

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. HUGGINS and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Denver, CO

*Docket No. 01-2099; Submitted on the Record;
Issued August 21, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the selected position of insurance clerk fairly and reasonably represented appellant's wage-earning capacity.

The Board has given careful consideration to the issue involved,¹ 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 of Workers' Compensation Programs dated May 21, 2001 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.²

¹ Appellant's case was previously before the Board. The facts and circumstances of the case are set forth in the Board's prior decision and are incorporated herein for reference. Docket No. 92-477 (issued November 27, 1992).

² 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, *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 May 21, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 21, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member