United States Department of Labor
Employees' Compensation Appeals Board

B.W., Appellant	)	
and	)	**Docket No. 14-372**
	)	**Issued: November 12, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Rockwall, TX, Employer	)	

Appearances:
Michael E. Woods, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 4, 2013 appellant, through her attorney, filed a timely appeal from a September 11, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly reduced appellant's compensation to zero from May 5 to June 3, 2013 for failing to cooperate with the early stages of vocational rehabilitation.

On appeal appellant contends that OWCP did not properly follow its selection procedures when it chose the impartial medical examiner.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 23, 2004 appellant, then a 51-year-old rural letter carrier, filed an occupational disease claim alleging osteoarthritis due to repetitive motion. OWCP assigned the case claim number xxxxxx260, accepted for osteoarthritis of the left thumb and hand. It subsequently accepted an open wound of the left wrist with tendon involvement and mechanical complications from the implant of an internal orthopedic device and graft.[2] In March 2005, appellant returned to modified-duty work under physical limitations performing light office duties. By decision dated December 21, 2005, OWCP reduced her monetary benefits to zero as her actual earnings fairly and reasonably represented her wage-earning capacity.

In June 2005, appellant filed an occupational disease claim alleging that the repetitive motion of her job and left wrist and hand injury caused overuse of her right shoulder. OWCP assigned the case claim number xxxxxx470 and accepted right rotator cuff syndrome.

On June 2, 2008 appellant came under treatment by Dr. Mike Shah, a specialist in pain management. He diagnosed osteoarthritis of the hand with history of an open wound of the left wrist tendon. Appellant was provided medication for pain and the physician completed a CA-17 duty status report outlining appellant's physical restrictions. Dr. Shah provided follow-up notes and annual duty status reports listing appellant's limitations for work.

As of November 24, 2010, the employing establishment could no longer accommodate appellant's work restrictions under the National Reassessment Process (NRP). Accordingly, OWCP placed her on the periodic compensation rolls.[3]

On January 3 and 10, 2012 Dr. Shah provided brief treatment notes on a prescription pad, prescribing medical refills and physical therapy from four to six weeks (two to three times a week).

On January 3, 2012 appellant was referred by OWCP to Dr. Charles Mitchell, a Board-certified orthopedic surgeon, together with a statement of accepted facts and the medical record. Dr. Mitchell was asked to examine appellant and address any ongoing residuals of her accepted conditions and her capacity for work.

In a January 19, 2012 report, Dr. Mitchell set forth an accurate history of appellant's employment and medical treatment. He reviewed the medical reports of record, including the diagnostic tests of the left hand and wrist and surgery for arthrodesis of the left thumb carpometacarpal joint. Dr. Mitchell also reviewed the medical records pertaining to appellant's right shoulder treatment for rotator cuff syndrome. He addressed the accepted conditions and noted that appellant had not worked since 2010, as no modified work was available. On examination, there was a scar over the left thumb with an obvious deformity at the base of the thumb due to the previous surgery. Appellant had some general interosseous atrophy of the muscles of the left hand and some decreased sensation. Her overall grip was described as fair

[2] On July 18, 2007 OWCP granted appellant a schedule award for 14 percent impairment of her left arm.

[3] In May 2011 OWCP combined the case files with number xxxxxx260 designated the master file.

due to restricted motion of the joint. Phalen's test was negative. Dr. Mitchell set forth findings of cervical spine and right shoulder range of motion, noting some tenderness and mild crepitation. He found that appellant was capable of work within specified physical restrictions based on her accepted conditions. Dr. Mitchell noted that the work restrictions were permanent in nature as there were no treatment options that would return her or assist in a full recovery from her injuries. He specified that appellant could not return to her usual occupation as a rural letter carrier, but was able to work up to six hours a day subject to a five-pound limitation on lifting, pushing and pulling up to two hours a day; twisting two hours a day and no reaching above shoulder level, climbing or operating a motor vehicle. Appellant could occasionally bend, squat and kneel.

On February 27, 2012 OWCP asked Dr. Shah to review the report of Dr. Mitchell and state whether he agreed with the findings. If he disagreed, Dr. Shah was asked to provide a narrative opinion with specific reasons for any dissent. On February 28, 2012 he referred to his recent CA-17, noting that appellant could work eight hours a day with restrictions. Dr. Shah responded that appellant tolerated less restriction.

