

meniscal tear, for which she underwent arthroscopic surgery on October 20, 2003. Appellant received compensation for temporary total disability on the periodic rolls.

On May 12, 2004 Dr. George W. Irvine, the attending orthopedic surgeon, reported that appellant was able to work full time with limitations. The Office referred appellant to a vocational rehabilitation counselor. Based upon the medically determinable residuals of the injury, and taking into consideration all significant preexisting impairments and pertinent nonmedical factors, the rehabilitation counselor found that appellant was able to perform the duties of a user support analyst (computer support specialist). The counselor explained that appellant met the specific vocational preparation for this job, which was two to four years of training or experience:

“[Appellant] has a variety of related work experience and training in this occupation. She most recently completed a four-month refresher computer technology training program at New Horizons in February 2005. [Appellant] also completed a one-year training program at OICW [Opportunities Industrialization Center West, Inc.] for a Computer Service Technician program and a nine-month Microsoft Technical certificate program in 1999. She has also worked as an IT [Information Technology] technician for Northpoint Communications in 2001.”

The rehabilitation counselor noted that appellant currently lived in Fairview, Oregon, so her labor market included the greater Portland area, which included Region 2 (Multnomah/Washington counties) and Region 3 (Clackamas County). She confirmed the following through the Oregon Labor Market Information System:

“Region 2: 3,691 User Support Analysts (Computer Support Specialists) employed in 2004, with 22.8 percent projected growth by 2014, bringing total to 4,531. There are 137 annual average job openings for this occupation in this county in the long-term projections.

“Region 3: 665 User Support Analysts (Computer Support Specialists) employed in 2004, with 12.8 percent projected growth by 2014, bringing total to 750. There are 18 annual average job openings for this occupation in this county in the long-term projections.”

The rehabilitation counselor reported: “[appellant] qualifies for median wages, based on her combination of training and work experience. Median wages for User Support Analysts (computer support specialists) in this commuting area average \$21.06 per hour, or \$942.40 per week.” Her source for this information was 2006 wages, Oregon Labor Market Information System. The rehabilitation counselor concluded that appellant clearly meets the qualifications needed for employment in that occupation.

On October 25, 2006 Dr. Irvine reviewed the job classification for user support analyst and reported that appellant would be capable of performing the duties outlined therein. He added: “It should be noted, though, that the patient is unable to squat or kneel on her right knee, that she should not lift more than 20 pounds, either occasionally or on a regular basis, that she

has a limited ability to climb stairs, that she cannot crawl and that extended periods of sitting need to be broken up with periods of standing and walking.”

The employing establishment confirmed the current pay of appellant’s date-of-injury position.

On February 6, 2007 the Office notified appellant that it was proposing to reduce her compensation for wage loss to reflect her capacity to earn wages as a user support analyst at a weekly rate of \$942.40. The Office allowed her 30 days to respond.

On February 23, 2007 appellant explained that she had been actively seeking a user support analyst job but that her training did not make her marketable. She argued that the user support analyst job description commonly used by the computer industry was different from the job description appearing in the Department of Labor, *Dictionary of Occupational Titles* (DOT). She listed a number of reasons that she believed kept her from obtaining regular full-time employment as a user support analyst/computer support specialist. She disputed the salary reported by the rehabilitation counselor, alleging that such a wage was unrealistic “in this economic region for someone with my education and experience.” She argued that job cuts at Intel and outsourcing had contributed to the demise of IT support positions.

In a decision dated March 15, 2007, the Office reduced appellant’s compensation for wage loss to reflect her capacity to earn wages as a user support analyst (computer support specialist). Because her wage-earning capacity was greater than the current pay of the job she held at the time of injury, the Office explained that she would no longer receive monetary compensation benefits effective March 18, 2007.

LEGAL PRECEDENT

As used in the Federal Employees’ Compensation Act,¹ the term “disability” means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.² When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.³ Compensation for loss of wage-earning capacity is based upon loss of the capacity to earn, not upon actual wages lost.⁴

Section 8115(a) of the Act provides that in determining compensation for partial disability, the wage-earning capacity of an employee is determined by her actual earnings, if her actual earnings fairly and reasonably represent her wage-earning capacity. If the actual earnings

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f) (1999).

³ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁴ *George W. Coleman*, 38 ECAB 782 (1987).

of the employee do not fairly and reasonably represent her wage-earning capacity or if the employee has no actual earnings, her wage-earning capacity as appears reasonable under the circumstances is determined with due regard to the nature of her injury, the degree of physical impairment, her usual employment, her age, her qualifications for other employment, the availability of suitable employment, and other factors or circumstances which may affect her wage-earning capacity in her disabled condition.⁵

When the Office makes a medical determination of partial disability and of the specific work restrictions, it may refer the employee's case to an Office wage-earning capacity specialist for selection of a position, listed in the Department of Labor, DOT or otherwise available in the open labor market, that fits the employee's capabilities in light of 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. Finally, application of the principles set forth in *Albert C. Shadrick* will result in the percentage of the employee's loss of wage-earning capacity.⁶

ANALYSIS

The Office properly found that appellant's February 26, 2003 employment injury was no longer totally disabling her for work. Dr. Irvine, the attending orthopedic surgeon, reported that she was able to work full time within well-defined physical limitations. This allowed the Office rehabilitation counselor to select a position from the Department of Labor, DOT that fit appellant's capabilities in light of her physical limitations, education, age and prior experience. The selected position, user support analyst (computer support specialist), is a sedentary position whose physical demands are consistent with Dr. Irvine's restrictions. He reviewed the job classification and agreed that appellant would be capable of performing the duties outlined. Further, the rehabilitation counselor explained how appellant met the specific vocational preparation for employment in the selected position.

The rehabilitation counselor also performed a labor market survey and appropriately documented that the position was being performed in sufficient numbers so as to make it reasonably available to appellant within her commuting area. Appellant argues that she was not successful in finding a user support analyst job for various reasons, but her anecdotal evidence is beside the point. The Office may reduce her compensation under section 8115 of the Act based on her capacity to earn, which does not depend on her success in securing an actual job. So long as the selected job is performed in sufficient numbers within her commuting area, it is considered reasonably available in the open market, and this is so regardless of whether anyone has yet hired her.

Appellant also takes issue with the weekly wages reported for the selected position. The rehabilitation counselor, a professional in matters of vocational rehabilitation, judged that appellant qualified for median wages based on her combination of training and work experience. She documented a 2006 median hourly wage of \$21.06 for a computer support specialist in the

⁵ 5 U.S.C. § 8115(a).

⁶ *Hattie Drummond*, 39 ECAB 904 (1988); see *Albert C. Shadrick*, 5 ECAB 376 (1953).

Multnomah/Washington and Clackamas regions. It appears, however, that the reported weekly wage is a typographical error: an hourly wage of \$21.06 translates, of course, to a weekly wage of \$842.40, not \$942.40. But this still exceeds, by over \$200, the current weekly pay of the position appellant held on the date of injury. So the error is harmless.

The Board finds that the Office gave due regard to the factors specified in section 8115(a) of the Act and followed established procedures for determining appellant's wage-earning capacity. Because she has the capacity to earn the wages she was receiving at the time of injury, appellant has no "disability" under the Act and is not entitled to compensation for wage loss. The Board will affirm the Office's March 15, 2007 decision reducing her compensation for wage loss to zero.

CONCLUSION

The Board finds that the Office properly reduced appellant's compensation for wage loss to zero on the grounds that she was capable of earning wages as a user support analyst (computer support specialist).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2007
Washington, DC

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board