United States Department of Labor
Employees' Compensation Appeals Board

SAMUEL E. STRINGFIELD, Appellant	)	
and	)	**Docket No. 04-281**
	)	**Issued: June 22, 2004**
DEPARTMENT OF THE ARMY, TRANSPORTATION CENTER, Fort Eustis, VA, Employer	)	

Appearances:
Yvonne N. Stringfield, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 12, 2003 appellant filed a timely appeal from the August 21, 2003 merit decision of the Office of Workers' Compensation Programs' decision, which reduced his compensation to zero based on his failure to continue to participate in vocational rehabilitation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office properly reduced appellant's wage-loss compensation to zero effective August 11, 2002 for his failure to continue to participate in vocational rehabilitation.

FACTUAL HISTORY

On January 3, 1983 appellant filed an occupational disease claim alleging that his right wrist condition was causally related to his federal employment. He was first aware of a relationship between his right wrist condition and his federal employment on March 2, 1970. The Office accepted appellant's claim for de Quervain's syndrome and chronic tenosynovitis of the right wrist. The Office paid appropriate compensation benefits.

By decision dated July 10, 1995, the Office reduced appellant's compensation on the basis that he had the wage-earning capacity of an appointment setter. By decision dated June 10, 1996, an Office hearing representative vacated the July 10, 1995 decision and remanded the case for further development. The Office resumed payment of appropriate compensation benefits.

On June 5, 2002 appellant was referred for vocational rehabilitation services. Appellant was assigned to vocational rehabilitation counselor Kenneth Chaney, who requested to meet with appellant for an initial interview and arrange for a functional capacity evaluation (FCE) as requested by treating physician, Dr. David E. Lannik, a Board-certified orthopedic surgeon specializing in hand surgery.

In a June 19, 2002 letter, Mr. Chaney notified appellant that his appointment with the Vocational Company, Inc. was for June 21, 2002 at 9:30 a.m. He noted that attempts to contact appellant by telephone were fruitless as the line was continuously busy as though it was a computer line. In a June 21, 2002 letter, Mr. Chaney informed appellant that he had a FCE scheduled for July 2, 2002. On June 21, 2002 Mr. Chaney met with appellant to discuss the FCE. On June 24 2002 appellant cancelled his July 2, 2002 FCE appointment.

In a June 30, 2002 letter addressed to U.S. Senator John Warner, appellant expressed his concerns over his assignment to vocational rehabilitation. Appellant asserted that Vocational Company, Inc. was formally known as OccuSystems, Inc., a company with which he had experienced problems in the past. He stated that a renewed assignment with this agency would be problematic. Appellant expressed his distrust of the agency and a concern for possible retaliation. He expressed skepticism about receiving the full range of appropriate rehabilitation services. Appellant requested that he be reassigned to another vocational service. He submitted copies of 1988 correspondence indicating that he had some issues with the vocational rehabilitation program. Appellant provided copies of business cards and other forms to show that the Vocational Company, Inc. and OccuSystems, Inc. were the same agency. He also submitted a copy of Mr. Chaney's June 21, 2002 letter noting the scheduling of his FCE on July 2, 2002.

By letter dated July 1, 2002, the Office advised appellant that he failed to cooperate with the rehabilitation effort in that he had failed to keep a scheduled appointment for a FCE on July 2, 2002 and had also failed to appear for scheduled meetings with the vocational rehabilitation counselor. Appellant was further advised that if he failed or refused to participate in vocational rehabilitation without good cause, his compensation benefits would be reduced to zero. Appellant was allowed 30 days to make a good faith effort to participate in vocational rehabilitation or to provide good reason for not cooperating.

In a decision dated August 5, 2002, the Office reduced appellant's compensation to zero, effective August 11, 2002, due to his failure to participate in the essential preparatory effort of vocational testing. The Office noted that appellant expressed concerns regarding his assignment to Vocational Company, Inc. but failed to provide a valid reason for his noncooperation with vocational rehabilitation specialist. The Office explained that appellant had not indicated that he was willing to make a good faith effort to participate in the rehabilitation effort. The Office reduced his compensation to zero on the grounds that due to the lack of any vocational testing, it was assumed that participation in the rehabilitation efforts would have resulted in a return to work with no loss of wage-earning capacity. The Office noted that appellant's entitlement to further wage-loss compensation would be restored when he complied with the directed vocational testing or showed good cause for not complying.