On September 18, 2012 Dr. Shah advised that appellant could work four hours per day with additional restrictions. In a letter dated October 3, 2012, OWCP requested that he clarify his opinion with regard to appellant's condition and the need for added restrictions, such as sitting, walking and standing restrictions, due to the accepted work-related condition. It noted that Dr. Shah had not submitted any current narrative report or diagnostic testing. Dr. Shah did not respond.

OWCP determined that a conflict in medical opinion arose between Dr. Shah and Dr. Mitchell as to appellant's capacity for work due to the accepted work-related conditions. By letter dated October 11, 2012, appellant referred to Dr. Bernie L. McCaskill, a Board-certified orthopedic surgeon, for an impartial medical evaluation. The record contains an October 11, 2012 iFECS Report: MEO23 -- Appointment Schedule Notification and a screen shot indicating that Dr. McCaskill was selected as an impartial medical adviser on October 11, 2012.[4]

By decision dated November 5, 2012, OWCP denied appellant's request to participate in the selection of the referee physician as there was no evidence that Dr. McCaskill was improperly selected or biased.

In a November 20, 2012 report, Dr. McCaskill described appellant's history of injury, medical treatment, and reviewed the medical records. On examination he noted a full active range of motion of the cervical spine and upper extremities, other than her left thumb. Appellant had tenderness over the left thumb metacarpal-carpal joint, with no obvious sign of swelling, atrophy, or other objective evidence of significant musculoskeletal injury in either upper extremity. There were no abnormal neurological findings, with normal and symmetrical

[4] On November 5, 2012 the Medical Management Specialist verified that there was one bypass performed on the selection of the referee physician because the appointment scheduler was not in the office when the appointment was being scheduled. An October 10, 2012 screen shot notes that Dr. Benzel MacMaster, a Board-certified orthopedic surgeon, was bypassed because the appointment scheduler was not in the office. The bypass time was not provided. The bypass reason was noted as code O.

strength. Dr. McCaskill diagnosed left thumb pain postmetacarpal carpal fusion. He found that appellant was able to work eight hours a day with physical restrictions of no climbing and a 10-pound lifting, pulling and pushing limitation. Dr. McCaskill opined that her restrictions were related to difficulties grasping with her left hand due to thumb dysfunction and pain.

In 2012 OWCP referred appellant for vocational rehabilitation services. A vocational test performed on May 4, 2012 revealed that she was capable of working but had a limited formal education. As appellant did not have a General Equivalency Education Diploma (GED), she was directed to attend training classes to prepare her for the GED test.

In a February 26, 2013 letter, the vocational rehabilitation counselor noted that a tutor had met with appellant only once in the prior week and had not met again due to her "schedule." The tutor advised OWCP that she could work around appellant's scheduled doctor appointments. The tutor also stated that her schedule was very flexible and that she could reschedule their current schedule with one day notice. The tutor stated that appellant had texted her the night before they were to meet and canceled the meeting. The vocational rehabilitation counselor advised appellant to study between classes with the tutor so she could be prepared for the GED examination in May. The vocational counselor stated that appellant had not gone to the library since January. If appellant did not want to sit for the GED examination or attend classes or tutoring sessions, her case status could be moved into Placement New Employer.

By letter dated February 28, 2013, OWCP notified appellant that she had refused to participate in an OWCP-approved training program with the math tutor in order to help her obtain her GED, as recommended by the rehabilitation counselor. It advised her that, under section 8113(b), her compensation could be reduced prospectively based on what would have been her wage-earning capacity, had she not failed to undergo vocational rehabilitation. OWCP directed appellant to undergo the recommended training program; or, if she believed that she had sufficient justification to not participate, she should provide her reasons with supporting documentation.

In a January 1, 2013 note, Dr. Shah advised that appellant was on narcotic medication for pain and restricted from driving until further notice.

In a March 11, 2013 letter, appellant's representative contended that appellant's kidney disease and epilepsy prevented her from performing class work. In a February 13, 2013 letter, Dr. Les T. Sandknop, an osteopath, stated that appellant had hyperlipidemia, hypertension, hypothyroidism, chronic kidney disease, seizure disorder, anxiety and depression and listed her medications. He noted that she had her first seizure on November 4, 2009 and a second seizure on February 8, 2010. Dr. Sandknop stated that she also had fatigue and bilateral knee pain which affected her energy and mobility. He stated generally that appellant was having a great deal of difficulty attending coursework as recommended by the Department of Labor.

