

**United States Department of Labor
Employees' Compensation Appeals Board**

C.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Fort Worth, TX, Employer)

**Docket No. 13-808
Issued: July 2, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On February 13, 2013 appellant filed a timely appeal from a January 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly reduced appellant's compensation effective January 25, 2013, based on her capacity to perform the duties of a receptionist.

FACTUAL HISTORY

Appellant, a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) for benefits on December 22, 2003, alleging that she developed a prolapsed uterine condition causally related to employment factors. OWCP accepted the claim for uterine prolapse, urinary

¹ 5 U.S.C. § 8101 *et seq.*

incontinence, pilonidal cyst and chronic interstitial cystitis. It commenced payment for temporary total disability compensation. Appellant returned to work with the employing establishment intermittently but has not worked since February 22, 2010.

On October 15, 2010 OWCP referred appellant for vocational rehabilitation services.

In a report dated December 16, 2010, Dr. Tarakumar Reddy, Board-certified in psychiatry and neurology, stated that after appellant sustained her work injuries she was allegedly harassed about her restrictions at the workplace; this led to her feeling anxious and sad. Appellant refused to get adequate treatment in a timely manner because she was afraid that she was not covered by her insurance carrier. Dr. Reddy advised that this led to a progressive worsening of her symptoms to the extent that she could not work without having anxiety and sadness. Appellant allegedly was harassed because she engaged in activities beyond her limitations, which exacerbated her symptoms. Dr. Reddy opined that psychologically, she was unable to return to work because of her depression and anxiety. He stated, however, that appellant was currently not depressed or anxious and was not on any medication. Dr. Reddy noted that she was treated with Paxil for about three months, which apparently ameliorated her symptoms of depression and anxiety. He stated that appellant denied having any symptoms of major depression, psychosis, or panic disorder and opined that her depression and anxiety developed because of adjustment to her occupation and dealing with people. Dr. Reddy diagnosed adjustment disorder with mixed anxiety and depressed mood, currently resolved. He concluded that she could return to work without restrictions from a psychiatric point of view.

In a work capacity evaluation dated April 19, 2011, Dr. Carolyn W. Quist, an osteopath and appellant's treating physician, indicated that appellant could work light duty for eight hours per day with restrictions of no lifting more than 25 pounds.

In a work capacity evaluation dated May 17, 2012, Dr. Quist reiterated that appellant could work eight hours per day and outlined the following restrictions: no operating a motor vehicle at work; no more than two to four hours of pushing and pulling 30 pounds; no more than two to four hours of lifting 25 pounds; and a five-minute break every two hours with access to a bathroom due to overactive bladder.

In a labor market survey dated June 19, 2012, the rehabilitation counselor found that there was a position as a reception clerk listed in the Department of Labor, *Dictionary of Occupational Titles (DOT)* which was within appellant's indicated restrictions and reasonably reflected her ability to earn wages, consumer complaint clerk, DOT #237.367-038. She stated that appellant did not obtain employment because she failed to actively participate in job search efforts and only minimally followed up on job leads that were provided to her. The vocational counselor also indicated that appellant had the vocational and work history, education, skills, and training to qualify for job openings in this occupation, that the job was being performed in sufficient numbers as to make it reasonably available to the claimant within his commuting area and that there was a positive labor market for the job. She opined that the duties of the receptionist position were reflective of appellant's previous clerical experience and associates' degree. The vocational counselor noted that appellant was currently volunteering at Bethesda Community Church as a receptionist and at the Fort Worth Nature Center performing data entry. She advised that the salary for the receptionist position was \$8.89 per hour, or \$355.60 per week.

By letter dated July 6, 2012, OWCP advised appellant that the rehabilitation counselor had recommended a position as a receptionist which was within Dr. Quist's work restrictions. It informed appellant that it would provide her with 90 days of placement services to assist in gaining employment at this position and advised that if she did not obtain employment or cooperate with the rehabilitation counselor her compensation would be reduced based on the wage-earning capacity of \$355.60 per week.

