United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 09-1922**
	)	**Issued: September 3, 2010**
DEPARTMENT OF DEFENSE, DEFENSE FINANCE & ACCOUNTING SERVICE, Cleveland, OH, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 5, 2009 appellant filed a timely appeal from a June 11, 2009 merit decision of the Office of Workers' Compensation Programs. Under 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 appellant was entitled to compensation for partial disability commencing January 26, 2009 due to the accepted August 17, 1999 traumatic injury.

FACTUAL HISTORY

Appellant, then a 36-year-old accounting technician, injured her right knee on August 17, 1999 when she struck her knee against a desk. She filed a claim for benefits on August 19, 1999 which the Office accepted for right knee contusion and right knee meniscus tear. The Office subsequently accepted the conditions of right hip bursitis and right hip enthesopathy.

Appellant returned to work following the August 17, 1999 work injury until July 12, 2000, when she underwent right knee surgery. She returned to full duty on September 11, 2000. Appellant subsequently left her date-of-injury position with the Department of Defense and began working for the National Park Service.[1] Effective January 6, 2008 appellant was working as a GS-12, step 1 contract specialist.

In a January 26, 2009 report, Dr. Michael Hebrard, a specialist in physical medicine and rehabilitation and appellant's treating physician, stated that appellant had complaints of back and right leg pain with numbness and tingling of the toe. He related that she had fewer spasms around the hip and back area, but still had some achiness past the right leg and knee with standing and walking. Dr. Hebrard reduced her work hours to four hours per day as of January 27, 2009 secondary to a flare-up of her back and hip dysfunction.

In order to determine appellant's current condition and whether the prescribed reduction in work hours; *i.e.*, her alleged partial disability, was causally related to an accepted condition, the Office referred her to Dr. Ramon L. Jimenez, Board-certified in orthopedic surgery, for a second opinion examination. In a March 13, 2009 report, based on his March 6, 2009 examination, Dr. Jimenez stated that appellant continued to have problems related to the right greater trochanteric bursitis; *i.e.*, right hip condition and that her hip condition had not been adequately treated since the 1999 work injury.[2] In a March 6, 2009 work-capacity evaluation, he limited appellant to working a six-hour day with restrictions.

In an April 1, 2009 supplemental report, Dr. Jiminez reiterated that due to appellant's work-related condition of right hip enthesopathy or right trochanteric bursitis, she was limited to working six hours a day with restrictions.

In a Form CA-7 dated May 8, 2009, appellant requested compensation for wage loss for February 24 to April 30, 2009. She also submitted a Form CA-7a time analysis sheet claiming intermittent time loss due to medical appointments for the period February 27 through April 30, 2009.

By telephone call dated May 21, 2009, appellant's current employing establishment, the Department of the Interior, informed the Office that she was on leave without pay status from February 24 to 26, 2009 and had been placed on paid administrative leave from February 27 through April 11, 2009.

[1] It is unclear from the record when appellant began working for the Department of Defense. An August 17, 2007 Office memorandum states that appellant was still working for the National Park Service at that time. A statement of accepted facts dated December 29, 2008 indicates that appellant was working for the Department of Defense as of that date.

[2] Dr. Jiminez stated that it was his understanding, based on the Office's referral letter and statement of accepted facts, that he was evaluating appellant to determine the nature of her claimant's condition regarding the right knee and right hip and that a lumbar spine condition had not been accepted.

By letter dated May 26, 2009, the Office denied appellant compensation for wage loss for partial disability for February 24 to April 30, 2009. It stated that she had been paid for eight hours of wage loss for February 24 through 27, 2009. The Office rejected her claim for reimbursement for leave without pay for the period March 2 through April 3, 2009 because her most recent employer, Department of the Interior, had advised the Office that she had been on paid administrative leave for the period February 27 to April 11, 2009.[3] It approved compensation for wage loss in the amount of $386.23 for intermittent time loss from April 13 through 30, 2009 based on the reduced six hours per day schedule prescribed by her treating physician. In addition, the Office noted that her employment with the National Park Service was terminated effective April 12, 2009 for cause.

In a Form CA-7 dated May 29, 2009, appellant requested compensation for wage loss for May 1 to 29, 2009.

By decision dated June 11, 2009, the Office found that as of January 26, 2009 appellant had the capacity to work as a contract specialist for no more than six hours per day with restrictions due to an increase in her work-related hip symptoms.

