

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

FRANKLIN G. JONES, Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Atlanta, GA, Employer**

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**Docket No. 06-131
Issued: April 3, 2006**

Appearances:
Franklin G. Jones, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 24, 2005 appellant filed a timely appeal from the August 2, 2005 merit decision of the Office of Workers' Compensation Programs, which found that he failed, without good cause, to undergo vocational rehabilitation as directed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the wage-earning capacity issue.

ISSUE

The issue is whether the Office properly reduced appellant's compensation for failing, without good cause, to undergo vocational rehabilitation as directed.

FACTUAL HISTORY

On June 18, 2000 appellant, then a 34-year-old correctional officer, injured his back in the performance of duty when he slipped and fell while walking down stairs. The Office accepted his claim for a herniated disc and authorized a microdiscectomy. Appellant received compensation for temporary total disability on the periodic rolls effective May 20, 2001.

When the medical evidence indicated that appellant was capable of resuming gainful employment within restrictions, the Office referred him to vocational rehabilitation services. He began training at Clayton College and State University with the goal of obtaining an associate's degree in computer information systems, which would qualify him for employment as a Computer Systems Hardware Analyst or Database Design Analyst.

In a decision dated September 18, 2003, the Office found that appellant failed, without good cause, to undergo vocational rehabilitation as directed. The Office reduced his compensation effective September 21, 2003 based upon what would have been his wage-earning capacity as a Computer Systems Hardware Analyst had he not failed to undergo vocational rehabilitation.

In a decision dated December 15, 2003, an Office hearing representative affirmed the reduction of appellant's compensation until such time as he resumed participation in his rehabilitation program.

When appellant wrote to the Office on December 24, 2003 to advise that he was ready and willing to return to vocational rehabilitation, his rehabilitation file was reopened to coordinate his readmission to Clayton College and State University for the purpose of completing his training in computer information systems. Appellant resumed training in the fall of 2004. On November 12, 2004 he reported to the rehabilitation counselor that his classes were going fine. On November 26, 2004 the Office rehabilitation specialist noted that appellant was maintaining A's and B's in all courses and that his current term was scheduled to end by December 17, 2004.

In a letter dated December 1, 2004, appellant notified the Office that he had withdrawn from training due to the true severity of his condition, which was "confirmed and verified as permanent disabled by more than ten independent physicians and two federal Institutions -- the Veteran's Affairs office and the Social Security Administrations office." Appellant noted that the former agency now recognized him as 100 percent disabled.

Beginning January 14, 2005 the rehabilitation counselor was repeatedly unable to reach appellant by telephone. She learned from the school that he was not registered for the spring semester and that he had not completed a request for a copy of his grades. The rehabilitation counselor sent appellant a certified letter on February 17, 2005 but was still unable to reach him.

On March 1, 2005 the Office advised appellant that he needed to provide a copy of his transcript from the fall term and needed to maintain contact with his rehabilitation counselor. The Office informed him that his failure to enroll for the spring term was an obstruction of vocational rehabilitation retraining efforts. After notifying appellant of the provisions of 5 U.S.C. § 8113(b), the Office directed him to undergo the training program at Clayton College and State University and to contact the Office to make the necessary arrangements. The Office also provided appellant 30 days to show good cause for not undergoing the training program.

On May 10, 2005 the Office rehabilitation specialist reported that appellant had made no contact to date. She found that, if appellant had successfully completed training, he would have

been qualified for employment as a Computer Systems Hardware Analyst with a wage-earning capacity of \$12.67 per hour.

In a decision dated August 2, 2005, the Office reduced appellant's compensation for failing, without good cause, to undergo vocational rehabilitation as directed. The Office found that if he had participated in vocational rehabilitation efforts, he would have been able to perform the position of a Computer Systems Hardware Analyst. The Office reduced appellant's compensation under 5 U.S.C. § 8113(b) based on the difference between his pay rate for compensation purposes and what his wage-earning capacity would have been had he cooperated with vocational rehabilitation efforts.

LEGAL PRECEDENT

Section 8104(a) of the Federal Employees' Compensation Act provides: "The Secretary of Labor [*i.e.*, the Office] may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services."¹

Section 8113(b) of the 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 have probably 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 10.519(a) of the implementing regulations provides:

"If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, [the Office] will act as follows:

"(a) Where a suitable job has been identified, [the Office] will reduce the employee's future monetary compensation based on the amount which would likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation. [The Office] will determine this amount in accordance with the job identified through the vocational rehabilitation planning process, which includes meeting with the [Office] nurse and the employer. The reduction will remain in effect until such

¹ 5 U.S.C. § 8104(a).

² *Id.* at § 8113(b).

time as the employee acts in good faith to comply with the direction of [the Office].”³

ANALYSIS

Under section 8104(a) of the Act, the Office directed appellant to undergo vocational rehabilitation. On March 1, 2005 the Office directed appellant to undergo the training program at Clayton College and State University and to contact the Office to make the necessary arrangements. Appellant did not respond. He advised the Office on December 1, 2004 that he had withdrawn from training, and reports from his rehabilitation counselor and the Office rehabilitation specialist document that he failed to maintain contact, failed to request a copy of his grades for the fall term and failed to register for the spring semester. The Board finds that this evidence establishes that appellant failed to undergo vocational rehabilitation when so directed under section 8104.

The question for determination becomes whether appellant showed good cause. The only evidence of his reasons for withdrawing from training can be found in his December 1, 2004 letter to the Office. Although he implicated the true severity of his condition, he offered no medical evidence showing that he was physically unable to continue his education in the spring semester. He may well have been confirmed as permanently disabled by more than 10 independent physicians and rated 100 percent disabled by the Department of Veterans Affairs and the Social Security Administration, but this has no bearing on his ability to go to class or to complete his training in computer information systems. As the Board explained in the case of *Hazelee K. Anderson*:

“Appellant submitted a copy of a decision of the Social Security Administration which awarded her benefits. In this regard, it appears that appellant is under the impression that because she was awarded disability benefits for retirement purposes she is *ipso facto* disabled for compensation purposes under the Federal Employees’ Compensation Act. This is not so and, as the Board has stated, entitlement to benefits under one Act does not establish entitlement to [benefits under] the other. The findings of other administrative agencies have no bearing on proceedings under the Federal Employees’ Compensation Act which is administered by the Office and the Board, and a determination made for disability retirement purposes is not determinative of the extent of physical impairment or loss of wage-earning capacity for compensation purposes.”⁴

The Board finds that appellant did not show good cause for failing to undergo vocational rehabilitation as directed. Given the finding of the Office rehabilitation specialist that in the absence of his failure appellant would be qualified for employment as a Computer Systems Hardware Analyst with a wage-earning capacity of \$12.67 an hour, the Board further finds that

³ 20 C.F.R. § 10.519(a) (1999).

⁴ 37 ECAB 277, 282-83 (1986) (citations omitted).

the Office properly reduced appellant's monetary compensation under 5 U.S.C. § 8113(b). The Board will affirm the Office's August 2, 2005 decision reducing his compensation.⁵

CONCLUSION

The Board finds that the Office properly reduced appellant's compensation for failing, without good cause, to undergo vocational rehabilitation as directed.

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁵ Because an updated labor market survey found that the hourly wage for this position had decreased from \$15.00 an hour to \$12.67, and because the current weekly pay rate for the job and step appellant held when injured had increased since 2003, the August 2, 2005 reduction of compensation actually netted appellant an increase in compensation over the prior reduction.