U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY H. EVERETT and DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION, Washington, DC

Docket No. 99-962; Submitted on the Record;
Issued February 8, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is 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 Office accepted appellant's claim for a basal skull fracture, concussion, dermatitis, perforated left tympanic membrane, residual vestibular dysfunction, tinnitus, hearing loss in the left ear and chronic intermittent cluster headaches.

In a work restriction evaluation form dated February 25, 1993, Dr. Ross P. Chiles, appellant's treating physician and a Board-certified internist with a specialty in endocrinology, diabetes and metabolism, opined that appellant could work eight hours a day, stated he must avoid high speed working due to poor balance and vertigo, and he would have trouble meeting deadlines due to recurrent headaches.

In a report dated July 15, 1993, Dr. Chiles reiterated that appellant's chronic disability included recurring cluster headaches, chronic tinnitus, hearing loss and the associated problem with balance and vertigo. He stated that the balance difficulty manifested itself with a sudden loss of balance when changing positions and in an upright posture. Dr. Chiles stated that the vertigo was quite variable in its manifestation and totally unpredictable, lasting up to 14 days at a time. He concluded that appellant had continued disability for any employment requiring work at any height or with high speed equipment or one that required recurring changes in posture. Dr. Chiles stated that it "would also be difficult, if not impossible, for him to work at any occupation requiring any regular schedule because of the unpredictability of his cluster headaches, vertigo and poor balance."

In a report dated November 15, 1993, Dr. Philip J. Leonard, a Board-certified psychiatrist and neurologist and a second opinion physician, diagnosed post-concussion syndrome, post-traumatic headaches, possibly cluster and sensorineural hearing loss status post basilar skull fracture. He opined that appellant could work eight hours a day, would have trouble meeting

deadlines due to recurrent headaches and required limitations including lifting and walking for only four hours a day. Dr. Leonard stated that appellant would have difficulty with height and high speed working due to vestibular dysfunction, poor balance and vertigo.

In a labor market survey dated October 31, 1994, the rehabilitation counselor, Terry L. Vander-Molen, contacted 10 companies, only two of which, National Market Share, Incorporation and Telequest, had the precise title of telemarketers. National Market Share, Incorporation had a relaxed atmosphere, a large open area shared by other employees and no "real pressure." Telequest stated that it required tolerance to rudeness and/or rejections. Both companies had full-time and part-time jobs available but Telequest stated that adherence to the preapproved schedule was required.

In a report dated November 18, 1994, the rehabilitation counselor, James B. Howard, stated that the select commission salary jobs were the only ones which could provide the injured worker with a stress-free work environment and allow him to work at his discretion.

In a job classification form dated December 7, 1994 (Form CA-66), Mr. Vander-Molen listed the job description of telephone solicitor obtained from the Department of Labor *Dictionary of Occupational Titles* as being reasonably available to claimant within his community. The job included soliciting orders for merchandise or services over the telephone and calling prospective customers to explain the type of service or merchandise offered. The job was available full time or part time. It's physical requirements were sedentary with occasional lifting less than 10 pounds. Attached to the form, Mr. Vander-Molen listed the telemarketing positions from National Market Share, Inc. and Telequest which he obtained in his October 31, 1994 labor market survey.

In a notice of proposed reduction of compensation dated May 22, 1995, the Office stated that although appellant unsuccessfully tried to obtain the jobs of telephone solicitor, the rehabilitation counselor's December 7, 1994 report established that appellant was qualified for and could perform the work of a telephone solicitor as the work schedules was flexible and had low stress. The Office stated that appellant's wage-earning capacity should be reduced to $180.00 a week as a telephone solicitor [per the attached Form CA-816 which is not attached].

By letter dated June 5, 1995, appellant stated that he did not feel he could perform the job of telephone solicitor because it was too stressful and Drs. Chiles and Leonard's reports established he could not perform work involving stress, work schedules and deadlines. He stated that he would accept a weekly salary of $180.00 in a part-time telephone solicitor position.

