

her claim for bilateral carpal tunnel syndrome. Appellant underwent surgical releases in 2008. She received compensation for temporary total disability on the periodic rolls.²

In July 2010 Dr. Sultan A. Quraishi, the attending surgeon and hand specialist, advised that appellant had been his patient since 2001 and that she was under his care for bilateral carpal tunnel syndrome. He stated: “She can get trained as [a] phlebotomist and her movements will not affect her ability to perform this type of job.” OWCP rehabilitation specialist approved a training plan. Appellant completed her training but was unable to secure placement with a new employer.

After obtaining current medical restrictions, an OWCP rehabilitation counselor conducted a labor market survey. Based upon the medically determinable residuals of appellant’s injury, and taking into consideration all significant preexisting impairments and pertinent nonmedical factors, the rehabilitation counselor found that appellant was able to perform the selected job of phlebotomist. The rehabilitation counselor noted that appellant had completed a specific training program and had acquired the necessary skills to perform the essential functions of a phlebotomist. The job was being performed in sufficient numbers so as to make it reasonably available to appellant within her commuting area. According to the labor market survey completed in March 2013, the weekly wage for the selected position ranged from \$420.00 to \$625.00.

Dr. Quraishi completed a current work capacity evaluation. Informed that OWCP had accepted bilateral carpal tunnel syndrome and a right knee replacement, she indicated that appellant was able to work eight hours a day with certain restrictions.

OWCP issued a notice of proposed reduction. It informed appellant that the medical and factual evidence established that she was no longer totally disabled, but rather had the capacity to earn wages as a phlebotomist at the rate of \$420.00 per week.

Appellant did not believe it was fair to reduce her monetary compensation. She noted that in addition to her carpal tunnel surgery, she also had at right total knee replacement. Appellant now walked with a limp and had to be patted down every time she traveled by air. She stated that every employer was looking for someone with at least one year of experience, which she did not have. Appellant added that she had a pin in her left ankle, which was also an injury claim. “I was a good employee, if this had not happen to me I could be making more money, missing overtime and my body would not have all this metal in it.”

In a decision dated January 27, 2014, OWCP reduced appellant’s wage-loss compensation to reflect her capacity to earn wages as a phlebotomist.

Appellant requested a telephonic hearing, appellant testified that she was trained and had the skills to do the job of an entry-level phlebotomist, and there was no reason physically that she could not do the job, but she had no practical experience. She was also not currently capable of doing anything because of her knee injury.

² The record indicates that appellant underwent a right total knee replacement in 2009. OWCP File No. xxxxxx185.

On November 5, 2014 OWCP hearing representative issued a decision affirming the reduction of appellant's wage-loss compensation.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.³ "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴

In determining compensation for partial disability, the wage-earning capacity of an employee is determined by his or her actual earnings, if his or her actual earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent her wage-earning capacity, or if the employee has no actual earnings, her wage-earning capacity as appears reasonable under the circumstances 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.⁵

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁶ When OWCP makes a medical determination of partial disability and of the specific work restrictions, it may refer the employee's case to an OWCP wage-earning capacity specialist for selection of a position, listed in the Department of Labor's *Dictionary of Occupational Titles* or otherwise available in the open labor market, that fits the employee's capabilities in light of 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* will determine the percentage of the employee's loss of wage-earning capacity.⁷

ANALYSIS

When appellant was totally disabled for her work due to bilateral carpal tunnel injury, OWCP paid her compensation for total wage loss. Appellant underwent surgery on both wrists, and Dr. Quraishi, the attending hand specialist, completed work capacity evaluations indicating there was no reason appellant could not work eight hours a day with restrictions. The medical

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f).

⁵ 5 U.S.C. § 8115(a)

⁶ *Harold S. McGough*, 36 ECAB 332 (1984).

⁷ *Hattie Drummond*, 39 ECAB 904 (1988); see *Albert C. Shadrick*, 5 ECAB 376 (1953).

evidence thus made clear that appellant's injury no longer totally disabled her for work. It remained for OWCP to determine her capacity to earn wages.

Appellant received vocational training to become a phlebotomist. When she was unable to obtain placement with a private employer within the time frame set by the rehabilitation counselor, the rehabilitation counselor found that appellant was nonetheless able to perform the selected job of phlebotomist based on the medically determinable residuals of her injury and taking into consideration all significant impairments and pertinent nonmedical factors. She duly conducted a labor market survey and found that the job was being performed in sufficient numbers so as to be reasonably available to appellant within her commuting area. Accordingly, OWCP reduced appellant's compensation to reflect her capacity to earn entry-level wages as a phlebotomist.

Appellant's principal argument is that she has been unable to secure a job as a phlebotomist. As the Board explained in the case of *J.Q.*,⁸ the very fact that the claimant was unable to secure a position in the open labor market made it necessary to determine her wage-earning capacity on the basis of a position deemed suitable but not actually held. Such a position must be performed in sufficient numbers within the claimant's commuting area. If it is, as the rehabilitation counselor confirmed, then the position is deemed to be reasonably available notwithstanding the claimant's failure to secure a position. It must be remembered that OWCP did not reduce the claimant's compensation based on actual wages. It reduced her compensation under section 8115(a) of FECA based on her *capacity* to earn wages in her partially disabled condition.

In short, appellant was no longer totally disabled for work and was no longer entitled to compensation for total wage loss. Even though she was not currently able to find a job as a phlebotomist, she had the capacity to earn wages in that position, and it was found that such jobs were reasonably available to her within her commuting area. OWCP has met its burden of proof to reduce appellant's compensation benefits.

With respect to appellant's right total knee replacement, the Board notes that Dr. Quraishi was aware of OWCP's acceptance of her right knee injury when he completed the last work capacity evaluations before OWCP reduced her compensation. Dr. Quraishi remained of the opinion that there was no reason appellant could not work eight hours a day with restrictions.

As OWCP followed proper procedure in determining appellant's capacity to earn entry-level wages as a phlebotomist, the Board will affirm OWCP's November 5, 2014 decision.

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 appellant has the capacity to earn wages as a phlebotomist and is therefore no longer entitled to compensation for total disability.

⁸ Docket No. 13-395 (issued May 1, 2013).

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board