

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

A.M., Appellant

and

**DEPARTMENT OF THE AIR FORCE, AIR
EDUCATION & TRAINING COMMAND,
RANDOLPH AIR FORCE BASE, TX, Employer**

**Docket No. 25-0627
Issued: August 11, 2025**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 9, 2025 appellant filed a timely appeal from February 26, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP has met its burden of proof to reduce appellant's wage-loss compensation to zero, effective February 26, 2025, pursuant to 5 U.S.C. § 8113(b), for failure to cooperate with the early stages of vocational rehabilitation without good cause.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the February 26, 2025 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On May 6, 2014 appellant, then a 44-year-old animal caretaker, filed a traumatic injury claim (Form CA-1) alleging that on May 3, 2014 he sustained multiple puncture wounds to his right hand when he was attacked by a dog in the recovery kennel, while in the performance of duty. Appellant's supervisor noted on the claim form that his payrate on the date he stopped work was unknown. Appellant returned to full-time modified duty on May 4, 2014. OWCP accepted the claim for right elbow and arm open wound without complications. It subsequently expanded the acceptance of the claim to include right carpal tunnel syndrome, right upper extremity cellulitis, radial styloid tenosynovitis, right hand open wound, right hand traumatic scapholunate ligament tear, right wrist other specific joint derangements, right hand palmar ganglion, and right shoulder superior labrum anterior to posterior (SLAP) lesion. It paid appellant wage-loss compensation on the supplemental rolls effective February 21, 2016, and on the periodic rolls effective April 3, 2016.

A May 17, 2023 functional capacity evaluation (FCE), conducted by physical therapist Adrian Cardona, indicated that appellant was unable to work in any capacity as he was not capable of lifting anything, and his maximum carry capacity was 15 pounds. The physical therapist also noted that appellant was unable to complete the functional mobility and functional dexterity portions of the examination.

In a May 24, 2023 report, Dr. Robert C. Lowry, a physiatrist, related appellant's physical examination findings. He stated that appellant's diagnoses included resolved open elbow/arm open wound, right carpal tunnel syndrome, resolved right traumatic hand cellulitis, right wrist traumatic ligament rupture, right wrist joint derangements, pronator tunnel syndrome, right lateral epicondylitis, right wrist ganglion, anxiety, SLAP right shoulder lesion, cervical spine sprain, chronic pain due to trauma, cervical radiculopathy, insomnia, and headaches. Dr. Lowry advised that appellant was disabled from his date-of-injury position as he was not capable of significant grip or related activity. He recommended that appellant be retrained for a sedentary position following recommendations from an FCE.

On May 31, 2023 OWCP referred appellant for vocational rehabilitation services based on Dr. Lowry's May 24, 2023 report finding him capable of performing sedentary work. It advised him that participation in vocational rehabilitation was mandatory, and that failure to comply could adversely affect his benefits.

In reports dated July 5 and August 16, 2023, Dr. Lowry repeated his prior findings and diagnoses.

A July 13, 2023 FCE, conducted by Mr. Cardona, determined that appellant was unable to work in any capacity as he could not lift anything, and his carrying capacity was 20 pounds. He also noted that appellant was unable to complete the functional mobility and functional dexterity portions of the examination.

On September 7, 2023 OWCP determined that the case was not in posture for vocational rehabilitation services as clarification was required regarding appellant's medical restrictions.

In a letter also dated September 7, 2023, OWCP requested clarification from Dr. Lowry regarding appellant's work capacity and work restrictions.

Dr. Lowry, in September 13 and October 31, 2023 reports, reiterated his prior findings and diagnoses. In a work capacity evaluation form (Form OWCP-5c) dated September 13, 2023, he provided permanent work restrictions, indicating appellant was capable of performing sedentary work for eight hours a day. Restrictions included walking and standing four hours each per day; no reaching above the shoulder; up to 40 pounds of pushing and pulling; up to 10 pounds of lifting; and no kneeling or squatting.

