

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANTIAGO B. ABREO and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Big Spring, Tex.

*Docket No. 97-482; Submitted on the Record;
Issued December 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation effective March 3, 1996 on the basis of his capacity to earn wages as an electronics worker.

Appellant sustained injuries to his back at work on March 16, 1970, September 29, 1970, and April 4, 1973. He last worked on December 4, 1974 and underwent a hemilaminectomy with partial disc resection on January 2, 1975. The Office began payment of compensation for temporary total disability, which was paid until March 3, 1996. By decision dated February 26 1996, the Office reduced appellant's compensation on the basis of that he had a capacity to earn wages as an electronics worker. The Office refused to modify this decision by a decision dated September 30, 1996.

Section 8115 of the Federal Employees' Compensation Act,¹ titled "[d]etermination 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:

- (1) the nature of his injury;
- (2) the degree of physical impairment;
- (3) his usual employment;

¹ 5 U.S.C. § 8115.

- (4) his age;
- (5) his qualifications for other employment;
- (6) the availability of suitable employment; and
- (7) other factors or circumstances which may affect his wage-earning capacity in his disabled condition.”

The Board finds that the Office properly reduced appellant’s compensation effective March 3, 1996 on the basis of his capacity to earn wages as an electronics worker.

A rehabilitation counselor under contract with the Office selected the position of electronics assembler from the Department of Labor’s *Dictionary of Occupational Titles*.² Through contact with the state employment service, the rehabilitation counselor ascertained that this position was reasonably available in appellant’s commuting area on a part-time basis. The specific vocational preparation for this position is short demonstration -- 30 days, and the rehabilitation counselor indicated appellant was vocationally able to perform the position.

The *Dictionary of Occupational Titles* described the strength needed for the position of electronics worker as light with occasional lifting up to 20 pounds. The medical evidence shows that appellant is physically able to perform the selected position. Appellant’s attending physician, Dr. Charles M. Younger, a Board-certified orthopedic surgeon, set forth work tolerance limitations in a February 14, 1995 report that would not preclude appellant from performing the duties of an electronics worker. Furthermore, in a report dated March 25, 1996, Dr. Younger stated:

“The patient has forwarded me some further information regarding his wage-earning capacity as an electronics worker. While I am not a vocational expert, I find it hard to believe that a company is going to hire a person with an eighth grade education and no previous experience to be a part-time electronics worker. However, if such a position could be made available, I feel that he could perform these duties.”

These reports from Dr. Younger establish that appellant is physically capable of performing the selected position of electronics worker. Although Dr. Younger stated in December 19, 1995 and May 15, 1996 reports that appellant was “unable to be gainfully employed,” the doctor’s March 25, 1996 report makes it clear that he was considering factors other than appellant’s physical capability, namely his age and experience. These factors are to be assessed, and were in this case, by a rehabilitation counselor, not by a physician.

² DOT No. 726.687-010.

The decisions of the Office of Workers' Compensation Programs dated September 30 and February 26, 1996 are affirmed.

Dated, Washington, D.C.
December 23, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member