

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEWIS N. HODGE and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 02-2348; Submitted on the Record;
Issued March 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation benefits, effective November 4, 2001, to reflect his capacity to earn wages in the constructed position of civil engineering technician.

On August 11, 1997 appellant, then a 47-year-old electrician helper, filed a notice of occupational disease alleging that, on or before May 7, 1997, he developed tendinitis in his right arm as a result of prolonged and repetitious use of hand tools in his federal employment. The Office accepted appellant's claim on September 3, 1997 for right medial epicondylitis and right carpal tunnel syndrome and began paying appropriate medical and compensation benefits.¹

Appellant's attending physician, Dr. Larry M. Gorman, a Board-certified orthopedic surgeon, performed right carpal tunnel release surgery on July 24, 1998. In a report dated September 2, 1998, Dr. Gorman stated that appellant's carpal tunnel syndrome had "healed very nicely" and no further treatment of the carpal tunnel syndrome was necessary. He stated that appellant could return to work with restrictions of no lifting over 30 pounds and no use of heavy vibrating tools or impacting hammers. He also diagnosed appellant with chronic rheumatoid arthritis but found that the condition was not work related.

In a report dated March 4, 1999, Dr. Gorman again stated that appellant's carpal tunnel syndrome had "resolved satisfactorily" and that he was employable in a light-duty capacity that did not require highly repetitive activities. He noted that it was not necessary for appellant to be unemployed since he would not be in more pain at work than at home.

On April 14, 1999 Dr. Gorman reviewed the job description and physical requirements of civil engineering technician and checked "yes" that he agreed that appellant could perform the physical activities described in the job and could return to work on April 14, 1999. The physical

¹ This decision is not found in the record.

requirements of the position included occasional lifting of up to 20 pounds, lifting 10 pounds frequently, sitting 5 to 7 hours per day at a desk or in a car when driving to a site, standing and/or walking 1 to 3 hours per day, 1 to 30 minutes at a time, and frequent/constant fine finger manipulation and hand use. The job description also noted no whole body vibration and no upper extremity vibration.

In a report dated January 25, 2000, Dr. Michael S. McManus, Board-certified in preventive medicine, found that appellant's present symptoms were stable and had not changed since approximately November 1999. He deferred to Dr. Gorman's work restrictions from 1999 and stated that there was "no change."

Appellant was briefly employed as a general clerk from November 1, 1999 through January 4, 2000 but the wages he received did not fairly and reasonably represent his wage-earning capacity.

On June 12, 2001 the Office issued a notice of proposed reduction of compensation, finding that appellant was employable as a civil engineering technician at the rate of \$648.00 per week. The Office found that there was zero wage loss, since on the date of injury appellant was a WG-5 Step 1 with a weekly pay rate of \$550.40, and the current pay rate for the same grade and step was \$568.00. Since the weekly rate for a civil engineering technician was \$648.00, which was more than appellant's date-of-injury job of \$568.00, there was no wage loss.²

By decision dated November 16, 2001, the Office finalized its proposed decision to reduce appellant's compensation benefits for wage loss to zero. The Office found that the medical evidence of record demonstrated that appellant's work restrictions fell within the physical requirements of the civil engineering technician position. Appellant's compensation benefits were terminated effective November 4, 2001.

By letter dated November 20, 2001, appellant, through counsel, requested an oral hearing, which was held on May 22, 2002. At the hearing appellant's counsel alleged that the reduction of appellant's compensation benefits was based on outdated medical evidence.

By decision dated August 19, 2002, the Office hearing representative affirmed the Office's November 16, 2001 decision reducing appellant's compensation.

The Board finds that the Office has met its burden of proof to justify the reduction of appellant's compensation to reflect his capacity to earn wages in the constructed position of civil engineering technician.

Once the Office accepts a claim, it has the burden of proof to establish that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³

² By decision dated June 17, 1999, the Office denied appellant's claim for compensation, finding that appellant's work-related injuries had resolved.

³ *Philip S. Deering*, 47 ECAB 692 (1996).

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 or her wage-earning capacity. If the actual earnings do not fairly and reasonably represent the employee's wage-earning capacity, or if the employee has no actual wages, the wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, the employee's usual employment, age, qualifications for other employment, the availability of suitable employment and other factors and circumstances which may affect his wage-earning capacity in his or her disabled condition.⁴

The initial question presented is whether the Office properly determined that the offered position of civil engineering technician was medically suitable. The Board finds that the weight of the medical evidence of record supports the reduction of appellant's compensation benefits to reflect his capacity to earn wages in the position of civil engineering technician. As early as 1998, appellant's treating physician Dr. Gorman stated that appellant's accepted condition of carpal tunnel syndrome had healed nicely and returned him to work with restrictions. His restrictions included no lifting over 30 pounds and no use of heavy vibrating tools or impacting hammers. In his report dated March 4, 1999, he stated that it was not necessary for appellant to be unemployed since he would not be in any more pain at work than at home, if he was performing a light-duty position with no repetitive motions. On April 14, 1999 Dr. Gorman reviewed the job description and physical requirements of the engineering technician position and checked "yes" that appellant could perform the physical activities described and could return to work. The Board notes that the selected position had an occasional lifting requirement of up to 20 pounds and Dr. Gorman stated that appellant could lift up to 30 pounds. The position description also noted no whole body vibration and no upper extremity vibration, which also complied with Dr. Gorman's restrictions. In a report dated January 25, 2000, Dr. McManus stated that appellant's symptoms were stable and noted that they had essentially remained unchanged since approximately November 1999. He deferred to the work limitations set forth by Dr. Gorman and noted that there was "no change" regarding the limitations.

The Board finds that the weight of the medical evidence of record supports that appellant has the physical capacity to perform the duties of the selected position. The medical evidence supports the wage-earning capacity determination and the Office correctly reduced appellant's compensation benefits based on his capacity to perform the selected position. Both Drs. Gorman and McManus found that appellant was not totally disabled for work and Dr. Gorman set forth physical limitations with which Dr. McManus concurred. Dr. Gorman also reviewed the selected position and physical requirements and found that they fell within appellant's physical capabilities. There is no medical evidence of record which indicates that appellant remains totally disabled due to residuals of his accepted condition and resulting surgery and could not perform the selected position.

⁴ 5 U.S.C. § 8115.

The decisions of the Office of Workers' Compensation Programs dated August 19, 2002 and November 16, 2001 are hereby affirmed.

Dated, Washington, DC
March 17, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member