

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.R., Appellant	)	
	)	
and	)	<b>Docket No. 06-923</b>
	)	<b>Issued: August 9, 2006</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
San Francisco, CA, Employer	)	
	)	

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*Appearances:*  
Ron Watson, for the appellant  
Office of the Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 14, 2006 appellant filed a timely appeal from a January 4, 2006 Office of Workers' Compensation Programs' decision reducing appellant's compensation based on his capacity to perform the duties of a billing control clerk/cost clerk. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly reduced appellant's compensation effective December 25, 2005, based on his capacity to perform the duties of a bill control clerk/cost clerk.

**FACTUAL HISTORY**

Appellant, a 47-year-old letter carrier, injured his right shoulder on November 15, 2002 while casing mail. He filed a claim for benefits on November 22, 2002, which the Office accepted for right shoulder sprain. Appellant stopped work on December 18, 2002. The Office subsequently expanded the claim to include the condition of right shoulder rotator cuff tear and authorized arthroscopic surgery. Surgery was performed by Dr. John P. Colman, a Board-certified orthopedic surgeon, who performed arthroscopic surgery for subacromial

decompression with debridement on April 16, 2003. The Office paid appropriate compensation for temporary total disability.

In an August 11, 2003 Form CA-17, duty status report, Dr. Cary Young, a specialist in occupational and preventive medicine, indicated that appellant could return to limited-duty work as of August 25, 2003. He limited appellant to a maximum of one hour per day of standing, walking, climbing, and no more than two hours per day of reaching and overhead lifting above the shoulder. On September 17, 2003 the employing establishment indicated that it had located a suitable, modified job which involved casing mail on an intermittent basis. On September 25, 2003 the employing establishment offered appellant work as a modified carrier technician with duties that were within the restrictions outlined by Dr. Young. Appellant accepted this job and began working on September 30, 2003, but left work on October 2, 2003.

In a statement dated October 23, 2003, appellant alleged that he stopped working at the carrier technician job because it required him to exceed his work restrictions, thereby, aggravating his accepted right shoulder condition.

In a report dated October 23, 2003, Dr. Young stated:

“[Appellant] reports that the tasks he has been assigned to date under the temporary job offer as *Modified Carrier Technician, FT*, which started on or about September 30, 2003, has consisted of casing mail exclusively during any given eight-hour workday. Since this activity requires extensive and nearly continuous reaching with the operated right arm (status post right shoulder arthroscopy), this situation would appear to be not in compliance with the work limitations stipulated for the above-mentioned modified assignment. (Emphasis in the original.)

“It was and remains my understanding that, according to the [t]emporary [j]ob [o]ffer [d]escription ..., work limitations include ‘Maximum two hours/day reaching/reaching overhead.’ Furthermore, it is my opinion, based on reasonable medical probability, that this should constitute a permanent restriction/preclusion for [appellant], in accordance with the statement put forth in the cited final report.

“Please ensure that [appellant’s] supervisors understand the required accommodation as discussed above with respect to his work limitations and that his hours of casing mail (or any other task involving reaching) do not exceed two hours/day total.”

In a memorandum of conference dated November 5, 2005, the Office indicated that it would refer appellant to a vocational rehabilitation counselor in order to locate suitable work within Dr. Young’s work restrictions. By letter dated November 12, 2003, the Office referred appellant for vocational rehabilitation.

In a report dated March 22, 2004, a vocational rehabilitation counselor summarized his efforts to find vocational training or suitable alternate employment for appellant within his physical restrictions. The vocational counselor recommended three positions for appellant listed in the Department of Labor, *Dictionary of Occupational Titles*, DOT, which reasonably reflected

appellant's capacity to earn wages. One of these positions was that of billing control clerk, DOT #214.387-010.<sup>1</sup>

In a March 16, 2004 report, Dr. Colman stated that he had reviewed the job duties of the three positions identified by the vocational counselor and concluded that they appeared to be within appellant's work capabilities. On October 20, 2005 the vocational rehabilitation counselor determined that the position of cost clerk, DOT #216.382.034,<sup>2</sup> was within appellant's restrictions and reasonably reflected his capacity to earn wages.

