

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

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C.H., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**VETERANS HEALTH ADMINISTRATION,** )  
**North Little Rock, AK, Employer** )

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**Docket No. 13-1369**  
**Issued: September 24, 2014**

*Appearances:*

*Martin Kaplan, Esq.,* for the appellant

*Hans K. Wild, Esq.,* for the Director

Oral Argument May 7, 2014

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 20, 2013 appellant, through her attorney, filed a timely appeal from the May 10, 2013 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 properly determined that appellant had no loss of wage-earning capacity after finding that her actual wages as a staff nurse fairly and reasonably represented her wage-earning capacity.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

OWCP accepted that on December 18, 1998 appellant, then a 46-year-old registered nurse, sustained cervical, left shoulder and left upper arm sprains and aggravation of cervical degenerative disease due to lifting and repositioning a patient at work. She stopped work on December 18, 1998. Appellant had been working as a registered nurse since August 26, 1991 and was working at the grade 3/step 5 pay level at the time of the December 18, 1998 injury.

By letter dated June 6, 2001, the employing establishment informed appellant that she did not meet the physical requirements of the registered nurse position and offered her the position of medical clerk, office automation, grade 5/step 10. Appellant accepted this position and started working on July 1, 2001. A Form 50-B, with an effective date of July 1, 2001, indicated that her position changed from registered nurse, with a \$52,838.00 annual salary,<sup>2</sup> to medical clerk, with a \$30,726.00 annual salary. Appellant stopped work on July 25, 2001 and, on August 24, 2001, she filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on July 25, 2001 due to her work injuries. By decision dated September 4, 2002, OWCP denied her claim for a work-related recurrence of disability on the grounds that she did not submit sufficient medical evidence in support of her claim.

In a September 4, 2002 letter, OWCP informed appellant that the medical clerk position was suitable and she would be paid compensation based on the difference between the pay of the medical clerk position and the pay of her registered nurse position on the date of injury. On September 10, 2002 the employing establishment advised OWCP that appellant's move to the medical clerk position was made due to her nonwork-related limitations. By letter dated September 10, 2002, OWCP informed appellant that the September 4, 2002 letter was issued in error and advised her to disregard the letter.

In an October 15, 2002 letter, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits on the grounds that the medical evidence of record showed that she ceased to have residuals and disability due to her December 18, 1998 work injury. It indicated that the proposed termination action was justified by the August 8, 2002 opinion of Dr. William Blankenship, a Board-certified orthopedic surgeon serving as an impartial medical specialist. On October 21, 2002 appellant returned to work in the medical clerk position.

On March 21, 2004 appellant began working for the employing establishment as a registered nurse in telephone triage (with the official title "staff nurse"). A Form 50-B, with the effective dated March 21, 2004, showed the change in his position from a medical clerk, with a \$34,714 annual salary, to a staff nurse, with a \$65,394.00 annual salary. Since March 21, 2004, appellant has continued to work in the staff nurse position.

In an April 21, 2006 letter, counsel requested that OWCP issue a loss of wage-earning capacity decision covering appellant's period of work at reduced wages from July 1, 2001 to March 21, 2004. By letter dated June 27, 2006, he requested that it pay appellant lost wages

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<sup>2</sup> The employing establishment later indicated that this figure was inaccurate and provided the higher figure of \$54,631.71.

from July 1, 2001 to March 21, 2004.<sup>3</sup> In an August 21, 2006 letter, OWCP informed counsel that appellant was not entitled to any additional compensation noting that her recurrence of disability claim had been denied on September 4, 2002. In August 24 and October 30, 2006 letters, counsel requested that it pay appellant for her past and continuing lost wages.

By decision dated April 19, 2007, OWCP terminated appellant's wage-loss compensation and medical benefits effective April 19, 2007 based on its finding that the medical evidence supported that she ceased to have residuals of her December 18, 1998 work injury.

By letter dated May 2, 2007, counsel requested that OWCP pay appellant for her past and continuing lost wages. Appellant submitted a Form CA-7 for the period July 1, 2001 to April 12, 2007 and continuing. On May 22, 2007 she requested a review of the written record by an OWCP hearing representative in connection with the April 19, 2007 OWCP termination decision.

