

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID M. COLE and GENERAL SERVICES ADMINISTRATION,  
BUILDINGS MANAGEMENT DIVISION, Washington, DC

*Docket No. 02-261; Submitted on the Record;  
Issued July 16, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation to reflect his wage-earning capacity in the selected position of procurement clerk.

In this case, the Office accepted that appellant, then a 39-year-old utility systems repair operator, sustained a lumbar strain and herniated disc while lifting in the performance of duty on May 8, 1992. Appellant began receiving compensation benefits for temporary total disability. By letter dated June 20, 2000, the Office notified appellant that it proposed to reduce his compensation on the grounds that he had the ability to earn wages as a procurement clerk at \$518.00 per week.

By decision dated November 15, 2000, the Office reduced appellant's compensation to reflect his wage-earning capacity as a procurement clerk. In a decision dated July 27, 2001, an Office hearing representative affirmed the prior decision.

The Board finds that the Office properly reduced appellant's compensation.

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 in such benefits.<sup>1</sup>

Under section 8115(a) of the Federal Employees' Compensation Act, wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity, or if the employee has no actual earnings, his wage-earning capacity is determined with due regard to the nature of his injury, his degree of physical

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<sup>1</sup> *Carla Letcher*, 46 ECAB 452 (1995).

impairment, his usual employment, his age, his qualifications for other employment, the availability of suitable employment, and other factors and circumstances which may affect his wage-earning capacity in his disabled condition.<sup>2</sup>

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 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 labor market should be made through contact with the state employment service or other applicable service.<sup>3</sup> 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.<sup>4</sup>

In this case, the Office selected the position of procurement clerk, a sedentary position with occasional lifting of up to 10 pounds.<sup>5</sup> With respect to appellant's physical ability to perform the position, the medical evidence indicates that the position was within appellant's work restrictions. In a report dated December 4, 1998, an attending orthopedic surgeon, Dr. Phillip Omohundro, provided a history and results on examination; he indicated that appellant's work capacity would be determined after a functional capacity evaluation. The record indicates that on March 4, 1999 appellant underwent a functional capacity evaluation. In a report dated June 2, 1999, Dr. Omohundro opined that appellant could be released to work with no lifting over 30 pounds, no pushing/pulling over 25 pounds, and no bending, kneeling or squatting. The selected position, as noted above, is a sedentary position with a 10-pound lifting restriction, and no stooping, kneeling, or crouching. The procurement clerk position is clearly within the established medical restrictions and is found medically suitable in this case.

With respect to vocational preparation, the rehabilitation specialist noted that appellant had work experience in procurement and was vocationally qualified for the position. At the May 10, 200 hearing before an Office hearing representative, appellant indicated that his work history established technical skills beyond that of a procurement clerk. The issue, however, is whether appellant has a sufficient vocational background to qualify for a position as a procurement clerk. The rehabilitation specialist noted that appellant had work experience in procurement and appellant does not appear to contest that he was qualified to work in the selected position. Accordingly, the Board finds that the position was vocationally suitable.

Appellant argued that the Office did not find him a position as a procurement clerk, but it is well established that the Office is not obligated to find appellant work in the selected position.<sup>6</sup>

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<sup>2</sup> See *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992); see also 5 U.S.C. § 8115(a).

<sup>3</sup> See *Dennis D. Owen*, 44 ECAB 475 (1993).

<sup>4</sup> 5 ECAB 376 (1953); see also 20 C.F.R. § 10.403.

<sup>5</sup> *Dictionary of Occupational Titles* No. 249.367-066.

<sup>6</sup> *Dennis D. Owen*, *supra* note 3.

It is the Office's responsibility to find a position that is reasonably available in appellant's commuting area. The rehabilitation specialist indicated in a November 19, 1999 report that the position was reasonably available, as verified by contact with the appropriate state employment agency.

Once an appropriate selected position has been identified, Office procedures require that appellant be notified of the proposed reduction in compensation. The Office notified appellant by letter dated June 20, 2000 and provided appellant 30 days to submit relevant evidence. The Board finds that the Office properly followed established procedures in reducing appellant's compensation. The evidence indicates that the position was medically and vocationally suitable, and was reasonably available in appellant's area with wages of \$518.00 per week. The Office therefore properly reduced appellant's compensation in accord with the formula provided at 20 C.F.R. § 10.403.

The decision of the Office of Workers' Compensation Programs dated July 27, 2001 is affirmed.

Dated, Washington, DC  
July 16, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member