U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JONATHAN GIBBS and DEPARTMENT OF THE NAVY, MILITARY SEALIFT COMMAND, Oakland, CA

Docket No. 99-361; Submitted on the Record;
Issued October 2, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation under 5 U.S.C. § 8113(b) to reflect his loss of wage-earning capacity had he continued to participate in vocational rehabilitation.

In the present case, the Office accepted that appellant, an able seaman, sustained a right ankle strain, right buttock strain, and herniated nucleus pulposus at L5-S1 in the performance of duty on May 21, 1990. Appellant returned to light-duty work in January 1992, then stopped working when the employing establishment terminated the light-duty position in October 1993.

The record indicates that the Office authorized vocational rehabilitation services. In a report dated April 26, 1995, a vocational rehabilitation counselor indicated that appellant had expressed an interest in hospitality management, and had been referred to the Hospitality Management Training Institute. A rehabilitation report dated July 11, 1995 indicates that appellant had begun taking classes at the Hospitality Institute. In a note dated September 19, 1995, the rehabilitation counselor stated that appellant had become "extremely displeased and critical" of his training program.[1] In a report dated October 13, 1995, the rehabilitation counselor stated that appellant had asserted the program was not meeting his needs and was a waste of time and money. According to the counselor, a meeting was held on September 28, 1995 with the Executive Director of the training program, appellant, and the counselor in attendance, but appellant stated he did not want to resolve the issues and he was withdrawing from the training program. The rehabilitation counselor opined that, if appellant had been willing to discuss the issues, a resolution could have been reached, and if appellant had completed the program, he would have been employable in the occupations identified in the rehabilitation plan.

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[1] The record contains a memorandum dated September 13, 1995 from the Executive Director of the Hospitality Institute stating that appellant had asserted he was forced into the program, and he did not like the attitude of an instructor in one of his classes.

In a letter dated October 12, 1995, the Office advised appellant that an individual who refuses or impedes vocational rehabilitation without good cause will have his compensation reduced, based on the wage-earning capacity had the training program been properly completed. By decision dated August 25, 1997, the Office determined that appellant had failed, without good cause, to undergo vocation rehabilitation. The Office reduced appellant's compensation based on his wage-earning capacity as a front desk clerk.

The Board has reviewed the record and finds that the Office properly reduced appellant's compensation under 5 U.S.C. § 8113(b).

Section 8113(b) of the Federal Employees' Compensation Act provides:

> "If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of this title, the Secretary, on review under section 8128 of this title and after finding that in the absence of the failure the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary."[2]

Section 10.124(f) of the implementing regulations of 5 U.S.C. § 8113(b), further provides in pertinent part:

> "Pursuant to 5 U.S.C. § 8104(a), the Office may direct a permanently disabled employee to undergo vocational rehabilitation. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue participation in a vocational rehabilitation effort when so directed, the Office will, in accordance with 5 U.S.C. § 8113(b), reduce prospectively the employee's monetary compensation based on what would probably have been the employee's wage-earning capacity had there not been such failure or refusal."[3]

In the present case, there is no question that appellant failed to continue participating in the training program that was authorized as part of the vocational rehabilitation efforts in this case. The issue is whether appellant's failure to continue participation was "without good cause." The record indicates that appellant told the rehabilitation counselor that the training program was not meeting his needs; he apparently was displeased over the abrasive manner of one of the teachers, and found the instruction inadequate. In a letter dated October 10, 1995, appellant asserted that the Hospitality Institute was not affiliated with any university and would not have provided sufficient training to fill a position in management. Appellant submitted a letter from the Accrediting Council for Independent Colleges and Schools, indicating that the Hospitality Institute was currently seeking accreditation from that agency.

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[2] 5 U.S.C. § 8113(b).

[3] 20 C.F.R. § 10.124(f).

With respect to “good cause,” however, the issue is not whether a specific agency had granted accreditation, but whether the training program was an appropriate method of realizing the rehabilitation goals in this case. The rehabilitation counselor clearly felt that continuing the training program was appropriate; she stated in the October 13, 1995 report that if appellant had completed the program he would have been employable in the occupations identified in the rehabilitation plan, which included front desk clerk. Appellant’s own belief that the training was inadequate is not sufficient to outweigh the opinion of a rehabilitation specialist. Accordingly, the Board finds that appellant did not present “good cause” for his failure to continue to participate in vocational rehabilitation efforts. Under 5 U.S.C. § 8113(b), the Office may reduce appellant’s compensation to reflect his wage-earning capacity had he properly completed the program.

The decision of the Office of Workers’ Compensation Programs dated August 25, 1997 is affirmed.

Dated, Washington, DC
October 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member