In a statement dated September 10, 2012, appellant asserted that OWCP did not exert sufficient efforts to provide her with a job within her permanent restrictions. She stated that the receptionist position was not suitable because it required vocational training or college courses to obtain such employment.

In a September 19, 2012 report, Dr. Quist related that appellant was experiencing significant anxiety and some depression in relation to her multiple diagnoses. She stated that appellant was well healed from her recent bilateral, laparoscopic oophorectomies although she experienced some pelvic spasms when her anxiety flared up. Dr. Quist advised that the effects of appellant's work injury had ceased except for the chronic interstitial cystitis, which required continuous medical treatment. While she opined that appellant should not resume her prior duties which required lifting up to 70 pounds, as that would predispose her to recurrent prolapse, she advised that appellant could return to work with the sole restriction of no lifting exceeding 25 pounds and no using industrial equipment or forklifts, which had caused a recurrence of her symptoms in the past. Dr. Quist also stated that appellant's anxiety and depression were under control until she ran out of medications and began having marital problems and developed breast cancer, which were exacerbating these issues. She recommended psychological counseling.

By notice of proposed reduction dated December 17, 2012, OWCP advised appellant of its proposal to reduce her compensation because the factual and medical evidence established that she was no longer totally disabled and that she had the capacity to earn wages as a receptionist, DOT #237.367-038,² at the rate of \$355.60 per week, in accordance with the factors outlined in 5 U.S.C. § 8115.³ It calculated that appellant's compensation rate should be adjusted to \$511.00, a week, using the *Shadrick*⁴ formula. OWCP indicated that her salary as of

² The job description of receptionist clerk stated: "Receives callers at establishment, determines nature of business, and directs callers to destination: Obtains callers name and arranges for appointment with person called upon. Directs caller to destination and records name, time of call, nature and business and person called upon. May operate PBX telephone console to receive incoming messages. May type memorandums, correspondence, reports and other documents. May work in office of medical practitioner or in other health care facility and be designated outpatient receptionist ... or receptionist, doctors' office. May issue visitors pass when required. May make future appointments and answer inquiries."

The physical demands for the job according to the Dictionary of Occupational Titles (DOT) entailed a strength level of sedentary (occasionally lifting up to 10 pounds), with no climbing, balancing, stooping, kneeling, crouching, crawling, feeling, taste/smelling, far acuity, depth perception, color vision and field of vision; occasionally fingering; frequently reaching, handling, talking, hearing, near acuity and accommodation.

³ 5 U.S.C. § 8115.

⁴ *Albert C. Shadrick*, 5 ECAB 376 (1953); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.2 (April 1995).

November 28, 2009, the date she stopped working, was \$1,047.22 per week, and that appellant was currently capable of earning \$355.60 per week, the rate of a receptionist. It therefore determined that appellant had a 38 percent wage-earning capacity. OWCP found that her current adjusted compensation rate, per four-week period, was \$2,044.00. It stated that the case had been referred to a vocational rehabilitation counselor, who had located a position as a receptionist which she found to be suitable for appellant given her work restrictions and was available in her commuting area. OWCP noted that the receptionist position was selected because it is an unskilled position that only requires a short demonstration of vocational preparation and had numerous openings in her commuting area. It allowed appellant 30 days in which to submit any contrary evidence.

In a January 25, 2013 decision, OWCP finalized the reduction of appellant's compensation to reflect that she had a 38 percent wage-earning capacity as a receptionist, and that her new compensation rate every four weeks was \$2,044.00.

