

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA DIZE and DEPARTMENT OF THE ARMY,
McDONALD ARMY COMMUNITY HOSPITAL, Fort Eustis, VA

*Docket No. 98-1578; Submitted on the Record;
Issued February 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation on the basis that the position of hospital admitting clerk represented her wage-earning capacity.

On May 1, 1995 appellant, filed a claim for an injury to her left hip and elbow sustained on April 4, 1995 when she slipped and fell at work. The Office accepted that this injury resulted in a herniated disc at C6-7 and authorized surgery for this condition. An anterior cervical discectomy and fusion were performed on August 16, 1995 by Dr. James E. Lesnick, a Board-certified neurosurgeon.

Appellant received continuation of pay intermittently from May 3 to August 1, 1995, after which the Office paid her compensation for temporary total disability until her return to limited-duty work on September 14, 1995. Her duties consisted of filing, answering telephones and greeting patients. Effective May 3, 1996 the employing establishment terminated appellant's limited duty. The employing establishment noted that it could not accommodate appellant's physical limitations in her position of diagnostic radiologic technician and that it was unable to locate a vacancy for which she was qualified.

On May 7, 1996 appellant filed a claim for compensation for the period beginning May 6, 1996. The Office authorized appellant to buy back leave she used from May 6 to 29, 1996, after which it began to pay her compensation for temporary total disability.

On June 6, 1997 the Office issued a proposal to reduce appellant's compensation on the basis that the position of hospital admitting clerk represented her wage-earning capacity. By decision dated November 13, 1997, the Office reduced appellant's compensation effective November 9, 1997 on the basis that the position of hospital admitting clerk represented her wage-earning capacity. Appellant requested reconsideration and the Office, by decision dated February 3, 1998, found that the additional evidence was not sufficient to warrant review of its

prior decision. An injured employee who is unable to return to the position held at the time of injury but who is not totally disabled for all employment is entitled to compensation computed on loss of wage-earning capacity. If an employee's actual earnings do not fairly and reasonably represent his or her wage-earning capacity or if the employee has no actual earnings, the employee's wage-earning capacity shall be determined by the Office by selection of a job after having given due regard to the nature of the employee's injury, the degree of physical impairment, the employee's usual employment, the employee's age, the employee's qualification for other employment, the availability of suitable employment and other factors or circumstances which may affect the employee's wage-earning capacity in his or her disabled condition.¹

The Board finds that the Office properly reduced appellant's compensation effective November 9, 1997 on the basis that the position of admitting officer (medical services) represented her wage-earning capacity.

The only actual earnings appellant had since she stopped work on May 3, 1996 consisted of pay for assistance in her church's nursery for two hours per week. As Dr. Lesnick indicated appellant could work eight hours per day with limitations, appellant's actual earnings did not represent her wage-earning capacity.

The Office selected a position from the Office's *Dictionary of Occupational Titles* (DOT). Although the Office's proposed reduction and its final decision state the position of hospital admitting clerk was selected, the number and the description from the DOT show that the position of admitting officer (medical services) was actually used. The specific vocational preparation for this position is listed as 30 days to 3 months. As appellant had worked in the medical field for over eight years and performed duties similar to the selected position for eight months in her limited-duty position with the employing establishment, she had the necessary training and experience to perform the position of admitting officer (medical services).

The evidence shows that appellant is physically capable of performing the duties of the selected position of admitting officer (medical services), which are listed as sedentary. The only work tolerance limitation listed by Dr. Lesnick was a permanent limitation against repeated extension and turning of the head and neck. While this limitation would prevent appellant from performing the duties of the job of diagnostic radiologic technician she held when injured, there is no indication that it would prevent appellant from performing the duties of an admitting officer (medical services).

Through contact with the state employment service, a rehabilitation counselor ascertained that the position of admitting officer (medical services) was being performed in sufficient numbers so as to make it reasonably available in appellant's commuting area. Appellant's submission of evidence that she had been unsuccessful in obtaining a job in the selected position does not establish that the position was not reasonably available in her area.² The Office is not obligated to actually secure a job for appellant. It must only provide evidence that the selected

¹ 5 U.S.C. §§ 8106(a), 8115; 20 C.F.R. § 10.303(a).

² *Samuel J. Chavez*, 44 ECAB 431 (1993).

position is performed in sufficient numbers in the geographical area to be reasonably available.³ The Office has met the requirements to show that the position of admitting officer (medical services) represents appellant's wage-earning capacity.

The decision of the Office of Workers' Compensation Programs dated November 13, 1997 is affirmed.

Dated, Washington, D.C.
February 28, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Alfred R. Hafer*, 46 ECAB 553 (1995).