By letter dated June 14, 1995, the rehabilitation specialist, James Howard, responded to appellant's comments and stated that he contacted two companies to address appellant's concerns about the jobs having fixed work schedules, quota deadlines and fast paced sales. He stated that the employers acknowledged that employees must work according to established schedules but they could arrange their own work shift which could be full- or part-time, or a split work schedule, meaning the employee could work two out of three days or five out of seven days either in the mornings, afternoons or evenings. Mr. Howard stated that the employers did not identify that the work environment involved high stress, fast pace sales and quotas and encouraged employees to set their own goals or offered additional bonuses. He also stated that

some of the work did not involve telephone sales but involved handling political polling campaigns, radio campaigns and survey and research work.

By decision dated June 30, 1995, the Office reduced appellant's compensation to $191.88 to reflect his wage-earning capacity as telephone solicitor.

Appellant requested an oral hearing before an Office hearing representative which the Branch of Hearings and Review denied in an undated decision received by the Office on September 25, 1995.

By letter dated February 7, 1996, appellant requested reconsideration of the Office's June 30, 1995 decision.

By decision dated May 14, 1996, the Office denied appellant's request for modification.

In a report dated June 21, 1996, Dr. Chiles stated that appellant had residual disability associated with a skull fracture sustained in 1963 and the disability consisted of recurring cluster headaches and severe tinnitus on the let side. He stated that in the past two years appellant had 20 to 45 episodes of cluster headaches which rendered him unable to do anything, that they lasted from 45 minutes to an hour at a time and the frequency, and recurrence rate of the headaches were totally unpredictable but were associated with periods of increased stress. Dr. Chiles stated that appellant's tinnitus had not responded to therapy, that it caused him loss of sleep when it was exacerbated, and that problem could cause him significant distraction when he was awake. Dr. Chiles stated:

> "In view of the continued presence of these symptoms, I believe the patient to be totally disabled in terms of returning to his previous occupation. I also believe him to be essentially disabled for any other job that does not allow for random absence for the irregular occurrence of his cluster headaches. Any potential occupation would have to be of quite low stress and not associated with the operation of any moving machinery or other dangerous equipment."

By letter dated August 16, 1996, appellant requested reconsideration of the Office's decision. He submitted a labor market survey which was conducted in 1996 by Stuart Vexler, a licensed psychologist, and Doug Dierking, a licensed professional counselor and licensed marriage and family therapist, whom he hired. Appellant also submitted the October 31, 1994 labor market survey performed by Mr. Vander-Molen for comparison. Mr. Vexler contacted seven telemarketing and five market research firms which were listed in the 1996 local Southwestern Bell Yellow pages, four of which appellant specifically requested and three of which, First Market Research, The Benchmark Company and Telequest, were contacted in Mr. Vander-Molen's labor market survey. Mr. Vexler stated that two of the companies, Calls Unlimited and Innovative Marketing Solutions, were unable to provide information about telephone agent positions. He stated of the five remaining telemarketing firms surveyed, MCI and Harte Hanks had full-time telephone positions and the three smaller firms had part-time positions. Mr. Vexler stated that a common theme among all five firms was that the telephone agent position "involved a significant amount of rejection, often verbally abusive rejection, which many people find difficult not to take personally and thus experience as stressful." He

stated that all the firms measured performance, that MCI had specific performance quotas, Harte-Hanks had a complex rating system, and the other companies had general standards and offered bonuses and commissions or other incentives. Mr. Vexler stated that turnover performance was high with average tenure less than six months.

Of the five market research firms Mr. Vexler contacted, one did not provide information about a telephone agent position and a second firm, Texas Poll, utilized researchers only from the University of Texas Office of Survey Research to conduct their surveys. He stated that the telephone agent positions at the other three market research firms which included Tammadge Market Research, Inc. and First Market Research were part time, required individuals who were dependable, able to work specific hours and able to handle rejection and rudeness from those who were called. Mr. Vexler stated that Benchmark used a quota system with a hourly base rate and a bonus based on the number of dials and completes. He stated that Tammadge Market Research did not use a specific quota system but the employee had to meet deadlines and the firm monitored the number of dials and completes and terminated telephone agents who did not meet their standards. Mr. Vexler stated that First Market Research had a standard of 20 dials per hour during the day and 25 per hour at night. Mr. Vexler concluded that although the nature of stress can be subjective, "[tele]phone agent positions, especially in the high pressure selling environment of telemarketing firms involves several of the factors likely to be experienced as stressful [by most people], including time pressure in the form of quotas and deadlines or other quantitative measures, competition either against a standard or others, repetitive work tasks in a confined environment, and a significant amount of rejection, often verbally abusive rejection, from those who are called." He stated that a frequently cited criteria was dependability and reliability, and that while some firms allowed for flexibility of scheduling within their hours of operations, the flexibility was limited.

