

# Vocational Rehabilitation



# Purpose

The purpose of vocational rehabilitation within the Division of Federal Employees' Compensation (DFEC) is to assist disabled employees who are covered by the Federal Employees' Compensation Act (FECA).

Vocational rehabilitation is part of DFEC's Disability Management process. The goal is to minimize the injured worker's (IW) disability and assist the claimant in returning to the workforce in suitable employment. Rehabilitation helps IW to become self-supporting and productive, and saves money by eliminating or reducing workers' compensation payments.

# Statutory Requirements

- The FECA (5 U.S.C. 8104) provides that a permanently disabled individual may be directed to undergo vocational rehabilitation. IW receives compensation while cooperating and participating in the rehabilitation process.
- The FECA (5 U.S.C. 8111) allows DFEC to pay an individual undergoing vocational rehabilitation additional compensation necessary for maintenance, not to exceed \$200 per month.
- The FECA (5 U.S.C. 8113) allows DFEC to prospectively reduce compensation in accordance with a claimant's wage-earning capacity if he or she refuses, without good cause, to undergo vocational rehabilitation.
- The FECA (5 U.S.C. 8113) provides restoration rights for injured employees and is administered by the Office Personnel Management.



# Roles and Responsibilities

- Supervisory Vocational Rehabilitation Program Specialist. Direct supervision of Lead Vocational Rehabilitation Program Specialist and Vocational Rehabilitation Program Specialists in the field throughout the 12 district offices.
- Lead Vocational Rehabilitation Program Specialist. The LVRS serves as the National Coordinator for DFEC's Vocational Rehabilitation Program and is responsible for overseeing all aspects of the VR Program, which includes serving as a professional resource and subject matter expert for the Rehabilitation Specialists located in the district offices. The LVRS assures that services are provided in accordance with DFEC policies and procedures.
- Rehabilitation Specialist (RS). RS responsibilities include, but are not limited to, the following: coordinating the assignment of Rehabilitation Counselors (RC) for specific cases; monitoring RC performance in correlation to both the contract specifications and the quality of service provided; providing guidance to RCs regarding VR services and course of action; reviewing RC reports for completeness and timeliness prior to authorizing payment of bills; communicating with Claims Examiners (CE) regarding the cases assigned for VR services; relaying important or time sensitive information to CEs so that action can be taken if needed; providing guidance to CEs on how to recognize when vocational services are necessary to assist the claimant with RTW; serving as a vocational resource to CEs; and providing solutions for RTW barriers.

# Roles and Responsibilities

Rehabilitation Counselor (RC). RC responsibilities include, but are not limited to, the following: coordinating any necessary medical rehabilitation services; evaluating the claimant's vocational abilities and transferable skills; recommending potential suitable and available occupational titles as the basis of potential earning capacity; facilitating employment placement including with the previous employer; arranging for vocational testing and training; developing and overseeing individual vocational re-employment plans; conducting labor market surveys; assisting the claimant with job-seeking skills such as resume building and interview techniques; identifying potential employers; arranging for specialized ergonomic job modification services; and making recommendations to RS and CE if a particular barrier is hindering the RTW effort.

Claims Examiner (CE). CE responsibilities include, but are not limited to, the following: referring appropriate cases for rehabilitation services; evaluating medical determinations in cases; responding to requests from RS or RC; reviewing rehabilitation plans for medical suitability; advising RS and RC of any changes in the medical or factual evidence which might alter any current course of action; issuing warning letters if non-cooperation occurs; and issuing notices of proposed actions and formal decisions pertaining to a claimant's entitlement to compensation.

# Dual Tracking

- CE has the option to take a dual track intervention approach on certain cases. A Field Nurse (FN) and RC may be assigned at the same time if there are specific and distinct goals for both.
- FN Intervention/Quality Case Management's (QCM) first effort is RTW with previous employer. If permanent work restrictions are identified and the agency does not provide a job offer or job accommodations, FN will recommend closure. On the closure report, FN will recommend vocational rehabilitation.



# Elements of Vocational Rehabilitation

- Initial Interview
- Placement with previous EA
- Medical Rehabilitation
- Guidance and Counseling
- Vocational Testing
- Training
- Placement with new agency
- Assisted Reemployment
- Follow-Up Services



# Placement with Previous Employer

- RC is instructed to contact EA before exploring other placement options. Advantages to placement with previous agency:
  - Quickest way to return IW to duties.
  - Reduces potential salary loss.
  - Preserves IW's pension and seniority rights.
  - Places IW in a familiar environment.
- If no response within 30 days or EA indicates re-employment not possible, RC moves to next phase of rehabilitation.





