

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS PIRAINO and U.S. POSTAL SERVICE,
POST OFFICE, Beaumont, Tex.

*Docket No. 96-53; Submitted on the Record;
Issued January 5, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation to reflect his wage-earning capacity as a receptionist.

On December 21, 1976 appellant, then a 37-year-old letter carrier, filed a claim alleging that he sustained injuries to both of his knees when he fell while in the performance of duty. This was the last of a series of employment-related incidents involving appellant's knees. As a result of these incidents, the Office accepted that appellant sustained a torn medial meniscus, anxiety and depression, and authorized surgical treatment, including a total right knee replacement. After the December 21, 1976 injury, appellant did not return to work and was placed on the periodic compensation rolls.

In reports dated October 3 and November 9, 1994, and January 18, 1995, appellant's attending physician, Dr. H.A. Reid, a Board-certified orthopedic surgeon, indicated that appellant could return to work in a seated clerical type position requiring no standing, lifting over ten pounds, bending, climbing, kneeling, squatting or twisting.

On May 10, 1995 the Office issued a notice of proposed reduction of compensation and accompanying memorandum. Based on a report dated May 9, 1995 from an Office rehabilitation specialist, the Office found that appellant is no longer totally disabled, but is partially disabled and has the wage-earning capacity of a receptionist. The Office further found that appellant's organizational, communication and interpersonal skills acquired through his position as a mail carrier qualified him for this work, that the job of receptionist is available in sufficient numbers within appellant's local commuting area to be considered reasonably available, and that the physical requirements of the job, classified as sedentary, are in line with the limitations set by appellant's attending physician. The Office, therefore, proposed to reduce appellant's compensation to account for appellant's wage-earning capacity as a receptionist.

Appellant did not respond to the Office's May 10, 1995 notice.

In a decision dated June 12, 1995, and accompanying memorandum, the Office determined that the selected position of receptionist represents appellant's wage-earning capacity.

By letter dated July 8, 1995, appellant requested reconsideration of the June 12, 1995 decision. In support of his request, appellant submitted a letter dated June 19, 1995 from his attending physician, Dr. Reid, stating that appellant is "totally disabled as far as any type of walking or standing" and "can do only sitting work."

In a decision dated July 18, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of his request was repetitious and therefore insufficient to warrant a merit review.

The Board has reviewed the record and finds that the Office properly reduced appellant's compensation in this case.

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of justifying a subsequent reduction in such benefits.¹

Under section 8115(a) of the Federal Employees' Compensation Act, 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 if the employee has no actual earnings, then the wage-earning capacity, as appears reasonable under the circumstances, is determined with due regard to the factors enumerated in section 8115(a).² These factors, which are also incorporated into the Office procedures,³ include the nature of the injury, the degree of physical impairment including impairments resulting from both injury-related and preexisting conditions, the usual employment, claimant's age and qualifications for other employment, and the availability of the employment.⁴

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 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 labor market should be made through contact with the state employment service or other applicable service.⁵ Finally, application of the

¹ *Carla Letcher*, 46 ECAB 452 (1995); *David W. Green*, 43 ECAB 883 (1992).

² 5 U.S.C. § 8115(a); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814 (December 1993).

⁴ *Id.*

⁵ *Dennis D. Owen*, 44 ECAB 475 (1993).

principles set forth in *Albert C. Shadrick* will result in the percentage of the employee's loss of wage-earning capacity.⁶

With respect to appellant's physical limitations, the Board notes that appellant's attending physician, Dr. Reid, indicated on reports and work restriction evaluation forms dated October 3 and November 9, 1994 and January 18, 1995, that although appellant had not yet undergone his authorized total right knee replacement, he was capable of performing seated clerical work or desk work 8 hours a day, provided he was not required to stand, lift more than 10 pounds, bend, climb, kneel, twist or squat. Based on this evaluation, the Office sought employment opportunities for appellant that complied with the physical limitations set by the physician. In response to the Office's June 12, 1995 decision reducing his compensation, appellant submitted an additional report from Dr. Reid dated June 19, 1995, in which the physician reiterated his earlier conclusion that appellant is totally disabled as far as walking or standing are concerned, but could perform seated work.

The Board therefore finds that the Office properly relied on Dr. Reid's opinion, as consistently expressed in his various reports, as the weight of the medical evidence with respect to appellant's physical limitations. In addition, the Board finds that the selected position of receptionist reasonably reflects appellant's wage-earning capacity under the circumstances.

In this case, a rehabilitation specialist reviewed the restrictions specified by Dr. Reid and determined that appellant is physically capable of performing the duties of a receptionist, a job described in the *Dictionary of Occupational Titles* as a sedentary position which involves occasional lifting of less than ten pounds, reaching, handling, fingering, feeling, talking, hearing and seeing. Therefore, the Office properly found that the position of receptionist is within appellant's medical limitations.

In addition, an Office wage-earning capacity specialist indicated that the selected position is suitable to appellant's education and experience, is reasonably available within appellant's commuting area and pays \$205.60 a week.

As the medical evidence establishes that appellant is capable of performing seated work with restrictions, and as the Office followed established procedures for determining the vocational suitability and reasonable availability of the position selected, the Board finds that the Office, has given due regard to the factors specified at section 8115(a) of the Act, properly reduced appellant's monetary compensation on the grounds that he has the capacity to earn wages as a receptionist.

⁶ *Id.*; *Albert C. Shadrick*, 5 ECAB 376 (1953); see 20 C.F.R. § 10.303.

The decisions of the Office of Workers' Compensation Programs dated July 18 and June 12, 1995 are affirmed.

Dated, Washington, D.C.
January 5, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member