In letters dated November 2 and 7, 2023, OWCP referred appellant for vocational rehabilitation services based on Dr. Lowry's September 13, 2023 report finding him capable of performing sedentary work. It advised him that participation in vocational rehabilitation was mandatory, and that failure to comply could adversely affect his benefits.

A November 13, 2023 FCE, conducted by Mr. Cardona, found appellant was capable of working in a light-duty job, with maximum lifting and carrying of 10 pounds. He identified restrictions of no standing continuously for more than 18 minutes; no sitting continuously for more than 16 minutes; no continuous walking for more than 0.4 miles, up to 40 pounds pushing; up to 50 pound pulling; no balancing activities requiring standing or crouching; and no kneeling, crawling, crouching, stooping, tip pinching, key pinching, and palmar pinching.

In a letter dated January 8, 2024, the vocational rehabilitation counselor requested that appellant contact her to assist in developing a plan for his employment.

Dr. Lowry, in a January 17, 2024 report, reiterated findings and diagnoses from prior reports. He again found appellant was capable of performing sedentary work.

In a letter dated January 30, 2024, the vocational rehabilitation counselor noted that she attempted to reach appellant several times to schedule vocational assessment testing. She informed him that testing was scheduled for February 9, 2024 at 9:00 a.m. central standard time. Appellant did not attend the testing scheduled on February 9, 2024 due to a conflicting medical appointment.

On February 19, 2024 appellant underwent another FCE, conducted by Mr. Cardona, which did not indicate changes in work restrictions or ability to work in a light strength capacity.

In a February 28, 2024 report, Dr. Lowry related appellant's physical examination findings and reviewed the February 19, 2024 FCE. He stated that the FCE showed appellant was capable of performing sedentary work and could participate in retraining. In a work capacity evaluation form (Form OWCP-5c) of even date, Dr. Lowry found appellant was capable of working a sedentary job eight hours per day with restrictions. The restrictions included up to three hours per day of walking, standing, and repetitive wrist movement; up to two hours per day of reaching above the shoulder, twisting, and bending/stooping; no squatting or kneeling; up to one hour per day of climbing; up to four hours per day of lifting, pulling, and pushing up to five pounds; and a 15-minute break every hour. Dr. Lowry also noted that appellant had cognitive and memory difficulties.

In a rehabilitation action report (Form OWCP-44) dated March 20, 2024, the vocational rehabilitation counselor related that appellant was obstructing the rehabilitation effort as he failed to appear at scheduled meetings and failed to carry out agreed upon actions. The vocational rehabilitation counselor also noted appellant did not complete the World of Work Inventory assessment due to an anxiety attack during the assessment.

In a June 21, 2024 individual rehabilitation plan and job search plan agreement, the job goals of service clerk or sorter were identified. Appellant's transferable skills were noted to be based on his previous employment, interests, aptitudes, and physical demand level. The positions were found to be available within appellant's labor market. The average wage for a service clerk was noted to be \$767.70 per week and the average wage for a sorter was \$712.40 per week.

In a letter dated August 1, 2024, OWCP informed appellant that it had reviewed the plan developed by the rehabilitation counselor for his return to work as a sorter. It determined that the selected job of sorter was within his medical restrictions. OWCP advised appellant that after any necessary training or other preparation he would be provided with 90 days of placement services to achieve this goal. It informed him that he would have a wage-earning capacity of \$712.40 per week in this position. OWCP further advised appellant that if he did not fully cooperate with vocational services, it would be assumed that vocational services would have resulted in a wage-earning capacity and his compensation would be reduced in accordance with 20 C.F.R. § 10.519.

In letter dated October 25, 2024, OWCP warned appellant of the penalties under 5 U.S.C. § 8113(b) and 20 C.F.R. § 10.519 for failing to cooperate with vocational rehabilitation without good cause. It provided him 30 days to make a good effort to participate in the rehabilitation effort.

In a November 30, 2024 letter, Jamie Anderson, computer instructor, informed the vocational rehabilitation counselor that she met with appellant on September 17, 2024 to begin his training. She advised that she had been unable to meet with appellant since the initial September 17, 2024 meeting. On November 5, 2024 Ms. Anderson was instructed to place appellant's training on hold.

