

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN T. SULLIVAN and DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION, Burlington, Mass.

*Docket No. 96-32; Submitted on the Record;  
Issued March 26, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying the rehabilitation benefits requested.

The Board has duly reviewed the record on appeal and finds that the Office abused its discretion.

The vocational rehabilitation provisions of the Federal Employees' Compensation Act vest the Office with discretionary powers and a decision granting or refusing to grant an application for training will not be set aside by the Board, unless it represents an abuse of discretion, that is, a manifestly unreasonable exercise of judgment.<sup>1</sup> The purpose of providing training under the Act is to upgrade the skills or education of beneficiaries who cannot return to their former federal employment, in order that they may qualify for other suitable employment and restore lost earning capacity.<sup>2</sup> The Office will sponsor vocational training if needed to furnish the claimant with necessary skills."<sup>3</sup>

Following the employment injury of February 4, 1982, appellant was entered into the Assisted Reemployment Project,<sup>4</sup> which led to a cooperative agreement for assisted employment as a Claims Adjuster/Investigator. The Office provided appellant with necessary equipment and supplies. Subsequently, appellant requested reimbursement for a course he attended and asked the Office to supply him with a bullet-resistant vest and periscope. In a decision dated

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<sup>1</sup> *Stephen Souza*, 27 ECAB 38 (1975); *Nicholas Slaton*, 13 ECAB 474 (1962).

<sup>2</sup> *See Willie S. Bolden*, 33 ECAB 316 (1981); *Mary A. Brown*, 27 ECAB 389 (1976).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*, Chapter 2.813.3 (December 1993).

<sup>4</sup> *See generally id.*, Chapter 2.813.9.

March 17, 1994, the Office denied payment or reimbursement for the training and supplies on the grounds that securing employment as a claims adjuster/investigator was not contingent upon the procurement of these items. In a decision dated July 31, 1995, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

In denying modification, however, the Office failed to consider the December 29, 1994 letter, from the president of the company that entered into the agreement for assisted employment. The Office received this letter on May 22, 1995. In it, appellant's employer related his understanding of the agreement between his company and the Office. The company intended to assist appellant in obtaining his private investigation license (which he obtained) and his insurance adjusting license, which the employer described as extremely important in his line of work. It was the employer's understanding that the Office would provide appellant with the tools and expenses necessary to obtain these licenses. In order to obtain a multi-line adjuster's license, it would be necessary and important for appellant to take various courses in order to be able to pass the examination for the license. The employer explained: "As an insurance adjusting firm, we find that [appellant's] activities are limited to strictly investigation and fact finding at this time. As a result of his not being licensed as an adjuster, we are unable to use [him] in settlement negotiations which are critical to our ability to provide full service to our various accounts." The employer described these courses as necessary. Without providing appellant with the necessary tools, he stated, the Office will have only partially assisted appellant to once again become a productive and full-time member of the active work force. The employer also recounted two instances in which appellant's life was threatened by individuals he was investigating. "A bullet-proof vest," he stated, "may be essential in saving [appellant] from serious injury or prevent death." The employer stated that the periscope was absolutely necessary in performing discreet surveillance and that without this tool the company would have to remain conservative in the assignments that it allowed appellant to perform.

The Board finds that the December 29, 1994 letter is relevant to the issue decided by the Office's July 31, 1995 decision and that a proper exercise of discretion requires that the Office base its decision on all the relevant evidence that it has before it.<sup>5</sup> In the memorandum attached to its July 31, 1995 decision, the Office acknowledged having received two prescriptions and a medical report subsequent to its prior decision. Although the Office correctly found that compensation benefits cannot be paid on the basis of possible future injury, it abused its discretion in failing to consider the employer's December 29, 1994 letter, setting forth his understanding of the assisted employment agreement and establishing the necessity of courses to obtain an important license, the essential protection of a bullet-proof vest and the absolute necessity for a periscope. The Board will set aside the Office's July 31, 1995 decision and remand the case to the Office for a proper exercise of its discretion. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's request for rehabilitation services and supplies.

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<sup>5</sup> *Jovita Weaver*, 2 ECAB 122 (1948) (decisions should be made on the basis of all the evidence); *see William A. Couch*, 41 ECAB 548, 553 (1990) (remanding the case to the Office for full consideration of the evidence submitted prior to the date of the Office's final decision).

The July 31, 1995 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.  
March 26, 1998

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member