



## **ISSUES**

The issues are: (1) whether OWCP properly reduced appellant's compensation under 5 U.S.C. § 8113(b) to reflect his wage-earning capacity had he continued to participate in vocational rehabilitation; and (2) whether OWCP properly denied appellant's request for an oral hearing.

## **FACTUAL HISTORY**

On July 14, 1978 appellant, then a 26-year-old distribution clerk, injured his left knee when he squatted down to lift a heavy box. OWCP accepted the claim for localized primary osteoarthritis of the left leg, left knee collateral ligament sprain, and tear of the left medial meniscus. Appellant underwent three authorized arthroscopic surgeries on the left knee on April 12, 1979, May 4, 1990, and August 5, 2013. He worked intermittently, but stopped completely on January 25, 1991 when the employing establishment had no work within his restrictions. Appellant received wage-loss compensation.<sup>3</sup>

Appellant came under the treatment of Dr. Paul D. Long, a Board-certified orthopedist, who on April 12, 1979, performed an arthroscopic left knee medial meniscectomy. Dr. Long diagnosed tear of the medial meniscus of the left knee. In reports dated February 15 and March 5, 1990, he diagnosed synovitis of the left knee, possibly related to degenerative arthritis and torn meniscus of 1979. On May 4, 1990 Dr. Long performed arthroscopic debridement of the left knee and proximal tibial osteotomy of the left tibia, and he diagnosed osteoarthritis of the left knee.

Dr. Long and his associates treated appellant until January 1993. The medical record was essentially dormant from January 1993 until OWCP obtained a second opinion on April 8, 2000. OWCP obtained intermittent second opinion evaluations indicating that, while appellant could not perform his regular duties, he could work full time within restrictions.

OWCP subsequently received treatment records from Dr. Vincent E. Paul, a Board certified orthopedic surgeon. Beginning on July 5, 2007, Dr. Paul submitted reports indicating appellant had work-related endstage left knee degenerative joint disease and was disabled. He noted that appellant could return to work after knee replacement surgery. On February 14, 2012 appellant informed OWCP that he was discharged from Dr. Paul's treatment because Dr. Paul did not perform surgery. Thereafter, OWCP authorized appellant's treatment by Dr. Stephen D. Lucey, a Board-certified orthopedist.

OWCP referred appellant to Dr. William A. Somers, a Board-certified orthopedist, for a second opinion examination. In an April 5, 2013 report, he diagnosed post-traumatic degenerative arthritis, left knee, directly related to his on-the-job injury dated July 14, 1978, post-traumatic degenerative arthritis, right knee, secondary to injury while on active military duty, nonworkers compensation, and diabetic neuropathy, right and left, secondary to his diabetes, nonwork related. Dr. Somers opined that appellant's left knee arthritis stemmed from his 1978 original injury and he continued with residuals of this work-related injury. He noted

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<sup>3</sup> Appellant has also received schedule awards totaling 25 percent permanent impairment of the left leg.

appellant had undergone a total medial meniscectomy in 1979 which led to progressive post-traumatic degenerative arthritis directly as a result of his on-the-job injury. Dr. Somers opined that appellant could work sitting down, stand from 5 to 10 minutes out of an hour, and not carry anything more than two to three pounds 8 hours a day. He noted that appellant had not reached maximum medical improvement and would be a candidate for vocational rehabilitation.

On April 30, 2013 OWCP referred appellant for vocational rehabilitation. Appellant was informed that he was expected to cooperate fully with the rehabilitation counselor.<sup>4</sup>

Dr. Lucey treated appellant from May 14, 2013 to March 10, 2014, for a chronic work-related left knee injury. He noted conservative treatment had failed and recommended a total knee arthroplasty.

On July 31, 2013 the rehabilitation counselor placed appellant's case in interrupted status as he was scheduled for a total left knee replacement on August 5, 2013.

Dr. Lucey performed a total left knee arthroplasty on August 5, 2013, and diagnosed left knee osteoarthritis. On November 21, 2013 he noted that appellant was progressing well and his left knee was normal except for quadriceps weakness. Dr. Lucey recommended physical therapy. In a February 18, 2014 report, he noted that appellant was very active, did well with physical therapy, continued to work out on his own, and was progressing back to his activities outside of the house and was looking forward to spring golf. Dr. Lucy referred appellant for a functional capacity evaluation (FCE). On March 10, 2014 appellant underwent the FCE which revealed that he was able to work in the light to medium physical demand level for an eight-hour day. In a March 18, 2014 report, Dr. Lucey noted appellant was progressing after his left knee replacement. He concurred with the findings of the FCE, noting that appellant could work light to medium capacity for eight hours a day.