In a December 2, 2024 rehabilitation action report (Form OWCP-44), the vocational rehabilitation counselor advised that the vendor assigned to teach appellant computer skills reported that she had not heard from appellant.

The vocational rehabilitation specialist, in a December 3, 2024 status report (Form OWCP-3), related that the 30-day sanction letter had been issued to appellant on October 25, 2024. Appellant had not responded to the letter, participated in training, or contacted either the rehabilitation counselor or the school. The vocational rehabilitation specialist also noted that appellant rented a computer from the training facility which must be returned if training was not resumed.

OWCP received reports dated December 18, 2024 and January 7, 2025 from Dr. Lowry requesting expansion of the claim to include anxiety, insomnia, chronic pain due to trauma, cervical radiculopathy, and headaches. Dr. Lowry reiterated that appellant was not capable of any significant grip or related activity but was able to work in a sedentary position.

A December 19, 2024 vocational rehabilitation progress report noted that appellant had no contact with the rehabilitation counselor and had not returned to computer training.

In a January 3, 2025 rehabilitation action report, the rehabilitation counselor related that appellant's plan expired on December 31, 2024 and appellant continued to be unresponsive.

Dr. Lowry, in a January 7, 2025 report, reiterated that appellant was disabled from performing his date-of-injury job, but was capable of working in a sedentary position.

On January 9, 2025 OWCP received a November 20, 2024 from Robert Raposo, a certified physician assistant, advising that appellant was disabled from performing his date-of-injury job, but was capable of working in a sedentary position.

In a January 20, 2025 vocational rehabilitation progress report, the rehabilitation counselor noted that appellant's plan had expired, he had no contact with the rehabilitation counselor, and he did not return to computer training.

In a report dated February 5, 2025, Mr. Raposo and Carlos Orozco,³ diagnosed right upper limb carpal tunnel syndrome, right upper limb cellulitis, radial styloid tenosynovitis (de Quervain), right wrist ganglion, right elbow lateral epicondylitis, right wrist traumatic ligament rupture, right wrist other specific joint derangements, and cervical ligaments sprain. The report concluded that appellant was disabled from performing his date-of-injury position and that a Form CA-17 would be completed. However, appellant was capable of performing sedentary work, but could not perform typing. A February 5, 2025 Form CA-17 from Mr. Raposo found appellant was unable to perform any work.

A February 21, 2025 vocational rehabilitation progress report, the rehabilitation reiterated that appellant has had no contact with her and had not returned to computer training.

By decision dated February 26, 2025, OWCP reduced appellant's wage-loss compensation to zero, pursuant to 5 U.S.C. § 8113(b), due to his failure to cooperate with vocational rehabilitation. It related that appellant's failure to undergo the essential preparatory effort of vocational testing did not permit OWCP to determine what would have been his wage-earning capacity if he had in fact undergone testing and rehabilitation effort. OWCP further related that the reduction would continue until appellant had in good faith undergone the directed vocational testing or showed good cause for not complying.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proof to establish that the disability has ceased or lessened before it may terminate or modify compensation benefits.⁴ Section 8104(a) of FECA provides that OWCP may direct a permanently disabled employee to undergo vocational rehabilitation.⁵

Section 8113(b) of FECA⁶ provides that if an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of FECA, then OWCP "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 [or her]

³ It is unclear whether this individual is a physician.

⁴ See *C.C.*, Docket No. 23-0684 (issued May 12, 2026); *B.D.*, Docket No. 21-1301 (issued October 17, 2022); *E.W.*, Docket No. 19-0963 (issued January 2, 2020); *Betty F. Wade*, 37 ECAB 556, 565 (1986).

⁵ 5 U.S.C. § 8104(a); see also *C.C.*, *id.*; *A.L.*, Docket No. 22-0316 (issued January 10, 2023); *J.E.*, 59 ECAB 606 (2008).

⁶ *Supra* note 2.

wage-earning capacity in the absence of the failure,” until the individual in good faith complies with the direction OWCP.⁷

OWCP’s regulations, at 20 C.F.R. § 10.519, provide in pertinent part:

“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 --

‘(a) 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 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.

