

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL L. SEEKINS and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, LAONA RANGER DISTRICT, Laoni, WI

*Docket No. 00-2641; Submitted on the Record;
Issued September 20, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in establishing that appellant had no loss of wage-earning capacity based on his actual wages as a modified forester effective July 29, 2000.

Appellant, a 44-year-old forester, filed a notice of traumatic injury alleging that on December 12, 1991 he slipped and injured his left knee in the performance of duty. Appellant filed a second claim on October 8, 1992 alleging that on October 7, 1992 he reinjured his left knee when he tripped at the employing establishment. The Office accepted appellant's claim for left patella dislocation and arthroscopic surgeries on January 9 and December 1, 1992.

Appellant filed a notice of recurrence of disability on April 13, 1998 which the Office accepted on July 14, 1998. The employing establishment offered appellant a position of modified forester on May 6, 1999 noting that the position was effective on June 6, 1999. Appellant accepted this position on May 14, 1999. By decision dated July 29, 2000, the Office noted that appellant was reemployed as a modified forester with wages of \$825.69 per week. The Office found that this position fairly and reasonable represented appellant's wage-earning capacity and that appellant had no loss of wage-earning capacity pursuant to section 8115 of the Federal Employees' Compensation Act.¹

The Board finds that the Office determined, in its July 29, 2000 decision, that appellant had no loss of wage-earning capacity based on his actual earnings as a modified forester.

¹ 5 U.S.C. §§ 8101-8193, § 8115.

Section 8115 of the Act,² titled “Determination of wage-earning capacity,” states in pertinent part:

“In determining compensation for partial disability, ... the wage-earning capacity of an employee is determined by his actual earnings if his earnings fairly and reasonably represent his wage-earning capacity....”

Generally, wages actually earned are the best measure of a wage-earning capacity, and in the absence of evidence showing they do not fairly and reasonably represent the injured employee’s wage-earning capacity, must be accepted as such measure.³

In the present case, appellant worked as a modified forester from June 6, 1999. Appellant accepted this position on May 14, 1999 of modified forester with wages of \$825.69 per week, equal to the current wages of his date-of-injury position. Appellant’s performance of this position for 90 days is persuasive evidence that it represents his wage-earning capacity. There is no evidence that this position is seasonal, temporary, less than full-time makeshift work designed for appellant’s particular needs.⁴ Appellant’s actual wages as a modified forester fairly and reasonably represent his wage-earning capacity.

The July 29, 2000 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 20, 2001

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² 5 U.S.C. § 8115.

³ *Elbert Hicks*, 49 ECAB 283 (1998).

⁴ *Monique L. Love*, 48 ECAB 378 (1997).