By letter dated August 25, 2002, appellant requested an oral hearing which was held on June 23, 2003. Appellant argued that his request for reassignment to another vocational rehabilitation agency did not constitute noncooperation with the rehabilitation effort. He indicated that Dr. Lannik had requested a FCE at Hand Rehabilitation of Hampton Roads, but the Office had not approved such request and the appointment scheduled for April 9, 2002 was cancelled. Appellant alleged that his request for reassignment and the documentation he previously submitted had been ignored. He resubmitted his June 30, 2002 letter to Senator Warner, together with an April 9, 2002 note from Claire McBride, of Hand Rehabilitation of Hampton Roads, which indicated that appellant had shown up for his April 9, 2002 appointment, but the appointment was cancelled as no approval had been obtained.

By decision dated August 21, 2003, an Office hearing representative affirmed the August 5, 2002 decision.

On November 12, 2003 appellant appealed to the Board. On March 15, 2004 the Board issued an order remanding case as the case record was not transmitted by the Office.[1] On March 30, 2004 the Director filed a petition to set aside order remanding case and submitted the record. On April 6, 2004 the Board issued an order granting petition for reconsideration.[2] The present appeal follows.

LEGAL PRECEDENT

Section 8104(a) of the Federal Employees' Compensation Act provides that the Secretary of Labor may direct a permanently disabled individual whose disability is compensable under the Act to undergo vocational rehabilitation.[3] Additionally, the Act and the implementing regulation provide for sanctions if an employee without good cause fails to apply for and undergo vocational rehabilitation when so directed.[4] These sanctions remain in effect until the employee in good faith complies with the Office's directives.

[1] Docket No. 2004-0281 (issued March 15, 2004).

[2] Docket No. 04-281 (issued March 30, 2004).

[3] 5 U.S.C. § 8104(a).

[4] 5 U.S.C. § 8113(b); 20 C.F.R. § 10.519 (1999).

Section 10.519 of Title 20 of the Code of Federal Regulations details the actions the Office will take when an employee refuses to undergo vocational rehabilitation. The regulation provides in relevant part that 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:

> "(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early but necessary stages of a vocational rehabilitation effort (that is, meetings with the [Office] nurse, interviews, testing, counseling, functional capacity evaluations and work evaluations), [the Office] cannot determine what would have been the employee's wage-earning capacity.
>
> "(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, [the Office] will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity and [the Office] will reduce the employee's monetary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the directions of [the Office]."[5]

ANALYSIS

The record reflects that, on June 21, 2002 appellant showed up for his vocational rehabilitation appointment with the Vocational Company, Inc. (formally known as OccuSystems, Inc.) and, on June 24, 2002 cancelled his FCE scheduled for July 2, 2002. On June 30, 2002 he wrote his Senator requesting to be reassigned to a different vocational rehabilitation agency due to past experiences and his feeling that such an assignment would be problematic. Following the Office's August 5, 2002 decision reducing benefits, appellant asserted in an August 25, 2002 letter, that his request for reassignment to another vocational rehabilitation agency was not noncooperation with the rehabilitation effort. He indicated that he had appeared for a prior April 9, 2002 FCE which had to be cancelled as the Office had not authorized it.

The evidence shows that the Office referred appellant to a vocational rehabilitation counselor to begin rehabilitation services on June 5, 2002. Appellant appeared for his initial appointment with the rehabilitation counselor but did not keep any subsequent appointments. He also cancelled a July 2, 2002 FCE on June 24, 2002. Although appellant indicated that he had appeared for a prior April 9, 2002 FCE, this was prior to the Office reopening vocational rehabilitation services on June 5, 2002 and, thus, is irrelevant to the issue of whether appellant had participated in the early stages of vocational rehabilitation. Although appellant had experienced problems in 1988 with the vocational rehabilitation agency in question, he offered no evidence that the agency had established a pattern of misconduct or erred during the current rehabilitation effort. Appellant merely alleged a fear of future problems with the vocational rehabilitation agency based on his past experience. He failed, without good cause, to participate

[5] 20 C.F.R. § 10.519(b), (c).

in preliminary vocational rehabilitation meetings such that he failed to participate in the "early but necessary stages of a vocational rehabilitation effort."[6]

CONCLUSION

The Board finds that the Office properly reduced appellant's wage-loss compensation to zero on the grounds that he failed, without good case, to continue to participate in vocational rehabilitation efforts.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated August 21, 2003 is affirmed.

Issued: June 22, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[6] *See* 20 C.F.R. § 10.519(b), (c); *see also David L. Maes*, 54 ECAB ___ (Docket No. 03-1334, issued July 22, 2003).