

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. SMITH and DEPARTMENT OF STATE,
U.S. PEACE CORPS, Washington, DC

*Docket No. 97-930; Submitted on the Record;
Issued October 26, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that he no longer had a loss of wage-earning capacity.

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits on the grounds that he no longer had a loss of wage-earning capacity.

Appellant filed a claim on June 6, 1973 alleging that he developed gastroenteritis while in the Peace Corps in Ghana. The Office accepted appellant's claim for gastroenteritis on April 1, 1974 and Addison's disease on April 5, 1974. The Office entered appellant on the periodic rolls on October 21, 1974. By decision dated October 9, 1975, the Office adjusted appellant's compensation based on his capacity to earn wages as a manager trainee (bank). The Office terminated appellant's compensation benefits effective August 24, 1995 on the grounds that he no longer had a loss of wage-earning capacity and was self-rehabilitated. Appellant requested an oral hearing. By decision dated September 30, 1996 and finalized October 2, 1996, the hearing representative affirmed the Office's August 24, 1995 decision.

In order to modify a formal loss of wage-earning capacity determination, the Office must establish either that the original rating was in error, that the claimant's medical condition had changed or that the claimant has been vocationally rehabilitated.¹ The burden of proof is on the party seeking modification, in this case the Office.² The Office may modify a wage-earning

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.11(a) (June 1996).

² *Id.* at Chapter 2.814.11(b).

capacity determination if the claimant is employed in a new job earning 25 percent more than the current rate of pay for the job for which the claimant was rated.³ The Office must:

“(1) *Determine the duration, exact pay, duties and responsibilities of the current job.*

“(2) *Determine whether the claimant underwent training or vocational preparation to earn the current salary.*

“(3) *Assess whether the actual job differs significantly in duties, responsibilities, or technical expertise from the job at which the claimant was rated.*”⁴

In this case, appellant was rated as a manager trainee (bank) and this position in 1975 included a salary of \$183.08 per week. Appellant’s current position of executive director includes a salary of \$34,300.00. However, the Office did not determine the current salary for appellant’s rated position of manager trainee (bank). Instead, the Office determined the difference between the current pay for appellant’s date-of-injury position and his current position.

As the Office failed to follow its own procedures in modifying the original wage-loss determination, the Office failed to meet its burden of proof.

The October 2, 1996 decision of the Office of Workers’ Compensation Programs is reversed.

Dated, Washington, D.C.
October 26, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

³ *Id.* at Chapter 2.814.11(c).

⁴ *Id.* at Chapter 2.814.11(d).