

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. GOODE and DEPARTMENT OF THE AIR FORCE,
DOVER AIR FORCE BASE, Dover, DE

*Docket No. 01-252; Submitted on the Record;
Issued September 26, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation to reflect his wage-earning capacity in the position of accounting clerk.

The Board has duly reviewed the case on appeal and finds that the Office properly reduced appellant's compensation to reflect his wage-earning capacity in the position of accounting clerk.

On January 4, 1993 appellant, then a 40-year-old sheet metal mechanic, filed a claim for traumatic injury, alleging that he developed pain and muscle soreness of his upper arms and shoulders due to the constant motions necessitated by his employment duties. Noting that this claim was more accurately classified as an occupational disease claim, the Office accepted appellant's claim for bilateral shoulder strain.¹ The Office subsequently referred appellant for vocational rehabilitation services. By letter dated September 30, 1999, the Office proposed to reduce appellant's compensation based on his capacity to earn wages as an accounting clerk. In a decision dated November 29, 1999, the Office reduced appellant's compensation effective December 5, 1999.

Once the Office has determined that an employee is totally disabled as a result of an employment injury, it has the burden of justifying a subsequent reduction of compensation. If

¹ Office regulations define the terms "injury" and "occupational disease or illness." "Injury" is defined by section 10.5(c)(14) as a wound or condition of the body induced by accident or trauma, and includes a disease or illness proximately caused by the employment. "Occupational disease or illness" is defined by 20 C.F.R. § 10.5(c)(16) as a condition produced in the work environment over a period longer than a single workday or shift by such factors as continued or repeated stress or strain. Under this regulation, the term "injury" includes a condition caused by repeated work stress or strain. *Barbara A. Dunnivant*, 48 ECAB 517 (1997).

the employee's disability is no longer total but is partial, appellant is only entitled to the loss of his wage-earning capacity.²

The Office informed appellant that it was adjusting his wage-loss compensation because he was no longer totally disabled under 5 U.S.C. § 8106 and was capable of performing the position of accounting clerk, in accordance with 5 U.S.C. § 8115.

Section 8106 of the Federal Employees' Compensation Act³ provides that a claimant may be paid compensation based on the difference between his monthly pay and his monthly wage-earning capacity after the beginning of partial disability.⁴ Section 8115(a) of the Act provides that wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity, or the employee has no actual earnings, his wage-earning capacity is determined with due regard to the nature of his injury, the degree of physical impairment, his usual employment, his age, his qualifications for other employment, the availability of suitable employment and other factors or circumstances which may affect his wage-earning capacity in his disabled condition.⁵

When the Office makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to a vocational rehabilitation counselor authorized by the Office or 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 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 *Albert C. Shadrick*⁶ will result in the percentage of the employee's loss of wage-earning capacity. The basic rate of compensation paid under the Act is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependents as defined in the Act, the employee is entitled to have his or her basic compensation augmented for a total of 75 percent of monthly pay.⁷

In this case, the Office determined that appellant was no longer totally disabled based on the reports of Dr. Glen D. Rowe, an orthopedic surgeon and appellant's treating physician, who stated on March 10, 1998 that appellant could work eight hours a day with no lifting more than 20 pounds, no pushing and pulling, and no operating a car, truck or other type of motor vehicle. Dr. Rowe clarified that appellant was capable of light to sedentary work but should avoid

² *Anthony W. Warden*, 40 ECAB 168, 181-82 (1988).

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8106.

⁵ *Pope D. Cox*, 39 ECAB 143, 148 (1988).

⁶ 5 ECAB 376 (1953).

⁷ *Thomas Taylor*, 49 ECAB 127 (1997).

repetitive activities above the chest level, could lift 50 pounds to the waist and 30 pounds from the waist level to the chest, but no lifting more than 20 pounds above the head. Appellant was also to avoid constant repetitive and strenuous activities with the right upper extremity. The Board finds the Office's determination that appellant was no longer totally disabled for work and capable for some type of employment was proper.

The Office then relied on the rehabilitation counselor's determination that the position of accounting clerk was within appellant's work restrictions and was reasonably available within appellant's commuting area. This position is classified as sedentary with maximum lifting up to 10 pounds occasionally and requiring frequent reaching, handling and fingering. Therefore, the position is well within the restrictions established by appellant's attending physician.

Appellant's rehabilitation counselor found that the job of accounting clerk was available in numbers sufficient to make it appropriate for appellant by contacting the state employment agency. The rehabilitation counselor and the Office considered appellant's prior occupation and vocational training, and the fact that appellant has a bachelors degree in business management, in concluding that an accounting clerk position was appropriate. The evidence establishes that the Office properly selected the job of accounting clerk in determining appellant's wage-earning capacity.

Further, the Office properly determined appellant's wage-earning capacity based on the weekly wages of \$350.80 of an entry-level accounting clerk and properly reduced his compensation to reflect his wage-earning capacity.

The decision of the Office of Workers' Compensation Programs dated November 29, 1999 is hereby affirmed.

Dated, Washington, DC
September 26, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member