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<b>J.G., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 25-0471</b>
	)	<b>Issued: June 3, 2025</b>
<b>U.S. POSTAL SERVICE, WILLOW SPRINGS</b>	)	
<b>POST OFFICE, Willow Springs, MO, Employer</b>	)	
	)	

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

## DECISION AND ORDER

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

## JURISDICTION

On April 10, 2025 appellant, through counsel, filed a timely appeal from a March 28, 2025 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.

<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 OWCP properly reduced appellant's wage-loss compensation benefits, effective September 20, 2024, based on her capacity to earn wages in the constructed position of supervisor -- telephone information.

## **FACTUAL HISTORY**

On September 19, 2022 appellant, then a 68-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on September 7, 2022 she sustained left shoulder, neck, upper back, and arm injuries due to a motor vehicle accident while in the performance of duty. She stopped work on the date of injury and returned to work on September 12, 2022. OWCP accepted the claim for neck muscle, tendon, and fascia strain and cervicgia. It subsequently expanded the acceptance of the claim to include left shoulder impingement. OWCP paid appellant wage-loss compensation on the supplemental rolls effective October 24, 2022, and on the periodic rolls effective December 3, 2023.

On February 17, 2023 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Edwin Roeder, a Board-certified orthopedic surgeon, for a second opinion examination to determine the status of her accepted medical conditions and extent of disability.

In a report dated March 7, 2023, Dr. Roeder recounted appellant's history of injury and medical treatment. He diagnosed neck strain and cervicgia. Dr. Roeder found that appellant was capable of returning to sedentary work, but he recommended that she undergo a functional capacity evaluation (FCE) to determine her work restrictions. He also recommended that appellant undergo an electromyography/nerve conduction velocity (EMG/NCV) study to rule out brachial plexus injury. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Roeder related that appellant was unable to raise her left arm above the shoulder. He also indicated that appellant's work restrictions included no more than two hours of pushing, pulling, and lifting up to five pounds with her left arm.

In a March 9, 2023 report, Dr. Joseph A. Marino, Board-certified in family medicine, related that appellant was currently unable to return to work and would be reevaluated following her EMG/NCV neurology appointment.

Appellant underwent an FCE on April 5, 2023, which found appellant capable of light work, with lifting restrictions.

A May 16, 2023 EMG/NCV report indicated findings of left median sensory neuropathy consistent with carpal tunnel syndrome, normal median motor/sensory nerve studies, normal radial sensory nerve studies, normal suprascapular motor nerve studies, and normal EMG with no evidence of cervical radiculopathy, myopathy or plexopathy.

Dr. Roeder, in a supplemental report dated May 23, 2023, related that his opinion was unchanged, following his review of appellant's May 16, 2023 EMG/NCV. He opined that she had residuals of the accepted conditions of neck strain and cervicgia, with residual tenderness over her paracervical and scapular musculature and painful motion of the left shoulder as a result of the

employment injury. Dr. Roeder concluded that appellant did not require further medical treatment, and that she was capable of performing sedentary work. In a Form OWCP-5c of even date, he noted that appellant was unable to perform her date-of-injury job, but was capable of performing sedentary work for eight hours per day.

In a supplemental report dated July 13, 2023, Dr. Roeder explained that appellant's persistent subjective pain complaints and objective findings of painful motion and tenderness were not present prior to the accepted September 7, 2022 employment injury, therefore, she did not sustain a normal soft tissue strain. However, the exact cause of her pain was not identified by the diagnostic studies.

In a July 19, 2023 report, Dr. Marino reviewed the April 5, 2023 FCE and agreed that appellant was capable of working light duty, with restrictions on use of her left upper extremity.

Dr. Roeder, in a September 15, 2023 supplemental report, reviewed the April 5, 2023 FCE, which indicated that appellant was capable of working in a light-duty position. He related that based on the FCE, appellant's restrictions were up to 16 pounds of occasional lifting, up to 10 pounds of frequent lifting, and up to 4 pounds of constant lifting.

In a November 1, 2023 report, Dr. Marino reviewed the FCE and Dr. Roeder's reports. He agreed that appellant was capable of working in a light-duty job with restrictions including occasional lifting up to 16 pounds, frequent lifting up to 10 pounds, and constant lifting up to 4 pounds.

On December 6, 2023 OWCP referred appellant for vocational rehabilitation services.

In a vocational rehabilitation action report (Form OWCP-44) dated December 8, 2023, the vocational rehabilitation counselor requested waiver of a vocational evaluation as appellant had sufficient transferable skills based on her experience working as an office manager, plant manager, census taker, and rural carrier. Additionally, the vocational rehabilitation counselor reported that appellant had completed training in computer systems.

