United States Department of Labor
Employees' Compensation Appeals Board

S.F., Appellant	)	
and	)	
DEPARTMENT OF COMMERCE, NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION, Woods Hole, MA, Employer	)	**Docket No. 20-0869** **Issued: October 14, 2021**

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 11, 2020 appellant, through counsel, filed a timely appeal from a January 6, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether OWCP has met its burden of proof to reduce appellant's wage-loss compensation, effective August 18, 2019, based on his capacity to earn wages in the constructed position of security guard/system monitor.

FACTUAL HISTORY

On October 2, 2014 appellant, then a 55-year-old skilled fisherman, filed a traumatic injury claim (Form CA-1) alleging that he sustained a low back injury during labor intensive trawling operations when he slipped while pulling a heavy net after dumping the bag in the sorting checker, which placed his lumbar spine in an awkward position, in the performance of duty. He stopped work on October 6, 2014.

In an October 24, 2014 report, Dr. Adnan Elamine, a Board-certified internist, noted that appellant's neck was supple with full range of motion (ROM), no masses, and no cervical lymphadenopathy (LAD). He diagnosed low back pain, lumbago, and noted that x-rays revealed diffuse lumbar spine degenerative changes. On October 28, 2015 OWCP accepted the claim for lumbar sprain, L5 radiculopathy, lumbar region, traumatic arthritis, right hip. It initially paid appellant wage-loss compensation on the supplemental rolls, and then on the periodic rolls as of December 11, 2016.

In a November 17, 2016 report, Dr. Alan Geller, a Board-certified neurologist and treating physician, related that since he last evaluated appellant in January, appellant had noticed atrophy of his right hand muscles. He noted active problems of cervical myelopathy, cervical radiculopathy, hip arthritis, lumbar radiculopathy, and sciatica. Dr. Geller reported that appellant was attending a work hardening program after completing his physical therapy program. He diagnosed sciatica, lumbar radiculopathy, hip arthritis, cervical myelopathy, and cervical radiculopathy. Dr. Geller opined that the crush injury appellant sustained at work on September 30, 2014, severely exacerbated lumbar spine arthritic changes and produced traumatic bursitis of the right trochanteric bursa. He also opined, "In all likelihood, he also sustained simultaneous trauma to his cervical spine, resulting in his spinal canal stenosis and C7-8 radiculopathy on the right with resultant right hand weakness. Appellant is completely disabled from working as a professional fisherman because of these work-related injuries."

On September 13, 2017 Dr. Geller completed a work capacity evaluation (Form OWCP-5c) in which he related that appellant would be unable to return to his date-of-injury position as he was unable to sit for prolonged periods of time due to herniated lumbar disc, radiculopathy, and trochanter bursitis. He noted that appellant initially complained of low back and hip pain following the employment injury, however, in May 2016 he was found to have scarring at C4-5 and C5-6 for which he underwent cervical spine surgery.

In an October 6, 2017 report, Dr. Michael Geary, a sports medicine specialist and treating physician, diagnosed osteoarthritis of the right hip. He related that appellant felt that he was unable to work due to hip pain caused by osteoarthritis. Dr. Michael Geary completed a Form OWCP 5c on October 6, 2017 indicating that appellant could perform sedentary work for eight hours a day.

In a November 1, 2017 report, Dr. Geller opined that appellant was completely disabled because of an injury that occurred on September 30, 2014, while working as a government fisherman. He explained that as a result of the crush injury, appellant sustained right hip arthritis and bursitis and right groin pain that worsened with weight bearing and movement at the hip. Dr. Geller noted that appellant sustained right lumbar radiculopathy in the L4 and L5 distribution with sciatica and continued to experience pain involving his right buttock and low back, radiating into the posterior right thigh, calf and foot, with subjective numbness involving a similar distribution. He found L4-5 right neuroforaminal stenosis caused by severe facet arthropathy and posterior disc bulge with right foramina disc protrusion. Dr. Geller explained that these findings were revealed on the magnetic resonance imaging (MRI) scan of January 30, 2015, were the cause of the symptoms of sciatica on the right, and were the direct result of the crush injury that appellant sustained on September 30, 2014. He opined that the employment-related conditions had not resolved, had worsened over time, and that appellant could not return to work of any kind, with or without restrictions.

