

FACTUAL HISTORY

On January 29, 1991 appellant, then a 36-year-old food service worker, filed a traumatic injury claim alleging that she sustained an injury to her right wrist in the performance of duty.³ OWCP accepted the claim for a contusion of the right hand and wrist, left carpal tunnel syndrome and right forearm joint derangement in the performance of duty.

On January 3, 1995 the employing establishment offered appellant a full-time position as a clerk in the Blind Rehabilitation Service. The position required light lifting and carrying under 15 pounds, reaching above the shoulders, use of the fingers and repeated bending every 30 minutes.

By decision dated July 11, 1995, OWCP reduced appellant's compensation after finding that her actual earnings as a clerk effective February 6, 1995 fairly and reasonably represented her wage-earning capacity.

By letter dated February 28, 1997, the employing establishment advised OWCP that on January 5, 1997 appellant voluntarily transferred to another location to work as a file clerk.

In a report dated June 5, 2007, Dr. Joseph Perlman, a Board-certified surgeon, related that appellant's right wrist problem had worsened and recommended a total wrist fusion. He stated, "She is presently not working due to a work-related laryngeal spasm. [Appellant] stated that she has been off work from December to the present time and does not know when she will be able to be cleared to return to work." Dr. Perlman provided work restrictions of lifting, pushing and pulling no more than two pounds and performing repetitive wrist movements of no more than one hour per day.

On January 28, 2008 the employing establishment notified appellant that it proposed to remove her for extended absences. It indicated that she had not reported to work since December 15, 2006. The employing establishment removed appellant from her information receptionist position effective February 10, 2008.

In an April 3, 2008 letter, the Office of Personnel Management informed appellant that it had determined that she was disabled from work due to spastic dysphonia and an impaired wrist.

In a progress report dated May 20, 2008, Dr. Perlman noted that appellant was on permanent disability as a result of injuries to her right wrist and vocal cords. He diagnosed "[c]ontinued pain and arthropathy of the right wrist status post work-related injury" and recommended a fusion.

In a May 20, 2009 report, Dr. Perlman stated, "[Appellant] is presently [on] permanent disability due to a vocal cord injury. She has also not been able to work because of the problem

³ This case has previously been before the Board. By decision dated May 9, 1994, the Board affirmed a November 2, 1992 decision suspending appellant's compensation benefits from October 17 through December 30, 1992 for refusing to undergo a medical examination. Docket No. 93-860 (issued November 2, 1992). In a decision dated July 22, 1998, the Board affirmed a finding that appellant received an overpayment of \$580.38 and that she was not entitled to waiver. Docket No. 93-860 (issued May 9, 1994).

with her right wrist. [Appellant] has weakness of grip and cannot perform repetitive functions for eight hours at a time with the right hand.”

On May 27, 2009 Dr. Perlman related that appellant continued to have right wrist pain due to her 1991 work injury. He indicated that she was “on permanent disability.”

By letter dated October 24, 2010, appellant requested compensation for disability beginning February 10, 2008. She alleged that she was unable to work due to her January 29, 1991 employment injury.

In a December 29, 2010 response, OWCP notified appellant of the criteria for modifying a wage-earning capacity determination. On December 29, 2010 appellant filed a claim for compensation from February 10, 2008 to the present.

In a February 28, 2011 work restriction evaluation, Dr. Perlman found that appellant could work full time with restrictions on performing repetitive movements of the wrists up to one hour of moving no more than two pounds and pushing, pulling, lifting and climbing one hour.

By letter dated February 28, 2011, appellant related that she was not alleging a recurrence of disability as she had not been released from medical treatment. She maintained that OPM and the employing establishment found she was unable to work due to her January 29, 1991 injury.

In a decision dated June 2, 2011, OWCP found appellant had not established modification of the July 11, 1995 wage-earning capacity determination.

On appeal appellant related that she was removed from the employing establishment due to her work injury. She asserted that the medical evidence from Dr. Perlman supported that she was unable to work due to a material change in her right wrist and hand condition.

LEGAL PRECEDENT

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant’s ability to earn wages.⁴ Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.⁵

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally

⁴ See 5 U.S.C. § 8115 (determination of wage-earning capacity).

⁵ *Sharon C. Clement*, 55 ECAB 552 (2004).

rehabilitated or the original determination was, in fact, erroneous.⁶ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁷

When a formal loss of wage-earning capacity is in place and light duty is withdrawn, the proper standard of review is not whether appellant sustained a recurrence of disability, but whether OWCP should modify its decision according to the established criteria for modifying a formal loss of wage-earning capacity determination.⁸ OWCP procedures provide that when the employing establishment has withdrawn a light-duty assignment, which accommodated the claimant's work restrictions and a formal wage-earning capacity decision has been issued, the decision will remain in place, unless one of the three accepted reasons for modification applies.⁹

ANALYSIS

OWCP accepted that appellant sustained a contusion of the right hand and wrist, right forearm joint derangement and left carpal tunnel syndrome due to a January 29, 1991 employment injury. On February 6, 1995 appellant accepted a job as a clerk with the employing establishment. The physical requirements of the position were lifting and carrying less than 15 pounds, reaching above the shoulders and use of the fingers and repeated bending every 30 minutes. In a decision dated July 11, 1995, OWCP reduced appellant's compensation based on its findings that her actual earnings beginning February 6, 1995 fairly and reasonably represented her wage-earning capacity.

