

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROY ALEXANDER and TENNESSEE VALLEY AUTHORITY,
BELLEFONTE NUCLEAR PLANT, Hollywood, AL

*Docket No. 00-2716; Submitted on the Record;
Issued February 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly determined that the position of cashier II reasonably represented appellant's wage-earning capacity.

On January 25, 1985 appellant, then a 48-year-old steamfitter, filed a notice of traumatic injury claiming that he injured his right elbow at work on January 2, 1985. The Office accepted the claim for right elbow strain, right epicondylitis and traumatic arthritis of the right elbow. Appellant received appropriate compensation benefits. On December 30, 1987 appellant received a schedule award based on a 10 percent permanent impairment of the right upper extremity.

In a report dated April 29, 1999, Gregory A. Price, a rehabilitation specialist, provided information that the position of cashier II was reasonably available in appellant's commuting area at a rate of pay of \$5.15 per hour (minimum wage). He provided a job description which indicated that the position was "light work," which involved lifting, carrying, pushing, pulling 20 pounds occasionally, frequently up to 10 pounds, or a negligible amount constantly. The duties also included reaching, handling, fingering, feeling, talking, hearing and seeing.

In a report dated December 3, 1998, second opinion physician Dr. Randall P. Frazier, a Board-certified orthopedic surgeon, indicated that appellant could no longer perform the duties of steamfitter but that he was able to perform the duties of cashier II.

In a notice of proposed reduction of compensation dated August 23, 1999, the Office advised appellant that it proposed to reduce his compensation benefits for the reason that he was no longer totally disabled and that he had the capacity to earn the wages of a cashier II at the rate of \$170.00 per week.

By decision dated October 5, 1999, the Office adjusted appellant's compensation benefits effective October 10, 1999, on the grounds that the evidence of record established that he was no

longer totally disabled for work due to the effects of his January 2, 1985 employment injury and that he was capable of performing the position of cashier II. The Office stated that the wage-earning capacity determination took into consideration such factors as actual earnings, the employee's disability, training, experience, age and the availability of such work in the area where the employee lived. The Office stated that, based upon the residuals of appellant's injury and considering all significant preexisting impairments and pertinent nonmedical factors, it had been found that appellant was able to perform the position of cashier II.

Appellant requested an oral hearing, which was held on March 28, 2000. At the hearing appellant stated that he only has one arm and cannot lift heavy objects.

By decision dated June 12, 2000, the hearing representative found that the evidence of record established that the position of cashier II, fairly and reasonably represented appellant's wage-earning capacity.

The Board finds that the Office properly determined that the position of cashier II reasonably reflected appellant's wage-earning capacity effective October 10, 1999, the date that it reduced his compensation benefits.

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.¹

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 represent his wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity, or if the employee has no actual earnings, his wage-earning capacity is determined with due regard to the nature of his injury, his degree of physical impairment, his usual employment, his age, his qualifications for other employment, the availability of suitable employment and other factors and circumstances which may affect his wage-earning capacity in his disabled condition.² Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions.³ The job selected for determining wage-earning capacity must be a job reasonably available in the general labor market in the commuting area in which the employee lives.⁴

When the Office makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to a vocational rehabilitation counselor authorized by the Office or to an Office wage-earning capacity specialist for selection of a position, listed in the Department of Labor's *Dictionary of Occupational Titles* or otherwise available in the open labor market, that fits that employee's capabilities with regard to his physical limitations,

¹ *Sylvia Bridcut*, 48 ECAB 162 (1996).

² *Pope D. Cox*, 39 ECAB 143, 148 (1988).

³ *Albert L. Poe*, 37 ECAB 684, 690 (1986).

⁴ *Id.*

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.

In this case, the Office obtained current information about the availability and pay rate for the job of cashier II in appellant's commuting area and determined that the position was reasonably available in appellant's commuting area at wages of \$5.15 per hour (\$206.00 per week).⁵

Dr. Frazier found that appellant still suffered from residuals from his elbow condition and stated that appellant was unable to perform the duties he held on January 2, 1995 as a steamfitter. He also stated that he reviewed the job duties of the cashier II position and that appellant was able to perform those duties. Also, in a work restriction evaluation received by the Office on February 5, 1999 Dr. Frazier indicated that appellant could lift up to 25 pounds.

In a report from Dr. Frazier dated September 16, 1999, he indicated that appellant was complaining of his inability to do the work of cashier II since he cannot lift 25 pounds. Dr. Frazier stated:

“At this point I do not have any objective findings to support the fact that the [appellant] is unable to do 25-pound weight limit work. My recommendation at this point would be to do a functional capacity evaluation to specifically address the amount of disability that he truly has.”

The Board finds that the Office considered the proper factors, such as availability of suitable employment and appellant's physical limitations, usual employment and age and employment qualifications, in determining that the position of caseworker represented appellant's wage-earning capacity.⁶ The Board also finds that the weight of the medical evidence rests with Dr. Frazier since there is no medical evidence of record indicating that appellant could not perform this job. He reviewed the duties of cashier II and stated that appellant could perform those duties. Subsequently, Dr. Frazier stated that appellant could lift up to 25 pounds and that there were no objective findings to suggest otherwise. The Board notes that the position of cashier II only requires pulling 20 pounds occasionally and 10 pounds frequently.

The weight of the evidence of record establishes that appellant had the requisite physical ability, skill and experience to perform the position of cashier II and that such a position was reasonably available within the general labor market of appellant's commuting area. Since the record contains no medical evidence to the contrary, the Office properly determined that the position of cashier II reflected appellant's wage-earning capacity effective October 10, 1999.

⁵ *Richard Alexander*, 48 ECAB 432 (1997).

⁶ *Id.*

The June 12, 2000 and October 5, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 15, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member