The Office determined appellant's entitlement to partial disability compensation by relying on section 8106(a), which states that a claimant will be paid monthly partial disability compensation equal to 66 and 2/3 percent of the difference between her monthly pay and her monthly wage-earning capacity after the beginning of the partial disability and the principles set forth in *Shadrick*, which outlines the formula for determining loss of wage-earning capacity based on actual earnings.[4] Relying on *Shadrick*, the Office calculated appellant's wage-earning capacity in terms of percentage by dividing her actual earnings by the current or updated, pay rate for the position she held at the time of her August 1999 work injury. It then multiplied the pay rate for compensation purposes, defined in 20 C.F.R. § 10.5(a) as the pay rate at the time of injury, the time disability begins or the time disability recurs, whichever is greater, by the percentage of wage-earning capacity. The Office then subtracted the resulting dollar amount from the pay rate for compensation purposes to obtain her loss of wage-earning capacity.[5]

The Office stated that, at the time of her August 17, 1999 work injury, appellant was a level GS-6, step 8 accounting technician with the Department of Defense. It noted that under the 2009 U.S. Office of Personnel Management Salary Table, the current salary for a GS-6, step 8 was $49,915 per year, which entailed a weekly pay rate of $959.90.[6] The Office then stated that

[3] According to the National Park Service, appellant was paid administrative leave for the periods February 9 to 20, 2009 and February 27 to April 11, 2009.

[4] *Albert C. Shadrick*, 5 ECAB 376 (1953); *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.2 (December 1993).

[5] *See C.W.*, Docket No. 07-1357 (issued April 10, 2007).

[6] *See* www.opm.gov/oca/09tables/pdf/SF.pdf

a GS-12, step 1 contract specialist with the National Park Service had a salary of $79,781 or $1,534.25 per week, effective January 26, 2009;[7] her current weekly pay rate as a contract specialist, based on 6 hours per day (30 hours per week), is $1,146.90. It calculated appellant's loss of wage-earning capacity by dividing her actual weekly earning capacity as a contract specialist of $1,146.90 by the pay rate for a GS-6, step 8 accounting technician of $959.90, which yielded a wage-earning capacity of 119 percent. The Office, therefore, found, based on these calculations, that since appellant's current earnings as a GS-12, step 1 contract specialist constituted more than 100 percent of the current earnings of a GS-6, step 8 accounting technician, the position she held as of her August 17, 1999 work injury, she sustained no loss of earnings causally related to her work injury. It further found that appellant was not entitled to compensation after April 12, 2009 when she was terminated for cause.

LEGAL PRECEDENT

Section 8102(a) of the Federal Employees' Compensation Act[8] provides that the United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of duty. Section 8106(a) provides in pertinent part as follows:

> "If the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of the difference between [her] monthly pay and [her] monthly wage-earning capacity after the beginning of the partial disability, which is known as [her] basic compensation for partial disability".[9]

As used in the Act, the term disability means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.[10] 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.[11]

The formula for determining wage-earning capacity, developed in the case of *Shadrick*, has been codified in the Office's regulations.[12] Under the *Shadrick* formula, the Office first calculates an employee's wage-earning capacity in terms of percentage by dividing the employee's actual earnings by the current or updated, pay rate for the position held at the time of

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[7] *Id.*

[8] 5 U.S.C. §§ 8101-8193.

[9] *Id*. at § 8106(a).

[10] *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).

[11] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

[12] Federal (FECA) Procedure Manual, *supra* note 4. For the formula itself, *see id.*, *Computing Compensation*, Chapter 2.901.15.c (October 2009).

injury. The employee's wage-earning capacity in dollars is computed by first multiplying the pay rate for compensation purposes, defined in 20 C.F.R. § 10.5(a) as the pay rate at the time of injury, the time disability begins or the time disability recurs, whichever is greater, by the percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain loss of wage-earning capacity.[13]

ANALYSIS

The Office accepted appellant's claim for right knee contusion, right knee meniscus tear, right hip bursitis and right hip enthesopathy. It accepted that appellant could only work six hours per day as a contract specialist as of January 26, 2009 due to her work-related hip conditions, based on the opinion of Dr. Jiminez. Appellant requested compensation for partial disability beginning January 26, 2009.

The Office calculated whether appellant was entitled to partial disability compensation as of January 26, 2009 using the correct information. It determined the current weekly earnings in her date-of-injury position were $959.90 by dividing the updated yearly salary of $49,915 by 52 weeks. The Office found that the current weekly salary of a contract specialist, appellant's most recent job, had an annual salary of $79,781.00 or a weekly pay rate of $1,534.25 as of January 26, 2009. This weekly pay rate equaled $1,146.90 when prorated to six hours per day or 30 hours per week. The Office divided her actual weekly earning capacity of $1,146.90 by her current date-of-injury pay rate of $959.90, which yielded a wage-earning capacity of 119 percent. Based on these calculations, the Office properly applied the principles set forth in the *Shadrick*[14] decision to determine that appellant was not entitled to partial disability compensation.

The Office properly found that appellant was not partially disabled as a result of her August 17, 1999 employment injury, as it followed established procedures for determining appellant's employment-related loss of wage-earning capacity at zero. The Board, therefore, affirms the June 11, 2009 Office decision denying compensation for wage loss based on partial disability beginning January 26, 2009.

CONCLUSION

The Board finds that appellant was not entitled to partial disability benefits commencing January 26, 2009 due to the accepted August 17, 1999 injury.

[13] *Albert C. Shadrick*, *supra* note 4; 20 C.F.R. § 10.403(e).

[14] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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