

spine; thoracic or lumbosacral neuritis or radiculitis; and displacement of the lumbar intervertebral disc. Appellant was placed on the periodic rolls and received appropriate compensation and medical benefits.

In a report dated October 6, 2011, Dr. Douglas Merrill, appellant's treating Board-certified physiatrist, provided a history of injury and treatment. On examination, thoracic and lumbar spine range of motion was functional for flexion, slightly limited and painful at the end range of extension. Hip rotation was symmetric. Knee range of motion was normal. Muscle testing was intact in the lower extremities distally, heel and toe walk power was intact bilaterally. Sitting straight leg raise was negative bilaterally. Dr. Merrill opined that appellant's back condition had not resolved but that he could work four to eight hours per day with permanent restrictions, which included no twisting, stooping or climbing. Appellant was precluded from pushing, pulling or lifting more than 40 pounds.

OWCP referred appellant for vocational rehabilitation services. The referral form noted that he had been unsuccessful in a previous rehabilitation effort because he could not sit for four hours per day. On April 10, 2012 OWCP informed appellant of the referral and advised him that he was expected to cooperate fully with the rehabilitation and reemployment effort.

In a report dated April 25, 2012, the rehabilitation counselor indicated that she had conducted an initial interview with appellant on that date. Appellant informed her in no uncertain terms that he did not wish to participate in vocational rehabilitation efforts. He refused to review with the counselor his current medical condition, work history or education background, alleging that he was in chronic pain as well as suffering from cardiovascular fatigue which, in his opinion, would preclude consistent work activity.

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 surveillance system monitor or security identification clerk as employment goals. Such work was being performed in sufficient numbers so as to be considered reasonably available within his commuting area. To give appellant background in the security surveillance monitor and security identification clerk field, the counselor recommended a one-day training program at Universal Security Academy to obtain his guard card.

On July 25, 2012 OWCP approved the vocational rehabilitation plan for the vocational goals of surveillance system monitor (DOT: 379.367-010) and security identification clerk (DOT: 205.362-022). Pursuant to the plans, appellant was to attend a one-day training program to obtain his guard card. OWCP informed him that the positions of surveillance system monitor and security identification clerk were within his medical restrictions and that he would receive 90 days of placement after any necessary training.² Appellant was advised that he was expected to cooperate fully with the rehabilitation program, so that he might return to work.

² 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.

Appellant refused to sign the rehabilitation plan documents or to participate in the training, claiming that he was medically incapacitated and unable to perform the duties of the selected positions.

By letter dated August 2, 2012, OWCP informed appellant that it had been advised by the rehabilitation counselor that he declined to participate in vocational rehabilitation. It stated that the reasons given were unacceptable and advised him of the sanctions for failure to undergo vocational rehabilitation. Appellant was advised to contact OWCP and the rehabilitation counselor within 30 days.

Appellant submitted a July 24, 2012 procedure note from Dr. William Fenton, a Board-certified internist, who performed an epidural injection on that date. In an August 7, 2012 follow-up report, Dr. Merrill noted that appellant had chronic low back pain associated with right lower extremity sciatica. On August 9, 2012 Dr. David B. Wampold, a Board-certified internist, stated that appellant had a myocardial infarction and had three-vessel coronary artery disease. The record contains a July 24, 2012 x-ray of the lower back.

In a letter dated August 21, 2012, appellant stated that he intended to fully cooperate “as long as my rights are not violated.” He disagreed with Dr. Merrill’s opinion that he was able to work four to eight hours per day, noting that he had previously been unable to complete a vocational rehabilitation program due to his inability to sit for more than four hours at a time.

In a decision dated September 7, 2012, OWCP found that appellant had failed, without good cause, to undergo vocational rehabilitation as directed and accordingly reduced his compensation effective that date based on what his wage-earning capacity would have been as a surveillance system monitor had he completed the training program.

LEGAL PRECEDENT

OWCP may direct a permanently disabled individual whose disability is compensable to undergo vocational rehabilitation.³ 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 or her wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of OWCP.⁴

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,

³ 5 U.S.C. § 8104(a).

⁴ *Id.* at § 8113(b). See *J.E.*, 59 ECAB 606 (2008).

which includes meeting with 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.⁵

ANALYSIS

The weight of the medical evidence established that appellant was not disabled for all work and OWCP directed him to undergo vocational rehabilitation. The vocational rehabilitation counselor developed a training plan for appellant to attend a one-day training program to prepare him to perform the positions of security surveillance monitor and security identification clerk. Appellant refused to sign the rehabilitation plan and failed to attend class. The question before the Board is whether he has shown good cause for his failure to participate in vocational rehabilitation when so directed.

The Board finds that appellant failed to show good cause for failing to participate in vocational rehabilitation. Appellant informed the rehabilitation counselor that he did not wish to participate in vocational rehabilitation efforts. He refused to review with the counselor his current medical condition, work history or education background, alleging that he was in chronic pain as well as suffering from cardiovascular fatigue which, in his opinion, would preclude consistent work activity. The positions selected, however, were consistent with appellant's work restrictions and were based on a labor market survey, as well as vocational testing and skills assessment. Appellant's lay opinion that he was unable to participate in the program does not constitute probative medical evidence.⁶ He did not submit any probative medical evidence in support of his claim that he was unable to attend the approved training or to perform the proposed jobs.

In response to OWCP's August 2, 2012 letter, appellant submitted: a July 24, 2012 procedure note from Dr. Fenton; an August 7, 2012 report from Dr. Merrill; an August 9, 2012 report from Dr. Wampold; and a July 24, 2012 x-ray of the lower back. None of these reports contains any information on the issue of appellant's ability to participate in vocational rehabilitation. Therefore, they are irrelevant and insufficient to show good cause for his failure to do so.

In his August 21, 2012 letter, appellant stated that he intended to fully cooperate "as long as my rights are not violated." He disagreed with Dr. Merrill's opinion that he was able to work four to eight hours per day, noting that he had previously been unable to complete a vocational rehabilitation program due to his inability to sit for more than four hours at a time. As noted, appellant's lay opinion does not constitute probative medical evidence and is not good cause for failing to participate in vocational rehabilitation.⁷ His allegations are not supported by the weight of the medical evidence, which is represented by Dr. Merrill's October 6, 2011 report.

⁵ 20 C.F.R. § 10.519 (1999).

⁶ The Board has held that lay individuals are not competent to render a medical opinion. *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁷ *Id.*

The Board finds that OWCP properly reduced appellant's compensation. The record reflects that he was encouraged on several occasions to cooperate with the approved plan, but he refused to sign the plan or to attend the approved training as scheduled. Appellant has not shown good cause for his failure to participate in vocational rehabilitation when so directed. OWCP properly found that vocational training would probably have substantially increased his wage-earning capacity and properly reduced his compensation in accordance with what would have probably been his wage-earning capacity had he completed the program. The Board will affirm the September 7, 2012 decision reducing appellant's compensation. This reduction remains in effect until he in good faith complies with the direction of OWCP.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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