United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 26-0385**
	)	**Issued: September 15, 2026**
U.S. POSTAL SERVICE, POST OFFICE, Hicksville, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On March 17, 2026 appellant, through counsel, filed a timely appeal from a March 10, 2026 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to reduce appellant's wage-loss compensation to zero, effective September 30, 2025, pursuant to 5 U.S.C. § 8113(b), for failure to cooperate with the early stages of vocational rehabilitation without good cause; and

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

(2) whether appellant met his burden of proof to establish that his failure to cooperate with the early stages of vocational rehabilitation was justified.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.[3] The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 20, 1987 appellant, then a 27-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 13, 1987 he sustained a lumbar injury when delivering packages while in the performance of duty. He stopped work on April 14, 1987 and did not return. OWCP accepted the claim for lumbosacral strain, thoracic or lumbosacral neuritis or radiculitis, and displacement of lumbar intervertebral disc without myelopathy. It paid appellant appropriate wage-loss compensation benefits. On December 20, 1990 appellant underwent an OWCP-approved multi-level laminectomy and spinal fusion at L3-4, L4-5, and L5-S1 with internal placement of instrumentation and screws.[4]

On July 18, 2024 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF) and series of questions to Dr. Teresa Habacker, a Board-certified orthopedic surgeon, for a second opinion regarding the status of appellant's accepted employment-related conditions.

In a report dated July 23, 2024, Dr. Raj Tolat, a Board-certified physiatrist, diagnosed status post April 13, 1987 work injury and lumbar spine disc derangement post 1990 lumbar spine fusion. He conducted a physical examination and reported that appellant had decreased lumbar range of motion; negative bilateral straight leg raising; 2+ bilateral lower extremity reflexes; and 5/5 bilateral lower extremity muscle strength. Dr. Tolat related that appellant did not require formal physical therapy. He concluded that appellant should refrain from performing any activity that would further exacerbate his injury.

In a report dated August 19, 2024, Dr. Habacker noted that she reviewed appellant's history of medical treatment and the SOAF.[5] She related that appellant injured his back on April 13, 1987 when he stepped off a high curb and felt back pain. Dr. Habacker performed a physical examination and related that appellant had decreased lumbar range of motion, negative bilateral straight leg raising, and 5/5 bilateral lower extremity muscle strength. She determined that his work-related conditions had not resolved; however, appellant did not require further orthopedic treatment or physical therapy. Dr. Habacker explained that appellant could not return to his date-of-injury position, but could perform eight hours of sedentary/light-duty work with restrictions. She completed a work capacity evaluation (Form OWCP-5c) and found that appellant was capable of performing sedentary work. Dr. Habacker provided work restrictions which included no more

[3] Docket No. 99-0874 (issued April 13, 2000).

[4] Appellant underwent a nonwork-related left partial lumbar laminectomy on November 11, 1983.

[5] Dr. Habacker noted that appellant had undergone unrelated right rotator cuff repair surgery in April 2024 and was undergoing physical therapy twice a week for this condition.

than two hours of walking and reaching above the shoulder; no more than four hours of standing and reaching; no more than one hour of twisting/bending/stooping; no more than one hour operating a motor vehicle to/from work; no more than one hour of squatting, kneeling, and climbing; no more than 20 pounds of pushing, pulling, and lifting; and a 15-minute break every four hours.

Dr. Habacker, in September 19, 2024 addendum, clarified that appellant required a 15-minute break every four hours and that he could walk for up to two hours during every eight-hour shift. She concluded that appellant's work restrictions were permanent.

On October 8, 2024 OWCP referred appellant for vocational rehabilitation services. It advised him that participation in vocational rehabilitation was mandatory and that failure to comply could adversely affect his benefits.

In a report dated October 29, 2024, Dr. Tolat diagnosed lumbar spine disc derangement status post lumbar spine fusion. He reported physical examination findings of reduced lumbar range of motion, negative bilateral straight leg raising, no tenderness on palpation over the paraspinal musculature, and intact bilateral lower extremity sensation to light touch and pinprick. Dr. Tolat opined that appellant was 100 percent disabled from work.