On July 21, 2014 OWCP resumed active vocational rehabilitation services. In a January 28, 2015 vocational rehabilitation report, the counselor noted that the employing establishment had no suitable job available within appellant's medical restrictions.

On February 10, 2015 the rehabilitation counselor developed a rehabilitation plan. She indicated that the vocational goal was to prepare appellant for positions as an information clerk, general clerk, or security guard. The counselor noted that labor market survey results for these positions indicated that they existed in sufficient numbers in appellant's commuting area to be reasonably available. These positions met the restrictions established by Dr. Lucey on March 18, 2014. Entry wage information provided included a weekly wage of \$529.00 for a general clerk, Department of Labor's *Dictionary of Occupational Titles* (DOT) No. 209.562.010.<sup>5</sup> Appellant agreed to participate in a short-term human resources development

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<sup>4</sup> The record indicates that OWCP had previously referred appellant for vocational rehabilitation. On April 7, 2006 OWCP reduced appellant's compensation due to his failure, without good cause, to under vocational rehabilitation. On June 21, 2007 an OWCP hearing representative reversed the April 7, 2006 decision, finding that the evidence supported that appellant discontinued his training program for legitimate medical reasons.

<sup>5</sup> This job was light strength level, sedentary, with occasional lifting of under 20 pounds and frequent lifting of under 10 pounds.

program offered at the Guilford Technical College to enhance his employability. In a letter dated February 18, 2015, OWCP approved the vocational rehabilitation training plan for appellant.

In a letter dated March 26, 2015, OWCP noted a rehabilitation plan was created by appellant and his counselor with the goal of obtaining employment as an information clerk, general clerk, or security guard. It indicated that at the end of the 90-day period, whether appellant was employed or not, it would in all likelihood reduce his compensation based on his ability to earn wages in one of those positions. OWCP advised that it was important that appellant fully cooperate with his rehabilitation counselor. It noted that the rehabilitation counselor would assist him in finding employment, but the primary responsibility for locating employment rested with him. OWCP advised that section 8113 of FECA provides penalties for claimants who fail to cooperate with vocational rehabilitation services. It noted that placement assistance may be terminated if the claimant fails to put forth his best effort and action would be taken to reduce his compensation to reflect his wage-earning capacity based on a position which OWCP determined to be within his restrictions and abilities.

In a March 27, 2015 report, the vocational rehabilitation counselor noted that appellant did not want to participate in training, but did enroll in a 10-day course to improve his computer skills. Appellant preferred taking classes at a community college for paralegal training and disfavored other training. The counselor indicated that a rehabilitation plan had been developed and approved and they would have to work together to implement the plan.

In a letter dated April 5, 2015, appellant asserted that the physical requirements of the proposed positions were outside of his medical restrictions and those of the FCE. He indicated that he planned to pursue training in criminal justice/paralegal studies and that any denial by OWCP would be strongly challenged.

In an April 28, 2015 progress report, the vocational rehabilitation counselor indicated that she received a text from appellant on April 27, 2015 which indicated that he had been involved in a serious car accident and would not be able to participate in his plan due to his injuries. Appellant indicated that he would be in touch once his doctor released him.

On April 30, 2015 appellant informed OWCP that he was in a nonwork-related automobile accident on April 23, 2015 and had to suspend participation in vocational rehabilitation until he recovered. He was unsure of his recovery time. Appellant submitted an April 27, 2015 report from Dr. Anthony Crawford, a chiropractor, who treated him for injuries sustained in a motor vehicle crash on April 23, 2015. Dr. Crawford determined that appellant was physically unable to perform strenuous, repetitive duties and he should avoid sitting and standing for prolonged periods. On May 18, 2015 he diagnosed cervical, thoracic, and lumbar biomechanical improprieties with muscle ligament injuries, arthritis spondylosis, and degenerative disc syndrome. Dr. Crawford indicated that appellant was totally disabled from work.

On May 15, 2015 OWCP contacted the rehabilitation counselor and advised that the medical evidence was insufficient to excuse appellant from placement activities as it did not diagnose a specific condition, indicate a treatment plan, or provide a projected date of improvement. It advised that placement activities should continue.

In a May 28, 2015 progress report, the rehabilitation counselor noted advising appellant that the chiropractor's note was insufficient documentation to stop placement activities and that appellant would need to meet with her for their monthly meeting. Appellant contacted the counselor on May 26, 2015 and indicated that he would not participate in vocational rehabilitation, meet her, or follow up on leads. The counselor continued to identify and forward appropriate job leads to appellant, but he did not follow up. Appellant indicated that he was under medical treatment.

