

lumbar strain. Appellant returned to work four hours a day on January 8, 2001. She returned to a full-time light-duty position on August 4, 2001. Appellant continued to work eight hours a day in a limited-duty position through June 6, 2008. On June 7, 2008 she accepted a position as a modified mail processing clerk surface visibility scanning for eight hours a day. The position required lifting, carrying, pushing and pulling up to 10 pounds intermittently. Appellant could stand, walk, bend, stoop, twist or drive a motor vehicle for one hour a day and perform simple grasping and fine manipulation for eight hours a day. She was not required to reach above the shoulder.

Appellant filed a notice of recurrence of disability on December 2, 2009 alleging that the employing establishment withdrew her light-duty position on November 30, 2009 and asked her to leave the building. Her attending physician, Dr. Roger W. Shortz, a neurologist, diagnosed cervical disc disease, lumbar disc disease and lumbar herniated disc. He noted that appellant was receiving epidural injections. Dr. Shortz provided work restrictions of no lifting over 10 pounds, no prolonged sitting, standing or walking and no repetitive bending or twisting.

OWCP referred appellant for vocational rehabilitation counseling on March 18, 2010. Appellant met with the vocational rehabilitation counselor on March 30, 2010. She participated in vocational testing on April 9, 2010. The testing results recommended the positions of motel clerk, self-storage facility clerk, information clerk and selective receptionist positions. In a report dated April 14, 2010, the vocational rehabilitation counselor found that the positions of receptionist or information clerk were most appropriate for appellant and that she was engaging in training. The opening for information clerk were consistently found with a salary of \$11.00 to \$12.00 per hour. The vocational rehabilitation counselor determined that appellant required computer training. On June 3, 2010 OWCP approved the plan for appellant to attempt to return to work as a receptionist or information clerk. Appellant completed her course work on December 20, 2010.

Appellant participated in placement activities for 90 days plus a 30-day extension but did not obtain a job offer. The vocational rehabilitation counselor determined that the information clerk and receptionist positions. The positions were performed in sufficient numbers to make them reasonably available to appellant within her commuting area. The physical demands of the position of information clerk was sedentary, requiring occasional lifting up to 10 pounds with no climbing, stooping, kneeling, crouching or crawling and occasional reaching and handling. The position also required talking and hearing. The duties of the position of information clerk included answering inquiries from persons entering the business establishment, providing information regarding the activities conducted and the location of various departments. The position required three to six months of vocational preparations. The vocational rehabilitation counselor found that appellant met this requirement through her course work in keyboarding and basic computers.

By decision dated July 5, 2011, OWCP proposed to reduce appellant's compensation benefits based on her capacity to earn wages as an information clerk at the rate of \$400.00 per week. Appellant had successfully completed training and, based on her experience, education, medical restrictions and a labor market survey she was employable as an information clerk under the physical restrictions recommended by Dr. Shortz. OWCP found that appellant was capable of earning \$10.00 per hour and that she had a wage-earning capacity of \$400.00. It noted that

the position of information clerk was sedentary and required exerting up to 10 pounds of force occasionally. OWCP allowed appellant 30 days to respond if she disagreed with the proposal.

By decision dated August 5, 2011, OWCP finalized the reduction of appellant's monetary compensation effective August 28, 2011.

In a letter dated August 3, 2011 and received by OWCP on August 8, 2011, appellant stated that she did disagree with the proposed reduction of compensation. She stated that she was totally disabled due to her accepted back condition. Appellant noted that she continued to receive epidural injections which reduced her back pain, spasms and numbness. She stated that she had sought employment but was unable to get work.

Appellant requested a review of the written record by an OWCP hearing representative on August 24, 2011. In a duty status report from Dr. Shortz dated August 22, 2011, he noted that appellant could lift and carry up to 10 pounds and could stand and walk for one hour a day. Appellant was totally restricted from climbing and kneeling and could bend, stoop, twist, pull and push for one hour a day. She could perform simple grasping and fine manipulation for eight hours a day and could drive a motor vehicle or operate machinery for one hour a day each.

By decision dated December 15, 2011, an OWCP hearing representative affirmed the August 5, 2011 wage-earning capacity determination.

LEGAL PRECEDENT

Section 8115 of FECA² provides that wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent her wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity, or the employee has no actual earnings, her wage-earning capacity 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.³

When OWCP makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to a vocational rehabilitation counselor authorized by OWCP for selection of a position, listed in the Department of Labor, *Dictionary of Occupational Titles* or otherwise available in the open market, that fits that employee's capabilities with regard to 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*⁴ will result in the percentage of the employee's loss of

² 5 U.S.C. § 8115.

³ *N.J.*, 59 ECAB 171 (2007).

⁴ 5 ECAB 376 (1953).

wage-earning capacity. The basic rate of compensation paid under FECA is 66 2/3 percent of the injured employee's monthly pay.⁵

ANALYSIS

OWCP accepted appellant's claim for lumbar strain. Appellant returned to light-duty work eight hours a day and continued to work until November 30, 2009 when the employing establishment withdrew her light-duty assignment. OWCP referred her for vocational counseling and she completed courses in the computer skills. The vocational rehabilitation counselor identified the position of information clerk as within appellant's medical restrictions and vocational skills. She found the position reasonably available within appellant's commuting area. The Board finds that the selected position of information clerk was medically and vocationally suitable.

Appellant's vocational rehabilitation counselor noted that appellant had completed the necessary course work to enable her to meet the specific vocational preparation period. She determined that the position was performed in sufficient numbers in appellant's commuting area to make the position reasonably available. The Board finds that OWCP properly relied on the opinion of the vocational rehabilitation counselor that appellant was vocationally capable of performing the information clerk position.

Dr. Shortz, appellant's attending physician, provided consistent work restrictions stating that appellant could lift up to 10 pounds and restricting walking, standing, bending, stooping, twisting, pulling and pushing to one hour each day. Appellant could perform simple grasping and fine manipulation for eight hours a day and could drive a motor vehicle or operate machinery for one hour a day each. The position of information clerk is designated as sedentary with occasional lifting up to 10 pounds. It does not require climbing, stooping or kneeling. The Board finds that the medical evidence establishes that the physical demands of the position of information clerk were within appellant's work restrictions as established by her physician.

OWCP considered the proper factors, such as availability of suitable employment and appellant's physical limitations, usual employment, age and employment qualifications in determining that the position of information clerk represented her wage-earning capacity. The weight of the evidence in the record establishes that appellant had the requisite physical ability, skill and experience to perform the position of information clerk and that such a position was reasonably available within the general labor market of his commuting area. The Board finds, therefore, that OWCP properly determined that the position of information clerk reflected appellant's loss of wage-earning capacity and used the *Shadrick* formula to properly reduce her compensation effective August 28, 2011.

Appellant may request modification of the wage-earning capacity determination, supported by new evidence or argument, at any time before OWCP.

⁵ *Karen L. Lonon-Jones*, 50 ECAB 293 (1999).

CONCLUSION

The Board finds that OWCP properly reduced appellant's compensation effective August 28, 2011 based on its determination that the constructed position of information clerk represented her wage-earning capacity.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 1, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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