

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

D.G., Appellant)
and) Docket No. 25-0735
DEPARTMENT OF THE NAVY, FLEET)
CYBER COMMAND, Fort Meade, MD,) Issued: September 9, 2025
Employer)

)

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 29, 2025 appellant filed a timely appeal from a July 24, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). In support of his oral argument request, appellant asserted that OWCP had found that appellant could perform sedentary work, based on medical evidence that he could perform light-duty work. However, it did not acknowledge that he required positional changes, which were outside of sedentary work allowances. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence required. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would not serve a useful purpose. Therefore, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly reduced appellant's wage-loss compensation, effective July 24, 2025, based on his capacity to earn wages in the constructed position of a computer security specialist.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 21, 2022 appellant, then a 47-year-old information technology (IT) manager, filed a traumatic injury claim (Form CA-1) alleging that on July 12, 2022 he aggravated preexisting chronic back and neck conditions when he was involved in an automobile accident while in the performance of duty. He stopped work on July 12, 2022. By decision dated September 1, 2022, OWCP accepted the claim for strain of muscle, fascia, and tendon of the lower back; and sprain of ligaments of the thoracic spine. It paid appellant wage-loss compensation on the supplemental rolls effective August 29, 2022, and on the periodic rolls effective October 8, 2023.

A March 30, 2023 functional capacity evaluation (FCE), conducted by Kara Ruddy, a physical therapist, found appellant capable of working full time in a light-duty job with restrictions of occasional lifting of 20 pounds floor to waist, up to 13 pounds of frequent lifting, limited stoop/bending, and no sitting or static standing more than 15 to 20 minutes before a positional change was needed to minimize low back pain.

On May 10, 2023 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. David Brian Lumsden, a Board-certified orthopedic surgeon, for a second opinion examination to determine the status of his accepted medical conditions and his work capacity.

In a report dated June 9, 2023, Dr. Lumsden noted appellant's physical examination findings and diagnosed lumbar pain with myalgia and myositis. He noted that the physical requirements of an IT management specialist were listed at a sedentary level, and that appellant had a desk which had a sit/stand option. Dr. Lumsden opined that appellant's work-related conditions had resolved. He related that appellant was capable of returning to his date-of-injury position, in a light-duty capacity based on the FCE, to avoid exacerbation of chronic back pain.

In a July 4, 2023 report, Dr. Nicholas Mata, a Board-certified physiatrist and pain medicine physician and appellant's attending physician, disagreed with Dr. Lumsden that the accepted employment-related conditions had resolved and that appellant could return to his date-of-injury position. Dr. Mata opined that appellant continued to have limitations due to pain caused by the work-related injury. He related that appellant was unable to return to his date-of-injury job based on the findings of the FCE, which limited his standing and sitting to one hour during an eight-hour shift. Dr. Mata concluded that appellant was capable of working in a light-duty position.

³ Docket No. 23-0448 (issued October 12, 2023).

Dr. Lumsden, in a supplemental report dated July 28, 2023, noted that there were minor discrepancies in the FCE regarding appellant's disability status; however, he was in agreement with the limitations set by the FCE, and that appellant could perform full-time work in a light-duty capacity.

On August 30, 2023 OWCP determined that a conflict in medical opinion existed between Dr. Mata and Dr. Lumsden regarding whether appellant's work conditions had resolved and/or reached maximum medical improvement (MMI), and whether he was capable of returning to his date-of-injury position as an IT specialist. It referred appellant, along with a SOAF and the case record, to Dr. Frederick Moore, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an October 27, 2023 report, Dr. Moore, serving as the impartial medical examiner (IME), recounted appellant's history of injury; and reviewed the medical evidence of record. He performed a physical examination and diagnosed lumbar radiculopathy, lumbago, lumbar strain, and thoracic sprain. Dr. Moore opined that appellant had reached MMI and that he required no further medical treatment. He further opined that appellant was not capable of returning to his date-of-injury job as an IT specialist, but was able to return to work in a sedentary position. In an attached work capacity evaluation (Form OWCP-5c) dated October 30, 2023, he related a diagnosis of lumbar radiculopathy, and reiterated that appellant was capable of sedentary work.