Appellant submitted an August 28, 2012 report from Dr. Shah, who noted that appellant wanted to return to work at the employing establishment. On examination, Dr. Shah advised there was notable, severe atrophy of the left hand, especially of the palm with decreased carpometacarpal joint and thumb range of motion for opposition, abduction and adduction. There was also decreased extension for wrist range of motion, and decreased grip strength on the

left. Dr. Shah noted that appellant had a seizure disorder, kidney disease and gout and, over the past 10 years, developed memory/cognition deficits. He assumed the deficits were a result of her seizures, but stated that he did not have her medical records to review or consider in prescribing any medications, as would have to be coordinated with her other doctors. Dr. Shah advised that she would most likely need intermittent therapy throughout her lifetime to maintain limited function of that hand.

The rehabilitation counselor continued to document appellant's reasons she could not participate with vocational rehabilitation efforts. She indicated that appellant complained that she was 60 years old, had dropped out of school, had medical problems, and that Dr. Shah restricted her from driving due to narcotic pain medication. Appellant acknowledged that the training hours were flexible but she would cancel the whole day whenever she had a medical appointment. The counselor noted that appellant was on jury duty on March 11, 2013 and did not attend training in April, claiming she had the flu. She noted that appellant was being driven to medical appointments.

By decision dated April 11, 2013, OWCP reduced appellant's compensation under section 8113(b) of FECA and 20 C.F.R. § 10.519. It found that she failed to participate as required with vocational rehabilitation efforts. Although appellant contended that she could not participate with vocational rehabilitation due to fatigue, bilateral knee problems, kidney disease and seizure disorder; the medical evidence of record did not establish her total disability due to her accepted conditions. Her compensation was reduced to zero as of May 5, 2013.

On April 25, 2013 appellant requested an oral hearing before an OWCP representative, which was held on July 25, 2013. At the hearing, appellant's representative presented arguments regarding appellant's medical conditions and deficiencies in the reports of Dr. Mitchell and Dr. McCaskill. She submitted a November 4, 2011 report from Dr. Tulika Jain, a Board-certified cardiologist, who provided an assessment of leg edema, polycystic kidney disease and a history of congestive heart failure.

In a May 16, 2013 letter, appellant's representative advised that appellant was willing to participate in vocational rehabilitation and would make a good faith effort to attend her tutoring classes. OWCP subsequently referred her for vocational rehabilitation assistance.

The vocational rehabilitation counselor continued to document meetings and discussions with appellant. The rehabilitation counselor stated that appellant did not return her calls on May 29 or 30, 2013 to arrange a meeting. Appellant later contacted and met with her on June 3, 2013. The vocational rehabilitation counselor identified jobs within appellant's medical restrictions and education, which did not require a GED or high school diploma. The identified jobs were those of hostess, telemarketer, food cashier and some sales jobs. The vocational rehabilitation counselor advised that appellant continued to state that she was unable to do such work and provided a list of her reasons.

In a June 10, 2013 letter, OWCP noted that, while appellant was cooperating with rehabilitation efforts, it could not reinstate her compensation benefits until the oral hearing was resolved or cancelled. It subsequently reinstated compensation for total disability effective June 3, 2013, finding that she was cooperating with vocational rehabilitation.

In a June 19, 2013 letter, OWCP advised appellant that the plan was to return her to the GED classwork for prevocational training to assist her in qualifying for less skilled positions. It advised that the classwork was within her restrictions. Based on the rehabilitation counselor's vocational evaluation and a survey of the local labor market, appellant had a wage-earning capacity of $306.00 per week and, at the end of the rehabilitation, whether or not she was employed, OWCP would reduce her compensation. OWCP noted, however, if she did not cooperate fully with the present plan, it would assume that vocational services would have resulted in a wage-earning capacity and, therefore, reduce her compensation in accordance with 20 C.F.R. § 10.519.

