

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT K. BRYSON and DEPARTMENT OF DEFENSE,
DEFENSE CONSTRUCTION SUPPLY CENTER, Columbus, OH

*Docket No. 01-1767; Submitted on the Record;
Issued June 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied modification of appellant's loss of wage-earning capacity determination.

This is the second appeal in this claim. In a May 11, 2000 decision, the Board affirmed the Office's decision finding that the position of surveillance system monitor properly represented appellant's wage-earning capacity.¹ The law and facts as set forth in the prior decision are incorporated herein by reference.

On September 11, 2000 the Office authorized payment of surgery for a midline compressive laminectomy and disc excision at L3-4 with bone graft with excision.² The Office began paying appellant for total disability effective July 20, 2000.

Appellant's counsel requested reconsideration by letter dated March 15, 2001 and submitted a November 14, 2000 report by Dr. Daryl R. Sybert, appellant's attending physician. In his report, Dr. Sybert opined that appellant had been totally disabled from any type of work, including sedentary work, from July 1997 to July 20, 2000, the date of his surgery.

By decision dated April 9, 2001, the Office found the evidence insufficient to warrant modification of its prior wage-earning capacity decision.

The Board finds that the Office properly denied modification of appellant's loss of wage-earning capacity determination.

Once loss of wage-earning capacity is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related

¹ Docket No. 98-1981.

² Appellant underwent this surgery on July 20, 2000.

condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous. The burden of proof is on the party attempting to show modification of the award.³

In this case, appellant did not submit sufficient evidence to show that the Office's original determination with regard to his wage-earning capacity was erroneous. In a July 9, 1997 decision, the Office reduced appellant's compensation finding that the position of surveillance system monitor fairly and accurately reflected his wage-earning capacity. Appellant appealed this decision which a hearing representative affirmed on April 30, 1998. By decision dated May 11, 2000, the Board affirmed the April 30, 1998 Office decision.

The only relevant evidence submitted by appellant is the November 14, 2000 letter by Dr. Sybert opining that appellant had been totally disabled from any type of employment since July 1997 until his July 20, 2000 surgery. The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.⁴ Dr. Sybert's opinion is insufficient to meet appellant's burden as the physician failed to provide any explanation or rationale as to why appellant was incapable of performing the duties of a surveillance system monitor. Therefore his report is of little probative value. Furthermore, at the time of the initial wage-loss determination, Dr. Sybert was not appellant's attending physician and the doctor did not otherwise explain the basis of his opinion. The Office correctly found that the evidence was insufficient to warrant modification of appellant's wage-earning capacity for the period July 9, 1997 through July 20, 2000.

The April 9, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 12, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ See *Don J. Mazurek*, 46 ECAB 447 (1995).

⁴ *William C. Thomas*, 45 ECAB 591 (1994).