In a June 5, 2015 letter, appellant asserted that he was being coerced into seeking employment outside of the Federal Government and wanted to be allowed to place himself in the best possible situation to become attractive to an employer.

OWCP, in a June 8, 2015 memorandum, noted that appellant informed the vocational rehabilitation counselor that he disagreed with the vocational rehabilitation plan and was going to pursue paralegal classes. Appellant reported being in a car accident and he would not be participating in vocational rehabilitation until released by his physician. OWCP advised that it did not have medical documentation of appellant's medical status.

In a rehabilitation action report (Form OWCP-44) dated June 29, 2015, the vocational rehabilitation counselor indicated that appellant had refused to meet with her and had refused to look for work or follow-up on job leads. Appellant indicated that he was under a physician's care and was told not to participate in vocational activities, but he failed to provide sufficient medical information to document his medical status. The counselor noted that appellant had been noncompliant since the beginning of the rehabilitation plan.

In a note dated June 30, 2015, Dr. Lucey opined that appellant would be totally disabled for four to six weeks after surgery on July 15, 2015. He did not identify the nature of appellant's condition or the nature of the scheduled surgery.<sup>6</sup>

On July 7, 2015 OWCP advised appellant that he was impeding vocational rehabilitation efforts. It informed him that failure to participate in the rehabilitation efforts without good cause would be construed as a refusal to apply for or undergo rehabilitation. OWCP advised appellant that the evidence from his chiropractor was insufficient to warrant discontinuance of vocational rehabilitation and that he remained responsible to contact job leads, appear for interviews, and comply with the plan. It notified him of the provisions of 5 U.S.C. § 8113(b) for reducing compensation, and provided him 30 days to make a good faith effort to participate in rehabilitation effort or to state his reasons for not participating along with the submission of supporting documentation. OWCP advised that, after any evidence submitted was evaluated, action would be taken without additional notice and, if good cause was not shown for nonparticipation, the rehabilitation effort would be terminated and his compensation reduced based on his probable wage-earning capacity as an information clerk, general clerk, or security guard.

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<sup>6</sup> Other information attached included a May 28, 2015, physician assistant treatment note advising that appellant had right knee pain that worsened in an automobile accident a couple of weeks earlier. The physician assistant advised that the right knee condition was a "VA knee" and that he could either have surgery for cartilage tears or a total knee replacement.

On July 26, 2015 appellant indicated that he complied with every request of his vocational rehabilitation counselor until his motor vehicle accident. He indicated that he would not participate in rehabilitation until he was released by his physicians. Appellant submitted a computer skills certificate dated March 27, 2015. Also submitted was a right knee magnetic resonance imaging scan which revealed a complex tear of the medial meniscus.

In a July 29, 2015 progress report, the vocational rehabilitation counselor noted meeting with appellant on July 10, 2015. Appellant advised that he was having surgery on July 15, 2015 for automobile accident injuries and would not meet with her again or participate in vocational rehabilitation. He noted that he would not look for work or follow up on job leads. The counselor called appellant on July 27, 2015, but he did not return her call.

On August 18, 2015 appellant called his rehabilitation counselor and indicated that this was his last communication until he was fully released by his orthopedic physician and his health allowed him to seek possible employment or educational training.

In a vocational rehabilitation report dated August 28, 2015, the counselor scheduled a meeting with appellant for August 17, 2015. Appellant refused to meet, follow up on leads, or continue vocational rehabilitation.

On September 29, 2015 OWCP requested the vocational rehabilitation placement services be terminated and that the rehabilitation counselor provide a final progress report.

In an October 6, 2015 vocational rehabilitation report, the counselor noted that appellant did not return to work and did not participate in his vocational plan. Appellant failed to attend monthly meetings, look for work, or follow up on job leads provided to him. She noted that he was unsuccessful because he was not fully compliant in his vocational efforts. The counselor indicated that if appellant had met with her monthly, sought assistance from agencies to which he had been referred, and followed up on job leads he likely would have been employed. Appellant discontinued contact with the counselor after a meeting on July 10, 2015 when he advised her that he was unable to look for work and would contact her when this changed. The counselor noted that appellant was restricted to light physical demand work and the target jobs identified included sedentary and light-duty jobs with job leads for security guard, general clerk, and information clerk. She noted that according to recent labor market data, these jobs remained open and available in appellant's labor market. The counselor noted that appellant's past relevant work was that of a distribution clerk which he performed for over 10 years and he also had a past work history as a military police officer and would have the qualifications to perform the targeted jobs.

