

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

<b>S.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 17-0990</b>
	)	<b>Issued: June 12, 2018</b>
<b>DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Dallas, TX, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On April 5, 2017 appellant filed a timely appeal from a March 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met its burden of proof to reduce appellant's compensation benefits on March 14, 2017 based on her capacity to earn wages in the constructed position of customer complaint clerk.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On September 14, 2000 appellant, then a 40-year-old claims examiner, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome due to her repetitive work duties. OWCP accepted the claim for bilateral carpal tunnel syndrome and paid wage-loss compensation benefits. Appellant stopped work on March 6, 2001. On April 24, 2001 she was released to return to work four hours per day with restrictions; and on May 7, 2001 she was released to work eight hours per day with restrictions.<sup>3</sup> This matter was developed under OWCP File No. xxxxxx040.

On March 14, 2002 appellant filed an occupational disease claim for depression. She attributed her depression to being forced to work outside of her medical restrictions and being unable to meet her performance standards. OWCP developed this under File No. xxxxxx176. At the time appellant filed her claim, she was performing a modified position as a result of previous work-related injuries in File No. xxxxxx040.<sup>4</sup> On May 10, 2005 OWCP accepted the claim for depressive disorder.<sup>5</sup> It administratively combined File Nos. xxxxxx040 and xxxxxx176.<sup>6</sup>

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<sup>2</sup> Docket No. 02-0127 (issued August 2, 2002); Docket No. 03-1447 (issued December 4, 2003); Docket No. 03-1592 (issued August 13, 2004); Docket No. 04-1197 (issued April 13, 2005); 05-1623 (issued April 3, 2006); 05-1722 (issued July 11, 2006); 06-1309 & 06-1153 (issued June 14, 2007); 08-1043 (issued April 8, 2009).

<sup>3</sup> In an August 2, 2002 decision, the Board reversed OWCP decisions dated May 29 and July 13, 2001 that suspended appellant's compensation benefits for failure to participate in vocational rehabilitation. Docket No. 02-0127 (issued August 2, 2002). In an August 13, 2004 decision, the Board found that OWCP did not meet its burden of proof to terminate compensation benefits and reinstated her compensation. Docket No. 03-1592 (issued August 13, 2004).

<sup>4</sup> By decisions dated May 7 and December 9, 2002, OWCP denied appellant's claim for an emotional condition. Appellant appealed her claim to the Board. In a December 4, 2003 decision, the Board remanded the case for further development of the medical evidence; *see* Docket No. 03-1447 (issued December 4, 2003). In an April 13, 2005 decision, the Board reversed an OWCP decision dated March 10, 2004 finding that appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty. The Board remanded the case to OWCP for a determination of the nature and extent of any disability causally related to the accepted emotional condition. *See* Docket No. 04-1197 (issued April 13, 2005). *See also* Docket No. 05-1722 (issued July 11, 2006).

<sup>5</sup> In an April 3, 2006 decision, the Board affirmed an OWCP decision dated June 27, 2005, finding that the evidence submitted did not support expanding appellant's emotional condition claim to include diagnoses of anxiety and multiple phobias. Docket No. 05-1623 (issued April 3, 2006).

<sup>6</sup> By decision dated June 14, 2007, the Board reversed an OWCP decision dated May 19, 2006 finding that OWCP did not meet its burden of proof to terminate appellant's compensation benefits for her accepted bilateral carpal tunnel syndrome and emotional condition. Docket Nos. 06-1309 & 06-1153 (issued June 14, 2007). On January 25, 2008 OWCP terminated appellant's wage-loss compensation benefits, effective February 16, 2008, for her bilateral carpal tunnel syndrome. On April 8, 2009 the Board reversed the January 25, 2008 termination decision. Docket No. 08-1043 (issued April 8, 2009).