LEGAL PRECEDENT

Once OWCP has made a determination that a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of justifying a subsequent reduction of benefits.⁵

Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions given the nature of the employee's injuries and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications and the availability of suitable employment.⁶ Accordingly, the evidence must establish that jobs in the position selected for determining wage-earning capacity are reasonably available in the general labor market in the commuting area in which the employee lives. In determining an employee's wage-earning capacity, OWCP may not select a makeshift or odd lot position or one not reasonably available on the open labor market.⁷

ANALYSIS

OWCP determined that the selected position of receptionist represented appellant's wage-earning capacity, based upon the reports from Dr. Quist, appellant's treating physician. The Board finds that OWCP properly reduced appellant's compensation based on her ability to perform the duties of a receptionist.

Dr. Quist indicated that appellant could perform sedentary work for eight hours per day with restrictions on lifting not exceeding 25 pounds, no operating a motor vehicle at work, no more than two to four hours of pushing and pulling 30 pounds, no more than two to four hours of lifting 25 pounds and a five-minute break every two hours with access to a bathroom due to

⁵ *Harold S. McGough*, 36 ECAB 332 (1984); *Samuel J. Russo*, 28 ECAB 43 (1976).

⁶ *Samuel J. Chavez*, 44 ECAB 431 (1993); *Hattie Drummond*, 39 ECAB 904 (1988); see 5 U.S.C. § 8115(a); A. Larson, *The Law of Workers' Compensation* § 57.22 (1989).

⁷ *Steven M. Gourley*, 39 ECAB 413 (1988); *William H. Goff*, 35 ECAB 581 (1984).

overactive bladder. The rehabilitation counselor assigned to assist appellant in placement efforts identified a position as a receptionist listed in the Department of Labor's Dictionary of Occupational Titles, appropriate for appellant based on Dr. Quist's work restriction evaluation.

The Board also finds that the position of receptionist was vocationally suitable for appellant. The vocational counselor determined that the duties of the receptionist position were reflective of appellant's previous clerical experience and associates' degree and qualified appellant for the position. OWCP was also advised that the position was available in sufficient numbers so as to make it reasonably available within appellant's commuting area.

As OWCP considered the proper factors, such as appellant's physical condition, availability of employment, usual employment, age and employment qualifications, the Board finds that it properly determined that the selected position of receptionist represented appellant's wage-earning capacity.⁸

Finally, OWCP properly applied the principles set forth in the *Shadrick*⁹ decision to determine appellant's employment-related loss of wage-earning capacity. It calculated that her compensation rate should be adjusted to \$511.00 per week, or \$2,044.00 every four weeks, using the *Shadrick* formula. OWCP indicated that appellant's current pay rate for the job she held when injured was \$930.39, and that the weekly pay rate when disability recurred was \$1,047.22. It noted that she was capable of earning \$355.60 per week, therefore she had a 38 percent wage-earning capacity, and an adjusted compensation rate of \$511.00 per week, resulting in a new compensation rate every four weeks of \$2,044.00.

OWCP properly found that appellant was no longer totally disabled as a result of her accepted conditions, and it followed established procedures for determining her employment-related loss of wage-earning capacity. The Board therefore finds that OWCP met its burden of justifying a reduction in her compensation for total disability in its January 25, 2013 decision.

On appeal appellant states that she still requires medical care, the Board notes that OWCP has not terminated her medical benefits, but rather has reduced her compensation benefits, based upon her ability to perform work as a receptionist. She also argues that the employing establishment did not offer her a position as a receptionist and she would have difficulty being hired as a receptionist. OWCP however is not obligated to actually secure a job for the claimant. It must only present evidence that the selected position is performed in sufficient numbers in the geographical area to be reasonably available.¹⁰

CONCLUSION

The Board finds that OWCP properly reduced appellant's compensation effective January 25, 2013, based on her capacity to perform the duties of a receptionist.

⁸ See *Loni L. Cleveland*, 52 ECAB 171 (2000).

⁹ *Shadrick*, *supra* note 4.

¹⁰ See *Alfred R. Hafer*, 46 ECAB 553 (1995).

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2013 decision of the Office Workers' Compensation Programs is affirmed.

Issued: July 2, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board