The vocational rehabilitation counselor further documented appellant's cooperation with job placement and the math tutor. On June 19, 2013 appellant told the rehabilitation counselor that she did not believe she could get a GED within three months, that she was 61 years old, and falling all the time, haven fallen twice last week. The rehabilitation counselor stated that appellant had three grandsons living with her but they encountered trouble getting her up as she weighed 220 pounds. When asked if she wanted direct job placement or to try the math tutor, appellant responded that she did not care and that she was physically unable to do hotel desk or hostess work.

In a July 1, 2013 letter, appellant's representative contended that appellant had complied with the February 28, 2013 warning letter by attending classes with the rehabilitation counselor and tutor subsequent to that date. Appellant only recently became ill and could not continue the tutoring. Appellant's representative requested that appellant's compensation be reinstated retroactively to the date of the suspension.

In a July 3, 2013 letter, a nurse practitioner advised that appellant was diagnosed with polycystic kidney disease on September 11, 2000 and was diagnosed with a seizure disorder on November 2, 2009. Since fatigue and stress could precipitate seizures, appellant was restricted in activities that brought on fatigue. The nurse practitioner indicated that due to the difficulty appellant had completing the requirements for her coursework fatigue and stress could result.

On July 10, 2013 the rehabilitation counselor closed rehabilitation services. While appellant was scheduled to resume training on July 9, 2013; she had provided obstacles to attending, citing transportation issues as she no longer had a car, was dependent on her daughter, and told not to drive. Appellant also stated that she had conflicting medical appointments, had problems walking and standing and could not learn without an instructor.

In an August 30, 2013 report, Dr. Jeff Fritz, a Board-certified anesthesiologist, noted that appellant had several medical conditions which were not work related, which included polycystic kidney disease, hypertension, gout, seizure and heart disorder. He noted that her gout was chronic for the past year and half. Appellant was treated with medicine for pain and not allowed to drive. Her underlying medical problems prevented the prescribing of conventional medications which would be used to treat her work-related injuries. Dr. Fritz advised that appellant was productive on limited duty and not sent home by his office or any other doctor because of her medical problems. While in vocational rehabilitation, she was not able to meet the academic requirements in math which led to emotional stress. Dr. Fritz noted that documentation dated July 3, 2013 from Dr. Sandknop's office noted that seizure patients should

avoid stress and fatigue. He opined that sound medical judgment dictated that appellant refrain from any activities that caused stress or fatigue and placed her at risk for seizure.

By decision dated September 11, 2013, an OWCP hearing representative affirmed the April 11, 2013 decision which suspended appellant's compensation from May 5 to June 3, 2013. She found was no evidence that appellant made a good faith effort to resume vocational rehabilitation efforts after she was advised of the consequences; there was no evidence in the medical records at the time she was referred for vocational rehabilitation that she had any nonwork-related medical restrictions that warranted clarification and there was no probative medical evidence that discussed work restrictions for her nonemployment-related medical conditions.

LEGAL PRECEDENT

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[5] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[6] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[7]

Section 8104(a) of FECA provides that OWCP may direct a permanently disabled employee to undergo vocational rehabilitation.[8] Section 8113(b) provides that, if an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under 8104, the Secretary, on review under section 8128 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 or her wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary.[9]

Section 10.519 of OWCP regulations state that it may direct a permanently disabled employee to undergo vocational rehabilitation. Where a suitable job has been identified, OWCP will reduce the employee's future monetary compensation based on the amount which would

[5] 5 U.S.C. § 8123(a).

[6] 20 C.F.R. § 10.321.

[7] *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch),* 52 ECAB 252 (2001).

[8] 5 U.S.C. § 8104(a); *see J.E.*, 59 ECAB 606 (2008).

[9] *Id.* at § 8113(b); *see Freta Branham*, 57 ECAB 333 (2006).

likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation. This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.[10]

OWCP procedures provide that specific instances of noncooperation include a failure to appear for the initial interview, counseling sessions, a functional capacity evaluation (FCE), other interviews conducted by the rehabilitation counselor, vocational testing sessions and work evaluations, as well as lack of response or inappropriate response to directions in a testing session after several attempts at instruction. They also include failure to begin or continue prevocational training such as English lessons for those who lack command of the language, or classes for a GED for those without a high school education.[11]

ANALYSIS

In 2004, OWCP accepted that appellant sustained osteoarthritis of the left thumb and hand, an open wound of left wrist with tendon involvement and mechanical complications of internal orthopedic devise, implant and graft. Under claim number xxxxxx470, it accepted right rotator cuff syndrome in 2005. The record reflects that appellant continued to work as a modified rural letter carrier until November 24, 2010 when her employer could no longer accommodate her work restrictions. She was placed on the periodic rolls in receipt of compensation for total disability.