On August 24, 2004 appellant filed a claim for an occupational disease (Form CA-2) alleging that she developed bilateral cubital tunnel syndrome, neck, bilateral shoulder, and low back pain as a result of performing repetitive duties. OWCP assigned this matter File No. xxxxxx374, and later combined that claim with File Nos. xxxxxx040 and xxxxxx176.<sup>7</sup>

On June 24, 2009 appellant was referred for vocational rehabilitation. In a vocational rehabilitation report dated July 31, 2009, the counselor noted that the employing establishment requested updated medical restrictions before offering appellant a job noting that the most recent medical report from Dr. Olayinka Ogunro, a Board-certified orthopedic surgeon, was from 2007. The employing establishment requested a functional capacity evaluation (FCE).

On August 24, 2009 appellant underwent an FCE which demonstrated symptom magnification. The evaluator noted that appellant was able to function at a light physical level, sedentary, for four hours a day with five-minute breaks to perform stretching exercises.

In a letter dated October 1, 2009, appellant indicated that she obtained a Texas realtor license in June 2004 and continued to keep her license current. She further indicated that in June 2006 she completed her bachelor's degree in general studies.

In a vocational rehabilitation status report dated October 2, 2009, the counselor noted that appellant's case was placed in interrupted status as appellant was being sent out for a second opinion evaluation.<sup>8</sup>

Appellant was treated by Dr. Ogunro on December 5, 2011 and January 10, 2012, for numbness and tingling in both palms, locking in her right index finger, and weakness in grasping. Dr. Ogunro related appellant's history and diagnosed bilateral carpal tunnel syndrome, left cubital tunnel syndrome, possible ligament tear of the right wrist, and tendinitis of the beak ligament of the right thumb. He noted her work status was unknown. On February 14, 2013 Dr. Ogunro noted nerve conduction velocity testing revealed bilateral carpal tunnel syndrome. Appellant did not want surgery, but had a cortisone injection into the left carpal tunnel. In an October 7, 2013 report, Dr. Ogunro related appellant's history and provided findings. Appellant's carpal tunnel symptoms remained active and developed while working as a claims examiner with constant keying throughout the day. Dr. Ogunro indicated that appellant was able to work eight hours a day with keying limited to four hours a day. In a separate October 7, 2013 report, he diagnosed bilateral carpal tunnel syndrome and advised that appellant had not worked since September 5, 2001, but could resume regular duty with typing restricted to four hours a day. On December 10, 2014 Dr. Ogunro noted a positive Phalen's sign bilaterally, negative Tinel's sign, and negative elbow flexion test. He diagnosed bilateral carpal tunnel syndrome and continued conservative treatment.

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<sup>7</sup> By decision dated July 11, 2006, the Board affirmed an OWCP decision dated August 3, 2005 finding that appellant failed to establish that the claimed medical conditions: bilateral cubital tunnel syndrome, neck shoulder, foot, leg and lower back conditions were caused or aggravated by her federal employment work duties. *See* Docket No. 05-1722 (issued July 11, 2006).

<sup>8</sup> Thereafter, in the course of developing the claim, OWCP referred appellant to several second opinion physicians and also to an impartial medical examiner regarding the extent of her condition.

Dr. Ogunro again advised that appellant had not worked since September 5, 2001, but could resume regular duty with typing limited to four hours a day.

On April 15, 2015 appellant was again referred for vocational rehabilitation. She underwent a vocational evaluation on May 22, 2015 which revealed she was capable of working at “skilled to technical level.” Appellant could perform some keyboarding, voice recognition software could improve her ability to type reports, and she would benefit from computer skills and claims processing training.

In a July 29, 2015 rehabilitation plan, the counselor noted that the employing establishment had no work available due to a hiring freeze. A rehabilitation plan was approved with the objective of obtaining a claims position in the Department of Labor. These positions were within appellant’s work restrictions and vocational skills. On August 3, 2015 the counselor advised that they were awaiting approval for a voice activated computer training program and adjuster training.

Dr. Ogunro continued to treat appellant. On December 8, 2015 he related appellant’s complaints of bilateral hand numbness and paresthesia. Dr. Ogunro found a positive Phalen’s sign bilaterally, negative Tinel’s sign bilaterally, decreased sensation over the median distribution, and weak thenar musculature. He diagnosed bilateral carpal tunnel syndrome. Dr. Ogunro repeated appellant had not worked since September 5, 2001 and was capable of working with restrictions on typing no more than four hours a day. He further noted that appellant could use a “voice activated machine ... to accommodate restrictions in an eight-hour workday.”