In a November 16, 2023 Form OWCP-5c, Dr. Mata indicated that appellant was capable of performing sedentary and light-duty work with restrictions. The restrictions included up to one hour of sitting and standing, and up to eight hours of pushing, pulling, and lifting up to 20 pounds. Dr. Mata related that appellant had a low tolerance for static sitting and standing.

OWCP referred the case record, including the November 16, 2023 report of Dr. Mata to IME Dr. Moore for his review and a supplemental opinion.

In a February 14, 2024 addendum, Dr. Moore reiterated that appellant was capable of performing sedentary work.

On February 28, 2024 referred appellant to a vocational rehabilitation counselor for vocational rehabilitation services.

In a March 11, 2024 attending physician's report (Form CA-20), Dr. Mata diagnosed lumbar radiculopathy and lumbar degenerative disc disorder. He found appellant partially disabled from work and referenced the March 30, 2023 FCE regarding appellant's physical limitations.

In a vocational rehabilitation plan justification dated May 30, 2024, vocational rehabilitation counselor David B. Schewe, identified two sedentary positions that would accommodate appellant's medical restrictions which were reasonably available in his commuting area, namely computer security specialist and systems analyst. He related that the positions were within the medical restrictions provided by Dr. Moore, and were vocationally suitable given appellant's education, work history, and transferable skills. Mr. Schewe indicated that starting minimum wages for a computer security specialist would be \$3,271.35 per week and the starting minimum wages for a systems analyst would be \$3,054.42 per week.

In a letter dated July 25, 2024, and an August 20, 2024 amended letter, OWCP determined that the job duties of computer security specialist were within appellant's work limitations. It advised him that he would be provided with 90 days of placement services. OWCP determined that appellant had a wage-earning capacity of \$3,271.35 per week and informed him that, at the end of the rehabilitation program, whether or not he was actually employed, it would reduce his compensation based on that amount. Appellant was also advised that if he failed to cooperate with vocational rehabilitation services, action would be taken to reduce his compensation, pursuant to 5 U.S.C. § 8115, to reflect his wage-earning capacity based on the position OWCP determined was within his work restrictions and abilities.

In an updated labor market survey dated August 9, 2024, Mr. Schewe indicated that starting minimum wages for a computer security specialist would be \$1,511.53 per week and the starting minimum wages for a systems analyst would be \$1,297.30 per week.

OWCP referred the case record to the IME Dr. Moore for a supplemental opinion.

In an addendum report dated September 10, 2024, Dr. Moore, the IME, reviewed the job descriptions of the selected positions, and concluded that taking into account appellant's light-duty demand level indicated by the FCE, appellant was capable of performing the duties of the positions outlined.

In a rehabilitation action report (Form OWCP-44) dated October 15, 2024, the vocational rehabilitation counselor advised that appellant was not cooperating with placement services, noting he was not appearing at scheduled meetings and was failing to carry out agreed upon actions. He also noted that appellant had advised that he would be moving to Denver, Colorado and would begin a new job search there.

In a closure report dated December 17, 2024, the vocational rehabilitation counselor advised that appellant had not fully cooperated with reemployment efforts. He advised that further placement efforts would not be appropriate due to appellant's lack of cooperation. The vocational rehabilitation counselor verified that the computer security specialist position best represented appellant's wage-earning capacity and remained reasonably available. He reported that appellant had the ability to earn \$1,511.53 in weekly wages in that position based on the August 9, 2024 labor market survey.

By notice of proposed reduction dated May 12, 2025, OWCP informed appellant that it proposed to reduce his wage-loss compensation, pursuant to 5 U.S.C. § 8106 and 5 U.S.C. § 8115, because he had the capacity to earn \$1,511.53 in weekly wages in the constructed position of computer security specialist, Department of Labor, *Dictionary of Occupational Titles* (DOT) No. 033.362-010. It informed him that the opinion of the IME, Dr. Moore, represented the best assessment of his capacity to work and that his vocational rehabilitation counselor properly determined that he was vocationally and medically capable of working as a computer security specialist. As appellant's wage-earning capacity was 53 percent of the current pay of the job he held when injured, OWCP proposed to reduce his wage-loss compensation benefits to \$3,793.00 every four weeks. It afforded appellant 30 days to submit evidence and argument regarding the proposed reduction of his compensation.

