

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

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C.S., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Lexington, NC, Employer )

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**Docket No. 16-1448  
Issued: October 4, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 1, 2016 appellant filed a timely appeal from a June 8, 2016 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 reduced appellant's wage-loss compensation effective June 9, 2016 based on her capacity to earn wages in the selected position of receptionist.

**FACTUAL HISTORY**

On October 3, 2012 appellant, then a 51-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on September 22, 2012 she sustained a left shoulder

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

injury due to shifting bundles of mail in her postal vehicle. OWCP initially accepted her claim for a left shoulder/upper arm (acromioclavicular) sprain and it later expanded the acceptance to include a complete rotator cuff rupture of her left shoulder. Appellant stopped work on October 2, 2012 and received disability compensation on the daily rolls beginning December 11, 2012.<sup>2</sup>

The findings of an October 3, 2012 left shoulder x-ray revealed mild degenerative changes of the left acromioclavicular joint with no evidence of fracture. A January 28, 2013 magnetic resonance imaging (MRI) scan of the left shoulder contained an impression of full-thickness rotator cuff tear involving the distal supraspinatus tendon and mild osteoarthritis involving the acromioclavicular joint.

On February 27, 2013 Dr. Brian Ziegler, an attending Board-certified orthopedic surgeon, performed OWCP-approved left shoulder surgery, including arthroscopic subacromial decompression, distal clavicle excision, and rotator cuff repair.

In an August 15, 2013 report, Dr. Ziegler noted that his physical examination of appellant on that date showed no swelling or crepitus of her left shoulder. There was mild tenderness over the anterior portion of her left shoulder. Dr. Ziegler released appellant to return to limited-duty work on a full-time basis with restrictions of no overhead use of the left arm and no lifting/carrying more than 15 pounds.

OWCP referred appellant to Dr. David B. Lotman, a Board-certified orthopedic surgeon, for a second opinion examination in order to further evaluate her ability to work and the existence of any work-related residuals. As part of the evaluation, Dr. Lotman arranged for appellant to undergo a functional capacity evaluation (FCE) on August 22, 2013. A report of the results from the August 22, 2013 FCE, involving both upper extremities, indicated that appellant did not perform with a determined and consistent effort and that she had demonstrated behaviors associated with a high pain focus.

In a September 19, 2013 report, Dr. Lotman discussed appellant's September 22, 2012 work injury and noted that she complained of pain and soreness in her left shoulder. He reported the findings of his September 18, 2013 physical examination of both upper extremities. Appellant reported tenderness in the area of her left lateral clavicle and supraspinatus muscle belly but her right shoulder was described as asymptomatic. Dr. Lotman found that appellant's left shoulder and acromioclavicular sprains had resolved. He noted that the August 22, 2013 FCE showed submaximal effort by appellant and indicated that, based on his examination and evaluation, she was capable of working on a full-time basis with permanent restrictions contained in an enclosed form report. In an enclosed work capacity evaluation form (Form OWCP-5c) dated September 18, 2013, Dr. Lotman indicated that appellant was capable of working on a full-time basis with permanent restrictions of pulling and pushing no more than 20

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<sup>2</sup> Appellant received disability compensation on the periodic rolls beginning December 15, 2013.

pounds for three hours a day, lifting no more than 30 pounds for three hours a day, and no engaging in climbing/reaching above shoulder level.<sup>3</sup>

Appellant did not return to work around the time Dr. Ziegler and Dr. Lotman indicated that she could return to limited-duty work.

In April 2014 OWCP referred appellant to Dr. Brian C. Leung, a Board-certified orthopedic surgeon, for a second opinion examination in order to further evaluate her ability to work and the existence of any work-related residuals. In a report dated May 30, 2014, Dr. Leung reported appellant's factual and medical history and reported the findings of his physical examination on that date. He noted that appellant exhibited positive impingement of her left shoulder on examination. Dr. Leung found that appellant still had some residuals of her September 22, 2012 work injury, including those related to a left rotator cuff tear that had not fully healed. He determined, however, that appellant could perform limited-duty work on a full-time basis. Dr. Leung reported in an enclosed June 10, 2017 Form OWCP-5c that appellant had the following permanent restrictions: reaching above shoulder level for four hours a day, pushing and pulling no more than 45 pounds for four hours a day, and lifting no more than 25 pounds for four hours a day.