In a December 21, 2015 amended vocational rehabilitation plan, the counselor advised that the vocational rehabilitation plan would start January 1, 2016 and go to March 30, 2016 which included job placement for 90 days. In a December 23, 2015 letter, OWCP advised appellant that the selected positions were within her work restrictions and readily available within her local commuting area. It further advised her of her responsibility to cooperate with the 90-day placement assistance plan to help her obtain employment.

In a March 28, 2016 OWCP telephone log, the rehabilitation counselor contacted OWCP and indicated that he did not receive a response regarding his December 21, 2015 amended vocational rehabilitation plan and he did not follow-up as he had a death in his family. On May 26, 2016 OWCP requested the vocational rehabilitation counselor close the case due to inactivity. It advised that the case would be reassigned to another counselor. On June 15, 2016 OWCP again referred appellant for vocational rehabilitation services to a new rehabilitation counselor.

In a July 19, 2016 e-mail, appellant questioned why she was being referred to vocational rehabilitation after she participated from April 15, 2015 to the later part of 2015 with another counselor. She indicated that the employing establishment’s Dallas, Texas office did not offer her a claims examiner job with accommodations, but instead hired two new claims examiners.

In vocational rehabilitation reports dated July 30 and September 1, 2016, the successor counselor noted Dr. Ogunro’s work restrictions of typing for four hours a day during an eight-hour workweek. She noted appellant’s past work experience included clerical secretary, claims examiner, and administrative clerk. The counselor noted transferable skills of data entry operator, typing, inventory, invoices, mail clerk, answer telephone, bill payer, customer service, basic

accounting, transcriber, filing, and scheduler. She noted jobs that appellant could perform with limitations and transferable skills included insurance clerk, Department of Labor, *Dictionary of Occupational Titles*, DOT No. 219.367.014 and customer complaint clerk, DOT No. 241.367.014.

In a September 23, 2016 rehabilitation plan, the counselor noted that the employing establishment had no work available. The rehabilitation plan was approved with the objective of obtaining a position as a call out operator, DOT No. 237.367.014, insurance clerk, DOT No. 219.367.014, or a customer complaint clerk, DOT No. 241.367.014. The jobs were found to be within appellant's educational capabilities based on vocational testing and reasonably available within her commuting area. The vocational rehabilitation counselor completed a labor market survey for each position. In a vocational rehabilitation report dated September 26, 2016, the counselor noted that appellant signed the rehabilitation plan, but had concerns with the call out operator salary, noting that this was below her salary requirement.<sup>9</sup>

In an October 20, 2016 letter, OWCP advised appellant that the selected positions of insurance clerk, DOT No. 219.367.014, with a salary of \$874.80 a week, customer complaint clerk, DOT No. 241.367.014, with a salary of \$768.80 a week, and a call out operator, DOT No. 237.367.014, with a salary of \$426.40 a week were within her work restrictions. It also advised her of her responsibility to cooperate with the 90-day placement assistance plan to help her obtain employment. OWCP indicated that at the end of the 90-day period whether she was employed or not, it would likely reduce her compensation based on her ability to earn wages of \$426.40 to \$874.80 a week.

In a vocational rehabilitation report dated October 25, 2016, the counselor noted that she sent appellant job leads based on the transferable skills analysis. Appellant completed her resume and was applying for positions over the internet.

Appellant, in an October 25, 2016 letter, related that her attending physician determined that she could perform the duties of her date-of-injury position as a GS-12 claims examiner. She reported making multiple requests to return to work with accommodations, but was rejected. Appellant attached letters to the employing establishment and the Secretary of Labor requesting that she be offered her GS-12 claims examiner position with accommodations. She also noted filing several EEO complaints due to the employer's lack of cooperation in returning her to the date-of-injury position. Appellant asserted that a loss of wage-earning capacity (LWEC) determination under these circumstances should not be applicable because of her efforts to return to her date-of-injury job. She indicated that, when she applied for employment outside of OWCP, she believed her applications were rejected because of a 15-year gap in her employment history.

