U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REGINALD M. CALDWELL and DEPARTMENT OF THE TREASURY, BUREAU OF THE PUBLIC DEBT, Washington, DC

Docket No. 02-1252; Submitted on the Record;
Issued August 26, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation effective March 25, 2001 based on his capacity to earn wages as a computer support analyst.

On October 11, 1995 appellant, then a 46-year-old computer specialist, filed a claim for a traumatic injury on October 10, 1995 when he felt low back pain radiating down his right leg while moving a laser printer. The Office accepted that appellant sustained an acute lumbosacral strain and sciatica of the right leg and later authorized surgery on appellant's low back. On September 18, 1996 Dr. Sharon Marselas performed a laminotomy, foraminotomies, and a discectomy at L4-5 and a laminotomy and foraminotomy at L5-S1.

On April 25, 1997 appellant returned to work at the employing establishment as a computer specialist, working four hours a day, three days a week.

On March 3, 1998 the Office referred appellant to Dr. Louis Levitt for an evaluation of residuals of his injury-related condition and his ability to work. In a report dated March 17, 1998, Dr. Levitt concluded that the effects of appellant's surgery were not long lasting due to the degenerative pathology at L4-5. Dr. Levitt set forth work tolerance limitations dated March 31, 1998, indicating that appellant could work four hours per day while sitting.

On April 3, 1998 the employing establishment terminated appellant's employment effective April 11, 1998 on the basis of his excessive absences and his physical inability to perform his duties. The Office, which had been paying compensation for partial disability, began payment of compensation for temporary total disability on April 11, 1998.

On February 5, 1999 a rehabilitation counselor under contract with the Office interviewed appellant, who stated that, after his graduation from high school, he took a variety of computer classes from many computer training facilities, that he was a management analyst for a computer training center for three years, that he was self-employed for one year as a computer

training instructor, and that he had worked at the employing establishment for nine years as a computer specialist. In a July 13, 1999 note, this rehabilitation counselor stated: "Based on my research, I determined that neither the computer network administrator or engineer positions would be appropriate for [appellant] as they exceeded the sedentary work level and were not available on a part-time basis."

In a report dated September 9, 1999, an Office rehabilitation specialist stated that the position of computer support was consistent with appellant's physical limitations, that this position was reasonably available, and that appellant had the necessary vocational preparation, in that he had over four years of work experience.

On December 13, 2000 the Office issued a notice of proposed termination of compensation on the basis that the position of computer support analyst represented his wage-earning capacity.

By decision dated March 19, 2001, the Office reduced appellant's compensation effective March 25, 2001 on the basis that the position of computer support analyst represented his wage-earning capacity.

By letter dated April 11, 2001, appellant requested a hearing, contending that he was not qualified to perform the duties of a computer support specialist, as his most recent training in this field was no later than 1995. At a hearing held before an Office hearing representative on September 26, 2001 appellant testified that he was not disputing his physical ability to perform the selected position, although he did not actually feel he could physically perform the duties of the position. Appellant testified that his position of computer specialist with the employing establishment involved mostly troubleshooting, physical repairs and helping with installations. Appellant testified that he had not done programming or other functions contained in the description of computer support specialist, including analyzing to plan a system, projecting work loads and doing layouts and systems modifications.

By decision dated November 26, 2001, an Office hearing representative found that the Office met its burden of proof to reduce appellant's compensation, as he attended classes on a regular basis in an Office rehabilitation effort. This decision further found that appellant was physically capable of performing the position of computer support analyst on a part-time (20 hours per week) basis, and that this position was reasonably available in appellant's area.

The Board finds that the Office improperly reduced appellant's compensation effective March 25, 2001 based on his capacity to earn wages as a computer support analyst.

Once the Office determines that an employee is totally disabled as a result of an employment injury, it has the burden of justifying a subsequent reduction in compensation benefits.[1] Section 8115 of the Federal Employees' Compensation Act,[2] titled "Determination of wage-earning capacity" states in pertinent part:

> "In determining compensation for partial disability, *** if the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or if the employee has no actual earnings, his wage-earning capacity as appears reasonable under the circumstances is determined with due regard to --
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> (1) the nature of his injury;
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> (2) the degree of physical impairment;
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> (3) his usual employment;
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> (4) his age;
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> (5) his qualifications for other employment;
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> (6) the availability of suitable employment; and
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> (7) other factors or circumstances which may affect his wage-earning capacity in his disabled condition."

In the present case, the Office reduced appellant's compensation on the basis of his capacity to earn wages in the position of computer support analyst. A rehabilitation counselor indicated that the position of "computer support" was appropriate for appellant and was available in appellant's area. However, the job description and the code number from the Department of Labor's *Dictionary of Occupational Titles*, 033-167-010, in the Office's decision are not a computer support position but rather the position of computer systems hardware analyst, which has alternate titles of computer systems engineer, information processing engineer and data processing methods analyst.[3] The rehabilitation counselor stated that engineer positions exceeded appellant's work tolerance and were not available on a part-time basis. Although, the Office determined that computer support positions were available, the Office did not ascertain the availability of the computer systems hardware analyst position on which it based appellant's wage-earning capacity.

There is no evidence that appellant had training or experience as a computer systems hardware analyst. At a hearing held on September 26, 2001 appellant testified that he had not

[1] *Harold S. McGough*, 36 ECAB 332 (1984).

[2] 5 U.S.C. § 8115.

[3] Department of Labor, *Dictionary of Occupational Titles* (4th ed. 1991). The *Dictionary of Occupational Titles* contains a position of microcomputer support specialist, No. 039.264.01, but this was not the position the Office used as the basis of appellant's wage-earning capacity.

performed the functions listed in the job description for this position. The Office did not provide appellant with training, and did not ascertain what kind of computer training appellant had undergone. The position description for appellant's position of computer specialist at the employing establishment does not indicate that appellant performed the functions listed in the job description for the position selected to represent his wage-earning capacity. As the Office has not established that appellant met the specific vocational preparation for the selected position and that this position was available in appellant's commuting area, it did not meet its burden of proof to reduce his compensation.

The November 26, 2001 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
August 26, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member