‘(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 nurse, interviews, testing, counseling, functional capacity evaluations [(FCE)], and work evaluations) OWCP cannot determine what would have been the employee’s wage-earning capacity.

‘(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, OWCP will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and OWCP will reduce the employee’s monetary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.’”⁸

ANALYSIS

The Board finds that OWCP improperly reduced appellant’s wage-loss compensation to zero, pursuant to 5 U.S.C. § 8113(b) and 20 C.F.R. § 10.519, effective February 26, 2025.

If the individual fails or refuses to continue to participate in a vocational rehabilitation effort after a suitable position has been identified, future monetary compensation will be reduced based on the potential earnings of the identified position, as this would likely have been the individual’s wage-earning capacity had he undergone vocational rehabilitation.⁹ But if the failure or refusal to participate occurred prior to the identification of a suitable job, during the early, but necessary stages of a vocational rehabilitation effort, OWCP is not in a position to determine what

⁷ *Id.* at § 8113(b); *J.S.*, Docket No. 22-0386 (issued October 19, 2022); *S.H.*, Docket No. 16-1827 (issued March 12, 2018); *R.M.*, Docket No. 16-0011 (issued February 11, 2016).

⁸ 20 C.F.R. § 10.519; *see B.D.*, *supra* note 4; *R.H.*, 58 ECAB 654 (2007).

⁹ *Id.*

would have been the individual's wage-earning capacity.¹⁰ Under this latter scenario, OWCP will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and therefore, the individual's prospective monetary compensation is reduced to zero.

Upon receiving medical evidence that appellant could work with restrictions, OWCP properly referred him for vocational rehabilitation services on November 2, 2023. On June 21, 2024 the vocational rehabilitation counselor identified the position of sorter as suitable for appellant based on his job history, medical restrictions, and the labor market survey. On August 1, 2024 OWCP notified him that it had approved 90 days of job placement services for the selected position of sorter. It informed appellant that it would likely reduce his compensation based on his ability to earn wages of \$712.40 per week as a sorter at the end of the 90-day period and that it was thus important for him to cooperate with vocational rehabilitation.

In an October 25, 2024 letter, OWCP advised appellant that the vocational rehabilitation counselor reported that appellant refused to participate in the vocational rehabilitation program. It explained that pursuant to 5 U.S.C. § 8113(b), if an individual without good cause fails to apply for and undergo vocational rehabilitation when directed, it may prospectively reduce the compensation based on what likely would have been the individual's wage-earning capacity had they not failed to apply for and undergo vocational rehabilitation. OWCP afforded appellant 30 days to contact the vocational rehabilitation counselor to make a good faith effort to participate in the rehabilitation effort or to provide good reasons for noncompliance, or the vocational rehabilitation effort would be terminated, and action would be initiated to reduce his compensation to reflect his probable wage-earning capacity. On February 21, 2015 the vocational counselor again confirmed that appellant had not contacted her and had not resumed vocational rehabilitation.

The facts of this case establish that the vocational rehabilitation counselor had identified the position of sorter as appellant's vocational goal and had also identified his potential earnings in this position. Therefore, pursuant to 20 C.F.R. § 10.519(a), OWCP should have reduced his future monetary compensation based on the amount which would likely have been his wage-earning capacity had he undergone vocational rehabilitation in the position of sorter. However, it improperly reduced appellant's wage-loss compensation to zero.¹¹

The Board finds that OWCP failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP improperly reduced appellant's compensation effective February 26, 2025, pursuant to 5 U.S.C. § 8113(b), for his failure to cooperate with the early stages of vocational rehabilitation.

¹⁰ 20 C.F.R. § 10.519(b); *see also S.V.*, Docket No. 20-0906 (issued February 11, 2021); *C.S.*, Docket No. 06-1612 (issued February 27, 2007).

¹¹ *T.R.*, Docket No. 24-0934 (issued December 20, 2024); *see also S.V.*, Docket No. 20-0906 (issued February 11, 2021).

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 11, 2025
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board