In a November 27, 2016 vocational rehabilitation report, the counselor noted sending job leads to appellant and posted her resume on a "Labor for America" job board.

In a December 22, 2016 rehabilitation action report (Form OWCP-44), the counselor noted providing 90 days of job placement, but appellant was unsuccessful in securing employment. She

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<sup>9</sup> In a September 28, 2016 letter to the employing establishment's Dallas, Texas office, appellant requested that she be returned to her GS-12 position as a claims examiner with accommodations. She related making this request because of the departure of a claims examiner from the employing establishment.

requested that the rehabilitation case be closed. In a December 22, 2016 closure report, the counselor indicated that she completed vocational assessment and was able to identify suitable employment objectives that were reasonably available to appellant. She verified the current availability of wages of the job identified and provided information on the worker's wage-earning capacity.

In a December 23, 2016 rehabilitation closure memorandum, OWCP's rehabilitation specialist advised that placement services commenced on September 22 and ended on December 22, 2016. The target positions were insurance clerk, DOT No. 219.367.014, customer complaint clerk, DOT No. 241.367.014, and call out operator, DOT No. 237.367.014. Appellant did not obtain employment and was provided with job leads. The rehabilitation specialist indicated that the targeted positions remain vocationally and medically appropriate as they are within appellant's medical restrictions and her past work experience meets the requirements of these positions. Based on the labor market survey dated September 11, 2016, the targeted positions exist in sufficient numbers within a reasonable commuting area with a salary range of \$426.40 to \$874.80. The rehabilitation specialist further noted that no jobs were available within appellant's agency.

Appellant continued to receive medical treatment from Dr. Ogunro. In a report dated December 29, 2016, Dr. Ogunro noted that appellant still complained of numbness in her hands, but she did not wish to undergo surgery. He reviewed her history and provided examination findings similar to his previous reports. Dr. Ogunro diagnosed bilateral carpal tunnel syndrome. He noted that "this patient stated that she can do her work but with a voice activated system since this will not bother her wrist." Dr. Ogunro recommended follow-up in one year.

By letter dated February 7, 2017, OWCP proposed to reduce appellant's compensation, based on her capacity to earn wages as a customer complaint clerk, DOT No. 241.367.014. It noted that Dr. Ogunro related in a December 8, 2015 report that appellant could work with restrictions of typing not to exceed four hours. OWCP advised that, based on Dr. Ogunro's opinion, appellant had been referred for vocational rehabilitation services, and that the customer complaint position was selected as being the most appropriate, based upon the rehabilitation counselor's review of appellant's work history and transferrable skills analysis. It described the physical requirements of the customer complaint position as sedentary and within the restrictions provided by Dr. Ogunro. OWCP indicated that, based on recent wage and position information, the customer complaint position was reasonably available at an entry pay level of \$768.80 a week. Appellant was afforded 30 days to submit additional evidence or argument in opposition to this proposal.

On March 1, 2017 appellant disagreed with the proposed reduction of compensation. She asserted that she was denied due process because the employing establishment did not issue a job offer to return her to her date-of-injury job as a GS-12 claims examiner. Appellant noted making numerous requests to return to work with accommodations, but she never received a job offer. She indicated that her vocational rehabilitation counselor failed to assign jobs that were vocationally suitable to her date-of-injury position as a claims examiner and were entry level at best. Appellant further noted that to determine whether a customer complaint clerk position was medically suitable the totality of her restrictions should have been addressed including a 10-minute break per hour which was part of her 2003 permanent restrictions. She further indicated that Dr. Ogunro indicated

that she could perform the duties of a claims examiner with a voice activation system to accommodate her work restrictions, but OWCP failed to address how she could perform the duties of a customer complaint clerk without a voice activated system or ergonomic equipment. Appellant further alleged that the customer complaint clerk position exceeded the four-hour typing requirement. She related that typing was similar to fingering and handling. Appellant asserted that to perform fingering and handling occasionally<sup>10</sup> as provided in the job description would exceed the four-hour restriction on typing a day established by Dr. Ogunro. She also submitted evidence previously of record.