In September 2014 appellant began to participate in a vocational rehabilitation program designed to return her to work. Appellant's vocational rehabilitation counselor noted that Dr. Leung had advised that appellant could work on a full-time basis with restrictions.

In an October 6, 2014 letter, appellant asserted that she sustained a right shoulder condition as a consequence of overuse of her right upper extremity necessitated by her accepted September 22, 2012 left shoulder injury. She requested that OWCP accept her right shoulder condition as work related and pay medical expenses related to the condition.<sup>4</sup>

In a December 1, 2014 report, Dr. Ziegler indicated that appellant could perform limited-duty work on a full-time basis with restrictions of no overhead use of the left arm and no lifting/carrying more than 15 pounds.

In a June 10, 2015 report, Dr. Ramy S. Hanna, an attending Board-certified orthopedic surgeon, indicated that appellant reported having right shoulder symptoms over the last several years, including pain, clicking, popping, and weakness. Appellant denied any neck pain or radiating pain, numbness, or tingling. Dr. Hanna indicated that, upon physical examination on that date, appellant exhibited right acromioclavicular joint tenderness, positive right shoulder impingement, and pain at extremes of right shoulder abduction and external rotation. He

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<sup>3</sup> In a supplemental report dated October 17, 2013, Dr. Lotman indicated that the findings of October 10, 2013 MRI scan and computerized tomography (CT) scans of appellant's left shoulder did not change his prior opinion regarding her ability to work.

<sup>4</sup> In a June 11, 2015 letter and an undated letter received on June 23, 2015, appellant also asserted that her right shoulder condition was suffered as a consequence of her accepted left shoulder injury.

diagnosed several right shoulder conditions, including degenerative joint disease of the acromioclavicular joint, impingement, and tendinitis.<sup>5</sup>

In July 2015 appellant's vocational rehabilitation counselor determined that appellant was vocationally and medically able to perform the selected position of receptionist, and that state employment services showed the position was available in sufficient numbers so as to make it reasonably available within her commuting area with average wages of \$400.00 per week. The Department of Labor, *Dictionary of Occupational Titles* (DOT) indicates that the selected position of receptionist (DOT No. 237.367-038) involves receiving visitors, answering telephone calls, and limited typing of documents. The position was sedentary in nature and required frequent reaching, handling, and lifting up to 10 pounds. Appellant's participation in the vocational rehabilitation program did not result in her return to work.

In a July 22, 2015 decision, OWCP denied appellant's claim for a consequential right shoulder condition because the medical evidence of record did not show that she sustained a right shoulder condition related to the accepted left shoulder condition. It noted that Dr. Hanna did not provide an opinion in his June 10, 2015 report that appellant sustained a right shoulder condition related to her September 22, 2012 employment-related left shoulder injury.

In a December 17, 2015 report, Dr. Hanna reported findings of his physical examination on that date noting that appellant had presented for reexamination of her right shoulder. He indicated that she had full active and passive range of motion of her right shoulder with positive impingement and he diagnosed right shoulder impingement, right rotator cuff tear, and right shoulder bursitis/tendinitis.

In another December 17, 2015 report, Dr. Hanna noted that appellant's accepted September 22, 2012 left shoulder injury created a natural tendency to over use her right upper extremity. He found that this overuse was of sufficient force to aggravate the degenerative condition in her right shoulder to the point that she now required medical treatment for the right shoulder.