In an October 18, 2007 decision, an OWCP hearing representative reversed the April 19, 2007 termination decision and remanded the case to OWCP to refer appellant for a new evaluation by an impartial medical specialist and to issue a decision on her claim for lost wages for the period beginning July 1, 2001. He found that the opinion of Dr. Blankenship was not sufficiently well rationalized to constitute the weight of the medical evidence.

In a November 1, 2007 letter, the employing establishment advised OWCP that on December 18, 1998 appellant was at grade 3/step 5 and that the current rate of pay for this position was \$65,248.00 (including premium pay). Appellant's bi-weekly earnings on July 1, 2001 were \$1,177.00.

In a January 4, 2008 decision, OWCP found that appellant had a loss of wage-earning capacity of 47 percent for the period July 1, 2001 to March 21, 2004 and paid her \$62,106.10 in wage-loss compensation. In several letters dated between October 2007 and August 2011, counsel requested that it also pay appellant lost wages for premium pay beginning March 22, 2004 and continuing. By decision dated November 10, 2011, OWCP denied appellant's claim for premium pay beginning March 22, 2004 and continuing.

In a May 11, 2012 decision, an OWCP hearing representative vacated OWCP's November 10, 2011 decision and remanded the case to OWCP for further development of the case. She found that there was a continuing conflict in the medical evidence regarding appellant's work-related residuals and that she should be referred to a new impartial medical specialist for further evaluation. The hearing representative also indicated that if the staff nurse position appellant started on March 21, 2004 did not allow her to earn the type of premium pay that she earned in her date-of-injury job, she should be paid for premium pay that she did not receive from March 22, 2004 and continuing.

OWCP requested additional information from the employing establishment regarding appellant's wage history. Several employing establishment officials responded to its request. Appellant's annual base salary on the date of injury (December 18, 1998) as a registered nurse

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<sup>3</sup> In February 2006 appellant submitted a claim for compensation (Form CA-7) covering this period.

was \$47,868.00 per an August 7, 2012 and e-mail from Linda Towe. Premium pay for one year prior to the date of injury (December 18, 1997 to December 18, 1998) was \$2,916.58 for night differential pay, \$502.70 for Sunday premium pay, \$1,029.79 for Saturday premium pay and \$2,314.64 for holiday pay for a one-year total of \$6,763.71. Therefore, her salary and premium pay for the date-of-injury equaled \$54,631.71 (or \$1,050.61 per week). These figures were derived from an August 23, 2012 e-mail from Deborah Fowler. The employing establishment indicated that appellant's weekly pay rate as a medical clerk on July 1, 2001 was \$1,018.15, which included premium pay earned during the prior year. These figures came from an August 16, 2012 e-mail from Jackie Garvin. The current annual salary for the date-of-injury job of registered nurse (grade 3/step 5), effective July 29, 2012, was \$78,144.00 as indicated in an August 7, 2012 e-mail from Ms. Towe. Appellant's actual annual salary as a staff nurse (grade 5/step 11) on July 29, 2012 was \$90,702.00 (or \$1,744.27 per week) as noted in an August 21, 2012 e-mail from Ms. Towe.<sup>4</sup>

In an August 29, 2012 decision, OWCP found that appellant's current position of "staff nurse" in which she was employed since March 21, 2004 fairly and reasonably represented her wage-earning capacity. It reduced her wage-loss compensation to zero noting that she had a loss of wage-earning capacity of zero percent because her actual earnings met or exceeded the current earnings of the job she held when injured on December 18, 1998.<sup>5</sup> Therefore, appellant's entitlement to compensation for wage loss ended the date she was reemployed with no loss in earning capacity and the termination of her compensation was justified.

OWCP's August 29, 2012 decision was based on an August 28, 2012 wage-earning capacity worksheet which included calculations under the *Shadrick* formula, which was derived from principles contained in the case, *Albert C. Shadrick*.<sup>6</sup> Line (1) on the worksheet stated that appellant's weekly pay rate was \$1,018.15 and line (2) noted that the current weekly pay rate for the date-of-injury job of registered nurse (grade 3/step 5) was \$1,713.16. The amount on line (2) was calculated by taking the current annual salary for the date-of-injury job of registered nurse effective July 29, 2012 of \$78,144.00 plus premium pay she would have received of \$10,940.16 to equal the total amount of \$89,084.16. This figure was then divided by 52 weeks to equal \$1,713.16 per week.<sup>7</sup> Line (3) indicated that appellant's actual weekly salary as a registered nurse (grade 3/step 11) as of July 29, 2012 was \$1,744.27.

