

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOYD JONES and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 00-2396; Submitted on the Record;
Issued March 21, 2002*

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 wage-loss compensation based on its determination that the selected position of computer operator represented his wage-earning capacity.

The Board has duly reviewed the case record and concludes that the Office improperly determined that the selected position of computer operator represented appellant's wage-earning capacity.

On April 27, 1982 appellant, then a 40-year-old shipfitter, sustained a traumatic injury while in the performance of duty. The Office accepted appellant's claim for fractured fibulia and medial malleolus of the left ankle, lumbosacral sprain and strain of the left hip and groin region. Appellant received appropriate wage-loss compensation.

By decision dated April 4, 2000, the Office found that the position of computer operator reasonably and fairly represented appellant's wage-earning capacity. Consequently, the Office reduced appellant's wage-loss compensation.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹

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 on loss of wage-earning capacity.² 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

¹ *James B. Christenson*, 47 ECAB 775, 778 (1996); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

² 20 C.F.R. §§ 10.402, 10.403; *see Alfred R. Hafer*, 46 ECAB 553, 556 (1995).

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.³

When the Office makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to an Office wage-earning capacity specialist for selection of a position listed in the Department of Labor, *Dictionary of Occupational Titles*, or otherwise available in the open labor market, that fits the employee's capabilities with regard to his or her physical limitations, education, age and prior experience. 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. Finally, application of the principles set forth in the *Shadrick* decision will result in the percentage of the employee's loss of wage-earning capacity.⁴

The Office must initially determine appellant's medical condition and work restrictions before selecting an appropriate position that reflects appellant's vocational wage-earning capacity. The Board has stated that the medical evidence upon which the Office relies must provide a detailed description of appellant's condition.⁵

In determining appellant's medical condition and work restrictions, the Office relied on the January 18, 1995 report of Dr. Edward J. Waiter. Additionally, the Office's medical adviser reviewed the case record, and in a report dated April 4, 2000, she stated that, "[a]s long as the claimant does not have to stand for long periods of time, the position appears within [his] physical limitations."

The Board has held that a wage-earning capacity determination must be based on a reasonably current medical evaluation.⁶ In this case, there is no contemporaneous medical evidence demonstrating appellant's ability to perform the duties of the selected position of computer operator.⁷ The most recent medical evaluation predates the Office's April 4, 2000 decision by more than five years. The Office cannot properly determine appellant's wage-earning capacity without a detailed current description of his condition and ability to perform work.⁸ Notwithstanding the Office medical adviser's April 4, 2000 opinion, Dr. Waiter's five-year-old medical evaluation cannot reasonably be construed to represent appellant's current

³ 5 U.S.C. § 8115(a); see *Mary Jo Colvert*, 45 ECAB 575 (1994); *Keith Hanselman*, 42 ECAB 680 (1991).

⁴ *Albert C. Shadrick*, 5 ECAB 376 (1953).

⁵ *Samuel J. Russo*, 28 ECAB 43 (1976).

⁶ *Carl C. Green, Jr.*, 47 ECAB 737, 746 (1996).

⁷ See *Martha A. McConnell*, 50 ECAB 129, 131-32 (1998).

⁸ See *Anthony Pestana*, 39 ECAB 980, 986 (1988).

physical condition.⁹ Accordingly, the Office has failed to carry its burden to justify modification of compensation benefits.¹⁰

The April 4, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
March 21, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Samuel J. Russo, supra* note 5 (medical reports submitted two years prior to the wage-earning capacity determination were insufficient to establish appellant's current work capacity).

¹⁰ *James B. Christenson, supra* note 1.