In late-December 2015, OWCP referred appellant to Dr. Jonathan Black, a Board-certified orthopedic surgeon, for a second opinion examination in order to further evaluate her ability to work and the existence of any work-related residuals. In a report dated January 27, 2016, Dr. Black discussed appellant's factual and medical history and provided findings of the physical examination he performed on that date. He noted that appellant reported first having left shoulder symptoms and then having right shoulder symptoms after undergoing left shoulder surgery in 2013. Dr. Black advised that, upon examination, appellant had full range of motion of her left shoulder and that she had 5/5 strength in all the muscle groups of her left upper extremity. Appellant exhibited an exaggerated pain response to palpation of her left shoulder and examination of the right shoulder revealed unremarkable range of motion, no tenderness or gross instability, and normal strength and tone. Dr. Black indicated that he had been provided a description of the selected position of receptionist, including a description of its required

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<sup>5</sup> Dr. Hanna noted that June 10, 2015 right shoulder x-ray testing he obtained in his office showed degenerative joint disease of the right acromioclavicular joint, with normal alignment and no obvious fracture/dislocation. The record does not contain a report of this June 10, 2015 testing.

physical duties, and he opined that appellant could perform the position on a full-time basis without restrictions.

In an April 7, 2016 letter, OWCP advised appellant that it proposed to reduce her wage-loss compensation based on her capacity to earn wages in the selected position of receptionist.<sup>6</sup> It informed her that the evidence of record showed that she was vocationally and physically capable of working in the receptionist position. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed action.

In a letter dated April 12, 2016, appellant argued that she had pain and other symptoms in both arms which prevented her from physically performing the selected position of receptionist. She resubmitted a copy of the December 17, 2015 reports of Dr. Hanna.

By decision dated June 8, 2016, OWCP reduced appellant's wage-loss compensation effective June 9, 2016 based on her capacity to earn wages in the selected position of receptionist. It determined that the evidence of record showed that she was vocationally and physically capable of working in the selected position of receptionist.<sup>7</sup> OWCP noted the weight of the medical opinion evidence regarding appellant's ability to work as a receptionist rested with the opinion of Dr. Black, an OWCP referral physician. It noted that appellant's right shoulder condition developed after her accepted September 22, 2012 left shoulder injury and was not a consequence of that work injury. OWCP advised that, therefore, the right shoulder condition was not to be considered in determining loss of wage-earning capacity.<sup>8</sup> It then applied the principles set forth in the *Shadrick* decision to calculate the percentage of appellant's loss of wage-earning capacity.<sup>9</sup>

### **LEGAL PRECEDENT**

Once OWCP accepts a claim it has the burden of proof to justify termination or modification of compensation benefits.<sup>10</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 on loss of wage-earning capacity.<sup>11</sup> An employee's actual earnings generally best reflect his or her wage-earning capacity.<sup>12</sup> Absent evidence that actual earnings do not fairly and reasonably represent the

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<sup>6</sup> OWCP advised appellant that her entitlement to medical benefits would not be affected.

<sup>7</sup> OWCP marked the decision as "corrected" to identify it as replacing another June 8, 2016 decision in the record which reduced appellant's wage-loss compensation effective June 8, 2016. It noted that the decision did not affect appellant's entitlement to medical benefits related to treatment of her accepted work-related conditions.

<sup>8</sup> OWCP also indicated that the reports of Dr. Ziegler, Lotman, and Black showed that appellant could work as a receptionist.

<sup>9</sup> See *infra* note 20. OWCP noted that the receptionist position had average wages of \$400.00 per week.

<sup>10</sup> *James B. Christenson*, 47 ECAB 775, 778 (1996); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

<sup>11</sup> 5 U.S.C. § 8115(a); 20 C.F.R. §§ 10.402, 10.403; see *Alfred R. Hafer*, 46 ECAB 553, 556 (1995).

<sup>12</sup> *Hayden C. Ross*, 55 ECAB 455, 460 (2004).

employee's wage-earning capacity, such earnings must be accepted as representative of the individual's wage-earning capacity.<sup>13</sup> 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 or her disabled condition.<sup>14</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>15</sup> The medical evidence it relies upon must provide a detailed description of the employee's condition and the evaluation must be reasonably current.<sup>16</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 post injury or subsequently-acquired conditions.<sup>17</sup>

When OWCP makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to an OWCP wage-earning capacity specialist for selection of a position listed in the Department of Labor, *Dictionary of Occupational Titles* or otherwise available in the open labor market that fits the employee's capabilities with regard to his or her physical limitations, education, age, and prior experience.<sup>18</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>19</sup> Finally, application of the principles set forth in the *Shadrick* decision will result in the percentage of the employee's loss of wage-earning capacity.<sup>20</sup>

### ANALYSIS

OWCP accepted that on September 22, 2012 appellant sustained a left shoulder/upper arm (acromioclavicular) sprain and a complete rotator cuff rupture of her left shoulder. Appellant stopped work on October 2, 2012. She received disability compensation on the daily

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<sup>13</sup> *Id.*

<sup>14</sup> 5 U.S.C. § 8115(a); *Mary Jo Colvert*, 45 ECAB 575 (1994); *Keith Hanselman*, 42 ECAB 680 (1991).