In an October 14, 2015 decision, OWCP reduced appellant's compensation based on his ability to perform the duties of a general clerk. It found that he had failed, without good cause, to undergo vocational rehabilitation as directed. OWCP indicated that the evidence established that, in the absence of the failure to undergo vocational rehabilitation, his wage-earning capacity would have increased substantially.

In an appeal request form dated November 12, 2015 and post-marked on November 17, 2015, appellant requested an oral hearing before a hearing representative.

The vocational rehabilitation counselor submitted reports dated October 6 to 19, 2015 noting appellant's rehabilitation case was closed due to noncompliance.

In a December 18, 2015 decision, OWCP denied appellant's request for an oral hearing because the request was untimely filed. It also considered the matter in relation to the issues involved, and further denied the request as the issues in this case could be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8113(b) of FECA provides:

“If an individual without good cause fails to apply for an 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 probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary.”<sup>7</sup>

Section 10.519 of Title 20 of the Code of Federal Regulations details the actions OWCP will take when 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. Section 10.519(a) provides, in pertinent part:

“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 meetings with the OWCP nurse and the [employing establishment]. The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.”<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained localized primary osteoarthritis of the left leg, sprain of the left knee collateral ligament and tear of the medial meniscus of the left due to a July 14, 1978 employment injury. After sustaining periods of disability, he stopped work on

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<sup>7</sup> 5 U.S.C. § 8113(b).

<sup>8</sup> 20 C.F.R. § 10.519(a).

January 25, 1991. Appellant was referred for vocational rehabilitation services on April 30, 2013, but his case was placed in interrupted status pending left total knee arthroplasty on August 5, 2013 performed by Dr. Lucey. On March 10, 2014 he underwent an FCE which revealed that he was able to work in the light to medium physical demand level for eight hours a day. In a report dated March 18, 2014, Dr. Lucey noted appellant was progressing well status post left knee replacement. He concurred with the FCE indicating that appellant could work light to medium capacity for eight hours a day. Based on Dr. Lucey's findings, on July 21, 2014, OWCP resumed active vocational rehabilitation services.

In a vocational rehabilitation report dated January 28, 2015, the counselor noted that she contacted appellant's former employer, but there were no jobs available due to appellant's medical restrictions. She identified the positions of an information clerk, general clerk, or security guard as within the restrictions established by Dr. Lucey on March 18, 2014. Appellant agreed to participate in a short-term human resources development program offered at the Guilford Technical College to enhance his employability. In a letter dated February 18, 2015, OWCP approved the vocational rehabilitation training plan for appellant.

Appellant initially asserted that the physical requirements of the proposed positions were outside of his medical restrictions and those of the FCE. He indicated that he planned to pursue training in criminal justice/paralegal studies. However, the Board notes that the proposed position of a general clerk was in compliance with Dr. Lucey's restrictions set forth in his report dated March 18, 2014, in which he concurred with the findings of the FCE noting appellant could work light to medium capacity for eight hours a day. The Board finds that his actions establish that he failed to participate in vocational rehabilitation efforts.<sup>9</sup>

Appellant subsequently indicated that he had been involved in a nonwork-related automobile accident on April 23, 2015 and would not be able to participate in his rehabilitation plan due to injuries he sustained. In reports dated April 30 to August 28, 2015, the vocational rehabilitation counselor indicated that appellant would not meet with her, he would not follow up on job leads, nor would he participate in vocational rehabilitation at this time due to a car accident. She noted that appellant was noncompliant since the beginning of the rehabilitation plan. The Board finds that the evidence of record does not establish that appellant's failure to continue vocational rehabilitation was medically warranted.

Appellant submitted reports from Dr. Crawford, a chiropractor, who had treated him for injuries sustained in a motor vehicle crash on April 23, 2015. Dr. Crawford opined that appellant was physically unable to perform strenuous, repetitive duties or sit and stand for prolonged periods of time. On May 18, 2015 he diagnosed cervical, thoracic, and lumbar biomechanical improprieties with muscle ligament injuries, and arthritis spondylosis with degenerative disc syndrome. Dr. Crawford noted that appellant was totally disabled from work. The Board notes that section 8101(2) of FECA provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation

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<sup>9</sup> See *S.M.*, Docket No. 15-1236 (issued February 18, 2016).

by the Secretary.”<sup>10</sup> Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a “physician,” and his or her reports cannot be considered as competent medical evidence under FECA.<sup>11</sup> Dr. Crawford is not a physician as he did not diagnose a spinal subluxation demonstrated by x-ray. Thus, his reports are of no probative medical value and are insufficient to establish that, medically, appellant was unable to participate in vocational rehabilitation.

