

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of BENNY JOE OLIVER and DEPARTMENT OF THE ARMY,  
Fort Rucker, Ala.

*Docket No. 97-2182; Submitted on the Record;  
Issued July 12, 1999*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's monetary compensation to reflect a capacity to earn wages as a meter reader.

On January 25, 1993 appellant, a maintenance mechanic, sustained an injury while in the performance of duty when he pulled a wood tool box off a truck. The Office accepted his claim for the conditions of left shoulder strain, ruptured left biceps and labral tear of the left shoulder. The Office authorized a left rotator cuff repair and paid compensation for temporary total disability on the periodic rolls.

In a decision dated November 4, 1996, the Office found that the medical evidence showed that appellant was no longer totally disabled for work due to the effects of his employment injury. The Office reduced his monetary compensation on the grounds that he was able to perform the position of meter reader, which fairly and reasonably represented his wage-earning capacity.

The Board finds that the Office properly reduced appellant's monetary compensation.

Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions given the nature of the employee's injuries and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications and the availability of suitable employment.<sup>1</sup> When the Office makes a medical determination of partial disability and of the specific work restrictions, it should 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 labor market, that fits the employee's capabilities in light of his or her 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, the application of the principles set

---

<sup>1</sup> See generally 5 U.S.C. § 8115(a); 2 A. Larson, *The Law of Workmen's Compensation* § 57.22 (1989).

forth in the *Shadrick* decision will determine the percentage of the employee's loss of wage-earning capacity.<sup>2</sup>

The Office properly followed these procedures. Appellant's attending orthopedic surgeon, Dr. Glenn C. Terry, reported on January 5, 1995 that appellant was capable of returning to work with specific restrictions. A functional capacity evaluation performed on January 10 and 11, 1996 showed that appellant was capable of performing medium work with specific restrictions due to his limited range of motion and weakness. The Office referred appellant's case to an Office rehabilitation specialist, who selected several positions that fit appellant's capabilities, including the position of meter reader (utilities). The specialist found that appellant had satisfied the specific vocational requirements of this position. Through contact with the city personnel office and two water authorities, the specialist determined the position's prevailing wage rate and found that it was being performed in sufficient numbers so as to make it reasonably available to appellant within his commuting area.

The Office properly found that appellant was no longer totally disabled as a result of his accepted employment injury, and it followed established procedures for determining appellant's employment-related loss of wage-earning capacity.

The November 4, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
July 12, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

---

<sup>2</sup> *Hattie Drummond*, 39 ECAB 904 (1988); see *Albert C. Shadrick*, 5 ECAB 376 (1953).