By decision dated March 13, 2017, OWCP reduced appellant's wage-loss compensation based on her capacity to earn wages as a customer complaint clerk, effective March 14, 2017.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of the compensation benefits.<sup>11</sup> An injured employee who is either unable to return to the position held at the time of injury or unable to earn equivalent wages, but who is not totally disabled for all gainful employment, is entitled to compensation computed on LWEC.<sup>12</sup>

Under section 8115(a) of FECA, wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity or if the employee has no actual earnings, wage-earning capacity is determined with due regards to the nature of the injury, degree of physical impairment, usual employment, age, qualifications for other employment, the availability of suitable employment and other factors and circumstances which may affect the employee's wage-earning capacity in his or her disabled condition.<sup>13</sup>

OWCP must initially determine a claimant's medical condition and work restrictions before selecting an appropriate position that reflects his or her wage-earning capacity. The medical evidence relied upon which OWCP relies must provide a detailed description of the condition.<sup>14</sup> Additionally, the Board has held that a wage-earning capacity determination must be based on a reasonably current medical evaluation.<sup>15</sup>

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<sup>10</sup> "Occasional" is defined as an activity/condition exists up to one-third of the time. In this case one-third of an 8-hour day is 2 hours and 40 minutes.

<sup>11</sup> *James M. Frashner*, 53 ECAB 794 (2002).

<sup>12</sup> 20 C.F.R. §§ 10.402, 10.403; *John D. Jackson*, 55 ECAB 465 (2004).

<sup>13</sup> 5 U.S.C. § 8115(a); 20 C.F.R. § 10.520; *see Pope D. Cox*, 39 ECAB 143 (1988).

<sup>14</sup> *William H. Woods*, 51 ECAB 619 (2000).

<sup>15</sup> *John D. Jackson*, *supra* note 12.

When OWCP makes a 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 the employee's capabilities with regard to his or 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, local Chamber of Commerce, employer contacts, and actual job postings.<sup>16</sup> Lastly, OWCP applies the principles set forth in *Albert C. Shadrick*,<sup>17</sup> as codified in section 10.403 of OWCP regulations,<sup>18</sup> to determine the percentage of the employee's LWEC.<sup>19</sup>

In determining an employee's wage-earning capacity based on a position deemed suitable, but not actually held, OWCP must consider the degree of physical impairment, including impairments resulting from both injury-related and preexisting conditions, but not impairments resulting from post injury or subsequently acquired conditions. Any incapacity to perform the duties of the selected position resulting from subsequently-acquired conditions is immaterial to the LWEC that can be attributed to the accepted employment injury and for which the claimant may receive compensation.<sup>20</sup>

### ANALYSIS

OWCP issued its March 13, 2017 LWEC determination based on appellant's capacity to earn wages as a customer complaint clerk. As noted above, it must initially determine appellant's medical conditions and work restrictions before selecting an appropriate position that reflects her wage-earning capacity. The medical evidence upon which OWCP relies must provide a detailed description of the condition.<sup>21</sup>

In reports dated October 7, 2013 and December 10, 2014, Dr. Ogunro, appellant's treating physician, reviewed appellant's history, including diagnostic testing. He noted findings and diagnosed bilateral carpal tunnel syndrome. Dr. Ogunro noted that appellant could resume regular duty with restrictions of typing limited to four hours a day. On December 8, 2015 he reiterated his diagnosis and advised that appellant could work with restrictions on typing not more than four hours a day and noted that she could use a voice activated machine to accommodate restrictions in

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<sup>16</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on a Constructed Position*, Chapter 2.816.6.a (June 2013).

<sup>17</sup> *Albert C. Shadrick*, 5 ECAB 376 (1953).

<sup>18</sup> 20 C.F.R. § 10.403.

<sup>19</sup> *Supra* note 11.

<sup>20</sup> *James Henderson, Jr.*, 51 ECAB 268 (2000).