OWCP referred appellant for vocational rehabilitation services in March 2012. It subsequently found a conflict in medical opinion between Dr. Shah, a treating physician, and Dr. Mitchell, an OWCP referral physician, regarding appellant's capacity to work. OWCP referred her to Dr. McCaskill for an impartial medical evaluation. It based her work restrictions for vocational rehabilitation on his November 20, 2012 report. As of May 5, 2013, OWCP subsequently reduced her monetary compensation to zero pursuant to 5 U.S.C. § 8113(b) and 20 C.F.R. § 10.519 based on her noncooperation with vocational rehabilitation efforts. It subsequently reinstated appellant's compensation effective June 3, 2013 based on her representation that she would cooperate with vocational rehabilitation.

Initially, the Board notes that no conflict in medical opinion arose between Dr. Shah and Dr. Mitchell. Dr. Shah submitted brief treatment notes to the record and duty status reports listing appellant's work restrictions. Dr. Mitchell provided a 12-page report to the record addressing the accepted condition, providing findings on physical examination, and review of the medical records. Dr. Shah was provided a copy of the report from Dr. Mitchell and asked for a narrative opinion should he disagree with the findings. He responded on February 28, 2012 with a brief reference to a CA-17 duty status report and noted that appellant tolerated less restrictions prior to being sent home by her employer. Dr. Shah provided a duty status report of September 18, 2012 that increased work restrictions to four hours. When asked by OWCP to provide a narrative report addressing appellant's accepted conditions work restrictions, Dr. Shah

---

[10] 20 C.F.R. § 10.519.

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*, Chapter 2.813.11(a) (November 1996); *see Sam S. Wright*, 56 ECAB 358 (2005).

did not respond. Dr. Shah offered insufficient medical reasoning pertaining to appellant's residuals and work limitations.[12] Thus, the medical record lacked sufficient evidence to warrant the application of section 8123 of FECA.[13]

For this reason, the Board finds that Dr. McCaskill, the Board-certified orthopedic surgeon, was not an impartial medical specialist. Rather, Dr. McCaskill was a second opinion referral physician.[14] He examined appellant on November 20, 2012 and diagnosed left thumb pain postmetacarpal carpal fusion. Dr. McCaskill found that appellant was capable of working eight hours a day with restrictions of no climbing and limitations of 10 pounds on lifting, pulling, and pushing. He opined that her restrictions were related to difficulties grasping with her left hand because of thumb dysfunction and pain.[15]

The Board finds that appellant subsequently failed to cooperate with vocational rehabilitation efforts. The evidence from the vocational rehabilitation counselor documented appellant's failure to cooperate with vocational rehabilitation efforts. On numerous occasions in February 2013, appellant failed to keep her appointments with a math tutor and cancelled meeting at the last minute citing illness or conflicting medical appointments. The evidence of record does not document her illness or treatment and the math tutor advised OWCP that her schedule was flexible and she would be able to change tutoring sessions with a day's notice. Additionally, the evidence reflects that appellant did not show an effort to participate in the training. Appellant canceled training on short notice with excuses such as she had conflicting medical appointments, was sick, and she could not drive due to narcotic medication. While Dr. Shah indicated in a January 1, 2013 note that appellant was on narcotic medication for pain and restricted from driving, he did not address the medical condition for which such medication was prescribed. He did not state any opinion that residuals of the accepted conditions to her left hand and wrist or right shoulder disabled her from participating in vocational rehabilitation.

Dr. Fritz and Dr. Sandknop submitted medical reports largely addressing appellant's nonemployment-related medical conditions, including kidney disease, hypertension, gout and a seizure disorder. Dr. Fritz noted that, due to medication, appellant was not allowed to drive and stated that she should avoid stress and fatigue. Neither physician addressed how appellant's accepted medical conditions precluded her participation in vocational rehabilitation. The Board notes that OWCP is not required to consider medical conditions that arise subsequent to the work-related injury or disease in determining an employee's wage-earning capacity.[16] In this case, the left hand and wrist condition was accepted in 2004 and the right shoulder condition in 2005. Appellant returned and worked at modified duty until November, 2010. The physicians of

---

[12] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).

