



appellant's claim for total disability compensation for the period May 25 through November 8, 2002 raised the issue of whether modification of a May 23, 2002 wage-earning capacity was warranted. The Board set aside the Office's September 5 and August 15, 2003 and August 16, 2004 decisions, which found that appellant had not established a recurrence of total disability for the period May 25 through November 8, 2002. The facts and the history surrounding the prior appeal are set forth in the prior decision and are hereby incorporated by reference.<sup>2</sup>

The record reflects that, on June 3, 2002, appellant filed a recurrence claim for the period May 25 through November 8, 2002 due to his accepted January 17, 2001 employment injury and returned to his modified position on November 9, 2002 once ergonomic accommodations had been provided. Relevant medical evidence of record includes an August 25, 2002 cervical x-ray report, which indicated fractures of the C4 screws and reports from Dr. William White, a Board-certified neurosurgeon and appellant's treating physician.

In a July 15, 2002 report, Dr. White noted appellant's symptoms and reported that he was off work as his pain in the shoulder and arm were exacerbated by looking down at his desk in the sitting position. He stated that a July 1, 2002 electromyography and nerve conduction study demonstrated bilateral C6 distribution radiculopathies and recommended further diagnostic testing. Dr. White further noted that he had not taken appellant off work and that appellant did not have any objective findings to warrant an off-work status. In a September 10, 2002 office note, he reported a telephone call he had with appellant in which the issue of making appellant's workplace ergonomically correct to reduce pain was discussed. In an October 22, 2002 letter to the Office, Dr. White requested that appellant be accommodated in his job with a headset for telephone use, an easel or other measures to elevate work to eye level, and heating pads or ice packs to use on a per needed basis possibly every 30 to 45 minutes for pain.

In a May 7, 2003 letter, Dr. White explained that appellant continued to experience significant pain in the neck and shoulder blade area following his January 10, 2002 surgery, even though he returned to light duty. Appellant related that he was unable to work in May 2002 as looking down at his work while sitting at his desk exacerbated his neck and arm pain. Dr. White noted that, despite repeated attempts to obtain the x-rays of August 18, 2002, he did not receive the films until September 18, 2002, at which time ergonomically correct workplace modifications were requested. He noted that workplace modifications were again requested on October 22, 2002 and advised that appellant was able to return to work in November 2002 after the modifications were made available.

---

<sup>2</sup> On January 17, 2001 appellant, then a 55-year-old rural carrier, injured his neck and back while untangling snow chains on his postal vehicle. The Office accepted his claim for cervical strain and thoracic/trapezius strain and subsequently included a cervical disc injury and approved cervical surgery and an osteotech allograft implant with fusion and acufex plate stabilization at C4-5, C5-6 and C6-7, which appellant underwent on January 10, 2002. On March 5, 2002 appellant returned to a full-time modified letter carrier position. He stopped work again on May 24, 2002 and returned to his modified position with ergonomic accommodations on or about November 9, 2002. The Office subsequently expanded appellant's claim to include displacement of cervical intervertebral disc without myelopathy and spinal stenosis of cervical region. On April 1, 2003 appellant stopped work and underwent an approved cervical discectomy on June 5, 2003. Following his June 5, 2003 surgery, appellant did not return to work but applied for disability retirement which the Office of Personnel Management approved on April 22, 2004.

In a June 27, 2003 report, Dr. White advised that the diagnostic testing revealed that level C4-5, which was included in the original surgery, did not fuse correctly and that this had caused the pain appellant had reported. He opined that appellant should be compensated for the period May 25 to November 8, 2002 since the workplace accommodations were not made until November 2002.

By decision dated September 14, 2005, the Office found that the May 23, 2002 loss of wage-earning capacity determination should be modified to reflect that ergonomic adjustments of the work site were included in the physical requirements portion of the decision and put into effect in November 2002 when appellant returned to work. The Office denied retroactive monetary compensation benefits for the period May 24 through November 8, 2002.

### **LEGAL PRECEDENT**

It is well settled that, once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> Once the wage-earning capacity of an injured employee is properly determined, it remains undisturbed regardless of actual earnings or lack of earnings.<sup>4</sup> A modification of such a determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was in fact erroneous.<sup>5</sup> The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.<sup>6</sup>

### **ANALYSIS**

Appellant does not claim that he has been retrained or otherwise vocationally rehabilitated and the record does not support such a finding. Rather, appellant contends that the wage-earning capacity decision should be modified due to a material change in the nature and extent of his injury-related condition.<sup>7</sup> In its September 14, 2005 decision, the Office denied monetary compensation benefits for the period May 24 through November 8, 2002.

The evidence indicates that appellant returned to his full-time modified letter carrier position on March 5, 2002 after his January 10, 2002 cervical surgery. He stopped work on May 24, 2002 claiming that his neck and arm pain increased with forward bending of his head and that he could not work as his job required sitting in that position. Although Dr. White found that appellant had objective evidence of bilateral C6 distribution radiculopathies in a report of July 15, 2002, he specifically opined that appellant did not have any objective findings to warrant an off-work status. He did not support disability for work. In separate reports,

---

<sup>3</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>4</sup> *Roy Mathew Lyon*, 27 ECAB 186, 190-98 (1975).

<sup>5</sup> *Tamra McCauley*, 51 ECAB 375, 377 (2000); *Elmer Strong*, 17 ECAB 226, 228 (1965).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Dr. White also discussed not receiving August 18, 2002 x-rays in a timely manner; however, he did not discuss the results of such x-rays or how or why appellant was unable to attend work without ergonomic accommodations. In a June 27, 2003 report, Dr. White stated that appellant should be compensated for the period May 25 to November 8, 2002 since workplace accommodations were not made until November 2002. However, he failed to explain how the incorrect fusion of appellant's C4-5 surgery caused disability during the claimed period. His reports fail to provide a medical explanation as to why appellant was disabled from work during the period claimed as he previously opined that appellant did not have any objective findings to warrant an off-work status. As Dr. White's statements are not fully consistent or rationalized on the issue of disability, the Board finds that appellant has not established entitlement to compensation for the claimed period.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to modify the Office's May 23, 2002 loss of wage-earning capacity determination to reflect disability for the period May 25 to November 8, 2002.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 14, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board