

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILMA L. WHISENHUNT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Fayetteville, AR

*Docket No. 02-183; Submitted on the Record;
Issued July 16, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation pursuant to 5 U.S.C. § 8113(b) for failure to participate in vocational rehabilitation.

The Office accepted that appellant sustained right knee and thigh injuries in the performance of duty on May 1, 1982. By decision dated January 22, 2001, the Office reduced appellant's compensation. The Office determined that appellant had, without good cause, failed to continue vocational rehabilitation and under 5 U.S.C. § 8113(b) her compensation was reduced to reflect what would have been her wage-earning capacity in the absence of such failure. According to the Office, appellant would have had the capacity to earn wages as a medical transcriptionist had she continued vocational rehabilitation.

The Board finds that the Office met its burden of proof to reduce appellant's compensation in this case.

Section 8113(b) of the Federal Employees' Compensation Act provides:

“If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of this title, the Secretary, on review under section 8128 of this title 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 wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary.”

The regulations implementing the Act also provide in pertinent part:

“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:

“(a) Where a suitable job has been identified, [the Office] will reduce the employee’s future monetary compensation based on the amount which would likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation....”¹

In this case, a vocational rehabilitation plan was developed for appellant, which included training for a position as a medical transcriptionist or medical coding technician. As the Office noted in a detailed letter to appellant dated October 3, 2000, she had begun a training program in 1999 but withdrew as a result of medical problems. An alternative training program was established, and appellant attended during the summer 2000 semester but again had withdrawn due to personal problems. Office procedures require that prior to reduction of compensation a claimant be notified of the provisions of section 8113(b), and provided an opportunity to either resume participation in vocational rehabilitation or provide reasons for not continuing participation.² The October 3, 2000 letter directed appellant to contact her rehabilitation counselor and arrange registration for the winter 2001 semester as part of her vocational rehabilitation plan. Appellant was advised of the provisions of section 8113(b), and was further advised that she had 30 days to provide documentation regarding the failure to attend the training program.

There is no indication in the record that appellant responded to the October 3, 2000 letter. A December 21, 2000 report from the rehabilitation counselor stated that she had no contact with appellant since July 2000, despite repeated attempts to contact appellant.

The Board finds that the October 3, 2000 letter properly advised appellant of the provisions of section 8113(b) and provided her an opportunity to comply with the Office’s directive to continue participation in vocational rehabilitation or provide reasons for her failure to continue participation.³ Appellant did not comply with the Office or provide reasons for her failure. The Office properly determined that appellant had, without good cause, failed to undergo vocational rehabilitation when directed by the Office. According to the rehabilitation counselor, appellant would have been capable of performing the position of medical transcriptionist at \$385.00 per week on completion of the training program. Under the provisions of section 8113(b), the Office may reduce appellant’s compensation to reflect her wage-earning capacity as a medical transcriptionist.

¹ 20 C.F.R. § 10.519.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*, Chapter 2.813.11(b) (December 1993).

³ Appellant appears to argue on appeal that she did not receive the letter, but the October 3, 2000 was properly addressed and there is a presumption that notice mailed to an addressee in the ordinary course of business was received by the addressee. *Larry L. Hill*, 42 ECAB 596, 600 (1991).

The decision of the Office of Workers' Compensation Programs dated January 22, 2001 is affirmed.

Dated, Washington, DC
July 16, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member