

**United States Department of Labor
Employees' Compensation Appeals Board**

C.V., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Belmont, MA, Employer)

**Docket No. 07-725
Issued: August 15, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2007 appellant filed a timely appeal from a December 13, 2006 decision of the Office of Workers' Compensation Programs, denying his request for reimbursement of tuition. 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 denied appellant's request for reimbursement of tuition.

FACTUAL HISTORY

On October 3, 2000 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that he sustained an emotional condition due to harassment at work on September 13, 2000. Appellant stopped work on September 13, 2000 and did not return. The Office accepted his claim for panic disorder, acute incident and paid appropriate wage-loss compensation.

By letters dated October 16, 2002 and January 25, 2003, appellant asked the Office whether it would pay for his tuition. He submitted copies of documents relating to his tuition and other expenses. Appellant also provided information regarding his courses and grades.¹

On September 11, 2003 appellant stated that he wished to be reimbursed for his tuition at the Cambridge School of Culinary Arts and Eastern Maine Technical College. He indicated tuition expenses of approximately \$20,000.00. On September 25, 2004 appellant stated that the Office did not “technically” send him to school but he did not receive a response from the Office to a September 21, 2001 telephone inquiry regarding job rehabilitation. His vocational rehabilitation counselor indicated that he graduated from a one-year program at the Cambridge School of Culinary Arts in 2002. Appellant subsequently earned an associate degree in culinary arts from Eastern Maine Community College. He later began taking courses at the University of Southern Maine toward a bachelor’s degree in technology education.

On October 25, 2004 the Office advised appellant that a decision regarding reimbursement for tuition was deferred pending the outcome of his vocational rehabilitation program.

By decision dated May 5, 2005, the Office denied appellant’s request for reimbursement for tuition for approximately \$20,000.00 on the grounds that he did not obtain prior authorization from the Office.

On June 20, 2005 appellant requested reconsideration. He argued that he was not aware of the availability of rehabilitation services under the Federal Employees’ Compensation Act until he began attending classes. Between 2001 and 2005, appellant made several requests for tuition reimbursement.

By decision dated September 19, 2005, the Office denied modification of the May 5, 2005 decision.

On September 14, 2006 appellant requested reconsideration. By decision dated December 13, 2006, the Office denied modification of the September 19, 2005 decision. The Office noted that, if appellant had not commenced a retraining and educational program on his own without approval from the Office, the Office might have been able to provide him with suitable employment without the need for retraining. If his wages in the new employment procured by the Office were less than he made in his former federal job, the Office would have compensated him for his decreased earnings.²

LEGAL PRECEDENT

Section 8104(a) of the Act provides for the furnishing of vocational rehabilitation services. The section further provides that “[t]he cost of providing these services to individuals

¹ In February 2005, appellant submitted additional documentation regarding his courses and expenses.

² Subsequent to the December 13, 2006 Office decision, appellant submitted additional evidence. The Board’s jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

undergoing vocational rehabilitation “shall be paid by the Employees’ Compensation Fund.”³ The Office has discretionary authority with respect to vocational rehabilitation and the Board has held that an Office decision involving the exercise of this discretion will not be disturbed unless it is clearly in error.⁴

ANALYSIS

Appellant requested reimbursement for tuition for culinary courses and for courses toward obtaining a college bachelor’s degree taken at three educational institutions. However, he did not obtain prior authorization from the Office for his educational expenses.

The record shows that the tuition for which appellant seeks reimbursement was not part of any Office-approved vocational rehabilitation plan. Section 8104 of the Act does not authorize the reimbursement of expenses for self-procured training. As noted, the Office has discretionary authority with respect to the provision of vocational services and the Office’s decision involving exercise of this discretion will not be disturbed unless it is clearly unreasonable. Appellant has not established that the Office’s decisions denying his request for reimbursement for tuition constituted an abuse of discretion. The Board finds that the Office properly denied reimbursement of appellant’s tuition.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant’s request for reimbursement of his tuition.

³ 5 U.S.C. § 8104(a).

⁴ See *Edward E. Johnson*, 39 ECAB 611 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 13, 2006 is affirmed.

Issued: August 15, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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