<sup>21</sup> *Supra* note 14.



an eight-hour workday. On December 29, 2016 Dr. Ogunro advised that appellant had stated that she could do her work, but with a voice activated system since this would not bother her wrist. The Board finds that these medically prescribed limitations are within the physical demands of the customer complaint clerk position, which provided sedentary strength level, frequent need to hear and talk, occasional reaching, handling and fingering, occasional need for near acuity and accommodation with moderate level of noise with no climbing, balancing, stooping, kneeling, crouching, or crawling.

Appellant did not submit any medical evidence which showed that she could not work within Dr. Ogunro's restrictions. She asserts that the selected position was not medically suitable. Appellant contended that Dr. Ogunro's work restrictions from 2003 should have been considered, that she required a voice activated system and ergonomic equipment, and that the "handling" and "typing" requirements of the position exceed her four-hour typing restriction. The Board finds these assertions without merit. Dr. Ogunro has consistently provided work restriction of typing not to exceed four hours a day and provided these restrictions on October 7, 2013, December 10, 2014, and December 8, 2015. He has established that appellant's permanent work restrictions were typing not to exceed four hours per day. Regarding a voice activated system, Dr. Ogunro noted in his December 8, 2005 report that "patient can use voice activated machine in order to accommodate restrictions in an eight-hour workday." His December 29, 2016 report noted that "this patient stated that she can do her work but with a voice activated system since this will not bother her wrist." A voice activated system was not a work restriction or a requirement of reemployment, rather, Dr. Ogunro indicated that appellant could work eight hours a day and could use a voice activated system which would not affect the four-hour typing restriction. The Board also notes that the use of ergonomic equipment was not identified by Dr. Ogunro in his reports. With regard to appellant's contention that the "handling" and "typing" requirements of the position exceed her four-hour typing restriction, the record does not support this assertion. Dr. Ogunro's reports do not provide for a reaching, handling, or repetitive motion restriction. Rather, the restriction is limited to typing (fingering) four hours per day. The customer complaint clerk position description provides for reaching, handling and fingering occasionally which is within her restrictions. Therefore, the Board finds that appellant had the physical capacity to perform the duties of the selected position.

The Board also finds that appellant had received the necessary vocational and educational preparation for the selected position of customer complaint clerk. Appellant's past work experience included clerical secretary, claims examiner, and administrative clerk. The rehabilitation counselor noted transferable skills of data entry operator, typing, inventory, invoices, mail clerk, answer telephone, bill payer, customer service, basic accounting, transcriber, filing, and scheduler. The rehabilitation counselor advised that the customer complaint clerk position was reasonably available in the local labor market at a weekly wage of \$768.80.

The Board concludes that OWCP considered the appropriate factors in determining that the position of customer complaint clerk represented appellant's wage-earning capacity.<sup>22</sup> These factors include availability of suitable employment and appellant's physical limitations, usual

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<sup>22</sup> *John D. Jackson, supra* note 12.

employment, age, and employment qualifications.<sup>23</sup> The evidence of record establishes that appellant had the requisite physical ability, skills, 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 customer complaint clerk reflected appellant's wage-earning capacity, and properly reduced her compensation on March 1, 2017.<sup>24</sup>

On appeal appellant reiterated her allegations as set forth in her March 1, 2017 letter, including that the employing establishment should have rehired her. The Board notes that workers' compensation is not the appropriate forum to contest matters regarding the employing establishment personnel decisions.<sup>25</sup> As noted, OWCP considered the appropriate factors in determining that the position of customer complaint clerk represented appellant's wage-earning capacity<sup>26</sup> including the availability of suitable employment and appellant's physical limitations, usual employment, age, and employment qualifications.<sup>27</sup> OWCP properly determined that the position of customer complaint clerk reflected appellant's wage-earning capacity, and properly reduced her compensation on March 14, 2017.

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

### **CONCLUSION**

The Board finds that OWCP met its burden of proof to reduce appellant's compensation benefits based on her capacity to earn wages in the selected position of customer complaint clerk.

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<sup>23</sup> *Id.*

<sup>24</sup> *James Smith*, 53 ECAB 188 (2001).

<sup>25</sup> *See L.S.*, 58 ECAB 249, 252 (2006).

<sup>26</sup> *John D. Jackson*, *supra* note 12.

<sup>27</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2018  
Washington, DC

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

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

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