

sprain of the left knee, medical collateral ligament tear on the left, tear of the medial meniscus and contusion of the abdominal wall. On January 31, 2007 it accepted the additional conditions of cervical strain and glass in the right forearm. Appellant returned to work full duty on March 30, 2007.

Appellant stopped work on April 2, 2007. She stated that the employing establishment did not have light-duty work available. Dr. Charles W. Cha, a Board-certified orthopedic surgeon, limited her to light-duty work with no lifting, pushing or pulling over 20 pounds on April 19, 2007. He indicated that appellant should be allowed to change positions as necessary. Dr. Cha continued to support these restrictions.

The employing establishment stated that due to appellant's physical restrictions there was no work available for her. It offered her a light-duty position on September 5, 2007. Appellant accepted this position on September 7, 2007. She returned to work for 7.4 hours a day. Dr. Cha found that appellant had reached maximum medical improvement on August 29, 2007.

Appellant stopped work on September 15, 2007. The employing establishment found no work available. On February 6, 2008 OWCP accepted the additional conditions of lumbar strain and lumbar radiculopathy as due to appellant's December 1, 2006 motor vehicle accident. Appellant underwent knee surgery on February 13, 2008 consisting of chondral debridement patella articular cartilage and lateral plateau articular cartilage and resection of plica. The employing establishment was unable to accommodate her restrictions of sitting 10 minutes each hour.

On May 21, 2008 OWCP accepted lumbosacral spondylosis without myelopathy as resulting from appellant's December 2006 employment injury.

Appellant underwent a functional capacity evaluation (FCE) on March 31, 2010. This testing revealed that she could work at the light physical demand level. Appellant demonstrated the ability to lift 21.5 pounds up to 2.5 hours a day and to carry up to 16.5 pounds. She was able to sit, stand, walk, climb stairs, bend, squat and twist up to 5.5 hours a day. Appellant was able to balance, bend, kneel, crouch and crawl for up to 2.5 hours a day. Dr. Cha reviewed this study on April 15, 2010 and stated that the conclusions were consistent and that appellant's work restrictions would be maintained. He completed a form report on May 5, 2010 and stated that appellant could work eight hours a day and that she should avoid repetitive bending and lifting nor more than 21.5 pounds.

Appellant returned to work as a modified rural carrier on August 23, 2010. Dr. Cha completed a work restriction evaluation on September 9, 2010 and stated that she could not operate a motor vehicle while using medications. He further limited appellant's standing and walking to up to two hours a day. On October 7, 2010 the vocational rehabilitation counselor noted that the employing establishment position required appellant to stand more than two hours and that this position exceeded her restrictions.

OWCP referred appellant for vocational rehabilitation services and she met with a vocational rehabilitation counselor on October 15, 2010. It accepted the condition of lumbosacral spondylosis on December 14, 2010. The vocational rehabilitation counselor

determined that appellant could be reemployed as a medical assistant or phlebotomist. She noted that appellant had adequate experience working in these positions in her past as she trained for one year and had her diploma as a medical assistant as well as working in many job settings including doctor's offices and home health care. The vocational rehabilitation counselor noted that the position was classified as light or sedentary work and that both positions were readily available within appellant's commuting area.

The position of medical assistant is classified as light duty and requires frequent, reaching handling, fingering, feeling, talking and hearing. The position requires that appellant assist in the examination and treatment of patients, interview patients, measure vital signs and record information on patient charts. Further duties include preparing treatment rooms, draping patients and positioning instruments and equipment as well as handing instruments and materials to doctors and cleaning instruments. Appellant was also required to inventory and order medical supplies, operate diagnostic equipment or call to schedule these tests. The vocational rehabilitation counselor determined that appellant met the specific vocational preparation as she had worked as a medical assistant and held a diploma in this field. Appellant also had 10 years of experience working as a medical assistant and phlebotomist. The vocational rehabilitation counselor noted that the average annual openings were 315 and that in 2006 the employment was 5,230 with an expected increase to 7,750 by 2016.

Appellant signed her rehabilitation plan on January 21, 2011 and began seeking work. She reported increased back pain and Dr. Cha ordered diagnostic testing. Dr. Cha reviewed the results of appellant's MRI scan on March 24, 2011 and stated that she had some left neural foraminal narrowing in the lumbar spine, but no evidence of spinal contribution to her incontinence. On March 3, 2011 appellant stated that she needed a phlebotomy certification. The vocational rehabilitation counselor directed appellant to determine if she could be certified based on her prior experience. She noted on April 5, 2011 that appellant had been denied employment as she was not certified as a medical assistant or a phlebotomist. The vocational rehabilitation counselor stated that although appellant had 20 years of experience in both areas some of the requirements had changed since she last worked in these positions. She noted that certification was not required to work as a phlebotomist. The vocational rehabilitation counselor noted that appellant had not taken the necessary steps to become certified, which required a showing that she worked in the field of medical assistant for more than 20 years and having a former employer send a letter of recommendation. She stated, "This will help [appellant] with employment down the road but is not a requirement for employment." The vocational rehabilitation counselor noted that appellant had completed the recertification for cardiopulmonary resuscitation and had applied for certification for phlebotomy at the personal cost of \$125.00. Appellant submitted a certification application dated May 18, 2011 to become certified as a phlebotomist.