[13] A conflict in medical opinion requires reasoned medical reports. 20 C.F.R. § 10.502 (1999).

[14] *See N.W.*, Docket No. 09-1971 (issued July 26, 2010). For this reason, appellant's contentions on appeal concerning the selection of Dr. McCaskill are moot.

[15] Of note is the fact that Dr. Shah, Dr. Mitchell and Dr. McCaskill did not find appellant totally disabled for work due to residuals of her accepted conditions.

[16] *See Dorothy Jett*, 52 ECAB 246 (2001).

record did not document treatment for the nonaccepted medical conditions until November 2009, when Dr. Sandknop noted that she had her first seizure. The medical evidence does not reflect that the nonwork-related medical conditions preexisted her injuries of 2004 or 2005.[17]

Appellant was advised on February 28, 2013 that her refusal to participate in an OWCP-approved training program with a math tutor to help her obtain her GED constituted refusal to participate in the necessary early stages of vocational rehabilitation and could result in sanctions. Her GED training was rescheduled after she advised that she would cooperate with vocational rehabilitation. Appellant, however, presented excuses for failing to attend the training. These included being physically unable to attend the training due to nonwork-related medical conditions; transportation problems; conflicting medical appointments; her age; her perceived memory problems; and a limited education. However, the medical evidence of record does not clearly establish that she was unable to participate in vocational rehabilitation for the stated reasons. The evidence of record reflects that appellant did not make a good faith effort to resume vocational rehabilitation until June 3, 2013.

The Board finds that appellant failed to cooperate in the early stages of vocational rehabilitation efforts and, therefore, OWCP properly reduced her compensation to zero for the period May 5 to June 3, 2012. The vocational rehabilitation counselor determined that appellant would benefit from obtaining her GED as this would improve her changes of obtaining employment. While appellant initially met with a math tutor and studied for the GED, she eventually failed to cooperate by failing to meet with the math tutor and providing numerous excuses as to why she could not obtain a GED or perform any of the positions which did not require a GED. OWCP procedure specifically indicates that participating in a recommended GED program is part of the early stages of vocational rehabilitation efforts.[18] Although appellant participated in some initial vocational testing, her noncooperative actions, including failure to participate in GED classes and classes with the math tutor, prevented the vocational rehabilitation counselor from identifying appropriate employment opportunities which required a GED degree prior to closing her vocational rehabilitation file.[19] Therefore, vocational rehabilitation efforts did not advance beyond the early stages.[20] For these reasons, OWCP correctly reduced appellant's compensation to zero for failing to cooperate with the early stages of vocational rehabilitation efforts.

OWCP reinstated appellant's compensation June 3, 2013. The effective date of reinstatement of the previous rate of compensation should be the date the claimant indicates in writing his or her intent to comply, as long as actual compliance is confirmed. Compliance is

---

[17] The report of the nurse practitioner that fatigue could cause seizures is of no probative medical value as a nurse is not a physician as defined under FECA. The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2). *See L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[18] *See supra* note 9.

[19] *See M.L.*, Docket No. 11-400 (issued October 13, 2011).

[20] *Compare Jacquelyn V. Pearsall,* 51 ECAB 209 (1999).

shown by actions such as undergoing interviews or testing.[21] Although appellant's representative indicated on May 16, 2013 that appellant would participate in vocational rehabilitation and would make a good faith effort to attend her tutoring classes, the rehabilitation counselor noted appellant did not return her calls on May 29 and 30, 2013 to arrange a meeting. It was only on June 3, 2013 that appellant contacted and met with the vocational rehabilitation counselor. The evidence supports that appellant made her first good faith effort to resume vocational rehabilitation on June 3, 2013, when she met with her rehabilitation counselor. Accordingly, OWCP properly reinstated appellant's compensation June 3, 2013.

CONCLUSION

The Board finds that OWCP properly reduced appellant's compensation benefits to zero from May 5 to June 3, 2013 due to her refusal to cooperate with vocational rehabilitation efforts pursuant to 5 U.S.C. § 8113(d).

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[21] *Id.*; *see L.L.*, Docket No. 10-1725 (issued May 10, 2011).