

and chondroplasty of the medial compartment, patellofemoral joint and lateral femoral condyle.¹ He returned to light-duty work on January 11, 2004. The Office's referral physician, Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, concluded that appellant was not capable of performing the duties of his date-of-injury position. The employing establishment terminated appellant's employment on April 24, 2005. The Office entered appellant on the periodic rolls effective May 15, 2005.

The Office referred appellant for vocational rehabilitation services on April 7, 2005. The vocational rehabilitation counselor recommended that appellant undertake an eight-week clerical work adjustment course. Appellant began this course, but requested to stop on October 11, 2005. He noted that he was not interested in pursuing a data entry career and that he wanted to consider college level courses. On October 28, 2005 appellant requested to enroll in classes at Remington College to train as a pharmacy technician. This course of study required 48 credit hours in 32 weeks. The vocational rehabilitation counselor found that appellant's reemployment as a pharmacy technician was consistent with appellant's interest test results and his physical abilities. He noted that positions as either a full or part-time pharmacy technician were reasonably available in appellant's commuting area and at the hourly wage of \$10.47.

On March 30, 2006 the Office approved appellant's plan to return to work as a pharmacy technician earning \$418.80 per week. The Office informed appellant that he was expected to cooperate fully with vocational rehabilitation efforts and informed him that his compensation benefits would likely be reduced following this training. Appellant's training was expected to take place from November 21, 2005 to June 6, 2006.

In a letter dated May 8, 2006, appellant informed Remington College that he was withdrawing from the pharmacy technician program. He stated that when he began the program he understood that it was to be "complete, hands-on and comprehensive." Appellant noted that he was not aware that he had entered an accelerated study program. He noted that he believed that he was to receive 120 hours of laboratory studies and that to date he had only received 3 hours of "meaningful" instruction due to the legal difficulties of Instructor Martin L. Mathis. Appellant alleged that he had no chance of succeeding as a pharmacy technician as the courses included open book tests and as all students were awarded passing grades regardless of merit. He requested that his tuition be returned.

On May 9, 2006 the Office noted that appellant had withdrawn from his training program without notifying the rehabilitation counselor. An official of Remington College informed the Office that appellant withdrew from the pharmacy technician program due to the length of time required for appellant and the school to be paid. Appellant responded on May 10, 2006 and alleged that Remington College was guilty of fraud. In a statement dated May 10, 2006, Scott Heers of Remington College stated that appellant had completed five of seven modules with a grade point average of 2.75 and attended class to April 26, 2006. He noted that appellant claimed that Remington College had misrepresented itself, that the program was too fast-paced and intensive and that the program was not comprehensive. Mr. Heers noted that appellant

¹ Pages 142 through 187 of the record are inappropriate associated with this case file.

challenged the credentials of the lead instructor, despite the fact that this instructor was not scheduled to teach any of appellant's classes.

In a letter dated May 10, 2006, the Office informed appellant that he was subject to penalties under section 8113(b) of the Federal Employees' Compensation Act for failing to complete his rehabilitation program. The Office directed appellant to complete his training or provide written reasoning for not participating in the training program.

Appellant responded on June 5, 2006. He alleged that the pharmacy technician program at Remington College was fraudulent and corrupt. Appellant noted that it was an accelerated course, that tests were open book and that all the students were passing. He noted that he had received only 20 hours of laboratory time when the program was to include 240 hours of laboratory time. Appellant stated that this deficit was due to the criminal conviction of Mr. Mathis who was unable to teach the laboratory course due to his legal difficulties. He included a copy of the criminal court docket sheet for Mr. Mathis recording his guilty plea to the charges of possession of cocaine, driving under the influence and possession of drug abuse paraphernalia.

By decision dated June 12, 2006, the Office reduced appellant's compensation based on what his earning capacity would have been had he cooperated with vocational rehabilitation efforts and become a pharmacy technician working part time 30 hours a week. The Office noted that appellant had not provided good cause for failing to complete his vocational rehabilitation program. The Office stated: "Remington College's Pharmacy Technician program is the program you requested, is certified and is part of the training plan you agreed to attend and complete." The Office found that appellant's assertions regarding the program were not valid or sufficient justification for failing to complete his training program.

Appellant, through his attorney, requested an oral hearing on July 5, 2006. In a letter dated August 13, 2006, he alleged that Mr. Mathis was to be his laboratory instructor, but did not provide training and did not appear for field training due to his legal difficulties. Appellant stated that in order to work as a pharmacy technician he needed a license.

