

employee and supervisor. Appellant stopped work on April 30, 2009. OWCP accepted the claim for major moderate depression, single episode. Appellant was placed on the periodic rolls in receipt of compensation.

In a September 20, 2010 Form OWCP-5a, work capacity evaluation, Elizabeth Flannery, Ph.D., a clinical psychologist, advised that appellant was competent to work at least four hours a day and eventually would be able to increase the number of hours worked to an eight-hour day. She opined that appellant could work at a post office, but it was not advisable for her to return to the same setting or with her previous supervisor.

In a May 1, 2011 report, Dr. Flannery diagnosed major depressive disorder, single episode, in partial remission and avoidant personality features. Appellant noted that she was unable to return to work at the employing establishment and did not believe she would be able to return to work in the foreseeable future. Dr. Flannery opined that a possibility existed that appellant would further regress if she were to return to the employing establishment for work.

On August 23, 2011 OWCP referred appellant for vocational rehabilitation services. On February 6, 2012 it changed the status of the case from services interrupted to plan development. Appellant was advised that she was expected to cooperate fully with the rehabilitation and reemployment effort.

In a March 27, 2012 report, the rehabilitation counselor noted that appellant had not followed through on past homework assignments of journaling or making a site visit to the local library to be among people in a quiet environment. He noted that Dr. Flannery told appellant that she needed to get out of her house and do things.

In an October 30, 2012 report, the rehabilitation counselor reported that appellant had not engaged in activities she reported she would do or pursued any of the job leads provided to her and approved by Dr. Flannery. Appellant continued to avoid people that she knew and she would not move forward with working outside her home as she was focused on operating a home-based jewelry business. She failed to renew her driver's license, did not respond to contact attempts and refused appointments due to lack of transportation. The rehabilitation counselor advised appellant of the consequences of her actions and recommended that the file be closed as appellant refused services.

Effective October 20, 2012, OWCP closed appellant's case as a result of her noncooperation with rehabilitation services.

By letter dated December 26, 2012, OWCP informed appellant that it had been advised by the rehabilitation counselor that she declined to participate in vocational rehabilitation. It noted that appellant reported that she wanted to have her own home business and was not interested in vocational services. Appellant was advised of the sanctions for failure to undergo vocational rehabilitation. She was also advised to contact OWCP and the rehabilitation counselor within 30 days.

In January 25 and 28, 2013 telephone calls, appellant's representative, her husband, stated that she could not work for the employing establishment and that she refused to leave the house or work at a job.

In a decision dated February 22, 2013, OWCP found that appellant had failed, without good cause, to undergo vocational rehabilitation as directed. It reduced her compensation under the provisions of 5 U.S.C. § 8113(b) and 20 C.F.R. § 10.519 to zero effective March 10, 2013 based on what her wage-earning capacity would have been if she had undergone vocational testing and rehabilitation.

LEGAL PRECEDENT

Section 8104(a) of FECA provides:

“The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services....”²

Section 8113(b) of FECA 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 of OWCP’s regulations provide:

“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, OWCP will act as follows:”

* * *

“(b) Where 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 cannot determine what would have been the employee’s wage-earning capacity.”⁴

² *Id.* at § 8104(a).

³ *Id.* at § 8113(b).

⁴ 20 C.F.R. § 10.519.

ANALYSIS

The weight of the medical evidence established that appellant was not totally disabled for work and OWCP directed her to undergo vocational rehabilitation. The vocational rehabilitation counselor was unable to develop a vocational rehabilitation plan due to appellant's noncooperation with such efforts. It was noted that appellant did not renew her driver's license, respond to contact attempts and refused appointments due to lack of transportation. She failed to complete "homework assignments," or follow through with job placement leads. Appellant also refused to consider work outside her home contending that she was focused on operating a home-based jewelry business.

The Board finds that appellant failed to show good cause for her failure to participate in vocational rehabilitation. Appellant informed the rehabilitation counselor that she did not wish to participate in vocational rehabilitation efforts. She refused to consider work outside her home in preference to operating a home-based jewelry business. Appellant failed to followup with job leads, complete "homework assignments," or respond to contact attempts. She also refused appointments due to lack of transportation after not renewing her driver's license. There is no medical evidence from appellant's treating psychologist to establish that she could not engage in any of the activities or job leads noted by the vocational rehabilitation counselor. Appellant's contention that she was unable to participate in the program as her avoidance behavior remained high is not supported by any probative medical evidence.⁵ She did not submit medical evidence in support of her claim that she was unable to perform any of the selected tasks or activities. Appellant's contentions are not supported by the weight of the medical evidence, as represented by Dr. Flannery's September 20, 2010 report.

The Board finds that OWCP properly reduced appellant's compensation. The record reflects that the vocational rehabilitation counselor met with appellant over several months and encouraged her through the vocational rehabilitation planning process. Appellant refused to complete the assigned tasks and eventually noted that she wished to pursue a home-based business. She has not shown good cause for her failure to participate in vocational rehabilitation when so directed. OWCP properly found that had appellant in fact undergone the testing and rehabilitation effort, the vocational rehabilitation effort would have resulted in her return to work in the same or higher wages than the position held when injured and properly reduced her compensation to zero with what would have probably been her wage-earning capacity had she completed the program. The Board will affirm the February 22, 2013 decision reducing appellant's compensation. This reduction remains in effect until she in good faith complies with the direction of OWCP.

CONCLUSION

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

⁵ The Board has held that lay individuals are not competent to render a medical opinion. *Gloria J. McPherson*, 51 ECAB 441 (2000).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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