# Medical Rehabilitation

Medical Rehabilitation refers to those medical and related services necessary to correct, minimize or modify the impairment caused by a disease or injury so that the injured worker can return to an adequate level of function and employment. Thus, it is distinguished from actual medical treatment to cure or relieve the effects of the injury.

Various medical services can be provided during this phase:

- Intensive services provided in catastrophic claims;
- Functional Capacity Evaluations (FCE);
- Speech therapy, orthotics, prosthetics;
- Psychiatric counseling, drug addiction counseling;
- Housing and vehicle modifications



# Medical Rehabilitation

Occupational Rehabilitation Plans (ORPs): Services which help the IW RTW through the use of abbreviated workdays or altered job duties. There are two kinds of ORPs:

1. RTW: intended for claimants who were injured more than 60 days ago, have not worked for at least 30 days, and are returning to a particular job and employer with defined duties, including transitional duties. RTW ORPs are highly structured, job oriented, goal-directed, individualized, and interdisciplinary.
2. Work Readiness (WR): used when no specific job is available with a known employer. Services provided have the potential to improve the claimant's work options. They are designed to evaluate and treat the claimant's physical, behavioral, and vocational functions. These programs include real or simulated job-specific work tasks with modifications.

# Vocational Testing

- Testing and evaluation required for most IWs seeking a position with new agency.
- Testing consists of standard intelligence, educational, achievement and aptitude assessments.



# Training

- Utilized if:
  - IW has few transferable skills.
  - Wage earning gap between previous employment and potential position with new agency.
  - Period of training will enhance IW's employability.
- Types of Training:
  - Pre-vocational training is short-term and serves to upgrade basic skills such as literacy, but is not necessarily aimed at a specific occupation.
  - Formal training courses, or refresher courses, can be provided through business or trade schools, colleges, apprenticeship programs, tutoring, etc.
  - On-the-job training is another option for increasing the employability of the claimant.



# Placement with New Employer

Placement with New Employer is the phase of vocational rehabilitation during which an injured worker is provided services aimed at obtaining work with a different employer, other than the original EA, usually in the private sector (though another federal employer may also be an option).

- Placement plan:
  - Identifies at least two vocationally appropriate positions suitable to the work restrictions imposed that are reasonably available within IW's commuting area.
  - Provides a 90-day period to find work (extensions provided in rare instances).
  - Outlines the responsibilities of IW and RC.
- Assisted Reemployment:
  - The temporary wage subsidy incentive is intended to increase the number of job offers made to IWs, whose disability makes them difficult to place.

# Non-cooperation with Vocational Rehabilitation

- IW may fail to cooperate with vocational rehabilitation efforts in various ways.
- General examples of non-cooperation include:
  - Refusing or Impeding Training.
  - Refusing or Impeding Placement New Employer.
  - Refusing or Impeding Plan Development.
  - Refusing or Impeding Placement Previous Employer.



# Sanctions Under 5 U.S.C. 8113(b)

- Application of sanctions under 5 U.S.C. 8113(b) will result in suspension of compensation unless and until IW demonstrates cooperation with vocational rehabilitation efforts.
- Early vocational effort: failure to cooperate with the vocational rehabilitation effort at this stage results in a suspension of compensation to zero, based on the assumption that the vocational rehabilitation effort would have resulted in a RTW with no LWEC (in the absence of evidence to the contrary).



# Sanctions Under 5 U.S.C. 8113(b)

- During later stages when positions identified: failure to cooperate at this stage results in suspension to reduced compensation to reflect IW's earning capacity (that is, the salary level of the jobs as identified in the vocational rehabilitation plan).
- If IW later complies with DFEC's direction to undergo vocational rehabilitation after a formal decision has been issued suspending compensation under 5 U.S.C. 8113(b), compensation is reinstated prospectively at the previous rate. The effective date of reinstatement of the compensation is the date IW indicates in writing his/her intent to comply, as long as actual compliance is confirmed by RS or RC.



# Sanctions Under 5 U.S.C. 8115

- Refusing or impeding placement efforts: application under 5 U.S.C. 8115 will result in reduction of compensation based upon one of the positions identified in the placement plan.
- At the end of the 90-day placement period, RC submits a final report and identifies appropriate positions, whether or not IW participated or cooperated in placement efforts.
- CE issues a pre-reduction notice determining IW's wage-earning capacity prospectively under 5 U.S.C. 8115 based on one of these positions. After 30 days and considering any response to the pre-reduction notice, CE issues a final decision if appropriate.

# Actions Following 90-day Placement

- If employed, compensation benefits are reduced immediately upon RTW based upon the actual earnings in the new position. After working 60 days, CE will issue LWEC decision.
- If not employed, RC confirms that the identified positions are reasonably available in IW's commuting area. CE issues proposed reduction based upon one of the selected positions. After 30 days, final LWEC decision is issued and compensation is adjusted based upon LWEC.



