

## Vocational Rehabilitation Getting the Injured Employee back to Work

Kristin Coyle, VHA  
VISN 1 Program Specialist

---

---

---

---

---

---

---

---

### Purpose of Voc Rehab

- The purpose of the OWCP rehabilitation program is to assist disabled employees who are covered by the Federal Employees' Compensation Act with their disabilities and return to gainful work. Rehabilitation helps injured workers to become self-supporting and productive, and saves money by eliminating or reducing workers' compensation payments.

---

---

---

---

---

---

---

---

### Vocational Rehabilitation Management

- OWCP Rehabilitation Specialists (RSs) and Claims Examiners (CEs) in the FECA district offices carry out the program with the assistance of private and public agency rehabilitation providers, physicians, and employers, making sure that eligible workers receive the rehabilitation services best designed to return them to suitable work, preferably with little or no loss of earnings

---

---

---

---

---

---

---

---

### Emphasis of Vocational Rehabilitation

- Early referral and evaluation of all
- Injured workers who need services; case management standards to ensure that plans are efficient good quality; flexible to provide the widest range of services from private and public rehabilitation agencies.
- Preference for reemployment with the previous employer; and placement of workers in jobs where disability does not prevent them from competing with non-disabled employees.

---

---

---

---

---

---

---

---

### Legislative and Regulatory Authority Four Parts

- Federal Employees' Compensation Act 5 U.S.C. 8101 et seq. and Code of Federal Regulations (CFR) Title 20, parts 1-25, establish a worker's right to rehabilitation benefits and responsibility to undertake a program when so directed.

---

---

---

---

---

---

---

---

### Statutory Regulation

- Section 8104 of the FECA provides that a permanently disabled individual may be directed to undergo vocational rehabilitation.
- Section 8111 of the Act allows the Office to pay an individual undergoing vocational rehabilitation additional compensation necessary for maintenance, not to exceed \$200 per month.
- Section 8113 of the Act allows the Office 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

---

---

---

---

---

---

---

---

### Regulatory Requirements

- The Code of Federal Regulations discusses the vocational rehabilitation services provided at 20 C.F.R. §10.518. Additionally, the actions taken when the employee refuses to cooperate with vocational rehabilitation are discussed at 20 C.F.R. §10.519, and the method used for determining compensation after services are provided is discussed in 20 C.F.R. §10.520

---

---

---

---

---

---

---

### Rehab Counselor Responsibility

- Evaluating the claimant's vocational abilities and transferable skills; facilitating employment placement including with the previous employer; arranging for vocational testing and training;
- Meets with injured employee about return to work and reviews prior work history and education.

---

---

---

---

---

---

---

### Rehabilitation Plans

- Conducting labor market surveys; formulating a vocational re-employment plan; assisting the claimant with job-seeking skills such as resume building and interview techniques; arranging for specialized ergonomic job modification services; and making recommendations to the RS and CE if a particular barrier is hindering the return-to-work effort

---

---

---

---

---

---

---

### CE's Responsibility

- Referring appropriate cases for rehabilitation services; evaluating medical determinations in cases; responding to requests from the RS or RC; reviewing rehabilitation plans for medical suitability; issuing warning letters if non-cooperation occurs; and issuing notices of proposed actions and formal decisions pertaining to a claimant's entitlement to compensation.

---

---

---

---

---

---

---

---

### IW Responsibilities

- The IW is required to ensure full compliance of the Voc Rehab program; be responsive to the RC (including returning calls, appear for meetings, respond to request for info, undergo voc testing); maintain a "C" average; attend classed regularly and provide proof of grades/certificates; perform all job searches presented; keep a log of job searches; attend job fairs; schedule and attend interviews.
- IW must be flexible and realistic with changes in shifts, salary, new work environment and be willing to explore new occupations outside of the Federal government.

---

---

---

---

---

---

---

---

### Compensation Entitlement during Voc Rehab

- Compensation for Wage Loss.
- Retirement Benefits
- Schedule Awards.
  - Payment of the award, however, should usually be deferred until the completion of rehabilitation, since often a claimant will opt to receive OPM benefits concurrently with a schedule award, and concurrent receipt of OPM and OWCP benefits is prohibited during a period in which vocational rehabilitation services are being provided.
  - What if the claimant is already receiving a schedule award?