In a July 21, 2025 letter, the vocational rehabilitation counselor advised appellant that she had left several messages for him on July 18 and 21, 2025, but that she had not received a return call. She further advised that she was scheduling a telephone conference with appellant for 11:00 a.m. on August 7, 2025.

In a rehabilitation action report (Form OWCP-44) dated June 6, 2025, appellant's vocational rehabilitation counselor noted that appellant's prior rehabilitation specialist had related that appellant did not want to participate in vocational rehabilitation services, as he could not work. In a Form OWCP-44 dated August 12, 2024, the vocational rehabilitation counselor noted that on August 11, 2025 she received a call from appellant who stated he was not interested in returning to work. The vocational rehabilitation counselor asserted that appellant was not cooperating with the vocational rehabilitation efforts.

In a letter dated August 28, 2025, 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 faith effort to participate in the rehabilitation effort.

In a report dated September 11, 2025, received by OWCP on September 23, 2025, Dr. Steven Ross, an osteopath and Board-certified physiatrist, disagreed with Dr. Habacker's conclusion that appellant could perform sedentary work. He related that appellant complained of pain aggravated by prolonged sitting. Dr. Ross related appellant's statements that his sitting and standing tolerance was limited to between 45 to 60 minutes. On physical examination of appellant's lumbar spine, he noted tenderness to palpation; flexion 60 degrees (normal 90 degrees), extension 15 degrees (normal 30 degrees), left rotation 25 degrees (normal 45 degrees), right rotation 25 degrees (normal 45 degrees), left side bending 15 degree (normal 25 degrees), right side bending 10 degrees (normal 25 degrees). Dr. Ross further related that manual motor testing was 4+/5 with bilateral hip flexion, sensory examination intact to light touch, and deep tendon

reflexes bilaterally symmetric. He concluded that appellant could continue taking his current medication on an as needed basis and follow up with a spine specialist or pain management specialist. Dr. Ross concluded that appellant was 100 percent disabled.

In a Rehabilitation Action Report dated September 29, 2025, the vocational rehabilitation counselor noted that appellant had not initiated any contact and she recommended case closure.

By decision dated September 30, 2025, OWCP reduced appellant's compensation to zero, effective that date, pursuant to 5 U.S.C. § 8113(b) and 20 C.F.R. § 10.519, for his failure to cooperate with the early stages of vocational rehabilitation without good cause. It determined that he had failed to participate in the essential preparatory effort of vocational rehabilitation and thus it was unable to determine what his wage-earning capacity would have been had he undergone testing and vocational rehabilitation. OWCP consequently reduced appellant's compensation to zero under 20 C.F.R. § 10.519.

On February 12, 2026 appellant, through counsel, requested reconsideration. Counsel submitted a revised September 11, 2025 report from Dr. Ross. In this report, Dr. Ross added that appellant would be unable to participate in the training, resume, and interview skills program he was offered. He explained that appellant's structurally-fused lumbar spine with ankyloses combined with limited sitting tolerance and pain exacerbation with static postures would make prolonged classroom participation impractical. Dr. Ross would require breaks beyond reasonable accommodation, and he would not be able to have meaningful participation or sustained benefit from training or resume interview skills programs. He concluded that participation in any of these programs would pose a reasonable risk of further functional impairment rather than therapeutic benefit.

In a report, dated October 29, 2025, received by OWCP on February 12, 2026, Dr. Julian J. Sonnenfeld, a Board-certified orthopedic surgeon, related that appellant could not return to work until further notice. He related that appellant underwent surgery on October 21, 2025 to treat the diagnoses of right upper extremity biceps tendinitis, right shoulder impingement syndrome, traumatic complete tear of the right rotator cuff, partial tear of the right subscapularis tendon, and history of rotator cuff repair. Dr. Sonnenfeld concluded that appellant would remain out of work until October 21, 2026.

By decision dated March 10, 2026, OWCP denied modification of the September 30, 2025 decision.

LEGAL PRECEDENT -- ISSUE 1

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.[6] Section 8104(a) of

[6] *See A.M.*, Docket No. 25-0627 (issued August 11, 2025); *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).

