

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

P.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Canfield, OH, Employer**

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**Docket No. 10-2207
Issued: August 26, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REVERSING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On August 30, 2010 appellant, through her representative, filed a timely appeal from the July 8, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed the reduction of her compensation to zero under 5 U.S.C. § 8113(b) and 20 C.F.R. § 10.519(b) for obstructing vocational rehabilitation efforts.¹

The Board has duly considered the matter and finds that OWCP's July 8, 2010 decision must be reversed. When a suitable job has not been identified because the failure or refusal occurred in the early but necessary stages of a vocational rehabilitation effort (that is, meetings with OWCP's nurse, interviews, testing, counseling, functional capacity evaluations and work evaluations), OWCP will reduce the employee's monetary compensation to zero on the assumption that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity.²

¹ In the prior appeal, the Board found that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability beginning December 12, 2008 causally related to her March 31, 2008 employment injury. Docket No. 09-2052 (issued April 1, 2010).

² 20 C.F.R. § 10.519(b)-(c).

The record shows that appellant cooperated in the early but necessary stages of vocational rehabilitation, including the initial interview, counseling, and vocational testing and evaluation services. She was described as “cooperative with provider for academic, aptitude, interest testing, some computer and clerical work sample.” A two-week vocational evaluation concluded that appellant had no capacity to work competitively “at this time, so a [d]irect [p]lacement would not be realistic.” Sheltered employment was deemed impractical. Further training was not indicated. It was recommended, instead, that appellant pursue medical resolve and focus on quality of life issues. Rehabilitation goals included, among other things, establishing a realistic plan to enter retirement.

A month later, when the rehabilitation counselor reviewed with her the test results for her employability, appellant “declined offered job placement services” and applied for disability retirement. The rehabilitation counselor reported obstruction.

The Board finds that OWCP did not meet its burden of proof to justify the modification of appellant’s compensation.³ The rehabilitation counselor did not explain how declining direct placement services constituted obstruction of vocational rehabilitation efforts when vocational testing and evaluation services made clear that direct placement would not be realistic, that appellant had no capacity to work competitively, that further training was not indicated, and that appellant should establish a realistic plan to enter retirement, a recommendation she followed. It would appear that appellant’s actions were entirely consistent with the results of vocational testing and evaluation services. Accordingly,

³ Once the Office accepts a claim, it has the burden of proof to justify the termination or modification of compensation benefits. *Harold S. McGough*, 36 ECAB 332 (1984).

IT IS HEREBY ORDERED THAT the July 8, 2010 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 26, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board