

PAUL WHITE)
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 Claimant-Petitioner)
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 v.)
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 C. WHITE MARINE)
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 and)
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 AIG CLAIM SERVICE) DATE ISSUED: 09/21/2006
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Compensation Order of David Groeneveld, District Director, United States Department of Labor.

Paul White, Epsom, New Hampshire, *pro se*.

Edward W. Murphy (Morrison Mahoney LLP), Boston, Massachusetts, for employer/carrier.

Peter B. Silvain, Jr. (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Compensation Order (OWCP No. 01-150492) of District Director David Groeneveld rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We review the district director's implementation or termination of a vocational rehabilitation plan under the abuse of discretion standard. *Meinert v. Fraser, Inc.*, 37 BRBS 164 (2003).

Claimant, a crane operator, sustained a work-related injury to his left ankle and foot on July 24, 2000. Restrictions on climbing, crawling, walking and lifting preclude his return to his former employment. On February 28, 2002, the district director instituted a vocational rehabilitation plan scheduled to terminate in May 2004. In August 2004, claimant requested that the educational services provided by this plan be extended.¹ The OWCP's rehabilitation specialist, Mr. Taggert, recommended that the plan terminate as scheduled, based upon claimant's poor academic achievement and the difficulty of the future course work.²

Claimant appeals, contending that the district director erred in denying an extension to his rehabilitation plan because he did not receive notice or counseling prior to the plan's termination. Employer and the Director, Office of Workers' Compensation Programs, respond, urging affirmance of the district director's Order.

Section 39(c)(2) of the Act, 33 U.S.C. §939(c)(2), authorizes the vocational rehabilitation of permanently disabled employees. The implementing regulations provide that "vocational rehabilitation training shall be planned in anticipation of a short, realistic, attainable vocational objective terminating in remunerable employment, and in restoring wage-earning capacity or increasing it materially." 20 C.F.R. §702.506. Section 702.502 provides that the district director or a member of his staff shall promptly refer an eligible claimant to the vocational rehabilitation advisor, and Sections 702.503-702.506 set forth the advisor's responsibilities with regard to claimant's rehabilitation, from screening the

¹ Claimant also requested that an outstanding tuition bill of \$602 for a summer 2004 course, which he completed, be paid by the OWCP. In his Compensation Order, the district director concurred with the recommendation of the rehabilitation specialist that the OWCP pay this bill. As this issue has been decided in claimant's favor, we need not address claimant's contentions concerning this bill.

² After completing two remedial math courses, claimant enrolled in fifteen classes, of which he failed three and withdrew from two. NHIT transcript dated May 20, 2004. Claimant was not formally accepted as a civil engineering major until May 2004 and at that time had eleven core courses to complete.

claimant to developing the training program to monitoring the claimant's progress. 20 C.F.R. §§702.502-702.506.

In this case, claimant was referred to Kathleen Regan, a certified rehabilitation counselor, who, after conducting aptitude and ability tests and reviewing claimant's medical, vocational, and educational history, proposed a two-year vocational rehabilitation plan at New Hampshire Technical Institute to result in claimant's obtaining an Associate's degree in civil engineering.³ Regan Report dated February 28, 2002. The completion date of this program was set as May 2004. The OWCP approved this plan, which claimant signed on February 20, 2002. *See* DOL Form OWCP-16, Rehabilitation Plan and Award, February 20, 2002; *see also* Form OWCP-3 dated February 20, 2002. In declining to extend the plan, the district director noted that claimant had poor academic results despite the availability of tutoring and remedial coursework, and would require a minimum of two more years to complete his degree. Given claimant's academic difficulties, the district director determined that the plan was not likely to result in its intended purpose.

Reviewing the district director's termination of claimant's vocational rehabilitation education plan requires the Board to consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. *Meinert*, 37 BRBS 164. Claimant argues that the rehabilitation plan was improperly terminated because he received neither notice of the termination nor counseling. The administrative file before the Board does not bear out this contention.

Claimant was aware that the plan consisted of a two-year educational program that was scheduled to terminate in May 2004; the termination date was on the form signed by claimant in February 2002. Thus, claimant was on notice from the date of the program's inception of its termination in May 2004. Moreover, the OWCP notified claimant on February 25, 2004, that he was not to register for additional classes beyond the plan's expiration date unless he received an extension. OWCP-3 Form dated February 25, 2004. Claimant, however, did not act to have the program extended until September 2004, when he first contended that academic deficiencies which required that he take prerequisite courses in mathematics as well as undergo individual tutoring had slowed his progress. Letter dated September 24, 2004. Thus, contrary to his contention, claimant had notice that the program would terminate as of May 2004.

³ Upon successful completion of this plan it was anticipated that claimant could find employment within his physical restrictions either as a civil engineering technician or port engineer. Regan Report dated February 14, 2002.

Claimant also argues that he did not receive counseling prior to the plan's termination. Section 702.506(c) states, in relevant part, that, "The employee shall be counseled before training is terminated."⁴ The file reflects numerous consultations between claimant and Ms. Regan, who arranged tutoring for him in those subjects in which he experienced difficulty. *See* Regan reports dated July 17, 2002, January 15, 2003, June 30, 2003, October 22, 2003, March 21, 2004. Ms. Regan's records reflect her discussions with claimant concerning his progress or lack thereof throughout the program and the attempts made by her and Mr. Taggart to have claimant additionally timely comply with the necessary paperwork. Claimant thus received counseling as contemplated by the regulation.

We hold that the district director did not abuse his discretion in declining to pay for further coursework and in terminating the vocational plan as of May 2004. The district director addressed the regulatory factors, including the likelihood of success in a short period of time given claimant's two-year track record, and rationally concluded that it was unlikely that claimant could successfully complete this degree program even if the plan were extended. *See* 20 C.F.R. §702.506. In addition, he offered the OWCP's re-employment services to claimant. As the district director's termination of the vocational plan on the scheduled date of May 2004 does not constitute an abuse of discretion and is not contrary to the Act or its implementing regulations, we reject claimant's contentions of error and affirm the district director's order. *See generally General Constr. Co. v. Castro*, 401 F.3d 963, 39 BRBS 13(CRT) (9th Cir. 2005), *cert. denied*, 126 S.Ct. 1023 (2006).

⁴ This sentence is contained in a subsection permitting the termination of vocational rehabilitation due to the claimant's failure to cooperate with the OWCP. Claimant's plan was not terminated due to his lack of cooperation. Nonetheless, for purposes of this decision, we will assume that the counseling provision is applicable.

Accordingly, the Compensation Order of the district director terminating claimant's vocational rehabilitation plan is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge