

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KEENAN C. HAROLD and DEPARTMENT OF THE NAVY,  
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 99-187; Submitted on the Record;  
Issued August 9, 2000*

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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 compensation based on his wage-earning capacity in the selected position of computer technician.

In the present case, the Office accepted that appellant sustained a left shoulder injury in the performance of duty on October 15, 1996. The Office issued a schedule award for a 13 percent permanent impairment to the left arm on December 9, 1993. Appellant returned to light-duty work but his employment was terminated by the employing establishment in 1994, due to lack of work. In a letter dated October 8, 1997, the Office notified appellant that it proposed to reduce his compensation because he had the capacity to earn wages as a computer technician. By decision dated December 3, 1997, the Office reduced appellant's compensation based on his capacity to earn \$434.92 per week as a computer technician.

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.<sup>1</sup>

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, his wage-earning capacity is determined with due regard to the nature of his injury, his degree of physical impairment, his usual employment, his age, his qualifications for other employment, the

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<sup>1</sup> *Carla Letcher*, 46 ECAB 452 (1995).

availability of suitable employment and other factors, which may affect his wage-earning capacity in his disabled condition.<sup>2</sup>

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.<sup>3</sup> Finally, application of the principles set forth in *Albert C. Shadrick* will result in the percentage of the employee's loss of wage-earning capacity.<sup>4</sup>

In this case, the Office sent a copy of the job description for the selected position of computer technician to the attending physician, Dr. John P. Salvo, an orthopedic surgeon. He indicated on April 26, 1996 his approval for the position, noting that appellant could not do repetitive overhead lifting with the left arm. The Board notes that the job description indicates that the position rarely required overhead work and there is no indication that it required overhead lifting using the left arm. There is no probative evidence that the selected position was outside appellant's physical restrictions.

On appeal appellant notes that the Office form containing the job description for computer technician (Form CA-66) indicates two to four years of vocational preparation for the position. The record indicates, however, that appellant had completed a computer technician training program as part of the Office's vocational rehabilitation services. In addition, both the Office rehabilitation specialist and the private rehabilitation counselor used by the Office in this case, indicated that appellant was capable of working in an entry-level position as a computer technician. The Board finds that the probative evidence of record indicates that the selected position was medically and vocationally appropriate in this case.

In accordance with Office procedure, the rehabilitation counselor reviewed the availability of the position in appellant's area and found that it was reasonably available with a starting wage of \$434.92 per month. The record, therefore, indicates that the Office properly took into consideration appellant's physical limitations, education, age and prior experience in selecting the position and properly determined wage and availability of the position in appellant's commuting area. The Office then reduced appellant's compensation in accord with the *Shadrick* formula.

The decision of the Office of Workers' Compensation Programs dated December 3, 1997 is affirmed.

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<sup>2</sup> See *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992); see also 5 U.S.C. § 8115(a).

<sup>3</sup> See *Dennis D. Owen*, 44 ECAB 475 (1993).

<sup>4</sup> 5 ECAB 376 (1953); see also 20 C.F.R. § 10.303.

Dated, Washington, D.C.  
August 9, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member