FECA provides that OWCP may direct a permanently disabled employee to undergo vocational rehabilitation.[7]

Section 8113(b) of FECA[8] 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] wage-earning capacity in the absence of the failure," until the individual in good faith complies with the direction of OWCP.[9]

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

[7] 5 U.S.C. § 8104(a); *see also A.M.*, *id.*; *C.C., id.*; *A.L.,* Docket No. 22-0316 (issued January 10, 2023); *J.E.,* 59 ECAB 606 (2008).

[8] *Supra* note 1.

[9] *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).

remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP."[10]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to reduce appellant's wage-loss compensation to zero, effective September 30, 2025, pursuant to 5 U.S.C. § 8113(b), for failure to cooperate with the early stages of vocational rehabilitation without good cause.

When determining whether OWCP properly reduced appellant's wage-loss compensation benefits based on his failure to participate in vocational rehabilitation, the Board must first analyze whether OWCP properly determined appellant's work restrictions and ability to work.[11] OWCP referred appellant to vocational rehabilitation based on the August 19, 2024 report and September 19, 2024 addendum from Dr. Habacker, OWCP's second opinion physician, who opined that appellant's continued to suffer partial disability as a result of accepted conditions. Dr. Habacker indicated that appellant could perform sedentary work with permanent restrictions. As her report and addendum were sufficiently rationalized and based on the objective findings of record, the Board finds that OWCP properly determined that Dr. Habacker's opinion represented the weight of the medical evidence.

OWCP also received reports dated July 23 and October 29, 2024 from Dr. Tolat who reported physical examination findings of reduced lumbar range of motion, negative bilateral straight leg raising, no tenderness on palpation over the paraspinal musculature, and intact bilateral lower extremity sensation to light touch and pinprick. Dr. Tolat opined that appellant was totally disabled. However, he failed to offer a rationalized opinion explaining why he found appellant totally disabled such that he was precluded from participation in vocational rehabilitation.[12] The Board notes that Dr. Tolat did not provide sufficient medical reasoning to support the level of disability found in his report. Dr. Tolat did not refer to sufficient examination findings or objective evidence to support his opinion on disability. Rather, he primarily relied on appellant's own reported symptoms and perceived ability to function. The Board has found that findings on examination are generally needed to support a physician's opinion that an employee is disabled.[13]

Based on Dr. Habacker's findings that appellant was not totally disabled from all work, but could perform sedentary work with restrictions, OWCP properly referred appellant to vocational rehabilitation. The vocational rehabilitation counselor reported her difficulty reaching him by telephone and his failure to meet with her. The vocational rehabilitation counselor also

[10] 20 C.F.R. § 10.519; *see B.D., supra* note 6; *R.H.,* 58 ECAB 654 (2007).

[11] *See L.C.*, Docket No. 24-0696 (issued September 20, 2024); *L.C.*, Docket No. 23-0145 (issued September 12, 2023); *J.S.*, Docket No. 22-0386 (issued October 19, 2022); *F.N.*, Docket No. 20-0435 (issued February 26, 2021); *L.C.*, Docket No. 12-972 (issued November 9, 2012).

[12] *See L.C.*, Docket No. 24-0696 (issued September 20, 2024); *D.S.*, Docket No. 17-1972 (issued July 24, 2018).

[13] *S.N.*, Docket No. 22-1297 (issued June 2, 2023).

documented appellant's statements that he did not wish to participate in vocational rehabilitation services because he was unable to work.

In an August 28, 2025 letter, OWCP advised appellant of the need to participate in vocational rehabilitation and the consequences of not participating under section 8113(b) of FECA and section 10.519 of its regulations. It afforded him 30 days to participate in vocational rehabilitation services or provide good cause for his noncompliance.

