appellant could perform sedentary work.

By decision dated May 13, 2005, the Office affirmed the October 26, 2004 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,² 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, her 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 facts and circumstances which may affect her wage-earning capacity in her disabled condition.³ Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions.⁴ 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.⁵

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 the employee's capabilities with regard to her physical limitations, education, age and prior experience. Once this selection is made, a determination of wage rate and availability in the open labor market should be made through contact with the state employment service or other applicable service.⁶

¹ *Sherman Preston*, 56 ECAB ____ (Docket No. 05-721, issued June 20, 2005).

² 5 U.S.C. §§ 8101-8193.

³ See *Mary E. Marshall*, 56 ECAB ____ (Docket No. 04-1048, issued March 25, 2005); *James Smith*, 53 ECAB 188 (2001).

⁴ *Id.*

⁵ *Id.*

⁶ *Sherman Preston*, *supra* note 1.

ANALYSIS

In this case, the Office received a September 6, 2001 report from appellant's attending physician, Dr. Boone, who found that she was capable of working eight hours a day in a sedentary position. The reports of the vocational rehabilitation counselor determined that appellant was able to perform the position of accounting clerk. She determined that the position was available in sufficient numbers so as to make it reasonably available within appellant's commuting area and that the salary of the position was \$492.31 per week. The rehabilitation counselor provided a job description for the position of accounting clerk which indicated that the position was sedentary and conformed to the physical restrictions set forth by Dr. Boone.

The Board finds that the Office considered the proper factors set forth in 5 U.S.C. § 8115(a), such as availability of suitable employment and appellant's physical limitations, usual employment, and age and employment qualifications, in determining that the position of accounting clerk represented her wage-earning capacity. The evidence of record establishes that appellant had the requisite physical ability and skills to perform the position of accounting clerk and that such a position was reasonably available within the general labor market of appellant's commuting area. Accordingly, the Office met its burden of proof to establish that the position of accounting clerk reflected appellant's wage-earning capacity effective October 31, 2004, the date it reduced her wage-loss compensation benefits.

While appellant has made allegations that she could not perform this position and that no one would hire her, she has not submitted any evidence in support of her allegations.⁷

CONCLUSION

The Board finds that in this case the Office met its burden of proof in reducing appellant's compensation based on her ability to earn the wages of an accounting clerk.

⁷ Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions. See *James Smith*, 53 ECAB 188 (2001). The fact that the rehabilitation counselor is not able to secure a job offer does not establish that the selected position is not reasonably available. See *Marilyn J. Carter*, 49 ECAB 661 (1998).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 13, 2005 and October 26, 2004 are affirmed.

Issued: November 3, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board