Appellant continued to work in the position until January 3, 1997, when she transferred to another work location and began working as a file clerk. On June 5, 2007 Dr. Perlman noted that appellant was not working due to an employment-related laryngeal spasm. On February 10, 2008 the employing establishment removed appellant from her position as an information receptionist as she had not reported for work since December 15, 2006. Appellant requested compensation for total disability from February 10, 2008 onward, asserting that she was unable to work as a result of her January 29, 1991 work injury. The relevant issue, consequently, is whether she has established that the July 11, 1995 wage-earning capacity determination should be modified. The medical evidence must establish that appellant sustained a material change in her condition such that she was unable to perform the clerk position held at the time of the July 11, 1995 wage-earning capacity determination.

The Board finds that the original wage-earning capacity determination was not in error. OWCP's wage-earning capacity determination was consistent with section 8115(a) of FECA which provides that the wage-earning capacity of an employee is determined by actual earnings if the actual earnings fairly and reasonably represented wage-earning capacity.¹⁰ The position

⁶ *Harley Sims, Jr.*, 56 ECAB 320 (2005); *Tamra McCauley*, 51 ECAB 375, 377 (2000).

⁷ *Id.*

⁸ *See K.R.*, Docket No. 09-415 (issued February 24, 2010).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7a(5) (October 2005).

¹⁰ *See A.P.*, 58 ECAB 198 (2006).

was not temporary, make-shift or part time and appellant worked in the position until she voluntarily relocated.

Appellant asserted that she sustained a material change in the nature and extent of her January 29, 1991 employment injury. She did not, however, submit evidence containing a rationalized medical opinion explaining why she was unable to work beginning February 8, 2010 in her position as a clerk due to her January 19, 1991 work injury. On May 20, 2008 Dr. Perlman noted that appellant was on permanent disability due to her right wrist and vocal cord condition. He diagnosed right wrist arthropathy and pain following a work injury and recommended a fusion. Dr. Perlman did not specifically find that appellant was unable to perform her modified employment as a clerk but instead merely noted that she was on permanent disability due to two different conditions. As he did not address whether her condition materially changed such that she could not perform the position of clerk, his opinion does not establish a basis for modifying the wage-earning capacity determination.¹¹

In a May 20, 2009 report, Dr. Perlman opined that appellant was permanently disabled due to an injury to her vocal cords. He also indicated that she was not able to work because of her right wrist injury based on her grip weakness and inability to perform repetitive work eight hours a day. Dr. Perlman did not, however, provide a firm diagnosis of the right wrist condition or explain how appellant's accepted work injury caused an increase in disability. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹²

On May 27, 2009 Dr. Perlman discussed appellant's continued complaints of pain in her right wrist following a 1991 employment injury. He noted that she was "on permanent disability." While Dr. Perlman generally found appellant was disabled, he did not provide a diagnosis or specifically address whether appellant's disability due to her January 29, 1991 work injury increased such that she could no longer work as a clerk; therefore, his report is insufficient to meet her burden of proof.

In a February 28, 2011 work restriction evaluation, Dr. Perlman found appellant could work full time with restrictions on performing repetitive movements of the wrists up to one hour with no more than two pounds and pushing, pulling, lifting and climbing one hour. He did not, however, offer any opinion to explain how or why her work restrictions changed. Medical conclusions unsupported by rationale are of diminished probative value.¹³

On appeal appellant asserted that Dr. Perlman's opinion was sufficient to show a material change in her accepted conditions and that the employing establishment removed her because she could no longer perform the duties of her position. However, as explained, the medical

¹¹ See *Elbert Hicks*, 55 ECAB 151 (2003).

¹² See *Thaddeus J. Spevack*, 53 ECAB 474 (2002); *Jean Culliton*, 37 ECAB 728 (1996).

¹³ *Jacqueline L. Oliver*, 48 ECAB 232 (1996).

evidence does not establish that an injury-related condition caused increased disability. As noted, the burden of proof is on the party attempting to show a modification of the wage-earning capacity. Appellant has not met any of the criteria for modifying OWCP's July 11, 1995 wage-earning capacity determination.¹⁴ She may request modification of the wage-earning capacity determination, supported by new evidence of argument, at any time before OWCP.

CONCLUSION

The Board finds that appellant has not established that the July 11, 1995 wage-earning capacity decision should be modified.

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁴ See *Elbert Hicks*, *supra* note 11.