OWCP proposed to reduce appellant's compensation benefits based on her capacity to earn wages as a medical assistant on August 3, 2011.

By decision dated September 14, 2011, OWCP reduced appellant's compensation benefits effective that date on the grounds that the position of medical assistant was medically and vocationally suitable for her and fairly and reasonably represented her wage-earning capacity.

Counsel requested an oral hearing before an OWCP hearing representative by letter dated September 15, 2011. Appellant testified at the oral hearing that she had not worked as a medical assistant for 22 years, but that she worked part time providing home health care bathing patients, drawing blood and giving medications. She stated that she could work either as a medical assistant or as a certified medical assistant and that she had allowed her certification to lapse. Appellant attempted to recertify, but did not qualify to do so as she had not worked in a physician's office for more than 20 years. She stated that she could not work as a medical assistant due to her physical conditions. Appellant also noted that she was not familiar with new equipment and had limited computer skills. She stated that she did not have the technological ability to perform the tasks of a medical assistant. Appellant testified that she was not licensed as a phlebotomist.

In a decision dated April 30, 2012, the hearing representative found that the position of medical assistant fairly and reasonably represented appellant's wage-earning capacity. The hearing representative found that appellant had the necessary training, physical ability and experience to work as a medical assistant and that this position was reasonably available within her commuting area.

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 his wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity or the employee has no actual earnings, his wage-earning capacity is determined with due regard to the nature of his injury, the degree of physical impairment, his usual employment, his age, his qualifications for other employment, the availability of suitable employment and other factors or circumstances which may affect his wage-earning capacity in his disabled condition.

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's *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*³ will result in the percentage of the employee's loss of wage-earning capacity. The basic rate of compensation paid under FECA is 66 2/3 percent of the injured employee's monthly pay.⁴

² 5 U.S.C. §§ 8101-8193, 8115.

³ 5 ECAB 376 (1953); 20 C.F.R. § 10.403.

⁴ *Karen L. Lonon-Jones*, 50 ECAB 293 (1999).

ANALYSIS

Appellant sustained a sprain of the left knee, medial collateral ligament tear on the left, tear of the medial meniscus, contusion of the abdominal wall, cervical strain, laceration in the right forearm, lumbar strain, lumbar radiculopathy, lumbosacral spondylosis without myelopathy and lumbosacral spondylosis. The medical evidence in the record establishes that she could return to work with restrictions. Appellant's attending physician, Dr. Cha, approved a FCE, which determined that she could work in the light capacity, lifting up to 20 pounds and standing and walking up to two hours a day. On October 15, 2010, appellant met with the vocational rehabilitation counselor who identified two jobs that appellant could perform that were reasonably available. One of these positions was medical assistant. The Board finds that the selected position of medical assistant was medically and vocationally suitable.

The position of medical assistant is within appellant's physical abilities as it is classified as light duty. The position description does not include a specific period of standing, walking or sitting and requires frequent reaching, handling, fingering, feeling, talking and hearing. The vocational rehabilitation counselor determined that appellant met the specific vocational preparation as she had worked as a medical assistant and held a diploma in this field. Appellant also had 10 years of experience working as a medical assistant and phlebotomist. The vocational rehabilitation counselor found that this position was reasonably available within appellant's commuting area.

The Board finds that 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 medical assistant represented her wage-earning capacity. As noted, the evidence of file supports that the selected position was within the medical limitations provided by Dr. Cha. Appellant and her attorney have alleged that she did not have certification and, therefore, was not qualified to perform the position. However, the rehabilitation counselor's reports support that certification was not required and that appellant had the necessary vocational ability to perform the position. Additionally, the vocational rehabilitation specialist approved the selected position based on appellant's past work experience and her diploma as a medical assistant. As the rehabilitation specialist is an expert in the field of vocational rehabilitation, OWCP may rely on his or her opinion in determining whether the job is vocationally suitable and reasonably available.⁵ The Board finds that appellant's training and past work experience constitutes adequate vocational preparation for the constructed position of medical assistant.

The evidence of record establishes that appellant had the requisite physical ability, skill and experience to perform the position and that such a position was reasonably available within the general labor market of her commuting area. OWCP, therefore, properly determined that the position of medical assistant reflected appellant's wage-earning capacity and used the *Shadrick* formula to properly reduce her compensation.

⁵ *J.H.*, Docket No. 11-1386 (issued February 16, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.8.(b)(2) (December 1993).

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

CONCLUSION

The Board finds that OWCP properly determined that appellant was capable of earning wages in the constructed position of medical assistant.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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