In January 23, 2018 letters to Dr. Geller and Dr. Michael Geary, OWCP noted that there was a discrepancy regarding appellant's ability to perform any type of work and requested clarification.

In a February 16, 2018 report, Dr. Michael Geary opined that appellant could not return to his previous employment as a fisherman. He explained that appellant's hip condition did not allow him to perform this job, as he was unable to stand and walk for prolonged periods. Dr. Michael Geary also noted that appellant was unable to squat, kneel, and climb, and that he was completely disabled from any lifting or prolonged sitting. He opined that appellant was disabled and could not return to work in any capacity.

On May 29, 2018 OWCP prepared a statement of accepted facts (SOAF) and referred appellant for a second opinion examination with Dr. Christopher Geary, a Board-certified orthopedic surgeon, to determine the nature of appellant's condition, extent of disability, and appropriate treatment.

In a June 14, 2018 report, Dr. Christopher Geary noted appellant's history of injury and that appellant had explained that he twisted his back and hip during the employment incident. He also reviewed appellant's prior medical treatment and the SOAF. Dr. Christopher Geary examined appellant and provided findings. He noted that appellant's work-related conditions had not resolved, finding that appellant walked with an antalgic gait, had decreased ROM and groin pain, as well as a positive straight leg raise and decreased light-touch sensation. Dr. Christopher Geary opined that appellant had reached maximum medical improvement (MMI). Regarding return to work, he advised that appellant was unable to return to his previous job as a mariner; however, he opined that appellant could work at a sedentary job. Dr. Christopher Geary completed a Form OWCP-5c and provided restrictions of: no more than two hours of walking or standing; no more than four hours of twisting, bending, and stooping; no more than one hour of operating a motor vehicle at work, or to and from work; no more than four hours of pushing, pulling, and lifting; no more than six hours of squatting, kneeling, and climbing; and no lifting of more than 10 pounds.

In a letter dated June 28, 2018, addressed to the employing establishment, OWCP requested, if possible, that a position be offered to appellant in writing, within the restrictions provided by Dr. Christopher Geary, the second opinion physician.

In letters dated June 28 and 29, 2018, OWCP referred appellant for vocational rehabilitation to identify an employment position within the restrictions provided by Dr. Christopher Geary.

In a letter dated July 9, 2018, Andrea Pelfrey, a registered nurse and medical case manager with the employing establishment, noted that it was unable to extend a sedentary job offer to appellant, and that it concurred with appellant's referral for vocational rehabilitation.

In an October 10, 2018 report, Dr. Geller related a history of injury that appellant slipped on September 30, 2014 and landed on his buttocks, at the same time his neck "descended and landed on his lower abdomen." He further explained that it was likely that appellant's spinal cord injury occurred as a result of whiplash caused by his slip and fall just prior to the crush injury caused by the falling net full of fish and that this cervical spinal cord injury had in all likelihood contributed to appellant's right-hand weakness and clumsiness. Dr. Geller indicated that he disagreed with Dr. Christopher Geary's work capacity evaluation because it did not take into account that appellant had a spinal cord injury and right hand clumsiness that would prevent him from repetitive pushing, pulling, and lifting. He opined that appellant was completely disabled from any occupation because of injuries directly resulting from his work-related trauma on September 30, 2014.

