

FACTUAL HISTORY

On September 21, 2005 appellant, then a 60-year-old rural carrier, injured her right upper extremity in the performance of duty. She was placing mail into a mailbox when it fell down with her right arm still inside the mailbox. OWCP accepted appellant's traumatic injury claim (Form CA-1) for right wrist/forearm/elbow abrasion (without infection) and right shoulder/upper arm sprain. It also authorized a June 28, 2007 right shoulder arthroscopic procedure.³ On February 22, 2010 appellant underwent a second OWCP-approved right shoulder arthroscopic procedure. She received wage-loss compensation dating back to May 1, 2007, and OWCP twice placed her on the periodic compensation rolls. Appellant remained on the periodic compensation rolls from June 7, 2009 through October 15, 2016.

OWCP authorized a functional capacity evaluation (FCE), which was conducted on February 29 and March 2, 2016. During the FCE testing, appellant was able to lift up to 10 pounds from floor to waist and horizontally, push up to 15 pounds, and pull up to 25 pounds. Her left hand grip strength went up 27 pounds and her right hand grip strength went up to 33 pounds.

On May 13, 2016 the employing establishment offered appellant a temporary limited-duty assignment as a sales retention team member. The assignment involved contacting customers by telephone for six to eight hours intermittently per day, light typing and data entry for one hour intermittently, answering the telephone for four to eight hours intermittently, and providing back office administrative assistance and engaging in computer-type duties for four to eight hours intermittently. The physical duties of the assignment included sitting in an office chair with supportive back and occasional standing for eight hours intermittently per day, simple grasping/pushing/pulling of one pound (computer mouse, telephone) for one hour intermittently, fine manipulation (computer keyboard) for one hour intermittently, and lifting telephone (up to two pounds) to speak for six to eight hours intermittently.

On May 20, 2016 appellant declined the employing establishment's offer of a temporary limited-duty assignment as a sales retention team member.

In a May 20, 2016 work capacity evaluation (Form OWCP-5c), Dr. Stephen M. Desio, a Board-certified orthopedic surgeon, noted that, although appellant could not resume her usual job duties, she was able to perform full-time, sedentary work.⁴ He noted limitations with respect to walking, twisting, and reaching, and no reaching above shoulder. Dr. Desio found that appellant could perform repetitive movements of the wrists and elbows for one hour per day. Additionally, he imposed a 10-pound restriction with respect to pushing/pulling, and a 5-pound lifting restriction.

In an August 1, 2016 Form OWCP-5c, Dr. Desio indicated that appellant could perform sedentary work for eight hours per day with restrictions. Appellant could sit, walk, stand, twist,

³ Appellant underwent bilateral carpal tunnel releases in January and February 2007, which OWCP did not authorize.

⁴ Dr. Desio performed both of appellant's OWCP-approved right shoulder arthroscopic procedures.

bend, and stoop for eight hours per day, reach for four hours, and reach above her shoulders for two hours. Dr. Desio noted that she could lift, push, or pull up to 10 pounds for two hours per day, and engage in repetitive movements of the wrists or elbows for one hour.

On August 9, 2016 the employing establishment confirmed that the sales retention team member assignment was still available to appellant.⁵

In an August 16, 2016 letter, OWCP informed appellant of its proposed reduction of her compensation to zero as she had refused to accept a temporary limited-duty assignment as a sales retention team member which accommodated her work-related limitations and which would have paid her wages equal to those of her date-of-injury job.⁶ It advised her of the provisions of 20 C.F.R. § 10.500(a) and afforded her 30 days to accept the temporary assignment or provide good cause for not doing so.

Appellant submitted a copy of the March 9, 2016 FCE report that was already in the record. She also submitted a December 16, 2015 prescription form for an FCE signed by Dr. Desio.

In a September 26, 2016 decision, OWCP reduced appellant's wage-loss compensation to zero, effective October 16, 2016, as she had not accepted the May 13, 2016 temporary limited-duty assignment offered by the employing establishment. It also found that limited-duty assignment would have paid appellant wages equal to her date-of-injury job. OWCP applied the formula set forth in *Albert C. Shadrick*⁷ to calculate her loss of wage-earning capacity.

LEGAL PRECEDENT

OWCP's regulations provide in relevant part:

“(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a [Form] CA-7 to the extent that evidence contemporaneous with the period claimed on a [Form] CA-7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing [establishment] had

⁵ On August 15 2016 the employing establishment advised that appellant could use a headset while speaking on the telephone.

⁶ The record reveals that the limited-duty assignment would pay \$1,165.55 per week, which equals the current pay for appellant's date-of-injury job of \$1,165.55 per week.