<sup>15</sup> *M.A.*, 59 ECAB 624, 631 (2008).

<sup>16</sup> *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on a Constructed Position*, Chapter 2.816.4d (June 2013).

<sup>17</sup> *N.J.*, 59 ECAB 171, 176 (2007); *id.* at Chapter 2.816.4c (June 2013).

<sup>18</sup> *Id.* at Chapter 2.813.7b (February 2011).

<sup>19</sup> The job selected for determining wage-earning capacity must be a position that is reasonably available in the general labor market in the commuting area in which the employee resides. *David L. Scott*, 55 ECAB 330, 335 n.9 (2004); *id.* at Chapter 2.816.6.

<sup>20</sup> 20 C.F.R. § 10.403(d); *see Albert C. Shadrick*, 5 ECAB 376 (1953).

rolls beginning December 11, 2012.<sup>21</sup> Appellant underwent OWCP-authorized left shoulder surgery on February 27, 2013, including arthroscopic subacromial decompression, distal clavicle excision, and rotator cuff repair, and she received disability compensation on the periodic rolls beginning December 15, 2013. OWCP reduced her wage-loss compensation effective June 9, 2016 based on her capacity to earn wages in the selected position of receptionist.

On appeal appellant argues that she is overdue for right shoulder surgery and asserts that she cannot work until this matter is resolved. She claims that OWCP did not adequately consider reports in which Dr. Hanna, her attending physician, advised that her right shoulder condition prevented her from working. The Board finds that there is no definite, rationalized medical opinion linking appellant's right shoulder condition to the September 22, 2012 work injury or establishing that her right shoulder condition preexisted the September 22, 2012 work injury.<sup>22</sup> The Board notes that OWCP determined, in a July 22, 2015 decision, that appellant failed to meet her burden of proof to establish that she sustained a right shoulder condition as a consequence of her accepted September 22, 2012 left shoulder injury. OWCP properly found in that decision that appellant submitted Dr. Hanna's June 10, 2015 report discussing her right shoulder condition, but that Dr. Hanna did not provide an opinion that the right shoulder condition was related to the accepted September 22, 2012 left shoulder injury.

Appellant later submitted a December 17, 2015 report from Dr. Hanna who indicated that her accepted September 22, 2012 left shoulder injury created a natural tendency to overuse her right upper extremity. Dr. Hanna found that this overuse was of sufficient force to aggravate the degenerative condition in appellant's right shoulder to the point that she now required medical treatment for the right shoulder. The Board finds, however, that this report is of limited probative value regarding the existence of a consequential right shoulder condition because Dr. Hanna did not provide adequate medical rationale in support of his conclusion on the cause of the right shoulder condition. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>23</sup> Dr. Hanna opined that appellant engaged in overuse of the right upper extremity, due to her left shoulder condition, which was sufficient to cause the observed right shoulder condition. However, he did not provide any discussion of the nature of such overuse or describe the medical process through which overuse could have caused or aggravated appellant's right shoulder condition.<sup>24</sup>

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<sup>21</sup> Appellant received disability compensation on the periodic rolls beginning December 15, 2013.

<sup>22</sup> See *supra* note 17. With respect to whether appellant's right shoulder condition preexisted the September 22, 2012 injury, the Board notes that there is no medical evidence of record, in the form of physical examination or diagnostic testing findings, showing the existence of a right shoulder condition prior to September 22, 2012.