In an October 18, 2018 report, the vocational rehabilitation counselor described appellant's education, training, and work experience and noted that testing had been performed and that three sedentary jobs had been identified for appellant that were within his medical restrictions and reasonably available in his commuting area. The positions identified were: dispatcher, *Dictionary of Occupational Titles* (DOT) No. 379.362-010; security guard/system monitor, DOT No. 379.367-010; and electronics worker, DOT No. 726.684-110. The vocational rehabilitation counselor also completed a job classification (Form CA-66) on October 12, 2018, and noted that the security guard/system monitor position was sedentary, required no climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, taste/smelling, far visual acuity, depth perception, accommodation, color vision, or field of vision, and required frequent talking, hearing, and near visual acuity, all of which were consistent with appellant's medical restrictions. He also noted that appellant had a degree in criminal justice and advised that appellant met the specific vocational preparation required for the position as it was unskilled and did not require prior experience or training. The vocational rehabilitation counselor advised that the position was reasonably available within appellant's commuting area, based on the April 1, 2018 employment data from the Bureau of Labor Statistics (BLS) and from a private source, and the entry level wage for the position was $11.55 per hour.

In a February 26, 2019 report, the vocational rehabilitation counselor noted that Dr. Christopher Geary indicated that appellant was capable of working in a sedentary position for eight hours per day, walking or standing for two hours per day, operating a motor vehicle at work for one hour per day, with limits on pushing, pulling, and lifting up to 10 pounds for up to four

hours per day each. However, the vocational rehabilitation counselor related that appellant considered himself totally disabled and did not sign the rehabilitation plan.

In a letter dated March 21, 2019, OWCP informed appellant that it was advised that he had refused to cooperate with the OWCP-approved training program and that pursuant to Section 8113(b) of FECA (5 U.S.C. § 8113 (b)), if he failed without good cause to participate in the vocational rehabilitation process when so directed, OWCP would reduce his compensation based upon what would have been his wage-earning capacity had he not failed to undergo vocational rehabilitation.

In a letter dated April 5, 2019, appellant, through counsel, denied that he had failed to cooperate. Counsel argued that appellant did not sign the rehabilitation plan because it would foreclose him from his ongoing compensation payments, and that his treating physicians had explained why appellant could not participate. Counsel also argued that if a conflict existed in the medical evidence regarding appellant's ability to participate in vocational rehabilitation then he should be referred for an impartial medical evaluation.

In an April 20, 2019 report, the vocational rehabilitation counselor noted that on April 16, 2019, he spoke with appellant by telephone, that appellant was in California until June, and that he was currently unable to cooperate due to his location.

On April 22, 2019 placement assistance and vocational rehabilitation services were terminated due to appellant's lack of compliance and refusal to sign the rehabilitation plan.

In a letter dated May 10, 2019, OWCP informed counsel for appellant that it found that appellant obstructed vocational rehabilitation by refusing to sign the rehabilitation plan and by being unavailable to attend meetings with the rehabilitation specialist.

On June 5, 2019 OWCP issued a *Shadrick* documentation memorandum. It noted that appellant's total date-of-injury pay rate was $797.79. It also found that the constructed position chosen was that of security guard/system monitor, with constructed earnings of $462.00 per week, effective October 12, 2018, based upon the Labor Market Survey of October 12, 2018.

On June 11, 2019 OWCP notified appellant that it proposed to reduce his wage-loss compensation based on his capacity to earn wages in the constructed position of security guard/system monitor DOT No. 379.367-010 at the weekly pay rate of $462.00. It noted that the physical requirements of the security guard/system monitor position did not exceed appellant's medical restrictions and that the October 10, 2018 report of Dr. Geller indicated that there was no neck or cervical injury at the time of the employment injury. OWCP also found that the position was vocationally suitable, based on the rehabilitation counselor's report. Based on the weekly pay rate of $462.00, OWCP calculated 54 percent wage-earning capacity using the *Shadrick* formula and specified a new periodic compensation rate of $1,173.00. It afforded appellant 30 days to submit evidence and argument regarding the proposed reduction of his compensation and attached the job classification for the security guard/system monitor position completed by the vocational rehabilitation counselor on October 18, 2018, and Dr. Christopher Geary's June 14, 2018 work restrictions.