In a letter dated June 10, 2025, appellant disagreed that he was capable of performing the duties of the constructed position. He asserted that the duties of the constructed position were

similar to those of his date-of-injury job as an IT specialist. Appellant also asserted that the vocational rehabilitation process ignored relevant information regarding his disability and, thus, the vocational rehabilitation process was invalid, unfair, and must be dismissed in its entirety.

By decision dated July 24, 2025, OWCP reduced appellant's wage-loss compensation, effective that date, based on his capacity to earn wages as computer security specialist with weekly wages of \$1,511.53. It accorded the weight of the evidence to Dr. Moore's report.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁴ 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 based on his or her loss of wage-earning capacity (LWEC).⁵ An employee's actual earnings generally best reflect his or her wage-earning capacity.⁶ Absent evidence that actual earnings do not fairly and reasonably represent the employee's wage-earning capacity, such earnings must be accepted as representative of the individual's wage-earning capacity.⁷ But if actual earnings do not fairly and reasonably represent the employee's wage-earning capacity or the employee has no actual earnings, then 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 that may affect wage-earning capacity in his or her disabled condition.⁸

OWCP must initially determine the employee's medical condition and work restrictions before selecting an appropriate position that reflects his or her vocational wage-earning capacity.⁹ The medical evidence OWCP relies upon must provide a detailed description of the employee's condition and the evaluation must be reasonably current.¹⁰ Where suitability is to be determined based on a position not actually held, the selected position must accommodate the employee's

⁴ See *J.G.*, Docket No. 25-0471 (issued June 3, 2025); *K.L.*, Docket No. 24-0950 (issued January 31, 2025); *C.B.*, Docket No. 23-0795 (issued December 28, 2023); see *L.M.*, Docket No. 20-1038 (issued March 10, 2021); *E.D.*, Docket No. 17-1064 (issued March 22, 2018).

⁵ 5 U.S.C. § 8115(a); 20 C.F.R. §§ 10.402, 10.403; see *J.G.*, *id.*; *K.L.*, *id.*; *Alfred R. Hafer*, 46 ECAB 553, 556 (1995).

⁶ *J.G.*, *id.*; see *K.L.*, *id.*; *T.D.*, Docket No. 20-1088 (issued June 14, 2021); *Hayden C. Ross*, 55 ECAB 455, 460 (2004).

⁷ *Id.*

⁸ 5 U.S.C. § 8115(a); *J.G.*, *id.*; *S.F.*, Docket No. 20-0869 (issued October 14, 2021); *Mary Jo Colvert*, 45 ECAB 575 (1994); *Keith Hanselman*, 42 ECAB 680 (1991).

⁹ See *J.G.*, *id.*; *M.H.*, Docket No. 21-1055 (issued March 30, 2022); *M.A.*, 59 ECAB 624, 631 (2008).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity Based on a Constructed Position*, Chapter 2.816.4d (June 2013); see also *J.G.*, *id.*; *A.E.*, Docket No. 22-0119 (issued February 13, 2023); *J.H.*, Docket No. 18-1319 (issued June 26, 2019).

limitations from both injury-related and preexisting conditions, but not limitations attributable to postinjury or subsequently-acquired conditions.¹¹

When OWCP makes a determination of partial disability and of specific work restrictions, it may refer the employee's case to a vocational rehabilitation counselor authorized by OWCP for selection of a position listed in the DOT or otherwise available in the open market, that fits the employee's capabilities with regard to his or her physical limitations, education, age, and prior experience.¹² 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.¹³

The fact that an employee has been unsuccessful in obtaining work in the selected position does not establish that the work is not reasonably available in his commuting area.¹⁴

Lastly, OWCP applies the principles set forth in *Albert C. Shadrick*¹⁵ as codified in section 10.403 of OWCP's regulations,¹⁶ to determine the percentage of the employee's LWEC.

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹⁷ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁸

ANALYSIS

The Board finds that OWCP properly reduced appellant's wage-loss compensation benefits, effective July 24, 2025, based on his capacity to earn wages in the constructed position of a computer security specialist.

In determining appellant's work capacity, OWCP found a conflict of medical opinion existed between Dr. Lumsden, an OWCP second opinion physician, who opined that appellant's

¹¹ *Id.* at Chapter 2.813.7b (February 2011).