In response to the August 28, 2025 letter, appellant submitted a September 11, 2025 report from Dr. Ross who reviewed Dr. Habacker's report and disagreed with Dr. Habacker's opinion that appellant could perform sedentary work. Dr. Ross concluded that appellant was 100 percent disabled. He, however, failed to offer a rationalized opinion explaining why he found appellant totally disabled and unable to perform sedentary work.[14]

Appellant's lack of cooperation, without good cause, constitutes a failure to participate in the early, but necessary, stages of a vocational rehabilitation effort.[15] OWCP's regulations provide that, in such a case, it cannot be determined what would have been the employee's wage-earning capacity had there been no failure to participate, and it is assumed in the absence of evidence to the contrary, that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity.[16]

Appellant was given appropriate notification of the sanctions for continuing to refuse to cooperate with the rehabilitation program in the early stages, but failed, without good cause, to comply with these rehabilitation efforts. The Board finds, therefore, that OWCP properly reduced his compensation benefits on September 30, 2025 to zero for his failure to cooperate with vocational rehabilitation without good cause.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP establishes that appellant's wage-loss compensation should be reduced to zero, pursuant to 5 U.S.C. § 8113(b), for failure to cooperate with the early stages of vocational rehabilitation without good cause, the burden shifts to the employee to show that the failure to cooperate was reasonable or justified.[17]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish that his failure to cooperate with vocational rehabilitation was justified.

[14] *Id.*

[15] 20 C.F.R. § 10.519(b). *See also C.C.*, Docket No. 23-684 (issued May 12, 2025); *A.L.*, Docket No. 22-0316 (issued January 10, 2023); *E.W.*, Docket No. 19-0963 (issued January 2, 2020).

[16] *Id.* at § 10.519(c); *see M.D.*, Docket No. 23-0377 (issued June 5, 2023).

[17] *M.D.*, Docket No. 24-0239 (issued June 27, 2024).

Following the September 30, 2025 decision, on February 12, 2026 OWCP received a revised September 11, 2025 report from Dr. Ross. In this report, Dr. Ross explained that appellant's structurally-fused lumbar spine with ankyloses limited his ability to sit in static postures and would make prolonged classroom participation impractical. He further related that appellant would require breaks beyond a reasonable accommodation and would not be able to participate in a training program in any meaningful way. Dr. Ross concluded that participation in a vocational rehabilitation program would be of no therapeutic benefit and would pose a reasonable risk of further functional impairment.

The Board finds that Dr. Ross provided a conclusory opinion regarding appellant's ability to participate in the early stages of vocational rehabilitation. As previously noted, the early, but necessary stages of a vocational rehabilitation effort may entail meetings with an OWCP nurse, interviews, testing, counseling, FCE evaluations, and work evaluations. While Dr. Ross concluded that appellant's lumbar condition would make prolonged sitting impractical and that appellant would require breaks "beyond a reasonable accommodation," his opinion does not support that appellant was justified in not even attempting to participate in the essential preparatory efforts involved in the early stages of vocational rehabilitation. The Board also notes that to the extent that he is asserting that participating in vocational injury might cause appellant further injury, the Board has held that fear of future injury is not compensable.[18]

OWCP also received an October 29, 2025 report from Dr. Sonnenfeld. He noted that appellant had undergone a right shoulder surgical procedure on October 21, 2025 and that appellant could not return to work until October 21, 2026. Dr. Sonnenfeld, however, did not offer any opinion as to whether appellant's refusal to cooperate with the early stages of vocational rehabilitation was justified.

As the medical evidence is insufficient to establish that appellant's failure to cooperate with the early stages of vocational rehabilitation was justified, the Board finds that he has not met his burden of proof.

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 met its burden of proof to reduce appellant's wage-loss compensation to zero, effective September 30, 2025, pursuant to 5 U.S.C. § 8113(b), for failure to cooperate with the early stages of vocational rehabilitation without good cause. The Board also finds that appellant has not met his burden of proof to establish that his failure to participate in vocational rehabilitation was justified.

[18] *B.D.,* Docket No. 21-1301 (issued October 17, 2022); *D.T.,* Docket No. 19-1064 (issued February 20, 2020); *J.O.,* Docket No. 19-1047 (issued November 13, 2019); *Paul A. Clarke,* 43 ECAB 940 (1992).

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2026
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board