On March 5, 2024 the OWCP vocational rehabilitation counselor completed a job classification and labor market report (Form OWCP-66) for the position of supervisor -- telephone information, Department of Labor, *Dictionary of Occupational Titles* (DOT) No. 237.137-010. The duties of the position included coordinating activities of workers engaged in providing bus service information; conferring with management to project staffing, budget, and equipment requirements; issuing oral and written instructions on schedule changes and rates to keep workers informed and maintain accuracy of information given to public; monitoring telephone conversation between workers and callers to evaluate technical accuracy; reading telephone operator's meter to determine volume of calls handled and hourly total cost of lost calls; conducting classroom and on-the-job training; and submitting reports to provide information for the accounting department. The physical requirements of the position required sedentary work with occasional lifting of up to 10 pounds. Appellant determined that the supervisor -- telephone information position was within appellant's work restrictions as provided by Dr. Roeder. The vocational rehabilitation counselor found that the position was performed in sufficient numbers in appellant's geographic commuting area at an average weekly wage of \$639.60.

In a March 14, 2024 letter, OWCP advised appellant that the selected position of supervisor -- telephone information was within her medical restrictions and that she would receive 90 days of placement assistance to help locate work in this position. It further explained that appellant's wage-loss compensation benefits would be reduced based upon the salary of supervisor -- telephone information at the end of the 90-day placement assistance period.

By notice of proposed reduction dated August 13, 2024, OWCP informed appellant that it proposed to reduce her wage-loss compensation, pursuant to 5 U.S.C. § 8106 and 5 U.S.C. § 8115, because she had the capacity to earn \$639.60 in weekly wages in the constructed position of supervisor -- telephone information, DOT No. 237.137-010. It informed her that the opinion of Dr. Roeder and the April 5, 2023 FCE represented the best assessment of her capacity to work and that her vocational rehabilitation counselor properly determined that she was vocationally and medically capable of working as a supervisor -- telephone information. As appellant's wage-earning capacity was 46 percent of the current pay of the job she held when injured, OWCP proposed to reduce her wage-loss compensation benefits to \$2,162.00 every four weeks. This represented a loss of wage-earning capacity (LWEC) of 54 percent. OWCP afforded appellant 30 days to submit evidence and argument regarding the proposed reduction of her compensation. No reply was received.

By decision dated September 20, 2024, OWCP reduced appellant's wage-loss compensation, effective that date, based on her capacity to earn wages as a supervisor -- telephone information with weekly earnings of \$639.60. It accorded the weight of the evidence to Dr. Roeder's report and the April 5, 2023 FCE.

On September 26, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 14, 2025. OWCP's hearing representative left the record open for 30 days for the submission of any additional evidence or argument. No additional evidence or argument was received.

By decision dated March 28, 2025, OWCP's hearing representative affirmed the September 20, 2024 decision.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>3</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 based on his or her LWEC.<sup>4</sup> An employee's actual earnings generally best reflect his or her wage-earning capacity.<sup>5</sup> Absent evidence that actual earnings do not fairly and reasonably represent the employee's wage-earning capacity, such earnings must be accepted

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<sup>3</sup> See *K.L.*, Docket No. 24-0950 (issued January 31, 2025); *C.B.*, Docket No. 23-0795 (issued December 28, 2023); see *L.M.*, Docket No. 20-1038 (issued March 10, 2021); *E.D.*, Docket No. 17-1064 (issued March 22, 2018).

<sup>4</sup> 5 U.S.C. § 8115(a); 20 C.F.R. §§ 10.402, 10.403; see *K.L.*, *id.*; *Alfred R. Hafer*, 46 ECAB 553, 556 (1995).

<sup>5</sup> See *K.L.*, *id.*; *T.D.*, Docket No. 20-1088 (issued June 14, 2021); *Hayden C. Ross*, 55 ECAB 455, 460 (2004).

as representative of the individual's wage-earning capacity.<sup>6</sup> But if actual earnings do not fairly and reasonably represent the employee's wage-earning capacity or the employee has no actual earnings, then wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, the employee's usual employment, age, qualifications for other employment, the availability of suitable employment and other factors and circumstances that may affect wage-earning capacity in his disabled condition.<sup>7</sup>

OWCP must initially determine the employee's medical condition and work restrictions before selecting an appropriate position that reflects his or her vocational wage-earning capacity.<sup>8</sup> The medical evidence OWCP relies upon must provide a detailed description of the employee's condition and the evaluation must be reasonably current.<sup>9</sup> 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 postinjury or subsequently-acquired conditions.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

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 commuting area.<sup>13</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> 5 U.S.C. § 8115(a); *S.F.*, Docket No. 20-0869 (issued October 14, 2021); *Mary Jo Colvert*, 45 ECAB 575 (1994); *Keith Hanselman*, 42 ECAB 680 (1991).

