

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

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**L.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cameron, NC, Employer**

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**Docket No. 20-1594  
Issued: June 23, 2021**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 9, 2020 appellant filed a timely appeal from a May 19, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability for the period December 3, 2018 through February 28, 2020, causally related to her April 5, 2014 employment injury.

## FACTUAL HISTORY

On April 8, 2014 appellant, then a 62-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging injury on April 5, 2014 when she fell off a porch and landed on concrete while in the performance of duty. She did not stop work, but immediately began working in a modified-duty position under specified work restrictions, including no repetitive/strenuous use of the right arm. OWCP accepted appellant's claim for fracture of the right radial neck, right wrist sprain, and mandibular/jaw contusion, and later expanded the acceptance of her claim to include, right rotator cuff sprain, fracture of teeth, and cracked teeth.

OWCP paid appellant wage-loss compensation for disability from work on the supplemental rolls commencing May 30, 2014 and on the periodic rolls commencing April 5, 2015. It last paid appellant wage-loss compensation on the periodic rolls effective August 26, 2016.<sup>3</sup> OWCP paid her compensation for partial disability resulting from her loss of wage-earning capacity (LWEC) in her modified-duty position.<sup>4</sup>

On March 11, 2019 appellant filed claims for compensation (Form CA-7) alleging disability for the periods December 3, 2018 through April 26, 2019, May 11 through November 8, 2019, and November 23, 2019 through February 28, 2020 because she was placed in a modified-duty position due to her accepted April 5, 2014 employment injury. She did not submit any medical evidence in support of her claim.

In a May 19, 2020 documentation memorandum, OWCP outlined the various elements used in the *Shadrick* formula for determining a given claimant's LWEC.<sup>5</sup> It noted that the pay rate on which appellant's compensation was based was \$679.75 per week, effective the date of injury, April 5, 2014. OWCP advised that \$679.75 per week was appellant's salary on April 5, 2014 in her rural carrier associate position (Grade 5/Step Y), and that the figure was supported by an April 21, 2015 fiscal pay memorandum of record. It further noted that the current base pay for a rural carrier associate (Grade 5/Step Y) was \$677.75 per week.<sup>6</sup> OWCP indicated that this figure was supported by several documents, including CA-7 forms of record. It noted that appellant had

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<sup>3</sup> By decision dated August 29, 2017, OWCP granted appellant a schedule award for 13 percent permanent impairment of her right upper extremity and OWCP paid her schedule award compensation for the period of the award, *i.e.*, June 11, 2017 through March 21, 2018.

<sup>4</sup> The Board notes that the case record does not contain a formal LWEC determination.

<sup>5</sup> This formula for determining an LWEC was developed in the case of *Albert C. Shadrick*, 5 ECAB 376 (1953). *See infra* notes 16 through 20.

<sup>6</sup> OWCP inadvertently listed this figure as \$677.96, but corrected the figure to \$677.75 when it later carried out a *Shadrick* formula calculation.

an actual weekly earning capacity of \$825.31 on December 8, 2018, the date that she claimed wage loss commenced.<sup>7</sup> OWCP advised that this figure was supported by CA-7 forms of record.

By decision dated May 19, 2020, OWCP denied appellant's claim for intermittent disability for the period December 3, 2018 through February 28, 2020, noting that it was attaching two documents explaining why she did not suffer wage loss during this period. It attached the above-described May 19, 2020 documentation memorandum and a May 19, 2020 *Shadrick* formula calculation, which incorporated the various elements described in the May 19, 2020 documentation memorandum. The May 19, 2020 *Shadrick* formula calculation derived a wage-earning capacity percentage of 122 percent by dividing appellant's actual weekly earning capacity (\$825.31) by the current weekly pay rate for her job and step when injured (\$677.75). The wage-earning amount was derived by multiplying the wage-earning capacity percentage of 122 percent times her pay rate when disability began (\$679.75). Because the resultant wage-earning amount (\$829.30) was greater than appellant's pay rate when disability began (\$679.75), OWCP noted that application of the *Shadrick* formula showed that appellant had no wage loss for the claimed period.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup> Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>9</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>10</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>11</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>12</sup>

Section 8105(a) of FECA provides: "If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his

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<sup>7</sup> The \$825.31 figure is derived by converting the actual earnings for six days listed in the document (\$808.76) to a seven-day or week figure.

<sup>8</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> 20 C.F.R. § 10.5(f).