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<sup>4</sup> The employing establishment submitted various forms, including Forms 50-B, to support its responses regarding appellant's wage history.

<sup>5</sup> OWCP indicated that appellant currently earned \$1,744.27 per week, a figure that was higher than \$1,502.77, the current annual salary for the date-of-injury job of registered nurse (grade 3/step 5).

<sup>6</sup> 5 ECAB 376 (1953). See *infra* notes 19 through 22.

<sup>7</sup> To calculate the amount of premium pay, OWCP compared appellant's premium pay of \$6,763.71 in the year prior to the date of injury (December 18, 1997 to December 18, 1998) to her annual base salary on the date of injury. The premium pay was 14 percent of her base salary at the time of injury and OWCP used a 1.14 multiplier to ensure that the amount of premium pay credited on line (2) was 14 percent of the current annual salary for the date-of-injury job of registered nurse effective July 29, 2012. See *infra* note 20.

In a September 5, 2102 letter to OWCP, counsel stated that with respect to line (2) of OWCP's *Shadrick* calculation pertaining to the current weekly pay rate for the date-of-injury job of registered nurse, "[L]ine (2) of the [loss of wage-earning capacity] is correct."

Counsel, on behalf of appellant, requested a telephone hearing with an OWCP hearing representative. During the February 12, 2013 hearing, he disagreed with OWCP's calculation in line (3) of the *Shadrick* formula and asserted that it should have performed a retroactive wage-earning capacity determination using appellant's actual wages in March 2004 in line (3) of the formula.

In a May 10, 2013 decision, an OWCP hearing representative affirmed the August 29, 2012 decision. She stated that there was no requirement to perform a retroactive wage-earning capacity determination to March 2004 as OWCP was developing the case during this period to determine if appellant continued to have residuals of her December 18, 1998 work injury. The hearing representative stated, "I find that [OWCP] should base the claimant's wage-earning capacity on her earnings contemporaneous with their decision." She indicated that OWCP made a minor error in its calculation of the *Shadrick* formula noting that it should have used appellant's pay rate on December 18, 1998 of \$1,050.61 on line (1) of the worksheet and not the pay rate on July 1, 2001 of \$1,018.15. The hearing representative stated:

"Since the date disability began pay rate of December 18, 1998 is higher than the date of recurrence pay rate, this should be used by [OWCP] in the *Shadrick* formula to calculate the loss of wage-earning capacity.<sup>8</sup> I agree that the current date-of-injury pay for July 29, 2012 is \$1,713.16 and the claimant's actual earnings on July 29, 2012 were \$1,744.27. Using the corrected number for the date disability began however indicates that the claimant still does not have a wage loss.... I find [that] [OWCP] correctly determined that there is no loss of wage-earning capacity."

### **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>9</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>10</sup> Under 5 U.S.C. § 8115(a), 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. Generally, wages actually earned are the best measure of 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.<sup>11</sup> A determination regarding whether actual earnings fairly and reasonably

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<sup>8</sup> The Board notes, that despite OWCP's reference to a recurrence of disability, it does not appear that appellant established a recurrence of disability.

<sup>9</sup> *Bettye F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Gardner*, 36 ECAB 238, 241 (1984).

<sup>10</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>11</sup> *E. W.*, Docket No. 14-584 (issued July 29, 2014); *Dennis E. Maddy*, 47 ECAB 259, 262 (1995).

represents one's wage-earning capacity should be made only after an employee has worked in a given position for more than 60 days.<sup>12</sup> Wage-earning capacity may not be based on an odd-lot or make-shift position designed for an employee's particular needs or a position that is seasonal in an area where year-round employment is available.<sup>13</sup> Wage-earning capacity may only be based on a temporary or part-time position if the position held by the employee at the time of injury was a temporary or part-time position.<sup>14</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 monthly pay, which is known as his basic compensation for total disability."<sup>15</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>16</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>17</sup>

The formula for determining loss of wage-earning capacity, developed in the case of *Albert C. Shadrick*,<sup>18</sup> has been codified at section 10.403(c)-(e) of OWCP's regulations.<sup>19</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>20</sup> The employee's wage-earning

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<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7c (December 1993).