In an undated case status information report, the Office stated that because there was a conflict in the evidence as to whether the position of telephone solicitor was available and suitable for appellant, it was referring appellant to another certified rehabilitation counselor for an evaluation. In a report dated January 23, 1997, Mr. Frederick H. Fox, a licensed professional counselor, conducted a labor market survey on telephone solicitors in the Austin, Texas area. He contacted fifteen employers of telemarketers and telephone solicitors, eight of which completed interviews with him. Some of the firms had been contacted by either Mr. Vexler or Mr. Vander Molen or both and included Harte-Hanks, First Market Research, Tammadge Market Research, Inc., Benchmark Market Research and Telequest. Mr. Fox stated that the firms had part-time or full-time schedules but most of them had part time.

According to Mr. Fox, Tammadge Market Research, Inc ("Tammadge") required an interviewer and stated that the stress in the job was "very low" because there was no quota or commission basis pay rate. Mr. Fox stated, however, that when the person he contacted, Mr. Craig, compared his operation to other telephone rooms, he stated that it would be a "low stress" environment. In his conclusion about stress level on the job, Mr. Fox concluded that of all the companies he called, only Tammadge had a low stress environment. He stated that at Tammadge the majority of the interviewers worked 16 to 20 hours per week but some worked up to 35 hours. First Market Research required interviewers, stated that there was no selling and no quotas required for interviewers and that the stress level "appear[ed] to be low." The company

stated that the pay was initially $5.50 to $6.00 per hour and the majority of employees worked 15 to 20 hours a week although some worked 40 hours per week.

Harte-Hanks Direct Marketing required a telephone agent for "outbound" and "inbound calls," noting that outbound calls made at a fast pace rate are stressful and inbound calls were "slower paced with minimal stress involving pressure of performance, deadline or outcome." Harte-Hanks also stated that there was scheduled work with 6 to 10 absences from work permitted within a six-month period. Mr. Fox stated that the pressure at the University of Texas Office of Survey Research was moderate due to refusals in the work. The other companies listed has stress levels of low to moderate or moderate to high. Mr. Fox concluded that based on the firms' responses, employment was reasonably available as an "Interview/Telemarketer 'Telephone Solicitor'" in the Austin area within "the restrictions specified" and that there were sufficient numbers of positions being performed.

By decision dated February 12, 1997, the Office denied appellant's request for modification, stating that it credited Mr. Fox's opinion that appellant could perform the work of telephone solicitor full time over Mr. Vexler and Mr. Dierking's opinion that appellant could not perform the job of telephone solicitor or at most could perform the job only part-time because Mr. Fox was an impartial rehabilitation specialist.

By letter dated April 10, 1997, appellant requested reconsideration of the Office's decision. Appellant cited problems with five of the firms Mr. Fox contacted stating that Max Service and Harte Hanks had "schedules/production standards," Addressing Your Needs had "schedules and stress," and Gallup and Telequest had "stress and quotas." He stated that Mr. Fox stated that the stress level of the work at Tammadge and First Market Research was low while Mr. Vexler and Mr. Dierking stated that a tolerance for rudeness and rejection were part of the job requirements at both companies. Appellant concluded that the jobs identified by Mr. Fox were not within his physical restrictions. Further, that Mr. Fox's report as well as Mr. Vexler's and Mr. Dierking's report indicated that most of the jobs were part time, had an entry level wage of $4.50, and therefore appellant contended that at most he had a wage-earning capacity of $90.00 ($4.50 times 20 hours). Appellant contended that he should be paid retroactively to February 23, 1995.

By decision dated May 12, 1997, the Office denied appellant's request for modification.