On June 14, 2019 OWCP received a letter from appellant dated June 10, 2019. He argued that his own physicians had related that he was totally disabled from work and that Dr. Christopher Geary indicated that he could push, pull, and lift up to 10 pounds for four hours per day and that these restrictions did not conform to sedentary work. He noted that he had cooperated with vocational rehabilitation, but that he had travelled to California to visit his family as his daughter had graduated from medical school. On July 11, 2019 appellant further noted that he had never heard of the sedentary positions listed in the notice of proposed reduction.

By decision dated July 30, 2019, OWCP reduced appellant's wage-loss compensation, effective August 8, 2019, consistent with its finding that the constructed position of security guard/system monitor DOT No. 379.367-010 with weekly earnings of $462.00, represented his wage-earning capacity.

On August 7, 2019 appellant, through counsel, requested a telephonic hearing, before a representative of OWCP's Branch of Hearings and Review, which was held on November 4, 2019.

In an October 29, 2019 report, Dr. George Cuchural, a Board-certified internist, noted that appellant had severe right hip pain with decreased range of motion that was attributed to traumatic arthritis "as a function of crush injury when working as a seaman." He also noted that appellant had a history of severe cervical spinal cord trauma causing right-hand clumsiness and weakness. Dr. Cuchural indicated that an MRI scan from November 2016 showed severe degenerative stenosis at C4-5 and C5-6 with cord deformity and cord high signal at the C4-5 right paracentral disc osteophyte complex that would produce severe impingement at the right C5 root. He noted that a follow-up cervical spine x-ray in February 2019 showed anterolisthesis of C3 and C4 with dynamic instability and flexion and significant multilevel cervical spondylosis on x-ray. Dr. Cuchural found L5 radiculopathy that resulted in lower extremity pain, numbness, and weakness. He also noted that appellant recently had become unsteady and had fallen a few times because of right leg numbness and instability. Dr. Cuchural opined that appellant was unable to walk or stand for any prolonged period and was unable to squat, kneel, or climb. He indicated that he concurred with Dr. Geller that appellant was unable to work even a sedentary job due to his work-related injuries.

On December 6, 2019 OWCP received a July 22, 2019 report from Dr. Geller who examined appellant and provided findings. Dr. Geller noted that appellant had a crush injury involving his abdomen and pelvic area and low back and right hip producing multilevel spondylotic changes of the low back and traumatic arthritis and bursitis of the right hip. He opined that the cervical spine disease with spinal cord scarring and spinal arthritis were caused by the cumulative traumas that appellant sustained working as a professional fisherman and that these conditions were worsened "most likely" during his September 30, 2014 injury. Dr. Geller further opined that appellant was completely and permanently disabled from work because of his employment-related injury of September 30, 2014.

By decision dated January 6, 2020, an OWCP hearing representative affirmed the June 30, 2019 decision. The hearing representative noted that Dr. Cuchural and Dr. Geller supported total disability based upon unaccepted cervical and right upper extremity hand conditions. The hearing representative further noted that they did not explain the basis for their opinions and their reports indicated that appellant first began treatment for the cervical spine on November 17, 2016, when

Dr. Geller diagnosed cervical myelopathy and radiculopathy, more than two years later after the September 30, 2014 work injury. The hearing representative found that Dr. Geller did not address the delay of more than two years prior to onset of symptomatology, provided an equivocal statement, and little rationale. The hearing representative also found that Dr. Cuchural supported total disability based partly upon the cervical conditions, but did not indicate they were employment related. The hearing representative explained that medical conditions that developed following the accepted injury did not have to be considered in a loss of wage-earning capacity (LWEC) determination.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of the compensation benefits.[3] 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.[4]

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.[5] If the actual earnings do not fairly and reasonably represent wage-earning capacity, or if the employee has no actual earnings, the wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, the usual employment, age, qualifications for other employment, the availability of suitable employment, and other factors and circumstances which may affect the wage-earning capacity in his or her disabled condition.[6] Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions. The job selected for determining wage-earning capacity must be a job reasonably available in the general labor market in the commuting area in which the employee lives. The fact that an employee has been unsuccessful in obtaining work in the selected position does not establish that the work is not reasonably available in his or her commuting area.[7]

OWCP must initially determine an employee's medical condition and work restrictions before selecting an appropriate position that reflects his or her wage-earning capacity. The medical evidence upon which OWCP relies must provide a detailed description of the employee's medical

[3] *See S.C.,* Docket No. 19-1381 (issued November 24, 2020); *C.H.,* Docket No. 19-0136 (issued May 23, 2019).

