

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT TRUDELL and DEPARTMENT OF THE AIR FORCE,  
ELEMENDORF AIR FORCE BASE, AK

*Docket No. 01-1522; Submitted on the Record;  
Issued March 20, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly determined appellant's wage-earning capacity based on his actual earnings.

On March 13, 2000 appellant, then a 44-year-old carpenter, filed a notice of traumatic injury claiming that on March 6, 2000 he slipped on ice in a parking lot at work and injured his right knee. His claim was accepted for right knee sprain on April 18, 2000.

Appellant underwent surgery for a knee infection on May 18, 2000 and returned to light-duty work on May 31, 2000. He also underwent surgery for a torn meniscus on August 10, 2000 and was off work until August 23, 2000 when he returned to light duty. In a report dated December 5, 2000, Dr. Richard R. Strohmeyer, a Board-certified orthopedic surgeon, indicated that appellant's permanent light-duty restrictions were no climbing, bending or stooping and no standing or walking for over two consecutive hours, four hours total per day.

By decision dated April 20, 2001, the Office terminated appellant's compensation benefits stating that he had recently been reemployed by his agency as a carpenter effective August 23, 2000.

The Board finds that the Office did not properly determine appellant's wage-earning capacity based on his actual earnings.

Section 8115(a) of the Federal Employees' Compensation Act provides that 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."<sup>1</sup> Wages actually earned are the best measure of a wage-earning capacity and, in the absence of evidence showing that they do not fairly and reasonably represent the injured

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<sup>1</sup> 5 U.S.C. § 8115(a).

employee's capacity, must be accepted as such measure.<sup>2</sup> Office procedures direct that a wage-earning capacity determination based on actual wages, be made following 60 days of employment.<sup>3</sup> The procedures provide for a retroactive determination where an employee has worked for at least 60 days and the work stoppage following that date was not due to the employment-related condition.<sup>4</sup>

In this case, the Office determined on April 20, 2001 that appellant was reemployed as a carpenter effective August 23, 2000 and that the position fairly and reasonably represented his wage-earning capacity. There is no evidence of record that appellant was working his regular duties as a carpenter and was earning \$1,180.76 per week. The evidence of record indicates that appellant was doing sedentary office work. The record shows that appellant returned to light-duty work on August 23, 2000 with restrictions of no climbing, bending or stooping and no standing or walking for over two consecutive hours, four hours total per day. The medical evidence of record indicates that appellant continued to suffer residuals from his accepted knee condition and was not able to work his regular job as a carpenter. As the record does not establish that appellant was performing the regular position of a carpenter effective August 23, 2000, the Office did not meet its burden of proof to establish appellant's wage-earning capacity.<sup>5</sup>

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<sup>2</sup> *Gregory A. Compton*, 45 ECAB 154 (1993).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7a (December 1993).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7e (December 1995).

<sup>5</sup> The Board notes that the issue of appellant's schedule award is still open.

The April 20, 2001 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC  
March 20, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member