



was therefore properly based on appellant's actual earnings and ability to perform part-time work.

The Board has duly considered the matter and finds that OWCP's November 7, 2011 decision must be reversed. In *O.V.*,<sup>2</sup> the Board found that OWCP abused its discretion when it determined that the claimant's actual earnings in part-time reemployment fairly and reasonably represented his capacity to earn wages in the open labor market. The Board explained that OWCP procedures prohibited a wage-earning capacity determination based on part-time reemployment unless the claimant was a part-time worker at the time of injury.

Procedures that were in effect when OWCP issued its May 31, 1995 wage-earning capacity determination also prohibited a determination based on part-time reemployment where the employee formerly held a full-time position.<sup>3</sup> The Board's holding in *O.V.*, therefore, applies.

The Board finds that appellant has met one of the criteria for obtaining modification of OWCP's May 31, 1995 wage-earning capacity determination. Appellant has shown that the determination was, in fact, erroneous.<sup>4</sup> Accordingly,

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<sup>2</sup> Docket No. 11-98 (issued September 30, 2011).

<sup>3</sup> See FECA Circular No. 95-7 (issued February 12, 1995): "The FECA Procedure Manual notes in Chapter 2.814.7(a) that a job actually held may be considered to fairly and reasonably represent the claimant's loss of wage-earning capacity with certain exceptions. One of these exceptions is where the employee who formerly held a full-time position obtains part-time work."

<sup>4</sup> 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 rehabilitated, or the original determination was, in fact, erroneous. *Sue A. Sedgwick*, 45 ECAB 211 (1993).

**IT IS HEREBY ORDERED THAT** the November 7, 2011 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 26, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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