

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA J. DUNCAN and U.S. POSTAL SERVICE,
POST OFFICE, Avon, CO

*Docket No. 03-303; Submitted on the Record;
Issued April 29, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that the selected position of technical support specialist fairly and reasonably represented appellant's wage-earning capacity.

On January 17, 1998 appellant, then a 46-year-old clerk, filed an occupational disease claim for an employment-related emotional condition. She identified December 19, 1997 as the date she first became aware of her employment-related condition. The Office accepted appellant's claim for major depression, in partial remission and appellant received appropriate wage-loss compensation. In January 1999, the Office referred appellant for vocational rehabilitation. On February 24, 1999 appellant signed a rehabilitation plan for microcomputer technical support technician. Upon completion of her training program in May 2001, the Office provided appellant with 90 days of job placement assistance.

By decision dated October 25, 2001, the Office determined that the selected position of technical support specialist with earnings of \$756.00 per week fairly and reasonably represented appellant's wage-earning capacity. In a decision dated September 4, 2002, the Office hearing representative affirmed the October 25, 2001 decision.

The Board has given careful consideration to the issue involved, the parties' contentions on appeal and the entire case record. The Board finds that the decision of the hearing

representative of the Office dated September 4, 2002 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

The September 4, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 29, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits. *James B. Christenson*, 47 ECAB 775, 778 (1996); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992). 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. §§ 10.402, 10.403 (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's *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. Finally, application of the principles set forth in the *Shadrick* decision will result in the percentage of the employee's loss of wage-earning capacity. *Albert C. Shadrick*, 5 ECAB 376 (1953).