<sup>8</sup> *See M.H.*, Docket No. 21-1055 (issued March 30, 2022); *M.A.*, 59 ECAB 624, 631 (2008).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on a Constructed Position*, Chapter 2.816.4d (June 2013); *see also A.E.*, Docket No. 22-0119 (issued February 13, 2023); *J.H.*, Docket No. 18-1319 (issued June 26, 2019).

<sup>10</sup> *Id.* at Chapter 2.813.7b (February 2011).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at Chapter 2.816.6.a (June 2013); *see also S.M.*, Docket No. 23-0353 (issued July 13, 2023); *C.M.*, Docket No. 18-1326 (issued January 4, 2019).

<sup>13</sup> *F.M.*, Docket No. 24-0673 (October 18, 2024); *see B.G.*, Docket No. 17-0477 (issued September 20, 2017).

Lastly, OWCP applies the principles set forth in *Albert C. Shadrick*<sup>14</sup> as codified in section 10.403 of OWCP's regulations,<sup>15</sup> to determine the percentage of the employee's LWEC.

### ANALYSIS

The Board finds that OWCP properly reduced appellant's wage-loss compensation, effective September 20, 2024, based on her capacity to earn wages in the constructed position of supervisor -- telephone information.

OWCP referred appellant to Dr. Roeder for a second opinion evaluation to determine her work capacity. In a report dated March 7, 2023, he diagnosed neck strain and cervicgia. Dr. Roeder found that appellant was capable of returning to sedentary work, but he recommended that she undergo an FCE to determine her work restrictions. Appellant underwent an FCE on April 5, 2023, which indicated she was capable of light work, with lifting restrictions. Dr. Roeder, in a September 15, 2023 supplemental report, reviewed the April 5, 2023 FCE. He related that based on the FCE appellant's restrictions were up to 16 pounds of occasional lifting, up to 10 pounds of frequent lifting, and up to 4 pounds of constant lifting. In a November 1, 2023 report, Dr. Marino, appellant's treating physician, reviewed the FCE and Dr. Roeder's reports. He agreed that appellant was capable of working in a light-duty position with the restrictions noted by Dr. Roeder.

OWCP properly determined that appellant had the physical capacity to perform the duties of a supervisor -- telephone service. The position is classified as sedentary and none of the duties exceeded Dr. Roeder's restrictions. The Board finds that the weight of the medical evidence establishes that appellant had the physical capacity to perform the duties of the selected position.<sup>16</sup>

In assessing the employee's ability to perform the selected position, OWCP must consider not only physical limitations, but must also consider work experience, age, mental capacity, and educational background.<sup>17</sup> For the supervisor -- telephone information position, the vocational rehabilitation counselor determined that the position was vocationally suitable, given appellant's extensive prior work experience, and existed in sufficient numbers within the reasonable commuting area, with an average weekly wage of \$639.60 per week. As the vocational rehabilitation counselor is an expert in the field of vocational rehabilitation, OWCP may rely on her opinion in determining whether a job is vocationally suitable and reasonably available.<sup>18</sup>

The Board finds that OWCP considered the proper factors, including appellant's physical limitations, employment qualifications, and the availability of suitable employment in determining

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<sup>14</sup> 5 ECAB 376 (1953), codified at 20 C.F.R. § 10.403.

<sup>15</sup> 20 C.F.R. § 10.403.

<sup>16</sup> See *S.B.*, Docket No. 23-0700 (issued September 26, 2023); *M.H.*, Docket No. 19-1410 (issued November 5, 2020); *J.H.*, Docket No. 18-1319 (issued June 26, 2019).

<sup>17</sup> *M.H.*, *id.*; *C.P.*, Docket No. 19-0595 (issued September 9, 2019).

<sup>18</sup> See *M.H.*, *id.*; *J.B.*, Docket No. 17-0817 (issued April 26, 2018).

that she had the capacity to perform the selected position.<sup>19</sup> OWCP properly applied the *Shadrick* formula, as codified in section 10.403 of its regulations,<sup>20</sup> in determining appellant's LWEC. Accordingly, the Board finds that OWCP properly found that the supervisor -- telephone information position reflected appellant's wage-earning capacity.<sup>21</sup>

Appellant may request modification of the September 20, 2024 LWEC determination, supported by new evidence or argument, at any time before OWCP.

### **CONCLUSION**

The Board finds that OWCP properly reduced appellant's compensation, effective September 20, 2024, based on her capacity to earn wages in the constructed position of supervisor -- telephone information.

**IT IS HEREBY ORDERED THAT** the March 28, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>19</sup> *S.B.*, *supra* note 16; *T.B.*, Docket No. 17-1777 (issued January 16, 2019); *Clayton Varner*, 37 ECAB 248 (1985).

<sup>20</sup> 5 ECAB 376 (1953), codified at 20 C.F.R. § 10.403.

<sup>21</sup> *See M.H.*, *supra* note 16; *J.F.*, Docket No. 19-0864 (issued October 25, 2019).