By letter dated October 8, 1997, appellant requested reconsideration of the Office's decision and submitted a report from Mr. Vexler and Mr. Dierking dated September 30, 1997 as well as a "report" appellant compiled dated October 8, 1997 describing inconsistencies and omissions in Mr. Fox's report. In the September 30, 1997 report, Dr. Vexler and Mr. Dierking noted that of the firms interviewed by Mr. Fox, only one of the firms, Tammadge Market Research stated the work was low stress and four other firms had low to moderate stress. They stated that because Dr. Chiles opined that appellant required "quite low stress," and the description of the degree of stress at Tammadge Marketing Research, Inc. was unclear, the jobs described by Mr. Fox were not within appellant's restrictions. The counselors also stated that since most of the interviewers at Tammadge Market Research Inc. worked only 16 to 20 hours a week, even if the job was within appellant's stress restrictions, appellant's wage-earning capacity should be based on a part-time salary. In his request, appellant reiterated that his wage-earning

capacity should be adjusted from $180.00 to either $90.00 or $92.00 based on a part-time position of a telephone solicitor.

By decision dated January 8, 1998, the Office denied appellant's request for reconsideration.

By letter dated February 23, 1998, appellant requested reconsideration of the Office's decision. Appellant contended that the Office erred in denying his request for reconsideration in that he had submitted new evidence. Further, he stated that the Office "never" addressed the issue of whether there were a sufficient number of full-time telephone solicitor jobs within his vocational and medical work restrictions so as to establish a wage-earning capacity based on a full-time job. Appellant reiterated his request that his compensation be adjusted retroactive to July 23, 1995, to a part-time entry level telephone solicitor wage in effect at the time of the October 1994 labor market survey. Appellant referred to Mr. Vexler's and Dierking's report as supportive of his argument that of the firms identified by Mr. Fox, only Tammadge Market Research, Inc. might have "quite low stress" within his work restrictions and since most of the interviewers were part time, his wage-earning capacity should be based on a part-time telephone solicitor position.

By decision dated March 3, 1998, the Office denied appellant's request for reconsideration.

By letter dated April 13, 1998, appellant requested reconsideration of the Office's decision. Appellant reiterated some of his earlier contentions including the one that the Office did not consider the availability of full-time telephone solicitor positions. Appellant submitted additional evidence consisting of a medical report from Dr. Leonard dated April 7, 1998 on the cover page but dated on subsequent pages as November 15, 1993, and the last page with diagnoses and work prescription is verbatim the same as the November 15, 1993 report. In his report, Dr. Leonard indicated that he last examined appellant on November 15, 1993, reviewed Dr. Chiles' June 21, 1996 report and reviewed the vocational evidence.

Appellant submitted a report from Victor H. Appel, a licensed psychologist and career counselor, who opined that appellant could not perform the work of a telephone solicitor full time. In his March 27, 1998 report, Mr. Appel reviewed appellant's correspondence between him and the Office, one of Dr. Chiles' reports, the labor surveys performed by Mr. Fox and Mr. Dierking and Mr. Vexler, reviewed psychological literature on occupational stress and administered an anxiety test and an interpersonal relationship test. He stated that the fact that many of the jobs utilized mechanisms such as quotas, schedules or specified standards of performance and have a high turnover rate is suggestive that the occupation is stressful. Mr. Appel did not believe that any of the telephone solicitor jobs would involve very low stress. He also believed an assessment of appellant's ability to respond to the type of stressors the telephone solicitor job would involve was necessary. Mr. Appel found that appellant performed normal on the anxiety levels but in terms of social interaction, appellant liked to stay "very much to himself" and would be unsuited for telephone work.

By decision dated July 16, 1998, the Office denied appellant's request for modification.

By letter dated November 10, 1998, appellant requested reconsideration of the Office's decision and submitted another report from Dr. Leonard also dated April 7, 1998. In his second April 7, 1998 report, Dr. Leonard considered appellant's history of injury, the vocational evidence of record and performed a physical examination. He reiterated his diagnoses of post-concussion syndrome, post-traumatic headaches, possibly cluster and sensory neural hearing loss post basilar fracture. Dr. Leonard further explained appellant had residual tinnitus, problems with balance, severe cluster headaches and residual vestibular dysfunction. He stated:

> "I feel that he would not be able to be a telemarketer due to the problems listed above. I think that even taking for granted that there might be a job available, the high turnover rate of normal people suggests that with the increased stress of his cluster headaches, vertigo, and dizziness as well as his sleep disturbance and problems with stress, that he would be unable to do this job and would probably be terminated because of it if he were to try. He certainly would not be able to do this job on a full[-]time basis."