Appellant's oral hearing took place on November 8, 2006. His attorney contended that the selected position was not appropriate as it required certification and it was a part-time position. Appellant testified that he did not have the appropriate laboratory work as Mr. Mathis lost his certification due to his drug possession conviction. He stated that the college misrepresented itself and that he withdrew from the program because he knew he would not be able to pass the certification. Appellant believed that the program was defrauding the government.

By decision dated January 24, 2007, the hearing representative affirmed the June 12, 2006 decision finding that appellant failed to provide substantive evidence supporting his allegation that the school provided inadequate training or that the instructors were unqualified. The hearing representative stated that Mr. Mathis' legal problems were a personnel issue that the school had addressed.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of proof to support that the disability has ceased or lessened before it may terminate or modify compensation benefits.²

Section 8113(b) of the 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 have probably been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary.”³

Section 10.519(a) of the implementing regulations provides 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. [The Office] will determine this amount in accordance with the job identified through the vocational rehabilitation planning process.... The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of [the Office].”⁴

Application of the principles set forth in *Albert C. Shadrick*⁵ will result in the percentage of the employee’s loss of wage-earning capacity.

ANALYSIS

The record establishes that appellant dropped out of the pharmacy technician training program at Remington College in April 2006. The record reflects that he had successfully completed five of the seven modules of academic work when he dropped out. By doing so, appellant failed to continue participating in the program that was authorized as part of his

² *Howard L. Miller*, 56 ECAB ____ (Docket No. 04-2183, issued August 19, 2005).

³ 5 U.S.C. § 8113(b).

⁴ 20 C.F.R. § 10.519(a).

⁵ 5 ECAB 376 (1973).

vocational rehabilitation efforts. As a result, the Office applied section 8113(b) to reduce his monetary compensation to reflect his probable wage-earning capacity in the absence of such failure.

The issue is whether appellant's failure to continue participation in the vocational rehabilitation program was without "good cause."⁶ He has presented several arguments in support of his contention that he left the program with "good cause": (1) that the program was accelerated, but not comprehensive; (2) that the program was not rigorous enough to prepare him for certification; and (3) that he did not receive the required laboratory time to successfully complete the program and prepare him for certification. The Board finds that appellant has not presented evidence to establish "good cause" for his failure to continue to participate in the selected vocational rehabilitation training program.

Appellant selected the pharmacy technician training program at Remington College as an effective program to allow him to successfully complete vocational rehabilitation. He then became disillusioned with the program as it neared completion. Appellant felt that the open book tests, high passing rate and limited "hands on" laboratory training were not adequately preparing him for the required certification testing. He has not submitted any evidence substantiating that the pharmacy technician program at Remington College, an accredited school, was substandard or inadequate. Appellant's perceptions that his training was inadequate are not sufficient to establish "good cause" to cease cooperating with vocational rehabilitation efforts. He did not raise his concerns with his vocational rehabilitation counselor or with the Office before resigning from the program. Therefore, neither the Office nor the vocational rehabilitation counselor had an opportunity to discuss appellant's concerns with school administrators or other concerned entities prior to appellant's decision to resign. Appellant also objected to Mr. Mathis as lead instructor based on his guilty plea to drug possession and driving under the influence. He alleged that, due to these legal concerns, Mr. Mathis was not available and no longer certified to provide laboratory training. While appellant provided a copy of Mr. Mathis' criminal docket to the case record, he did not offer any evidence substantiating that Mr. Mathis was not allowed to teach based on his indictments and guilty pleas. Furthermore, Mr. Heers denied that Mr. Mathis was appellant's instructor. The Board finds that there is no probative evidence that Remington College did not provide proper training.⁷

CONCLUSION

For these reasons, the Board finds that appellant has failed to provide "good cause" for his failure to continue to participate in vocational rehabilitation efforts. Under section 8113(b), the Office properly reduced his wage-loss compensation to reflect his wage-earning capacity had he properly completed the pharmacy technician training program.

⁶ See *Jonathan Gibbs*, 52 ECAB 91 (2000) (the Board noted that the directed training program was an appropriate method of realizing the rehabilitation goals in the case).

⁷ *Michael D. Snay*, 45 ECAB 403, 412 (1994).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2007 and June 12, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 17, 2007
Washington, DC

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

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