

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LAWRENCE D. WHITE and DEPARTMENT OF THE NAVY,  
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 98-877; Submitted on the Record;  
Issued February 18, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to compensation for the period August 22, 1994 to October 15, 1995; and (2) whether the Office of Workers' Compensation Programs properly adjusted appellant's compensation to reflect his wage-earning capacity in the position of telephone solicitor.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the November 25, 1997 decision of the Office hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.<sup>1</sup>

The next issue to be addressed is appellant's wage-earning capacity. In his reports dated August 5, 1995 and June 21, 1996 and work capacity evaluations dated August 4, 1995 and August 12, 1996, Dr. William G. Peacher, a Board-certified neurological surgeon and a referral physician, opined that appellant had residuals from the August 23, 1993 employment injury and that appellant could work eight hours a day with lifting 10 to 20 pounds occasionally in an hour, limited repetitive reaching overhead, gripping, bending, stooping, pushing and pulling. The July 8, 1994 and April 10, 1995 reports of Dr. Satish K. Lal, appellant's treating physician, and the August 15, 1995 report of Dr. Ronald D. Levin, a Board-certified physiatrist, also stated that appellant could perform light-duty work with lifting and bending restrictions. In a vocational report dated October 31, 1996, covering the period from August 23 through October 31, 1996, the rehabilitation specialist identified the job of telephone solicitor as one that was available, within appellant's physical limitations, and one which appellant had the skills to perform. The physical requirements of the telephone solicitor were occasional lifting and carrying of 20 pounds, occasional to frequent walking and standing, and reaching, handling and fingering.

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<sup>1</sup> Appellant did not present any medical evidence showing that he was unable to perform light-duty work from August 4, 1995 to August 12, 1996 due to his accepted condition; see *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

By decision dated January 6, 1998, the Office found that the position of telephone solicitor at \$7.00 an hour fairly and reasonably represented appellant's wage-earning capacity. In an accompanying worksheet, the Office applied the *Shadrick*<sup>2</sup> formula and found that appellant's gross weekly compensation rate was \$563.00.

The Board finds that the Office properly adjusted appellant's compensation to reflect his wage-earning capacity as a telephone solicitor.

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury, it has the burden of justifying a subsequent reduction of compensation benefits.<sup>3</sup>

Under section 8115(a) of Federal Employees' Compensation Act,<sup>4</sup> wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings do not fairly and reasonably represent his or her wage-earning capacity, or the employee has no actual earnings, his or her wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, his or her usual employment, age, qualifications for other employment, the availability of suitable employment, and other factors and circumstances which may affect wage-earning capacity in his or her disabled condition.<sup>5</sup>

The August 8, 1995 and June 21, 1996 medical reports and the August 8, 1995 and August 12, 1996 work evaluations from Dr. Peacher establish that appellant was physically capable of performing the work of a telephone solicitor which required occasional lifting up to 20 pounds and occasional to frequent walking and standing. The reports of Dr. Levin, another referral physician, and Dr. Lal, appellant's treating physician, also stated that appellant could perform light-duty work with restrictions. As no special skills were required to perform the job of telephone solicitor, appellant had the necessary job qualifications. The job description indicated that the job was reasonably available. Appellant did not submit any evidence showing that he was unable to perform the job of telephone solicitor. The Office therefore met its burden of showing that the position of a telephone solicitor reasonably represented appellant's wage-earning capacity.

The decisions of the Office of Workers' Compensation Programs dated January 6, 1998 and February 10 and November 25, 1997 are hereby affirmed.

Dated, Washington, D.C.  
February 18, 2000

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<sup>2</sup> See *Albert C. Shadrick*, 5 ECAB 376 (1953).

<sup>3</sup> *Carlos Perez*, 50 ECAB \_\_\_\_ (Docket No. 98-128, issued July 23, 1999); *Gregory A. Compton*, 45 ECAB 154 (1993).

<sup>4</sup> 5 U.S.C. § 8115(a).

<sup>5</sup> *Kathleen Weiseman*, 50 ECAB \_\_\_\_ (Docket No. 97-1633, issued June 9, 1999); see *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member