Appellant also submitted a letter from the University of Texas Office of Survey Research dated August 7, 1998 stating that according to the letter dated July 29, 1998 appellant sent them listing his physical condition, telephone interviewing would not be an appropriate job for him as it is often stressful. Appellant stated that the University of Texas was the only one of four firms listed by Mr. Fox in his February 5, 1997 survey, page 16, which responded to his inquiry.

By decision dated December 24, 1998, the Office denied appellant's request for modification.

The Board finds that the case is not in posture for decision.

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 of benefits.[1]

Under section 8115(a) of Federal Employees' Compensation Act, if 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.[2] When the Office makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to a vocational rehabilitation counselor authorized by the Office or 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 that employee's capabilities with regard to his physical limitations, education, age and prior experience. Once this selection is made, a determination of wage rate

[1] *Sylvia Bridcut*, 48 ECAB 162 (1996); *James B. Christenson*, 47 ECAB 775 (1996).

[2] *See Wilson L. Clow, Jr.*, 44 ECAB 157 (1992); *petition for recon. denied, (*Docket No. 92-118, issued February 11, 1993); *see also* 5 U.S.C. § 8115(a).

and availability in the open labor market should be made through contact with the state employment service or other applicable service.[3] 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.[4] The basic rate of compensation paid under the Act is 66 2/3 percent of the injured employee's monthly pay.

In his February 25, 1993 report, appellant's treating physician, Dr. Chiles opined that appellant could work eight hours a day but must avoid high speed working due to poor balance and vertigo, and he would have trouble meeting deadlines due to recurrent headaches. In his July 15, 1993 report, Dr. Chiles stated that appellant's vertigo was quite variable in its manifestation and totally unpredictable, lasting up to 14 days at a time. He stated that it would be difficult, "if not impossible," for appellant to work at any occupation requiring any regular schedule because of the unpredictability of his cluster headaches, vertigo and poor balance. In his November 15, 1993 report, the second opinion physician, Dr. Leonard concurred with Dr. Chiles, stating that appellant could work eight hours a day but would have trouble meeting deadlines and difficulty with high speed working due to vestibular, poor balance and vertigo.

In his October 31, 1994 labor market survey, the rehabilitation counselor, Mr. Vander-Molen identified two companies, Telequest and National Market Share, which had job openings for telemarketers, one of which, National Market Share, had a relaxed atmosphere with no real pressure and the other which required tolerance to rudeness or rejections or both. Both companies had full-time or part-time jobs available but Telequest stated that adherence to the preapproved schedule was required. Based on the job opportunities at Telequest and National Market Share, the Office issued a notice of proposed reduction of compensation dated May 22, 1995, stating that appellant could perform the job of telephone solicitor as the work schedule for that position was flexible, had low stress, and was reasonably available. The Office stated that appellant's wage-earning capacity should be $180.00 a week for a telephone solicitor.

In response to appellant's comments, by letter dated June 14, 1995, the rehabilitation specialist, James Howard, stated that he contacted two companies, although he did not mention which companies, about the nature of telemarketing work, and stated that the employers did not identify that the work environment involved high stress, fast pace sales and quotas, the schedule could be full time or part time or "split," and some of the work did not involve sales.

Appellant subsequently submitted a June 21, 1996 report from Dr. Chiles in which Dr. Chiles stated that in view of the continued presence of appellant's symptoms of cluster headaches which were frequent, unpredictable and associated with periods of increased stress and appellant's tinnitus, appellant could only perform work which allowed him random absence to accommodate the irregular occurrence of his headaches. He also opined that appellant would require an occupation of "quite low stress."

Appellant submitted a labor market survey conducted in 1996 by a licensed psychologist, Mr. Vexler, and a licensed professional counselor, Mr. Dierking, whom he hired. They

[3] *Raymond Alexander*, 48 ECAB 432 (1997); *Dorothy Lams*, 47 ECAB 584 (1996).

