



1993, the Board found that the Office had not properly determined appellant's loss of wage-earning capacity.<sup>2</sup> The Board found that the Office had not provided a sufficient basis for a determination of the prevailing wage rate for chiropractors in appellant's area, nor had it established that the position was reasonably available. By decision dated September 9, 1998, the Board found that the Office had not properly determined the wage rate for the selected position of associate chiropractor.<sup>3</sup> In a decision dated May 23, 2001, the Board affirmed a December 16, 1998 wage-earning capacity determination based on the selected position of associate chiropractor.<sup>4</sup> The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

In a letter dated October 21, 2004, appellant requested reconsideration of his claim. He argued that the Office had not taken into consideration factors enumerated under 5 U.S.C. § 8115(a). Appellant submitted an October 9, 2002 report from Dr. Sofia Donskaya, a psychiatrist, diagnosing major depressive disorder and chronic post-traumatic stress disorder (PTSD). In a report dated November 23, 2003, Dr. Michael Jones, a psychologist, stated that appellant was first evaluated in 1997 with a long history of intermittent depressive episodes and PTSD. He noted that appellant was found vocationally disabled by the Social Security Administration, and he concluded that based on treatment and psychological testing appellant remained vocationally disabled.

By decision dated March 8, 2006, the Office reviewed the case on its merits and denied modification of the wage-earning capacity determination. On February 14, 2007 it received a February 7, 2007 request for reconsideration. Appellant argued that the Office did not take into account the factors listed at 5 U.S.C. § 8115 and did not properly calculate his wage-earning capacity. In a report dated February 5, 2006, Dr. Jones noted that appellant was diagnosed with leukemia in 1995. He stated that appellant "continues to exhibit symptoms of [p]ost[-]traumatic [s]tress when exposed to cues related to air traffic controlling. [Appellant's] symptoms are generally much improved, but show a tendency to wax and wane relative to psychosocial stressors. He [has] been placed on permanent disability since the 1980s."

In a decision dated February 7, 2008, the Office denied modification of the wage-earning capacity determination. Appellant again requested reconsideration on August 20, 2008. He submitted a May 18, 2008 report from Dr. Jones who reiterated his opinion that appellant remained on disability status.

By decision dated January 23, 2009, the Office denied modification of the wage-earning capacity determination.

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<sup>2</sup> Docket No. 93-92 (issued November 5, 1993).

<sup>3</sup> Docket No. 96-1843 (issued September 9, 1998).

<sup>4</sup> Docket No. 99-1454 (issued May 23, 2001).

## LEGAL PRECEDENT

Once the wage-earning capacity of an injured employee is determined, a modification of such 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 seeks to modify the December 16, 1998 decision, which found he had the capacity to earn the wages of an associate chiropractor. To modify the wage-earning capacity decision, she must meet one of the standards noted above.

The medical evidence of record does not establish a material change in the employment-related condition. In this case, the accepted conditions were acute anxiety, neurosis and depression, as well as peptic ulcer disease. Dr. Jones refers to symptoms of post-traumatic stress when exposed to “cues related to air traffic controlling,” without clearly explaining the nature and extent of any continuing employment-related condition. He also noted improved symptoms, with a general statement that appellant remained disabled. There is no rationalized medical opinion sufficient to establish a material change in the nature and extent of the employment-related condition.

Appellant did not raise the issue of retraining or vocational rehabilitation. With respect to the final standard, that the original determination was erroneous, appellant has argued on reconsideration that the Office did not properly consider the factors at 5 U.S.C. § 8115(a). As the history of the case suggests, the Board did review the December 16, 1998 decision and found that it was in accord with 5 U.S.C. § 8115(a). Appellant has not offered any new evidence to establish error in the original determination. The Office followed its procedures, referred the case to a rehabilitation specialist and considered the relevant factors.<sup>7</sup> The Board also found the Office had properly reduced appellant’s compensation in accord with the principles found in *Albert C. Shadrick*.<sup>8</sup> No probative evidence establishing error in the original determination was submitted.

The Board accordingly finds appellant did not meet any of the requirements for modification of a wage-earning capacity determination. Therefore the Office properly denied modification of the December 16, 1998 decision.

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<sup>5</sup> *Sue A. Sedgwick*, 45 ECAB 211 (1993).

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

<sup>7</sup> *See, e.g., Harley Sims, Jr.*, 56 ECAB 320 (2005).

<sup>8</sup> 5 ECAB 376 (1953).

**CONCLUSION**

The Board finds appellant did not establish that modification of the December 16, 1998 wage-earning capacity determination was warranted.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 23, 2009 is affirmed.

Issued: May 24, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board