# Loss of Wage Earning Capacity (LWEC)

- IW's actual earnings may be used to calculate reduced compensation if these earnings are found to fairly and reasonably represent his/her earning capacity.
- If IW does not RTW or if the earnings do not reasonably represent his/her earning capacity, benefits will be reduced on the basis of an estimated earning capacity, of a job not actually held by IW, but performed to a reasonable extent in the commuting area and suitable to IW's vocational background.



# Modification of LWEC Determination

- FECA Regulation has codified the longstanding ECAB case law establishing the following criteria for modifying a formal LWEC decision (17 ECAB 226):
  - The original rating was in error.
  - The claimant's medical condition has materially changed.
  - The claimant has been vocationally rehabilitated.



# Vocationally Rehabilitated

- EA should advise when IW has completed additional training, which resulted in change in job position and an increase in salary.
- Salary increase must be at least 25 percent more than the current pay of the job for which the claimant was rated.
- If EA is in doubt, notify OWCP anyway, so that OWCP can make a determination.



# Retirements and LWECs

- When IW receiving compensation on LWEC retires, EA compensation specialist should notify OWCP immediately of the retirement.
- Reason: Potential dual entitlement issue and IW must elect to continue LWEC or elect OPM benefits.
- Prompt reporting prevents overpayments.



# Questions

A permanently disabled individual may be directed to undergo vocational rehabilitation. The injured worker will receive compensation while cooperating and participating in the rehabilitation process. If the injured worker refused, without good cause, to undergo vocational rehabilitation, DFEC may prospectively reduce compensation in accordance with their wage-earning capacity.

- a) True
- b) False

# Questions

When a rehabilitation counselor is first exploring placement options for an injured worker, they are asked to first try and place the injured worker with:

- a) A new employer
- b) The previous agency the employee worked for at the time of injury
- c) All of the above



# Questions

To help place an injured employee, vocational training may be utilized if the:

- a) Injured worker has few transferrable skills.
- b) Wage-earning gap between previous employing and potential position with new agency is large.
- c) Period of training will enhance the injured worker's employability.
- d) All of the above

# Questions

There are instances when an injured worker may fail to cooperate with vocational rehabilitation efforts. All of the following are examples of non-cooperation except:

- a) Refusing or impeding training
- b) Refusing or impeding the receipt of compensation due to the injured worker
- c) Refusing or impeding placement with new employer
- d) Refusing or impeding plan development
- e) Refusing or impeding placement with previous employer

# Questions

If an injured worker is not employed after 90 days of placement services or if the earnings do not reasonably represent his/her earning capacity, the benefits will be reduced based on the estimated earning capacity of a job not held by the injured worker. This job should be performed to a reasonable extent in the commuting area and suitable to the injured worker's vocational background.

- a) True
- b) False

# Questions

Once a formal loss of wage earning capacity decision is issued in a case, that decision can be modified for all the following reasons except:

- a) The original rating was in error.
- b) The claimant calls the claims examiner to request a modification.
- c) The claimant's medical condition has materially changed.
- d) The claimant has been vocationally rehabilitated.

# Take Away Tips

- 1) The goal of vocational rehabilitation is to minimize the injured worker's disability and assist the claimant in returning to the workforce in suitable employment.
- 2) The FECA provides that a permanently disabled individual may be directed to undergo vocational rehabilitation. The injured worker receives compensation while cooperating and participating in the rehabilitation process.
- 3) The claims examiner has the option to take a dual track intervention approach on certain cases. A field nurse and rehabilitation counselor may be assigned at the same time if there are specific and distinct goals for both.
- 4) The rehabilitation counselor is instructed to contact the employing agency before exploring other placement options. If there is no response within 30 days or the employing agency indicates re-employment not possible, the rehab counselor moves to next phase of rehabilitation.

# Take Away Tips

- 5) Testing and evaluation is required for most injured workers seeking a position with new agency. Testing consists of standard intelligence, educational, achievement and aptitude assessments.
- 6) Placement with new employer is the phase of vocational rehabilitation during which an injured worker is provided services aimed at obtaining work with a different employer, other than the original employing agency.
- 7) Application of sanctions for non-cooperation of vocational rehabilitation under 5 U.S.C. 8113(b) will result in suspension of compensation unless and until the injured worker demonstrates cooperation with vocational rehabilitation efforts.
- 8) FECA Regulation has codified the longstanding ECAB case law establishing the following criteria for modifying a formal LWEC decision (17 ECAB 226): The original rating was in error; the claimant's medical condition has materially changed; or the claimant has been vocationally rehabilitated.