Also submitted was a June 30, 2015 report from Dr. Lucey which opined that appellant would be totally disabled for four to six weeks after surgery on July 15, 2015. However, he did not provide a rationalized opinion, supported by specific findings, clearly showing that appellant was disabled from all activity or that his medical condition prevented participation in vocational rehabilitation efforts.<sup>12</sup>

Prior to adjusting appellant’s compensation, OWCP advised him of the consequences of his failure to participate in vocational rehabilitation and provided him 30 days to participate or show good cause for his failure to participate. It specifically advised appellant that it did not have medical evidence sufficient to warrant discontinuance of vocational rehabilitation. Appellant did not, however, submit evidence showing good cause for his failure to participate. He argued that he wanted to pursue paralegal studies at a local community college. 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>13</sup> Appellant also maintained that the physical requirements of the proposed positions were outside of his medical restrictions and those of the FCE. However, Dr. Lucey determined that he could perform sedentary employment and noted that he concurred in the findings of the FCE noting appellant could work light to medium capacity for eight hours a day, such as that of a general clerk. The Board thus finds that OWCP properly reduced appellant’s wage-earning capacity to reflect what he would have earned had he cooperated with vocational rehabilitation. The reduction based on appellant’s failure to cooperate remains in effect until he complies in good faith with the direction of OWCP.

The rehabilitation counselor had identified the position of general clerk, with wages of \$529.00 per week. This represents the amount which would likely have been appellant’s wage-earning capacity had he undergone vocational rehabilitation. The job was a sedentary job, light strength level, sedentary, with occasional lifting of under 20 pounds and frequent lifting of under 10 pounds. The position is therefore found to be within the work restrictions of Dr. Lucey and the FCE. The medical evidence does not establish that the position was medically unsuitable. The Board has held that the medical evidence of record must show that an accepted condition, or a preexisting condition, prohibited appellant from performing the selected position.<sup>14</sup>

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<sup>10</sup> 5 U.S.C. § 8101(2).

<sup>11</sup> See *Susan M. Herman*, 35 ECAB 669 (1984).

<sup>12</sup> See *D.A.*, Docket No. 11-0871 (issued January 27, 2012); see also *C.P.*, Docket No. 15-0781 (issued April 5, 2016).

<sup>13</sup> See *B.A.*, Docket No. 11-0686 (issued October 14, 2011).

<sup>14</sup> See *S.B.*, Docket No. 15-0106 (issued March 15, 2016).

The Board finds that OWCP properly reduced appellant's compensation in this case. Had appellant completed vocational rehabilitation, he would have had the capacity to earn \$592.00 a week as a general clerk. OWCP may reduce his compensation in accord with the *Shadrick* decision to reflect his wage-earning capacity.<sup>15</sup>

On appeal appellant contends that OWCP failed to properly consider his injuries from a car accident and his subsequent recuperation. The Board has found, however, that the evidence of record does not establish that appellant's failure to continue vocational rehabilitation was medically warranted.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>16</sup> Section 10.617 and 10.618 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>17</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.<sup>18</sup> Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

Appellant requested an oral hearing by letter postmarked on November 17, 2015. This was more than 30 days after the October 14, 2015 OWCP decision. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>20</sup> Because the hearing request was untimely filed, appellant was not entitled to an oral hearing.

OWCP has the discretionary power to grant an oral hearing when a claimant is not entitled to one as a matter of right. It exercised this discretion in its December 18, 2015 decision, finding that appellant's contentions could be equally addressed by requesting reconsideration and submitting additional evidence. This basis for denying his request for a hearing was a proper

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<sup>15</sup> See *R.S.*, Docket No. 14-1484 (issued November 10, 2014); *Albert C. Shadrick*, 5 ECAB 376 (1953); 20 C.F.R. § 10.403(d).

<sup>16</sup> 5 U.S.C. § 8124(b)(1).

<sup>17</sup> 20 C.F.R. §§ 10.615, 10.616, 10.617.

<sup>18</sup> *Id.* at § 10.616(a).

<sup>19</sup> *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

<sup>20</sup> *William F. Osborne*, 46 ECAB 198 (1994).

exercise of OWCP's authority.<sup>21</sup> Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record.

**CONCLUSION**

The Board finds that OWCP properly reduced appellant's compensation under 5 U.S.C. § 8113(b) to reflect his wage-earning capacity had he continued to participate in vocational rehabilitation. The Board further finds that OWCP properly denied appellant's request for an oral hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 18 and October 14, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 7, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>21</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989).