

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBY C. HARRIS and DEPARTMENT OF HEALTH & HUMAN
SERVICES, SOCIAL SECURITY ADMINISTRATION, Baltimore, Md.

*Docket No. 96-1839; Submitted on the Record;
Issued September 15, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that the position of ticket seller represented appellant's wage-earning capacity, effective February 6, 1996.

In the present case, the Office had accepted that appellant, a computer assistant, sustained aggravation of bilateral carpal tunnel syndrome on April 1, 1989. Appellant thereafter worked in a light-duty position. The Office also accepted that appellant sustained a recurrence of disability on November 29, 1993. The record reflects that appellant worked intermittently until April 4, 1994, when she stopped work. On January 16, 1996 the Office reduced appellant's compensation benefits to reflect that she had the wage-earning capacity of a ticket seller.

The Board finds that the Office met its burden of proof to reduce appellant's compensation benefits.

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.¹

Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions given the nature of the employee's injuries and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications and the availability of suitable employment.² 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

¹ *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

² *See generally*, 5 U.S.C. § 8115(a);

employment service or other applicable service. Finally, application of the principles set forth in the *Shadrick* decision³ will result in the percentage of the employee's loss of wage-earning capacity.⁴

In the present case, the Office received information from appellant's treating physician, Dr. William E. Beatie, a Board-certified orthopedic surgeon, who found that appellant was not totally disabled for work and had a partial capacity to perform work for eight hours a day as of June 27, 1994, subject to specified work restrictions of no repetitive movements of hands/wrists/fingers; no heavy pushing/pulling; and no heavy lifting. The Office referred appellant's case to a rehabilitation specialist who determined that the position of ticket seller was consistent with claimant's recorded medical restrictions, her specific occupational preparation, and was reasonably available within the commuting area of appellant's home. The specialist selected the position of ticket seller from the Department of Labor's *Dictionary of Occupational Titles* to fit appellant's capacity for work and determined the position's prevailing wage rate and its availability in the open labor market from a labor market survey.

The Board finds that the physical requirements of the selected position do not exceed the work tolerance limitations as set forth by Dr. Beatie in his November 1, 1994 report and there is no medical evidence that appellant would be unable to perform the position of ticket seller. The Board also finds that the Office properly followed the required procedures in reducing appellant's compensation benefits based upon her wage-earning capacity.

The decision of the Office of Workers' Compensation Programs dated January 16, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 15, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ *Albert C. Shadrick*, 5 ECAB 376 (1953).

⁴ *Dennis D. Owen*, 44 ECAB 475 (1993).