[4] *J.F.,* Docket No. 19-0864 (issued October 25, 2019).

[5] 5 U.S.C. § 8115(a).

[6] *C.M.,* Docket No. 18-1326 (issued January 4, 2019).

[7] *Id.*

condition.[8] Additionally, the Board has held that a wage-earning capacity determination must be based on a reasonably current medical evaluation.[9]

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.[10] Any incapacity to perform the duties of the selected position resulting from subsequently-acquired conditions is immaterial to LWEC that can be attributed to the accepted employment injury and for which the claimant may receive compensation.[11]

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 DOT 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, a local "Chamber of Commerce," employing establishment contacts, and actual job postings.[12] Lastly, OWCP applies the principles set forth in *Albert C. Shadrick*,[13] as codified in section 10.403 of OWCP's regulations,[14] to determine the percentage of the employee's LWEC.

ANALYSIS

The Board finds that OWCP has met its burden of proof to reduce appellant's wage-loss compensation, effective August 8, 2019, based on his capacity to earn wages in the constructed position of security guard/system monitor.

Appellant's attending physicians, Dr. Geller and Dr. Cuchural, opined that appellant was totally disabled from any work. Dr. Geller in his November 17, 2016 and July 22, 2019 reports noted a "crush injury" and in his October 10, 2018 report related that during the accepted employment incident appellant fell on his buttocks and as he fell his neck descended and landed on his abdomen. His history of injury is, however, inconsistent with the history provided on appellant's CA-1 form which indicated that appellant sustained a low back injury when he slipped "while pulling on a heavy net after dumping the bag in the sorting checker causing his back to be

[8] *J.H.,* Docket No. 18-1319 (issued June 26, 2019).

[9] *Id.*

[10] *G.E.*, Docket No. 18-0663 (issued December 21, 2018).

[11] *Id.*

[12] *C.M.*, *supra* note 6; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Vocational Rehabilitation Services*, Chapter 2.813.7(a)(3) (February 2011).

[13] 5 ECAB 376 (1953).

[14] 20 C.F.R. § 10.403.

put in an awkward position." The Board has previously explained that medical reports which contain an incorrect history of injury are of limited probative value.[15] The Board further notes Dr. Geller diagnosed cervical spine disease with spinal cord scarring and spinal arthritis caused by the cumulative traumas that appellant sustained working as a professional fisherman and opined that those conditions were worsened "most likely" by the September 30, 2014 work injury. The Board finds that this opinion is speculative and does not offer a firm opinion that these conditions were preexisting. The Board has held that medical opinions that are speculative or equivocal have little probative value.[16] The Board notes that the record reveals treatment for a cervical condition was not until November 17, 2016, more than two years after the September 30, 2014 employment incident. Where suitability is to be determined based on a position not actually held, the selected position must accommodate the employee's limitations from both injury-related and preexisting conditions, but not limitations attributable to post-injury or subsequently-acquired conditions.[17] As such, Dr. Geller's report fails to establish that appellant was completely disabled from work due to the accepted conditions of lumbar sprain, L5 radiculopathy, lumbar region, and traumatic arthritis, right hip.