¹² *Id.*

¹³ *Id.* at Chapter 2.816.6.a (June 2013); *see also J.G., supra* note 5; S.M., Docket No. 23-0353 (issued July 13, 2023); C.M., Docket No. 18-1326 (issued January 4, 2019).

¹⁴ *J.G., id.; F.M.,* Docket No. 24-0673 (October 18, 2024); *see B.G.,* Docket No. 17-0477 (issued September 20, 2017).

¹⁵ 5 ECAB 376 (1953), codified at 20 C.F.R. § 10.403.

¹⁶ 20 C.F.R. § 10.403.

¹⁷ 5 U.S.C. § 8123(a).

¹⁸ *See R.L.,* Docket No. 24-0475 (issued June 7, 2024); *K.B.,* Docket No. 20-0358 (issued December 10, 2020); *T.D.,* Docket No. 16-0028 (issued November 28, 2016); *R.H.,* 59 ECAB 382 (2008); *Gary R. Sieber,* 46 ECAB 215, 225 (1994); *James P. Roberts,* 31 ECAB 1010 (1980).

accepted conditions had resolved and that he was able to return to his date-of-injury position, in a light-duty work capacity to avoid exacerbation of his pain complaints, and Dr. Mata, appellant's attending physician, who opined that appellant's accepted conditions had not resolved and that he was unable to return to his date-of-injury position. It properly referred appellant to Dr. Moore for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).¹⁹

In an October 27, 2023 report, Dr. Moore, serving as the IME, recounted appellant's history of injury; and reviewed the medical evidence of record. He performed a physical examination and diagnosed lumbar radiculopathy, lumbago, lumbar strain, and thoracic sprain. Dr. Moore opined that appellant had reached MMI and that he required no further medical treatment. He further opined that appellant was not capable of returning to his date-of-injury job as an IT specialist, but was able to return to work in a sedentary position. In an attached Form OWCP-5c dated October 30, 2023, he related a diagnosis of lumbar radiculopathy, and reiterated that appellant was capable of sedentary work. In a February 14, 2024 addendum, Dr. Moore reiterated that appellant was capable of performing sedentary work. In an addendum report dated September 10, 2024, Dr. Moore reviewed the job descriptions of the selected positions, and concluded that taking into account appellant's light-duty demand level indicated by the FCE, appellant was capable of performing the duties of the positions outlined.

The DOT defines sedentary work as exerting up to 10 pounds of force occasionally or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs may be defined as sedentary when walking and standing are required only occasionally and all other sedentary criteria are met.²⁰ The Board thus finds that the special weight of the medical evidence, as represented by Dr. Moore, establishes that appellant had the physical capacity to perform the duties of the selected position.

A state labor market survey from August 9, 2024 demonstrated that the computer security specialist position was reasonably available within appellant's commuting area, with an average beginning wage of \$1,511.53 per week.²¹ OWCP then applied the principles set forth in the *Shadrick* formula to calculate appellant's 53 percent wage-earning capacity or 47 percent LWEC.²² Accordingly, the Board finds that OWCP properly found that the computer security specialist position reflected appellant's wage-earning capacity.

¹⁹ Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or IME) who shall make an examination. 5 U.S.C. § 8123(a); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *L.S.*, Docket No. 19-1730 (issued August 26, 2020); *M.S.*, 58 ECAB 328 (2007).

²⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Vocational Rehabilitation Services*, Chapter 2.813, Exhibit 1 (February 2011).

²¹ See *T.K.*, Docket No. 24-0827 (issued October 24, 2024); *J.S.*, Docket No. 23-0518 (issued April 9, 2024); *M.P.*, Docket No. 18-0094 (issued June 26, 2018) (finding that the vocational rehabilitation counselor is an expert in the field of vocational rehabilitation and that OWCP may rely on his or her opinion in determining whether the job is vocationally suitable and reasonably available).

²² *Supra* note 16.

Appellant may request modification of the July 24, 2025 LWEC determination, supported by new evidence or argument, at any time before OWCP.

CONCLUSION

The Board finds that OWCP properly reduced appellant's wage-loss compensation benefits, effective July 24, 2025, based on his capacity to earn wages in the constructed position of a computer security specialist.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2025
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board