By notice of proposed reduction dated October 27, 2005, the Office advised appellant of its proposal to reduce his wage-loss compensation because the evidence established that he was no longer totally disabled and had the capacity to earn wages as a billing control clerk/cost clerk at the weekly rate of \$275.65 in accordance with the factors outlined in 5 U.S.C. § 8115.<sup>3</sup> The Office calculated that appellant's compensation rate should be adjusted to \$1,158.00 using the *Shadrick*<sup>4</sup> formula. The Office indicated that appellant's pay rate on November 15, 2002 was \$854.73 per week, that his current, adjusted pay rate for the position held on the date of injury was \$918.73, and that appellant was currently capable of earning \$487.20 per week, the pay rate of a billing control clerk/cost clerk. The Office determined that appellant had a 57 percent wage-earning capacity, which when multiplied by 3/4 amounted to a weekly compensation rate of \$275.65. It found that, based on the current consumer price index, appellant's current adjusted compensation rate was \$289.50. The Office noted that the case had been referred to a vocational rehabilitation counselor, who identified the billing control clerk/cost clerk as suitable for appellant given his work restrictions and available in appellant's commuting area. The Office allowed appellant 30 days in which to submit any contrary evidence. Appellant's representative telephoned the Office and asserted that the employing establishment had not made sufficient efforts to accommodate his work restrictions.

By decision dated January 4, 2006, the Office reduced appellant's compensation to reflect his wage-earning capacity in the position of billing control clerk/cost clerk.

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<sup>1</sup> The job description stated: "Reviews and posts data from meter books, computes charges for utility services and marks special accounts for billing purposes; marks accounts with fixed demands, and combined bills for more than one meter connection, and those requiring use of constant multipliers to extend meter reading to actual consumption. Posts late and special meter readings and estimated readings. Examines meter-reading entries for evidence of irregular conditions, such as defective meters or use of service without contract and prepares forms for corrective actions by others. Marks accounts for no bill when irregular conditions cannot be resolved before billing date."

<sup>2</sup> The job description stated: "Compile data, computer fees and charges, compare invoices for billing purposes. Duties include computing costs and calculating rates for goods, services and shipments of goods; posting data and keeping other relevant records. May involve use of computers or calculator and adding and bookkeeping machine. Examine records such as time and production sheets, payroll charts and schedules."

<sup>3</sup> 5 U.S.C. § 8115.

<sup>4</sup> *Albert C. Shadrick*, 5 ECAB 376 (1953); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.2 (April 1995).

## LEGAL PRECEDENT

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 of benefits.<sup>5</sup>

Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions given the nature of the employee's injuries and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications and the availability of suitable employment.<sup>6</sup> Accordingly, the evidence must establish that jobs in the position selected for determining wage-earning capacity are reasonably available in the general labor market in the commuting area in which the employee lives. In determining an employee's wage-earning capacity, the Office may not select a makeshift or odd-lot position or one not reasonably available on the open labor market.<sup>7</sup>

## ANALYSIS

Appellant's claim was accepted by the Office for a right shoulder injury and repair of a rotator cuff. Dr. Young found that he was capable of work restricted to a maximum of one hour per day of standing, walking, climbing and no more than two hours per day of reaching and overhead lifting above the shoulder. He stated in an October 23, 2003 report that appellant's mail casing duties should not exceed two hours per day. A rehabilitation counselor was assigned to assist appellant in placement efforts and identified positions as a billing control clerk and a cost clerk listed in the DOT, as appropriate based on Dr. Young's work restriction evaluation. In a March 16, 2004 report, Dr. Colman, an attending physician, approved the billing control and cost clerk positions as within appellant's work capabilities. The rehabilitation counselor obtained the prevailing wage rate in the area for a billing control clerk/cost clerk, and established that jobs in the position selected for determining wage-earning capacity were reasonably available in the general labor market in the commuting area in which appellant lived, as confirmed by state officials. The Office properly applied the principles set forth in the *Shadrick*<sup>8</sup> decision to determine appellant's employment-related loss of wage-earning capacity.

The Office properly found that appellant was not totally disabled as a result of his November 15, 2002 employment injury and followed established procedures for determining appellant's employment-related loss of wage-earning capacity. The Board therefore finds that the Office has met its burden of proof to reduce appellant's wage-loss compensation effective December 25, 2005, based on his capacity to perform the duties of a billing control clerk/cost clerk. The Board will affirm the January 4, 2006 Office decision reducing appellant's compensation.

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<sup>5</sup> *Harold S. McGough*, 36 ECAB 332 (1984); *Samuel J. Russo*, 28 ECAB 43 (1976).

<sup>6</sup> *Samuel J. Chavez*, 44 ECAB 431 (1993); *Hattie Drummond*, 39 ECAB 904 (1988); see 5 U.S.C. § 8115(a); A. Larson, *The Law of Workers' Compensation* § 57.22 (1989).

<sup>7</sup> *Steven M. Gourley*, 39 ECAB 413 (1988); *William H. Goff*, 35 ECAB 581 (1984).

<sup>8</sup> *Shadrick*, *supra* note 4.

**CONCLUSION**

The Board finds that the Office properly reduced appellant's compensation effective December 25, 2005, based on his capacity to perform the duties of a billing control clerk/cost clerk.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 4, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 9, 2006  
Washington, DC

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

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