Dr. Cuchural also opined that appellant was completely disabled from work due to severe cervical spine cord trauma causing right-hand clumsiness and weakness. While he related that appellant attributed the conditions to the work injury, Dr. Cuchural did not opine that appellant's diagnosed conditions were caused or aggravated by the accepted employment injury on September 30, 2014. He did not explain how the conditions would be preexisting, in light of the first mention of treatment not occurring until almost two years later. To the extent that the diagnosed conditions developed afterwards, they are not considered in the LWEC determination.[18]

Appellant's treating physician, Dr. Michael Geary initially completed a Form OWCP- 5c on October 6, 2017 indicating that appellant could perform sedentary work for eight hours a day. However, in a February 16, 2018 report, Dr. Michael Geary opined that appellant could not return to his previous employment as a fisherman as he was unable to stand and walk for prolonged periods. He also noted that appellant was unable to squat, kneel, and climb, and could not lift or sit for prolonged periods of time and concluded that appellant could not return to work in any capacity. The Board finds that Dr. Michael Geary's February 16, 2018 report was conclusory, as he did not explain why appellant's condition had worsened such that he could no longer perform sedentary work. The Board has held that a medical opinion is of limited probative value if it is conclusory in nature.[19] This report is, therefore, insufficient to establish total disability.

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[15] *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *see J.M.*, Docket No. 17-1002 (issued August 22, 2017) (a medical opinion must reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions).

[16] *See A.G.,* Docket No. 20-1319 (issued May 19, 2021); *see R.W.*, Docket No. 19-0844 (issued May 29, 2020).

[17] *See L.M.,* Docket No. 20-1038 (issued March 10, 2021); *N.J.*, 59 ECAB 171, 176 (2007); Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 2.816.4c (June 2013).

[18] *Id*.

[19] *C.M.,* Docket No. 19-0360 (issued February 25, 2020).

The second opinion physician, Dr. Christopher Geary, opined that appellant could perform sedentary duties, with walking and standing for two hours, twisting for four hours, bending and stooping for four hours, and operating a motor vehicle at work for one hour, with restrictions on pushing, pulling, lifting, squatting, kneeling, and climbing. OWCP, therefore, properly referred appellant for vocational rehabilitation in June 2018, as the medical evidence established that he no longer was totally disabled from work due to residuals of his employment injury.[20]

The Board finds that OWCP properly determined that appellant had the physical capacity to perform the duties of a security guard/system monitor and considered both injury-related and preexisting conditions. OWCP explained why the cervical condition was not considered a preexisting condition. The vocational rehabilitation counselor noted that the position of security guard/system monitor allowed for a variety of duties, none of which exceeded appellant's medical restrictions as provided by Dr. Christopher Geary. The Board, therefore, finds that the weight of the medical evidence establishes that appellant had the physical capacity to perform the duties of the selected position.[21]

In assessing the employee's ability to perform the selected position, OWCP must consider not only physical limitations, but also consider work experience, age, mental capacity, and educational background.[22] In an October 12, 2018 report, the rehabilitation counselor indicated that the security guard/system monitor position was vocationally suitable for appellant and available in appellant's commuting area. The report noted that the source of wage data was a BLS labor market survey dated April 1, 2018, which revealed a wage of $11.55 per hour for the entry level position. As the rehabilitation counselor is an expert in the field of vocational rehabilitation, OWCP may rely on their opinion in determining whether a job is vocationally suitable and reasonably available.[23]

The Board finds that OWCP considered the proper factors, including the availability of suitable employment and appellant's physical limitations and employment qualifications in determining that he had the capacity to perform the position of security guard/system monitor.[24] It properly applied the *Shadrick* formula, as codified in section 10.403 of its regulations,[25] in determining appellant's LWEC and reducing his compensation. The Board thus finds that OWCP properly determined that the position of security guard/system monitor reflected appellant's wage-earning capacity.[26]

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[20] *Id*.

[21] *Id*.

[22] *C.M.*, *supra* note 6.

[23] *C.H., supra* note 3; Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 2.816.6(b) (June 2013).

[24] *T.B.,* Docket No. 17-1777 (issued January 16, 2019).

[25] 20 C.F.R. § 10.403.

[26] *C.M., supra* note 6.

CONCLUSION

The Board finds that OWCP has met its burden of proof to reduce appellant's wage-loss compensation, effective August 18, 2019, based on his capacity to earn wages in the constructed position of security guard/system monitor.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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