[4] *Dorothy Lams*, *supra* note 3; *Albert C. Shadrick*, 5 ECAB 376 (1953); *see also*, 20 C.F.R. § 10.303.

contacted seven telemarketing firms and five market research firms. Five of the seven telemarketing companies which responded including Telequest stated that the telephone agent involved a significant amount of rejection, often verbally abusive rejection, and therefore could be deemed stressful. Three of the market research firms they contacted including Tammadge Marketing Research, Inc. had only part-time positions available, required individuals who were dependable, and able to handle rejection and rudeness from those who were called.

To resolve the conflict between appellant's labor market survey and Mr. Vander-Molen's labor market surveys, the Office referred appellant to the licensed professional counselor, Mr. Fox. In a labor market survey on January 23, 1997, he contacted fifteen telemarketers and telephone solicitors, eight of which completed interviews with him. Although Mr. Fox stated Tammadge stated that the stress level on the job was very low, the contact person described the stress level as low and Mr. Fox concluded that the stress level was low. He stated that the stress at First Market Research "appear[ed] to be low." It involved no selling and quotas and had a "fairly relaxed atmosphere." Most employees of those companies worked part time but full time was available. Harte-Hanks had telephone agent positions which involved outbound and inbound calls and stated the outbound call positions were stressful but the inbound call position was slower paced with "minimal stress involving pressure of performance, deadline or outcome." Harte-Hanks stated that work could be missed 6 to 10 times in six months. Harte Hands did not indicate whether the job was full time or part time. The other jobs Mr. Fox identified had low to moderate stress or moderate to high stress.

Subsequent evidence appellant submitted consisted of Dr. Leonard's two reports dated April 7, 1998 and the report of Mr. Appel, a licensed psychologist, dated March 27, 1998 supports appellant's contention that the job of telephone solicitor was not within his restrictions. Mr. Appel opined that he did not believe any telephone solicitor position would involve very low stress. In the second April 7, 1998 report appellant submitted from Dr. Leonard, he opined that appellant could not perform the job of telemarketer because the high turnover rate of the job suggested it was stressful and appellant could only perform the job part time.

Section 10.126 of the Code of Federal Regulations states that the Office's decision "shall contain findings of fact and a statement of reasons." In the present case, the Office's analysis of whether the jobs described in Mr. Fox's labor market survey were within appellant's medical restrictions is incomplete. The Office did not address Dr. Chiles' June 21, 1996 opinion in which he stated that appellant required a job with "quite low stress" to accommodate the irregular occurrence of his cluster headaches. This is consistent with his reports of February 25 and July 15, 1993 in which he stated that appellant could work eight hours a day but would have trouble meeting deadlines, must avoid high speed working and could not work at an occupation having a fixed schedule. Further, in his November 15, 1993 report, Dr. Leonard agreed with Dr. Chiles that appellant would have trouble meeting deadlines and must avoid high speed working. No medical evidence contradicts Dr. Chiles' June 21, 1996 opinion that appellant required a "quite low stress environment."

It was not clear whether the labor market survey completed by Mr. Fox on January 23, 1997 contained any jobs that had a "quite low stress environment." While the description of Tammadge Market Research, Inc. stated that the environment had "very low stress," the contact person stated that compared to its other work environment it was "low stress" and Mr. Fox

concluded it was low stress. The stress at Market Research, Inc. "appear[ed] to be low" which was not particularly definite. Harte-Hanks stated in-bound caller positions had "minimal stress involving pressure of performance, deadline or outcome" which is not entirely clear. The other companies, which responded to Mr. Fox were of low to moderate stress or moderate to high stress. To make a complete analysis, the Office should address Dr. Chiles' June 21, 1996 medical report, give reasons for accepting or rejecting it, and explain how the jobs described by Mr. Fox comply with the medical restrictions in his 1996 report or earlier reports. The Office should also give reasons why it relied on Mr. Fox's January 23, 1997 labor market survey instead of Mr. Vexler's and Mr. Dierking's 1996 labor market survey. Although the Board has held that an impartial medical specialist's opinion is entitled to greater weight when the impartial medical specialist has been selected to resolve a conflict in the medical evidence,[5] there is no provision in the law for the opinion of a second rehabilitation counselor to whom appellant is referred to be accorded special weight. After further development as it deems necessary, the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated December 24, July 16 and March 3, 1998 are hereby vacated and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
February 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

[5] *See* 5 U.S.C. § 8123(a); *see also Kathryn Haggerty*, 45 ECAB 383, 389 (1994).