

venous thrombosis of her legs.¹ She received compensation for periods of disability. In a May 29, 2007 decision, the Office terminated appellant's medical benefits for deep venous thrombosis as the medical evidence showed that she no longer had this condition. On August 2, 2006 Dr. Joseph E. Noonan, a Board-certified orthopedic surgeon serving as an Office referral physician, advised that due to her work-related right shoulder condition appellant was not able to return to work as a supervisory security screener without restriction. However, appellant was able to sit, stand, walk, kneel, bend and twist up to five hours per day and perform pushing, pulling and simple grasping with her left arm.

In June 2007, appellant began to participate in vocational rehabilitation efforts with her counselor, Jeanette Hanson.² Testing was obtained which showed that, if appellant obtained a general education development (GED) certificate, she would be qualified to consider such occupational areas as clerical handling and some areas of records processing.

Ms. Hanson made numerous attempts to have appellant participate in GED classes at the Takoma Goodwill headquarters. Appellant often did not return Ms. Hanson's telephone calls regarding this matter on a timely basis. She indicated that she would attend the classes at the Takoma Goodwill headquarters but she failed to do so, citing various reasons including not feeling well, moving into a new home, taking a vacation and the fact that her attorney told her she did not have to attend such classes.³ Appellant later indicated that she would pursue GED classes at the Bates Technical College, but she failed to attend classes on a regular basis. In a November 30, 2007 report, Ms. Hanson advised the Office that appellant was obstructing vocational rehabilitation efforts. In February 2008, appellant was assigned a new counselor, Jennifer Kabacy. There is no indication that appellant regularly attended GED classes despite Ms. Kabacy's efforts to have her do so.⁴

By letter dated June 11, 2008, the Office advised appellant of its preliminary determination that she had failed to participate in vocational rehabilitation efforts, including participating in classes designed to help obtain a GED certificate. It informed appellant that an individual who refuses or impedes a vocational rehabilitation effort without good cause after testing has been accomplished will have her compensation reduced based on what would have been her wage-earning capacity had the training been successfully completed. The Office directed appellant to make a good faith effort to participate in the rehabilitation effort within 30 days or, if she believed she had good cause for not participating in the effort, to provide reasons

¹ Appellant underwent right distal clavicle resection surgery on January 6, 2005 which was authorized by the Office.

² Appellant had previously participated in rehabilitation efforts, but health problems interrupted those efforts.

³ Ms. Hanson indicated that the Takoma Goodwill would make accommodations for appellant's physical condition.

⁴ In early May 2008, appellant arrived at the Bates Technical College for a GED class but she left after about one hour because she was in pain.

and supporting evidence of such good cause within 30 days.⁵ It stated that, if these instructions were not followed within 30 days, action would be taken to reduce her compensation.

In a June 17, 2008 report, Dr. Julian S. Arroyo, an attending Board-certified orthopedic surgeon, stated that appellant had ongoing pain with respect to her right shoulder. The report contain limited examination findings and Dr. Arroyo did not provide any opinion on whether appellant was unable to attend classes. The record reveals the Bates Technical College was willing to make accommodations for appellant's medical condition, but there is no indication that she attended GED classes on a regular basis. Ms. Kabacy indicated that, if appellant had received her GED certificate, she likely would have been able to return to work at the same or higher wages than for the position she held when injured.

In a July 11, 2008 decision, the Office reduced appellant's compensation under 5 U.S.C. § 8113(b) to reflect her loss of wage-earning capacity had she continued to participate in vocational rehabilitation efforts. It determined that appellant had failed, without good cause, to undergo vocational rehabilitation as directed. With respect to her wage-earning capacity, the Office further found that, if appellant had participated in good faith in vocational rehabilitation, she would have been able to return to work at the same or higher wages than for the position she held when injured. It reduced her compensation to zero as of July 14, 2008.

Appellant requested reconsideration and contended that she was medically unable to attend GED classes but she did not submit any medical evidence to establish that she was medically unable to attend such classes. Ms. Kabacy advised that appellant had not attended GED classes on a regular basis. In a January 16, 2009 decision, the Office affirmed its July 16, 2008 decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened before it may terminate or modify compensation benefits.⁶ Section 8113(b) of the Federal Employees' Compensation Act provides that, if an individual, without good cause, fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of the Act, the Office, "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 [or her] wage-earning capacity in the absence of the failure," until the individual in good faith complies with the direction of the Office.⁷

Section 10.519 of Title 20 of the Code of Federal Regulations details the actions the Office will take when an employee without good cause fails or refuses to apply for, undergo,

⁵ The Office directed appellant to attend GED classes at Bates Technical College at specified times and to return calls of her rehabilitation counselor within 24 hours.

⁶ *Betty F. Wade*, 37 ECAB 556, 565 (1986).

⁷ 5 U.S.C. § 8113(b).

participate in, or continue to participate in a vocational rehabilitation effort when so directed. Section 10.519(a) provides, in pertinent part:

“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, which includes meetings with the [Office] nurse and the employer. The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of [the Office].”⁸

ANALYSIS

The record establishes that appellant was offered repeated opportunities to complete the agreed upon vocational rehabilitation plan, including attending GED classes. Starting in June 2007, appellant’s rehabilitation counselors attempted to have appellant attend GED classes at either the Takoma Goodwill headquarters or the Bates Technical College. Both institutions advised that they would make accommodations for appellant’s physical condition. Appellant often did not return her rehabilitation counselors’ telephone calls regarding this matter on a timely basis. She indicated that she would attend the GED classes but she failed to do so, citing various reasons including not feeling well, moving into a new home, taking a vacation and the fact that her attorney told her she did not have to attend such classes. Appellant claimed that her physical condition prevented her from attending classes, but she did not submit medical evidence to support this assertion. In a June 17, 2008 report, Dr. Arroyo, an attending Board-certified orthopedic surgeon, noted that she had ongoing pain with respect to her right shoulder. However, Dr. Arroyo did not provide any opinion on whether appellant was disabled from attending classes. There is no indication that appellant ever attended GED classes on a regular basis as directed to do by her rehabilitation counselors.

There is no evidence therefore that appellant’s failure to fully participate in the rehabilitation program, particularly in her failure to participate in attempts to obtain a GED certificate necessary to return to the workforce at a reasonably high level of employment, was based on “good cause.”⁹ The reduction of appellant’s compensation was based on a determination of what appellant’s income likely would have been if she had fully participated in vocational rehabilitation efforts. The Office properly found that, if appellant had participated in good faith in vocational rehabilitation efforts, she would have been able to return to work at the same or higher wages than for the position she held when injured. Therefore, it reduced appellant’s compensation to zero as of July 14, 2008. For these reasons, the Office properly

⁸ 20 C.F.R. § 10.519(a).

⁹ See *Michael D. Snay*, 45 ECAB 403, 410-12 (1994).

reduced appellant's compensation under 5 U.S.C. § 8113(b) to reflect her loss of wage-earning capacity had she continued to participate in vocational rehabilitation efforts.¹⁰

CONCLUSION

The Board finds that the Office properly reduced appellant's compensation under 5 U.S.C. § 8113(b) to reflect her loss of wage-earning capacity had she continued to participate in vocational rehabilitation efforts.

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2009 and July 16, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 17, 2009
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

¹⁰ On appeal appellant's attorney argued that the Office committed errors of fact and law in its decisions, but he did not further articulate the basis for this belief.