



place mail in a low post office box. OWCP accepted her claim for a left knee strain. Appellant stopped working on November 3, 2008.<sup>2</sup>

In a second opinion report dated March 27, 2009, Dr. Bunsri T. Sophon, a Board-certified orthopedic surgeon, diagnosed left knee strain, resolved and osteoarthritis of the left knee, which he opined was medically connected to the accepted injury by precipitation. He stated that appellant could return to work with restrictions, including sitting, walking and standing for no more than six hours per day; lifting no more than 20 pounds for two hours or less; and squatting, kneeling and climbing for no more than two hours.

On May 22, 2009 OWCP accepted precipitation of left knee osteoarthritis and placed appellant on the periodic rolls.

Appellant submitted a July 10, 2009 report from her treating physician, Dr. Lawrence Henry Albinski, a Board-certified orthopedic surgeon, who opined that appellant could return to work with the following restrictions: standing and walking no longer than 15 minutes per hour; sitting for no longer than 45 minutes cumulative per hour; lifting and carrying no more than 10 pounds; and no squatting or bending.

On August 28, 2010 OWCP referred appellant for vocational rehabilitation services. The rehabilitation counselor conducted a labor market survey and, based on the medically determinable residuals of the injury in the case and taking into consideration all pertinent nonmedical factors, selected the positions of service clerk and accounting clerk as employment goals. Such work was being performed in sufficient numbers so as to be considered reasonably available within his commuting area. As the labor market survey reflected that appellant required proficiency in Microsoft Office programs, the rehabilitation counselor recommended a training program to prepare her for these positions.

On December 7, 2009 OWCP approved the vocational rehabilitation plan for the vocational goals of service clerk (DOT: 221.367-070) and accounting clerk (DOT: 216.4.82-010). Pursuant to the plan, appellant was to attend a 28-week training program for computerized office administration at Westech College, beginning January 19, 2010. In a January 14, 2009 letter, OWCP informed her that the positions of accounting clerk and service clerk were within her medical restrictions and that she would receive 90 days of placement after any necessary training.<sup>3</sup> Appellant was advised that she was expected to cooperate fully with the rehabilitation program, so that she might return to work.

Appellant refused to attend the computer training. She informed the rehabilitation counselor that she did not agree to the vocational goals of the plan and instead wanted to attend

---

<sup>2</sup> Appellant's April 4, 1992 traumatic injury claim (which was accepted for left ankle sprain under File No. xxxxxx679) and her 1998 occupational disease claim (which was accepted for left ankle strain under File No. xxxxxx195) were consolidated with the present case record (File No. xxxxxx398), with File No. xxxxxx398 serving as the master file. Her 2008 emotional condition claim was denied by decision dated March 5, 2009 under File No. xxxxxx928.

<sup>3</sup> The Board notes that the position descriptions for the selected positions identify the positions as sedentary, requiring no climbing, stooping or kneeling and lifting a maximum of 10 pounds occasionally.

training for paralegal and medical billing positions. The rehabilitation counselor noted that the accounting clerk vocational goal was selected based upon her recommendation, as she had transferable skills for the position by virtue of prior employment experience in a bank.

On January 26, 2010 OWCP directed appellant to undergo the computer training designed to prepare her for positions as a service clerk or accounting clerk or to respond within 30 days if she believed she had a good reason for not participating in this effort. It informed her of the penalty provisions of 5 U.S.C. § 8113(b).

On January 19, 2010 appellant informed OWCP that she did not agree to work as a service clerk or accounting clerk. In a February 2, 2010 letter, she stated that she was never told that she would be trained to be a service clerk or an accounting clerk, but rather that she would be trained for a new career, for example, as a paralegal, accountant or medical billing specialist. Appellant contended that the rehabilitation counselor acted illegally by placing her in a computer school without her knowledge. She contended that she was unable to attend school from February 17 to May 5, 2010 in preparation for bariatric surgery, which would be followed by knee replacement surgery.

The record reflects that appellant failed to report for classes at Westech College.

In a decision dated April 23, 2010, OWCP found that appellant had failed, without good cause, to undergo vocational rehabilitation as directed, and accordingly reduced her compensation effective that date based on what her wage-earning capacity would have been as a service clerk had she completed the training program.

On May 21, 2010 appellant requested a review of the written record. She stated that she had to undergo bariatric surgery because her physician would not perform her required knee surgery unless she lost a substantial amount of weight. As classes to prepare appellant for bariatric surgery conflicted with her computer training classes, she was unable to attend training. She also reiterated her complaints regarding the goal of service clerk.

Appellant submitted a January 22, 2010 report from Dr. Albinski who noted that she was able to work restricted duty, as previously stated. Dr. Albinski advised that appellant could lift and carry no more than 10 pounds. He also recommended weight loss.