⁷ 5 ECAB 376 (1953) (codified by regulation at 20 C.F.R. § 10.403).

offered, in accordance with OWCP procedures, a temporary light-duty assignment within the employee's work restrictions. (The penalty provision of 5 U.S.C. § 8106(c)(2) will not be imposed on such assignments under this paragraph.)"⁸

If the evidence establishes that injury-related residuals continue and result in work restrictions; that light duty within those work restrictions is available; and that the employee was notified in writing that such light duty was available, then wage-loss benefits are not payable for the duration of light-duty availability, since such benefits are payable only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.⁹ The claims examiner must provide a pretermination notice if the claimant is being removed from the periodic rolls.¹⁰ When a temporary light-duty assignment either ends or is no longer available, the claimant is entitled to compensation and should be returned to the periodic rolls immediately as long as medical evidence supports any disabling residuals of the work-related condition.¹¹

ANALYSIS

OWCP accepted appellant's traumatic injury claim for right wrist/forearm/elbow abrasion (without infection) and right shoulder/upper arm sprain. It also authorized two right shoulder arthroscopic procedures, the latest of which Dr. Desio performed on February 22, 2010. Appellant also received wage-loss compensation for temporary total disability, and OWCP placed her on the periodic compensation rolls.

On May 13, 2016 the employing establishment offered appellant a temporary limited-duty assignment as a sales retention team member on a full-time basis. The assignment involved contacting customers by telephone for six to eight hours intermittently per day, light typing and data entry for one hour intermittently, answering the telephone for four to eight hours intermittently, and providing the back office administrative assistance and engaging in computer-type duties for four to eight hours intermittently. The assignment required sitting in an office chair with supportive back and occasional standing for eight hours intermittently per day, simple grasping/pushing/pulling of one pound (computer mouse, telephone) for one hour intermittently, fine manipulation (computer keyboard) for one hour intermittently, and lifting telephone (up to two pounds) to speak for six to eight hours intermittently.

The determination of whether an employee has the physical ability to perform a position offered by the employing establishment is primarily a medical question that must be resolved by the medical evidence.¹²

⁸ 20 C.F.R. § 10.500(a).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9c(1)(a) (June 2013).

¹⁰ *Id.* at Chapter 2.814.9c(1)(b).

¹¹ *Id.* at Chapter 2.814.9c(1)(d).

¹² *See N.D.*, Docket No. 15-0027 (issued February 4, 2016); *T.T.*, 58 ECAB 296 (2007).

The Board finds that the medical evidence of record shows that appellant could perform the temporary limited-duty assignment offered by the employing establishment in May 2016. The physical requirements of the offered temporary limited-duty assignment were within the medical restrictions as provided by Dr. Desio in his May 20 and August 1, 2016 reports.¹³ The Board finds that the medical restrictions provided by Dr. Desio in these reports constitute the best picture of appellant's ability to work at the time that the employing establishment offered her the temporary limited-duty assignment.

The Board further finds that OWCP complied with its procedural requirements by advising appellant that the offered assignment was suitable, providing her with the opportunity to accept the assignment or provide reasons for her refusal, and notifying her that her wage-loss compensation would be reduced or terminated if she failed to submit sufficient evidence showing such reduction was not justified.¹⁴

The evidence of record reflects that appellant declined the temporary limited-duty assignment offered by the employing establishment, which was suitable and would have paid her wages equal to those of her date-of-injury job.¹⁵ Therefore, OWCP properly reduced appellant's wage-loss compensation to zero effective October 16, 2016 under 20 C.F.R. § 10.500(a) based on her earnings had she accepted the temporary limited-duty assignment.¹⁶

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

CONCLUSION

The Board finds that OWCP properly reduced appellant's wage-loss compensation to zero effective October 16, 2016 under 20 C.F.R. § 10.500(a) based on her earnings had she accepted a temporary light-duty assignment.

¹³ In his May 20, 2016 Form OWCP-5c, Dr. Desio noted that appellant could perform sedentary work for eight hours per day with restrictions. She could engage in repetitive movements of the wrists or elbows for one hour per day, push or pull up to 10 pounds, and lift up to 5 pounds. In his August 1, 2016 OWCP-5c, Dr. Desio indicated that appellant could perform sedentary work for eight hours per day with restrictions. She could sit, walk, stand, twist, bend, and stoop of eight hours per day, reach for four hours, and reach above her shoulders for two hours. Dr. Desio noted that appellant could lift, push, or pull up to 10 pounds for two hours per day, and engage in repetitive movements of the wrists or elbows for one hour.

¹⁴ *Supra* note 9 at Chapter 2.814.9c(7) (June 2013).

¹⁵ The Board finds that OWCP properly applied the provisions of *Shadrick* in determining appellant's loss of wage-earning capacity. *See supra* note 7. The sales retention team member assignment would have paid \$1,165.55 per week, which equals the current pay for appellant's date-of-injury job of \$1,165.55 per week.

¹⁶ *G.C.*, Docket No. 17-0140 (issued April 13, 2017).

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board