U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE DICKERSON, III and DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

Docket No. 00-2486; Submitted on the Record;
Issued March 7, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's wage-loss compensation based on its determination that the selected position of part-time assembler reasonably represented his wage-earning capacity.

On September 18, 1991 appellant, then a 42-year-old equipment mechanic, sustained a traumatic injury in the performance of duty. The Office accepted appellant's claim for post-traumatic arthritis of the left ankle and torn medial meniscus of the right knee with arthroscopy. Appellant received appropriate wage-loss compensation.

In a decision dated August 26, 1998, the Office found that the selected position of part-time assembler reasonably represented appellant's wage-earning capacity. The Office reduced appellant's wage-loss compensation. By decision dated April 25, 2000, an Office hearing representative affirmed the August 26, 1998 decision.

The Board finds that the Office erred in determining that the selected position of assembler reasonably represented appellant's wage-earning capacity.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[1] 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.[2] Under section 8115(a) of the Federal Employees' Compensation Act, 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. If the actual earnings do not fairly and reasonably represent the employee's wage-earning capacity, or if the employee has no actual

[1] *James B. Christenson*, 47 ECAB 775, 778 (1996); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

[2] 20 C.F.R. §§ 10.402, 403; *see Alfred R. Hafer*, 46 ECAB 553, 556 (1995).

wages, the 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 which may affect his or her wage-earning capacity in his or her disabled condition.[3]

When the Office makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to an Office wage-earning capacity specialist for selection of a position listed in the Department of Labor's *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. 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. 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.[4]

The Office must initially determine appellant's medical condition and work restrictions before selecting an appropriate position that reflects appellant's vocational wage-earning capacity. The Board has stated that the medical evidence upon which the Office relies must provide a detailed description of appellant's condition.[5]

In determining appellant's work restrictions, the Office relied upon the September 12, 1997 report of Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon and Office referral physician. Dr. Klinghoffer stated that in appellant's present situation "he is disabled from performing anything other than sedentary work on a part-time basis." In an accompanying Form OWCP-5c, the doctor only indicated that appellant could work four to five hours per day; he did not delineate the type of activities or the number of hours a day appellant was able to perform specific types of activities. Other than noting that appellant could perform part-time sedentary work, Dr. Klinghoffer did not delineate any specific physical limitations. As such, the doctor's report fails to provide a sufficient description of appellant's physical limitations. Therefore, the Office erred in relying on this evidence as a basis for determining appellant's wage-earning capacity.[6] Consequently, the Office failed to meet its burden of proof to justify modification of compensation benefits.[7]

[3] 5 U.S.C. § 8115(a); *see Mary Jo Colvert*, 45 ECAB 575 (1994); *Keith Hanselman*, 42 ECAB 680 (1991).

[4] *Albert C. Shadrick*, 5 ECAB 376 (1953).

[5] *Samuel J. Russo*, 28 ECAB 43 (1976).

[6] *See Bettye F. Wade*, 37 ECAB 556 (1986).

[7] *James B. Christenson*, *supra* note 1.

The April 25, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
March 7, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member