In a letter dated August 5, 2010, appellant stated that she was enclosing a letter from Dr. Albinski in support of her inability to attend training classes prior to undergoing surgery. She indicated that she would have sent the letter earlier had she known it was required. The record does not contain a copy of any letter from Dr. Albinski relating to appellant's need for surgery or reasons why she was unable to attend training.

By decision dated September 15, 2010, OWCP's hearing representative affirmed the April 23, 2010 decision, finding that OWCP properly reduced appellant's compensation based on her wage-earning capacity in the targeted position of service clerk.

On September 30, 2010 appellant requested reconsideration. She contended that she never refused to comply with vocational rehabilitation, but merely wanted training in a different field. Appellant reiterated her argument that she was unable to attend training due to conflicting

schedules related to her upcoming surgeries. She noted that she was enclosing a letter from Dr. Albinski regarding the need for surgery.<sup>4</sup> Appellant also argued that walking around the campus at the college would aggravate her knee condition.

Appellant submitted a copy of her August 5, 2010 letter to OWCP advising that she was enclosing a copy of a letter from Dr. Albinski regarding her surgery. No such letter was enclosed.

By decision dated December 15, 2010, OWCP denied modification of the September 15, 2010 decision. The claims examiner found that appellant had not shown good cause for failing to participate in the vocational rehabilitation program.

### **LEGAL PRECEDENT**

OWCP may direct a permanently disabled individual whose disability is compensable to undergo vocational rehabilitation.<sup>5</sup> If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed, OWCP, on review under 5 U.S.C. § 8128 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 OWCP.<sup>6</sup>

Where a suitable job has been identified, OWCP 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. It will determine this amount in accordance with the job identified through the vocational rehabilitation planning process, which includes meeting with an OWCP 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 OWCP.<sup>7</sup>

### **ANALYSIS**

The weight of the medical evidence established that appellant was not disabled for all work and OWCP directed her to undergo vocational rehabilitation. The vocational rehabilitation counselor developed a training plan for appellant to attend a 28-week training program for computerized office administration at Westech College beginning January 19, 2010 to prepare her for the positions of accounting clerk or service clerk. Appellant refused and failed to attend class. The issue is whether she had good cause for her failure to participate in vocational rehabilitation when so directed.

---

<sup>4</sup> The Board notes that the record does not contain a letter from Dr. Albinski regarding the need for surgery or appellant's inability to attend training.

<sup>5</sup> 5 U.S.C. § 8104(a).

<sup>6</sup> *Id.* at § 8113(b). See *J.E.*, 59 ECAB 606 (2008).

<sup>7</sup> 20 C.F.R. § 10.519 (1999).

Appellant's initial explanation did not establish good cause. She informed the rehabilitation counselor that she did not agree to the vocational goals of the plan and instead wanted to attend training for a new career as a paralegal or medical billing specialist. The Board has held that a claimant's dislike for a selected position does not constitute good cause for failing to participate in vocational rehabilitation.<sup>8</sup> The counselor noted that the vocational goal was selected based upon appellant's recommendation, as she had transferable skills for the position by virtue of prior employment experience in a bank. The positions selected were consistent with her work restrictions and were based on a labor market survey, as well as vocational testing and skills assessment. The record reflects that appellant was encouraged on several occasions to cooperate with the approved plan by attending class at Westech College, but she refused to start the approved training as scheduled.

Appellant's later explanation also fails to establish good cause. She argued that she was unable to attend school because she was scheduled for a 12-session class from February 17 to May 5, 2010 to prepare for bariatric surgery, which would be followed by knee replacement surgery. Appellant stated that bariatric surgery was required because her physician would not perform knee replacement surgery unless she lost a substantial amount of weight. As classes to prepare her for bariatric surgery conflicted with her computer training classes, she was unable to attend training. Appellant did not submit any probative medical evidence in support of her claim that she was unable to attend the bariatric training. Dr. Albinski diagnosed obesity and recommended weight loss. None of his reports, however, provide any opinion that appellant was unable to attend computer training or that she required surgery that would conflict with her training. Appellant asserted on appeal that she provided a letter from her physician discussing her need for surgery and her inability to attend training. The record does not contain such a letter. Therefore, the Board finds that appellant's allegations are not supported by the weight of the medical evidence.

The Board finds that OWCP properly reduced appellant's compensation. Appellant has not shown good cause for her failure to participate in vocational rehabilitation when so directed. OWCP properly found that vocational training would probably have substantially increased her wage-earning capacity, and properly reduced her compensation in accordance with what would have probably been her wage-earning capacity had she completed the program. The Board will affirm the September 15 and December 15, 2010 decisions reducing appellant's compensation. This reduction remains in effect until appellant in good faith complies with the direction of OWCP.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly reduced appellant's compensation for failing to cooperate with vocational rehabilitation.

---

<sup>8</sup> See *Demetrius Beverly*, 53 ECAB 305 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 15 and September 15, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 14, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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