<sup>13</sup> See *James D. Champlain*, 44 ECAB 438, 440-41 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment and Determining Wage-Earning Capacity*, Chapter 2.814.7a (July 1997).

<sup>14</sup> *Id.*

<sup>15</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>16</sup> *Id.* at § 8101(4).

<sup>17</sup> 20 C.F.R. § 10.5(f).

<sup>18</sup> 5 ECAB 376 (1953).

<sup>19</sup> 20 C.F.R. § 10.403(c)-(e).

<sup>20</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, Chapter 2 -- Claims, *Computing Compensation*, Chapter 2.901.15c (December 1995). When the job held at injury included additional pay elements (such as night differential pay, weekend premium pay and holiday premium pay), which would also be included in the pay rate for compensation purposes, the additional pay should be reflected in the current pay rate for job and step when injured portion of the *Shadrick* formula. This adjustment is made by increasing the additional pay elements by the same percentage as the original base pay was increased by these elements. *Id.* at Chapter 2.901.15d (December 1995).

capacity in dollars is computed by first multiplying the pay rate for compensation purposes, 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>21</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>22</sup>

The Board has held that is inappropriate to issue a retroactive wage-earning capacity determination when there is a pending claim for compensation.<sup>23</sup> The Board has also found a retroactive wage-earning capacity determination to be inappropriate when the employee submitted medical evidence showing that his or her injury-related condition had progressed.<sup>24</sup> The Board has also noted that the pay rates of the date-of-injury job and the new job should be compared as of the time that the formal loss of wage-earning capacity decision is being prepared, unless there are compelling reasons to use a different date.<sup>25</sup>

### ANALYSIS

OWCP accepted that on December 18, 1998 appellant sustained cervical, left shoulder and left upper arm sprains and aggravation of cervical degenerative disease and she stopped work on December 18, 1998. At the time of her December 19, 1998 work injury, appellant was working as a registered nurse at the grade 3/step 5 pay level. On March 21, 2004 she began working for the employing establishment as staff nurse. Appellant continued working in this position and, in an August 29, 2012 decision, OWCP determined that her current position of staff nurse in which she was employed since March 21, 2004 fairly and reasonably represented her wage-earning capacity. OWCP reduced her wage-loss compensation to zero noting that she had a loss of wage-earning capacity of zero percent because her actual earnings met or exceeded the current wages of the registered nurse job she held when injured on December 18, 1998. In a May 10, 2013 decision, an OWCP hearing representative affirmed OWCP’s August 29, 2012 decision.

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<sup>21</sup> *Id.* at § 10.403(e).

<sup>22</sup> *Id.* at § 10.403(d).

<sup>23</sup> See *K.E.*, Docket 10-1211 (issued April 14, 2011); *G.M.*, Docket No. 08-44 (issued December 3, 2008); *Juan A. DeJesus*, 54 ECAB 721 (2003); *William M Bailey*, 51 ECAB 197 (1999).

<sup>24</sup> *M.P.*, Docket No. 06-1126 (issued September 27, 2006).

<sup>25</sup> *Kit C. Jeh*, Docket No. 03-1085 (issued July 12, 2004).

In this case, OWCP properly determined that appellant's actual wages as a staff nurse since March 21, 2004 fairly and reasonably represented her wage-earning capacity. The record does not establish that the staff nurse position constituted part-time, sporadic, seasonal or temporary work, nor does the record reveal that the position was a make-shift position designed for appellant's particular needs.<sup>26</sup>

Appellant has not argued that the staff nurse position did not fairly and reasonably represent her wage-earning capacity. Rather, she argued that OWCP improperly applied the *Shadrick* formula to determine that she had a loss of wage-earning capacity of zero percent.<sup>27</sup> Appellant claimed that, rather than using her current wages in the staff nurse position in its *Shadrick* formula calculation, OWCP should have used her wages from March 2004 in the staff nurse position. In effect, she has argued that it should have performed a retroactive loss of wage-earning capacity determination.