<sup>23</sup> *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

<sup>24</sup> Therefore, Dr. Hanna's report is of limited probative value for the further reason that it is not based on a complete factual and medical history. See *E.R.*, Docket No. 15-1046 (issued November 12, 2015) (finding that a medical opinion not based on a complete and accurate factual and medical history is of limited probative value on a given medical question).

For these reasons, appellant did not show that her right shoulder condition was sustained as a consequence of the accepted September 22, 2012 left shoulder injury or preexisted it. Further the Board finds that OWCP properly determined that appellant's right shoulder condition was not relevant in determining the wage-earning capacity as it was a subsequently acquired condition.<sup>25</sup>

The Board finds that OWCP has met its burden of proof to justify modification of appellant's wage-loss compensation benefits.<sup>26</sup> The record establishes that the selected position of receptionist is suitable.

OWCP received medical evidence showing that appellant was not totally disabled for work and had a partial capacity to perform work for eight hours per day subject to specified work restrictions. Appellant's vocational rehabilitation counselor determined that appellant was vocationally and medically able to perform the selected position of receptionist and that state employment services showed the position was available in sufficient numbers so as to make it reasonably available within her commuting area. The Department of Labor, *Dictionary of Occupational Titles* indicates that the selected position of receptionist (DOT No. 237.367-038) involves receiving visitors, answering telephone calls, and limited typing of documents. The position was sedentary in nature and required frequent reaching and handling and lifting up to 10 pounds. Appellant's vocational rehabilitation counselor is an expert in the field of vocational rehabilitation and OWCP may rely on her opinion regarding reasonable availability and vocational suitability.<sup>27</sup> Appellant failed to submit any evidence or argument showing that she could not vocationally perform the receptionist position.

A review of the medical evidence of record reveals that appellant is physically capable of performing the receptionist position. In a January 27, 2016 report, Dr. Black, an OWCP referral physician, provided an opinion that appellant could perform the physical duties of the selected position of receptionist. He noted that, upon examination on January 27, 2016, appellant had full range of motion of her left shoulder and she had 5/5 strength in all the muscle groups of her left upper extremity. Dr. Black indicated that appellant exhibited an exaggerated pain response to palpation of her left shoulder.<sup>28</sup> His assessment of appellant's ability to work constitutes the most comprehensive medical evaluation of record to be obtained around the time of the reduction of appellant's compensation in mid-2016. Dr. Black's assessment that appellant could work as a receptionist is supported by earlier reports of Dr. Ziegler, an attending physician, and Dr. Lotman and Dr. Leung, OWCP referral physicians. These reports contained work restrictions that would have allowed appellant to perform the physical duties of the receptionist position.

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<sup>25</sup> See *supra* note 17. See also A.R., Docket No. 15-0447 (issued September 28, 2016).

<sup>26</sup> See *supra* note 10.

<sup>27</sup> G.A., Docket No. 13-1351 (issued January 10, 2014).

<sup>28</sup> As noted in the above discussion, appellant's right shoulder condition need not be taken into account when evaluating her ability to work as a receptionist. However, it should be noted that Dr. Black indicated that examination of appellant's right shoulder revealed unremarkable range of motion, no tenderness or gross instability, and normal strength and tone.



Appellant failed to submit sufficient evidence or argument to show that she could not physically perform the receptionist position, nor did she show that she could not vocationally perform the position. OWCP considered the proper factors, such as availability of suitable employment and appellant's physical limitations, usual employment, age and employment qualifications, in determining that the position of receptionist represented appellant's wage-earning capacity.<sup>29</sup> The weight of the evidence of record establishes that appellant had the requisite physical ability, skill, and experience to perform the position of receptionist, and that such a position was reasonably available within the general labor market of her commuting area. Therefore, OWCP properly reduced appellant's compensation effective June 9, 2016 based on her capacity to earn wages in the selected position of receptionist.

Appellant may request modification of the loss of wage-earning capacity determination, supported by new evidence or argument, at any time before OWCP.

### **CONCLUSION**

The Board finds that OWCP properly reduced appellant's wage-loss compensation effective June 9, 2016 based on her capacity to earn wages in the selected position of receptionist.

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<sup>29</sup> See *Clayton Varner*, 37 ECAB 248, 256 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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