

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTONIO ESQUEDA, SR. and DEPARTMENT OF THE NAVY,
SEA SYSTEM COMMAND, Long Beach, Calif.

*Docket No. 96-1187; Submitted on the Record;
Issued March 13, 1998*

DECISION and ORDER

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

The issue is whether appellant has established that he is entitled to wage-loss benefits after November 27, 1995.

The Board has duly reviewed the case record and finds that the case is not in posture for a decision on the issue of whether appellant is entitled to wage-loss benefits after November 27, 1995.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a shipfitter, sustained a left knee injury on November 7, 1994 in the performance of duty, resulting in a left medial meniscus tear and requiring arthroscopic surgery. Appellant returned to work in a light-duty position on April 26, 1995. Appellant's treating physician, Dr. Ray Craemer, a Board-certified orthopedic surgeon, submitted a number of progress reports to the record indicating that appellant's left knee condition was improving, however, he remained restricted to light work with no lifting over 15 pounds, and walking 30 minutes at a time. These restrictions were certified by an employing establishment physician, Dr. Edgar Briones, on September 25 and October 19, 1995. Appellant was laid off from his light work duties on November 27, 1995, upon expiration of the temporary position. Dr. Craemer reported on November 28, 1995 that appellant's restrictions remained no lifting over 15 pounds and avoid exposure to walking greater than 30 minutes. Dr. Craemer stated with increased work activities appellant sustained swelling and pain of the left knee. Dr. Craemer concluded that appellant was unable to return to his regular work.

By decisions dated December 21, 1995 and February 8, 1996, the Office denied payment of disability benefits after November 28, 1995 on the grounds that appellant had not established that he was totally disabled and his employment had been terminated due to expiration of the temporary position.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹

In the present case, following appellant's November 7, 1994 employment injury, he returned to light-duty work on April 26, 1995. Appellant remained in a light-duty capacity until November 27, 1995, at which time he was terminated from his federal employment on the grounds that his temporary position had expired and the employing establishment no longer had any work within his physical limitations. As no light duty was made available for appellant after this date, the nature and extent of his light-duty job requirements did change.² The medical evidence of record continued to support a finding that appellant had residuals of the accepted employment injury such that he was disabled for the job he had at the time of injury. As used in the Federal Employees' Compensation Act, the term "disability" means the incapacity because of an injury in employment to earn the wages the employee was receiving at the time of injury.³ Appellant was therefore disabled and entitled to wage-loss benefits after November 27, 1995.

The medical evidence of record, however, does not indicate that appellant is totally disabled for all employment and therefore on remand the Office should determine appellant's loss of wage-earning capacity in accordance with the principles established in the *Shadrick* case.⁴

¹ *Terry R. Hedman*, 38 ECAB 919 (1986).

² *Id.* See also *Jackie B. Wilson*, 39 ECAB 915 (1988).

³ See *Patricia A. Keller*, 45 ECAB 278 (1993).

⁴ *Albert C. Shadrick*, 5 ECAB 376 (1953); see *Wilson*, *supra* note 2.

The decisions of the Office of Workers' Compensation Programs dated February 8, 1996 and December 21, 1995 are hereby set aside and the case remanded for further development of the case record and a *de novo* decision consistent with this decision.

Dated, Washington, D.C.
March 13, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member