

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SAM R. WILLIAMS and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, Research Triangle Park, NC

*Docket No. 02-1427; Submitted on the Record;  
Issued October 7, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation to reflect his wage-earning capacity as a computer electronics mechanic.

The Office accepted that appellant sustained a low back strain and aggravation of degenerative disc disease as a result of a September 18, 1996 employment incident. Appellant, a 55-year-old building engineer, at the time of injury stopped working and participated in vocational rehabilitation services.

In a letter dated January 29, 2002, the Office advised appellant that it proposed to reduce his compensation to reflect his wage-earning capacity in the constructed position of computer electronics mechanic (*Dictionary of Occupational Titles* No. 828.261-022). The Office indicated that the position was reasonably available with wages of \$461.54 per week.

By decision dated March 13, 2002, the Office finalized its proposed reduction of compensation.

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

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 appellant wage-earning capacity. If the actual earnings do not fairly and

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

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 appellant's injury, his degree of physical 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, *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>

The computer electronics mechanic position is described in the *Dictionary of Occupational Titles* as a medium strength position, with occasional lifting of 20 to 50 pounds. The Office requested that the attending physician, Dr. Timothy Garner, a neurosurgeon, reviewed the job description for the position and provide an opinion as to whether appellant was medically capable of working in the position. On August 1, 2001 Dr. Garner submitted a (CA-9999) form stating "yes" that appellant was medically capable. Dr. Garner also stated on the form "within the confines of my March 13, 2001 letter." The reference is apparently to a brief letter dated March 13, 2001, from Dr. Garner, stating that heavy lifting was not in appellant's best interest and he should not have to sit in one place for extended periods. The selected position is a medium lifting position and there is no indication in the job description of any extended sitting requirements without the opportunity to stand.

The record, therefore, indicates that Dr. Garner did review the selected position and found that appellant was medically capable of performing the required duties. It is noted that on August 7, 2001 Dr. Garner faxed a copy of the form stating "no" with respect to appellant's capability to perform the selected position. The record indicates, however, that later in the day on August 7, 2001 Dr. Garner again faxed a copy of the form, stating "yes" as to the selected position and indicating that this was the "correct form." The Board, therefore, finds that the attending physician's opinion was that the selected position was within appellant's medical capabilities.

With respect to appellant's vocational preparation for the position, a rehabilitation counselor indicated in a December 10, 2001 report, that appellant met the specific vocational preparation requirement. The rehabilitation counselor noted that he had received training through vocational rehabilitation and was A+ certified in hardware computer repair. The Board

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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. § 10.303.

notes that on appeal, appellant asserts that he was not properly certified as he had not completed certification testing. It appears that appellant is referring to software certification; the rehabilitation counselor had noted in a December 31, 2001 report, that appellant needed to be retested for software certification. The job description does not indicate that software certification was a requirement for the position. The rehabilitation counselor found on December 10, 2001 did have sufficient vocational preparation and there is no probative contrary evidence.

The Board accordingly finds that the evidence of record establishes that the selected position of computer electronics mechanic was medically and vocationally appropriate under section 8114(a). The rehabilitation counselor determined that the position was reasonably available in appellant's commuting area, with entry level wages of \$24,000.00 per year. The Office may, therefore, reduce appellant's compensation based on application of the *Shadrick* wage-earning capacity formula.

The decision of the Office of Workers' Compensation Programs dated March 13, 2002 is affirmed.

Dated, Washington, DC  
October 7, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member