The Board finds that OWCP properly applied the *Shadrick* formula to determine that appellant had zero percent loss of wage-earning capacity. In her May 10, 2013 decision, OWCP's hearing representative properly used appellant's weekly pay rate of \$1,050.61 from the date-of-injury (December 18, 1998) in line (1) of the *Shadrick* formula.<sup>28</sup> Use of this figure was proper because it represented the highest figure of appellant's pay at the time of injury, the monthly pay at the time disability began or the monthly pay at the time compensable disability recurred, if the recurrence began more than six months after the injury.<sup>29</sup>

Appellant has not contested OWCP's calculation of line (2) of the *Shadrick* formula. In a September 5, 2012 letter to OWCP and a May 14, 2013 appeal letter to the Board, counsel stated on behalf of appellant that "line 2 of the [loss of wage-earning capacity] is correct." OWCP used appellant's current annual salary, as of July 29, 2012, for the date-of-injury position of \$78,144.00 and then added \$10,940.00 in premium pay she would have received if she had worked nights, Saturdays, Sundays and holidays for total annual earnings of \$89,084.00 and a weekly pay rate of \$1,713.16.<sup>30</sup> The Board notes that OWCP's calculation in this regard was proper.

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<sup>26</sup> Moreover, OWCP made its August 29, 2012 loss of wage-earning capacity determination after appellant had been working in the position more than 60 days. *See supra* notes 11 through 14.

<sup>27</sup> *See supra* notes 18 through 22 regarding the application of the *Shadrick* formula.

<sup>28</sup> The Board notes that the figure of \$1,050.61 properly included appellant's premium pay. *See supra* note 20. In its August 29, 2012 decision, OWCP improperly used the figure of \$1,018.15, appellant's weekly earnings as a medical clerk on July 1, 2001, in line (1) of the *Shadrick* formula. OWCP's hearing representative noticed and corrected this harmless error in her May 10, 2013 decision. The Board notes that use of the \$1,018.15 figure in the *Shadrick* formula would also yield a zero percent loss of wage-earning capacity.

<sup>29</sup> *See supra* notes 15 and 16. The Board notes that appellant did not establish that she sustained a recurrence of disability.

<sup>30</sup> OWCP properly calculated appellant's premium pay by using a multiplier formula based on her premium pay as a registered nurse. *See supra* notes 7 and 20.



Appellant has contested OWCP's calculation of line (3) of the *Shadrick* formula. OWCP used her actual weekly earnings as a registered nurse, effective July 29, 2012, of \$1,744.27 in line (3) of the *Shadrick* formula. Counsel, on behalf of appellant, asserts that OWCP should have performed a retroactive loss of wage-earning capacity calculation on line (3) based on her actual wages in March 2004.

The Board finds, however, that a retroactive loss of wage-earning determination is not appropriate in this case. As noted above, OWCP regulations provide, "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>31</sup> (Emphasis added.) Appellant continued to receive medical benefits under FECA and OWCP proceeded to develop the medical evidence for a number of years in response to her claims for work-related disability for various periods. For example, in an October 18, 2007 decision, an OWCP hearing representative remanded the case to OWCP with instructions to refer appellant for another evaluation with an impartial medical specialist to address an unresolved medical conflict regarding the nature of her work-related residuals. In a May 11, 2012 decision, a hearing representative again instructed OWCP to further develop the medical evidence. OWCP was directed to refer appellant for another evaluation with an impartial medical specialist in order to address an unresolved conflict in the medical opinion evidence regarding work-related residuals. As noted above, a retroactive wage-earning capacity determination is not inappropriate when there is a pending claim for compensation.<sup>32</sup> Therefore, the most appropriate method for OWCP to calculate line (3) of the *Shadrick* formula was to use appellant's actual wages contemporaneous with the date of the decision and OWCP properly compared her wage rates in lines (2) and (3) as of July 29, 2012. OWCP issued a decision soon after July 29, 2012 when it issued its August 29, 2012 wage-earning capacity determination. Because its calculations showed that appellant was able to earn the current wages of the position she held when injured on December 18, 1998, she had no disability within the meaning of FECA.<sup>33</sup>

For these reasons, OWCP properly determined that appellant had no loss of wage-earning capacity and reduced her wage-loss compensation to zero after finding that her actual wages as a staff nurse fairly and reasonably represented her wage-earning capacity. Appellant may request modification of the wage-earning capacity determination, supported by new evidence or argument, at any time before OWCP.

### CONCLUSION

The Board finds that OWCP properly determined that appellant had no loss of wage-earning capacity after finding that her actual wages as a staff nurse fairly and reasonably represented her wage-earning capacity.

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<sup>31</sup> See *supra* note 22.

<sup>32</sup> See *supra* note 23.

<sup>33</sup> See *supra* note 17.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board