



## Wage earning capacity

**W**age-earning capacity (WEC) is a gauge of the claimant's ability to earn wages in the labor market under normal employment conditions. OWCP, in a WEC determination, will consider that the employee is only partially disabled and may make a determination on how much the employee is able to earn. OWCP has the authority to make a WEC determination at any time, but a WEC is usually made after vocational rehabilitation is completed. A WEC is sometimes referred to as loss of wage-earning capacity (LWEC).

Compensation under a WEC determination is based on 66-2/3 percent (75 percent with dependents) of the difference between the claimant's adjusted earning capacity established by OWCP and the claimant's former earnings at the time of injury (date disability first begins or date of recurrence of disability, whichever is higher). A formula was created to make these calculations.<sup>1</sup>

For a claimant who is working a limited-duty job offer with the Postal Service or has taken a job with another employer, his or her actual earnings in that position will in all probability be used by OWCP when making a WEC determination, if such earnings fairly and reasonably represent their current earning capacity. The nature of the claimant's injury and degree of physical impairment, the claimant's usual employment, the claimant's age and vocational qualifications, and the availability of suitable employment are all factors that will be considered by OWCP in making a WEC determination.

For a claimant who is *not* working, OWCP will, in some cases, decide a claimant's WEC by making a medical determination of partial disability, of the specific work restrictions and of the compatible work in the commuting area. These cases are referred to an OWCP wage-earning capacity specialist for selection of a compatible position. The selected compatible position is usually available in the open labor market and fits the claimant's capabilities in light of his or her physical limitations, education, age and prior experience. Once this selection of a compatible position is made, a determination of wage rate and availability in the open labor market will be made and is usually

accomplished through contact with the state employment service or other applicable service.

**The claimant's WEC can be modified if the claimant can** prove that a material change to his or her condition has occurred. The OWCP can modify a WEC if it shows the claimant has been retrained or otherwise vocationally rehabilitated.<sup>2</sup> Once OWCP determines that a claimant is totally disabled as a result of an employment injury, it has the burden of justifying a subsequent reduction in compensation.<sup>3</sup>

Under the Postal Service's National Reassessment Process (NRP), many carriers' limited-duty positions have been withdrawn. The affected carriers should request compensation for the recurrence of disability by submitting a Form CA-2a (Notice of Recurrence).

However, some of the affected carriers' CA-2a's are being denied by OWCP because WEC determinations have been made on them. If this happens, the claimant bears the burden of proving to OWCP that the WEC determination was erroneous or prove that their condition has worsened to a degree that precludes continuation of the limited-duty job. The claimant should provide the OWCP claims examiner with a detailed explanation and copies of all pertinent documents that prove that the WEC determination was incorrect.

In many cases, the WEC determination is flawed because it was based on a "permanent job offer" that, under NRP, turned out to be less than "permanent." Along with the CA-2a, the injured worker should submit a copy of the written notice from management withdrawing the limited duty. If management does not give written notice of the limited duty withdrawal, the carrier should fill out a Form 3971 requesting LWOP, and clearly state the reason for the requested leave is management's withdrawal of limited duty.

The evidence presented to OWCP must prove that management caused the recurrence of disability and that it was not the carrier's choice. The claimant should also contact their shop steward and request an investigation into possible violations of 546 of the *ELM*. ☒

1. See August 2001 column for the Shadrick Formula.

2. FECA FPM 2-0814-11.

3. Ellen G. Trimmer, 32 ECAB 1878 (1981).