

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 21, 1995 appellant, then a 30-year-old distribution clerk, filed an occupational disease claim for events which occurred on August 29, 1995. He was working a detail in a supervisory position in distribution operations when two postal workers were shot on the premises. Appellant witnessed one of victims being pistol-whipped by the gunman whom he confronted and escorted out of the building. OWCP accepted the condition of post-traumatic stress disorder.³ Following the August 29, 1995 incident, appellant returned to work on a part-time basis for approximately three days a week in the temporary supervisory position. On February 9, 1996 he returned to his distribution clerk duties. Appellant stopped work on April 29, 1996.⁴ OWCP placed him on the period compensation rolls.

OWCP referred appellant to vocational rehabilitation. A vocational training program was approved beginning June 27, 1997 for him to attend courses at Harold Washington College to obtain an accounting degree. In a form letter OWCP-23, OWCP advised appellant that a maintenance allowance would be paid every four weeks, provided a minimum of average progress and attendance was maintained. On May 22, 1997 appellant and the rehabilitation counselor requested transportation expense for \$76.16 per week to take the bus and train to school.

On August 1, 1997 OWCP approved a rehabilitation plan and award, which included a set amount for reimbursement for books and supplies. In an August 1, 1997 letter, it informed appellant that he would receive \$9.23 a day in additional compensation for maintenance while participating in the rehabilitation program. OWCP noted that his program at Harold Washington College would start June 27, 1997 and end on March 27, 1998. Appellant was informed that he could request a maintenance allowance for extra expenses and was advised about making such a claim.

The record reflects that appellant was actively enrolled in classes from August 27, 1997 through October 6, 1998, when he dropped out of school. The record also reflects that OWCP paid for all necessary expenses, such as books and supplies.

In an October 15, 2008 letter, appellant stated that he did not receive additional compensation while he was in the vocational training program commencing June 1997 and requested that such compensation be processed. On May 28, 2009 OWCP advised appellant's representative that its records showed that it had paid appropriate compensation, including payment of bills and fees for which records were submitted. In an October 14, 2009 letter, it reiterated to appellant that its records showed that compensation had been paid beginning June 27, 1997, while he was in vocational rehabilitation, for bills, fees and reimbursements for which records from appellant were submitted. In an undated letter, appellant disagreed with

³ Appellant has concurrent conditions of migraine headaches under case number xxxxx350 and insomnia of a closed case.

⁴ Appellant last worked for the employing establishment April 20, 1996. The record reflects appellant worked part time at Marshall Fields during the period October 13 through December 18, 1996. No other gainful employment is reported.

OWCP's October 14, 2009 letter. He did not specify any particular expenses that had not been paid. In a June 26, 2010 and subsequent letters, appellant again requested a subsistence allowance for when he underwent vocational rehabilitation.⁵

In an October 8, 2010 decision, OWCP found that all maintenance allowance payments were paid for appellant's participation in the vocational rehabilitation training program from August 28⁶ through October 6, 1998.⁷ It noted that his rehabilitation program was terminated due to noncompliance on October 6, 1998 when he dropped out school. When appellant dropped out of school, he was no longer eligible for any maintenance allowance.

LEGAL PRECEDENT

Section 8111(b) of FECA provides that "the Secretary may pay an individual undergoing vocational rehabilitation under section 8104 of this title additional compensation necessary for maintenance, but not to exceed \$200.00 a month."⁸

The Board has held that the purpose of section 8111(b) is not to supplement the income of an employee undergoing vocational training where he is already receiving the full amount of disability compensation authorized by FECA and all the costs of his training program are being paid by OWCP. With respect to such an employee, the section was intended to cover only such expenses incidental to his training as transportation to and from class, parking, lunch, *etc.*⁹

The Board has held that the only limitation on OWCP's authority is reasonableness and an abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹⁰

ANALYSIS

In this case, OWCP authorized appellant to receive a maintenance allowance during his participation in the vocational rehabilitation training program at Harold Washington College from June 27, 1997 to March 27, 1998. Appellant participated in the program from August 27,

⁵ In a July 23, 2010 decision, OWCP denied the claimed subsistence allowance during the period June 27, 1997 through April 2001 citing to a regulatory provision regarding the time limit for submitting medical bills. On July 30, 2010 it rescinded the July 23, 2010 decision and noted that a new decision would be issued.

⁶ This is a typographical error as the record reflects appellant was actively enrolled in classes from August 27, 1997.

⁷ This case was previously before the Board. By decision dated February 9, 1999, the Board affirmed a July 29, 1997 OWCP decision that found appellant had abandoned his request for a hearing. Docket No. 98-397 (issued February 9, 1999).

⁸ 5 U.S.C. § 8111(b).

⁹ See *Denis F. Rafferty*, 27 ECAB 524 (1976); see *Charles Rivers*, 21 ECAB 258 (1970); *Victor R. Thurman*, Docket No. 96-1219 (issued November 13, 1998).

¹⁰ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

1997 through October 6, 1998, when he dropped out and stopped taking classes at Harold Washington College. Appellant subsequently claimed he did not receive payment of a maintenance allowance while he was in vocational rehabilitation training. OWCP denied his claim.

The evidence of record does not establish that OWCP abused its discretion in its denial of appellant's claim for payment of a maintenance allowance from August 27, 1997 through October 6, 1998. As noted, appellant participated in the vocational rehabilitation training program during this period. OWCP paid for requested expenses, such as books and supplies, and approved an additional \$9.23 per day in transportation expenses. Additionally, appellant received supplemental income from OWCP during the stated period. In its August 1, 1997 letter, OWCP informed appellant that he could request extra expenses and advised him how to make such a claim. Appellant, however, made no further claim until 2009. He generally alleged that he was not paid a maintenance allowance but did not identify any particular expenses that were not paid. Appellant has not identified any specific eligible incidental expenses for which he was not previously paid. In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of his request for payment of a maintenance allowance during the period August 27, 1997 to October 6, 1998.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's claim for payment of a maintenance allowance during the period August 27, 1997 through October 6, 1998.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 8, 2010 is affirmed.

Issued: November 15, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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