

To determine whether the employee's work fairly and reasonably represents his wage-earning capacity, OWCP should consider whether the tour of duty is at least equivalent to that of the job held on date of injury. Unless it is, OWCP may not consider the work suitable. Thus, reemployment may not be considered suitable when the job is part time, unless the claimant was a part-time worker at the time of injury.³

The Board having duly considered the matter concludes that OWCP failed to meet its burden of proof in reducing appellant's wage-loss compensation effective February 2, 2009 based on his actual earnings as a clerk. OWCP found appellant was working part time or 20 hours per week in the clerk position. However, it has administratively determined that part-time reemployment does not fairly and reasonably represent an employee's wage-earning capacity in the open labor market unless the claimant was a part-time worker at the time of injury.⁴ At the time of his injury appellant was a full-time employee working 40 hours per week. OWCP failed to follow its procedures when it determined that appellant's part-time job working 20 hours per week fairly and reasonably represented his wage-earning capacity.

The Board finds that March 14, 2011 loss of wage-earning capacity determination was, in fact, erroneous. Therefore, the Board will reverse OWCP's September 28, 2011 decision affirming the wage-earning capacity determination.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(a)(1) (October 2009).

⁴ Federal (FECA) Procedure Manual, *supra* note 3. See *O.V.*, Docket No. 11-98 (issued September 30, 2011) (overruling Price to the extent of their finding that OWCP's procedure allows consideration of part-time reemployment when the tour of duty is not at least equivalent to that of the job held on the date of injury).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2011 is reversed.

Issued: June 12, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board