<sup>10</sup> See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>11</sup> See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>12</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

[or her] monthly pay, which is known as his [or her] basic compensation for total disability.”<sup>13</sup> Section 8101(4) of FECA defines “monthly pay” for purposes of computing compensation benefits as follows: “[T]he monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater....”<sup>14</sup> OWCP’s regulations define “disability” as “the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”<sup>15</sup>

The formula for determining loss of wage-earning capacity, developed in the case of *Albert C. Shadrick*,<sup>16</sup> has been codified at section 10.403(c)-(e) of OWCP’s regulations.<sup>17</sup> Under the *Shadrick* formula, OWCP calculates an employee’s wage-earning capacity in terms of percentage by dividing the employee’s actual earnings (or constructed earnings) by the current or updated pay rate for the position held at the time of injury.<sup>18</sup> The employee’s wage-earning capacity in dollars is computed by first multiplying the pay rate for compensation purposes, defined in 20 C.F.R. § 10.5(a) as the pay rate at the time of injury, the time disability begins or the time disability recurs, whichever is greater, by the percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain loss of wage-earning capacity.<sup>19</sup> The regulations further provide:

“The employee’s wage-earning capacity in terms of percentage is computed by dividing the employee’s earnings by the current pay rate. The comparison of earnings and ‘current’ pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. OWCP may use any convenient date for making the comparison as long as both wage rates are in effect on the date used for comparison.”<sup>20</sup>

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<sup>13</sup> 5 U.S.C. § 8105(a). Section 8110(b) of FECA provides that total disability compensation will equal three fourths of an employee’s monthly pay when the employee has one or more dependents. 5 U.S.C. § 8110(b).

<sup>14</sup> 5 U.S.C. § 8101(4).

<sup>15</sup> 20 C.F.R. § 10.5(f).

<sup>16</sup> 5 ECAB 376 (1953).

<sup>17</sup> 20 C.F.R. § 10.403(c)-(e).

<sup>18</sup> *Id.* at § 10.403(c)-(d). In the *Shadrick* formula, line (1) represents the weekly pay rate of record as derived from section 8101(4) and associated sections of FECA; line (2) represents the current weekly pay rate for the job and step when injured; and line (3) represents the injured employee’s constructed or actual weekly earnings. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on Actual Earnings*, Chapter 2.815.4b (June 2013).

<sup>19</sup> *Id.* at § 10.403(e).

<sup>20</sup> *Id.* at § 10.403(d).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period December 3, 2018 through February 28, 2020, causally related to her April 5, 2014 employment injury.

Appellant alleged disability for the periods December 3, 2018 through April 26, 2019, May 11 through November 8, 2019, and November 23, 2019 through February 28, 2020, because she was placed in a modified position due to her accepted April 5, 2014 employment injury. However, the Board finds that she has not established such disability.<sup>21</sup>

The Board finds that OWCP provided documentation in connection with its May 19, 2020 decision, which demonstrates that appellant did not have disability for the periods December 3, 2018 through April 26, 2019, May 11 through November 8, 2019, and November 23, 2019 through February 28, 2020, as claimed. It attached two documents explaining why she did not suffer disability during these periods, including a May 19, 2020 documentation memorandum and a May 19, 2020 *Shadrick* formula calculation, which was correctly carried out by incorporating the various elements described in the May 19, 2020 documentation memorandum.<sup>22</sup> The May 19, 2020 *Shadrick* formula calculation properly derived a wage-earning capacity percentage of 122 percent by dividing appellant's actual weekly earning capacity (\$825.31) by the current weekly pay rate for her job and step when injured (\$677.75). The wage-earning amount was correctly derived by multiplying the wage-earning capacity percentage of 122 percent times her pay rate when disability began (\$679.75). Because the resultant wage-earning amount (\$829.30) was greater appellant's pay rate when disability began (\$679.75),<sup>23</sup> OWCP properly noted that application of the *Shadrick* formula showed that she had no wage loss for the claimed period.<sup>24</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period December 3, 2018 through February 28, 2020, causally related to her April 5, 2014 employment injury.

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<sup>21</sup> The Board notes that appellant has not claimed or otherwise established that she had intermittent disability for the period December 3, 2018 through February 28, 2020 due to a worsening of her employment-related injury. *See supra* note 12.

<sup>22</sup> *See supra* notes 16 through 20 for a discussion of the *Shadrick* formula.

<sup>23</sup> The Board finds that OWCP properly based the \$679.75 figure on appellant's weekly pay rate on April 5, 2014, which was both the date of injury and the date when disability began. *See supra* note 14.

<sup>24</sup> *See supra* note 19.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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