

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OLLIE TERRELL and DEPARTMENT OF THE NAVY,
MARINE CORPS LOGISTICS BASE, Albany, GA

*Docket No. 00-1548; Submitted on the Record;
Issued June 13, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation benefits based on its determination that the selected position of security gate tender fairly and reasonably represented his wage-earning capacity.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated February 29, 2000 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

¹ An injured employee who is either unable to return to the position held at the time of injury or unable to earn equivalent wages, but who is not totally disabled for all gainful employment, is entitled to compensation computed on loss of wage-earning capacity. 20 C.F.R. §§ 10.503(c), 10.518 and 10.520 (1999); *see Alfred R. Hafer*, 46 ECAB 553, 556 (1995). 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 labor 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 open labor market should be made through contact with the state employment service or other applicable service. The failure to secure a job offer with respect to the selected position does not establish that the position was not reasonably available in the employee's commuting area. *Kenneth Tappen*, 49 ECAB 334, 335 (1998).

The February 29, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member