

8.8

MAINTENANCE FOR VOCATIONAL REHABILITATION

Section 8(g) of the LHWCA provides:

(g) Maintenance for employees undergoing vocational rehabilitation: An employee who as a result of injury is or may be expected to be totally or partially incapacitated for remunerative occupation and who, under the direction of the Secretary as provided by section 39(c) of this Act, is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed \$25 a week. The expense shall be paid out of the special fund established in section 44.

33 U.S.C. § 908(g).

Section 702.507(b) of the Regulations states that a maintenance allowance shall be terminated when it is shown to the satisfaction of the Director that a trainee is not complying reasonably with the terms of the training plan or is absenting himself without good cause from training so as to materially interfere with the accomplishment of the training objective. See 20 C.F.R. § 702.507(b).

The Office of Workers' Compensation Programs (OWCP) must properly terminate a claimant's vocational rehabilitation plan based upon a claimant's failure to cooperate with OWCP. Olsen v. Triple A Mach. Shops, 25 BRBS 40 (1991). See generally Howell v. Einbinder, 350 F.2d 442 (D.C. Cir. 1965).

Neither the LHWCA nor the Regulations provide for the reimbursement of moving or child care expenses associated with the implementation of an employee's vocational rehabilitation plan; rather, Section 8(g) of the LHWCA, and its implementing regulation, 20 C.F.R. § 702.507(a), unequivocally provide for a maximum maintenance allowance of \$25.00 per week to be paid to employees undergoing rehabilitation training. Olsen, 25 BRBS 41; see generally Banks v. Chicago Grain Trimmers Ass'n, 390 U.S. 459 (1968).

A claimant's psychological counseling and weight reduction programs are medical, rather than rehabilitative, expenses, and thus are not reimbursable under the claimant's vocational rehabilitation plan. Olsen, 25 BRBS 41; see generally Goldsmith v. Director, OWCP, 838 F.2d 1079, 21 BRBS 27 (CRT) (9th Cir. 1988).

Once a claimant enters into a Section 8(i) settlement, the claimant is no longer entitled to seek vocational rehabilitation services. Olsen v. General Engineering and Machine Works, 25 BRBS 169 (1991). The Board reached this conclusion relying on both Section 8(g) and Section 39(c)(1).

Section 39(c)(1) states that the Secretary shall “provide employees *receiving* compensation information on medical, manpower, and vocational rehabilitation and assist such employees in obtaining the best such services available.” (Emphasis added.) Section 8(g), in pertinent part, states that the employee “shall receive *additional compensation* necessary for his maintenance.” (Emphasis added.) The Board found that, taken together, the language of these sections contemplates that claimants currently must be receiving compensation under a continuing award in order to seek vocational rehabilitation services from the district director.