

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORETTA PARKER and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Denver, CO

*Docket No. 03-1860; Submitted on the Record;
Issued September 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly determined that the position of modified mail handler fairly and reasonably represented appellant's wage-earning capacity effective November 13, 2002.

The Office accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of duty and paid compensation for periods of total and partial disability. Appellant returned to light-duty work in September 2000. A functional capacity evaluation performed on January 4, 2001 indicated that appellant was capable of performing a medium demand job.

Appellant filed a claim for compensation (Form CA-7) on May 23, 2001 for the period April 30 to May 14, 2001. By decision dated July 11, 2001, the Office denied appellant's claim for wage-loss compensation since no medical evidence was submitted to establish entitlement to compensation for that period.

By letter dated November 2, 2001, the Office requested that appellant's treating physician, a Board-certified plastic surgeon, Dr. William Brown, complete a work restriction evaluation (Form OWCP-5).

On a work restriction evaluation form, received on July 17, 2002, Dr. Brown indicated that appellant had reached maximum medical improvement and could work eight hours per day with restrictions.

The employing establishment offered appellant a modified mail handler position with permanent restrictions. On September 30, 2002 Dr. Brown approved the position. Appellant accepted the limited-duty assignment on November 13, 2002.

The employing establishment informed the Office that appellant's pay rate at the time of her injury, was a Level 4 step 0. As of November 13, 2002, a Level 4 step 0 was earning

\$40,234.00 per year. Appellant continued at the same grade and step in her limited-duty position.

By decision dated June 9, 2003, the Office determined that the position of modified mail handler fairly and reasonably represented appellant's wage-earning capacity effective November 13, 2002. The Office further found that appellant was not entitled to continuing compensation due to loss of wage-earning capacity because her actual earnings as a modified mail handler beginning November 13, 2002 met or exceeded the current pay rate for the position that she held when injured on February 28, 2000.

The Board finds that the Office properly determined that the position of modified mail handler fairly and reasonably represented appellant's wage-earning capacity effective November 13, 2002.

Once the Office 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.¹

Section 8115(a) of the Federal Employees' Compensation Act provides: "Wage-earning capacity of an employee is determined by his actual earnings if his actual earnings fairly and reasonably represent his wage-earning capacity."² The Board has stated, "[g]enerally, wages actually earned are the best measure of a wage-earning capacity and in the absence of evidence showing that they do not fairly and reasonably represent the injured employee's wage-earning capacity, must be accepted as such measure."³

In reaching its determination of appellant's wage-earning capacity, the Office properly noted that appellant had received actual earnings as a modified mail handler for more than 60 days in that she had been working in the position since November 13, 2002 when the Office issued its June 9, 2003 decision.⁴ Appellant has not contended that she did not have actual wages as a modified distribution clerk.

The Board also finds that, in addition to making a correct finding that appellant had actual wages as a modified mail handler, the Office also properly found that such wages fairly and reasonably represented her wage-earning capacity. The record does not contain evidence showing that a modified mail handler position constitutes part-time, sporadic, seasonal or temporary work.⁵ Moreover, the record does not reveal that the position is a make-shift position

¹ *Bettye F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Gardner*, 36 ECAB 238, 241 (1984).

² 5 U.S.C. § 8115(a).

³ *Floyd A. Gervais*, 40 ECAB 1045, 1048 (1989); *Clyde Price*, 32 ECAB 1932, 1934 (1981).

⁴ Office procedure provides that a determination regarding whether actual earnings fairly and reasonably represent wage-earning capacity should be made after an employee has been working in a given position for more than 60 days; see Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(c) (December 1993).

⁵ *Monique L. Love*, 48 ECAB 378 (1997); Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(a) (December 1993).

designed for appellant's particular needs.⁶ The facts in this case demonstrate that appellant's modified mail handler position is a full-time, permanent position.

For these reasons, appellant's actual wages as a modified mail handler fairly and reasonably represented her wage-earning capacity on and after November 13, 2002. These wages met or exceeded the current pay rate for the position that she held when injured on February 28, 2000 and, therefore, the Office properly determined that appellant had no loss of wage-earning capacity.⁷

The June 9, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ *Id.*

⁷ *Richard M. Knight*, 42 ECAB 320 (1991).