---

---

---

---

---

---

---

---

### Restoration Rights

- Section 8151 of the FECA provides civil service retention rights who have recovered either fully or partially and who can perform the duties of the original job or its equivalent.
- The EA must: restore a permanent employee (i.e., one with career or career-conditional status) who recovers within one year after beginning compensation to that position or its equivalent.
- Make all reasonable efforts to place the employee in his or her former or an equivalent position in accordance with 5 U.S.C. 8151 if the employee has fully recovered after one year.
- OPM has jurisdiction and is responsible for enforcing this section. See *Pedro Beltran*, 44 ECAB 222 (1992) and *Charles J. McCuiston*, 37 ECAB 193 (1985)

---

---

---

---

---

---

---

---

### What Happens Next

- 5 C.F.R. §302, 330 and 353 requires agencies to grant leave without pay (LWOP) for at least the first year the injured worker is receiving compensation.
- A terminated claimant who wishes to reclaim his or her job should contact the EA within 30 days.
- Issues pertaining to retention rights should be referred to the EA or OPM

---

---

---

---

---

---

---

---

### Voc Rehab Referrals

- The CE Should: ensure adequacy of the medical reports and they are current. If work capacity is questionable OWCP 5 should be issued.
- No response from treating doctor a second opinion should be scheduled.
- Have the PD in the record, report of physical and psychological requirements.
- No outstanding medical issues.

---

---

---

---

---

---

---

---

### Criteria for Referral

- The medical evidence must:
  - Support a minimum of a 4 hour per day work capacity.
  - The medical condition should be stable
  - Accepted condition is present and disabling.
  - Capable of at least sedentary work, defined by the DOT
- If the claimant can perform date of injury position:
  - Placement in voc rehab is not appropriate.

---

---

---

---

---

---

---

---

### Services Provided

- Initial Interview
- Placement with Previous Employer
- Medical Rehabilitation
- Guidance and Counseling
- Vocational Testing and Work Evaluations
- Vocational Training
- Placement with New Employer
- Follow-up Services

---

---

---

---

---

---

---

---

### What is the DOT?

- The DOT is: the Dictionary of Occupational Titles.
- These definitions indicate the absence or presence and frequency of the physical demand components requested on the OWCP-5b and OWCP-5c.

---

---

---

---

---

---

---

---

### DOT Chart

Rating	Occasionally	Frequently	Constantly
Sedentary	*-10	*	N/A
Light	*-20	*-10	*
Medium	20-50	10-25	*-10
Heavy	50-100	25-50	10-20
Very Heavy	100+	50+	20+

\*=negligible weight; = Not Applicable

---

---

---

---

---

---

---

---

### DOT Definitions Strength Level

- **Sedentary Work:** involves sitting most of the time, may involve walking or standing for brief periods of time
- **Light Work** negligible amount of force constantly to move objects, mostly sitting
- **Medium Work:** involves exerting 20 to 50 pounds of force occasionally or 10 to 25 pounds of force frequently
- **Heavy Work:** involves exerting 50 to 100 pounds of force occasionally, or 25 to 50 pounds of force frequently
- **Very Heavy Work:** involves exerting in excess of 100 pounds of force occasionally, or in excess of 50 pounds of force frequently

---

---

---

---

---

---

---

---

### Nurse Referral and Dual Tracking

- The FN may recommend a vocational rehabilitation referral at the end of nurse services.
- Active FN cases may be referred for dual tracking. The referral will be for Medical Rehabilitation and usually be limited to 3 months for concurrent services.
  - In these cases, the restrictions may not be completely defined. As a result, full plan development cannot begin immediately.

---

---

---

---

---

---

---

---

### Further Dual Tracking

- The FN will focus on the medical aspects of the case, and the RC will focus on the vocational aspects of the case. Once the claimant has stable and well-defined restrictions, nurse intervention will cease .

---

---

---

---

---

---

---

---

### Limited Referrals

- If the claimant is only able to perform part-time or sub-sedentary work, but for a non-employment-related condition post DOI.
- For claimants who cannot work 8 hours per day.
- An Occupational Rehabilitation Program (ORP) may be appropriate when the specific work limitations are unknown or sub-sedentary
  - Options: FCE, work hardening etc.

---

---

---

---

---

---

---

---

### Possible Outcomes of Voc Rehab

- Return to Work with the Previous Employer
- Refusal of Suitable Work with the Previous Employer
  - Due Process
  - Termination of Benefits
  - Decision should not be modified even is condition worsens.
- Return to work with a new employer
- Constructed WEC Decisions

---

---

---

---

---

---

---

---

### Training

- Training must fit the injured.
- Short-term (six months to two years) training should be considered first, since it is more likely to be cost-effective, and requires a lesser commitment on the part of the worker.
- Longer-term training, such as college training (usually limited to two years), minimal loss of earning capacity.

---

---

---

---

---

---

---

---

### 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 authorized up to 1 year.

- GED
- several-week course that upgrades basic computer
- Formal training (vocational training) not beyond 2 years.
  - Business School, Trade School
  - Apprenticeship
  - College (claimant shows exceptional ability) no longer than two years,

---

---

---

---

---

---

---

---

### Time and Costs

- Training. The overall limit for vocational training is two years .Exceptions can be made in very severe injury cases
- Prevocational training is limited to one year without extension.
- Plans in which total cost of the rehabilitation plans in excess \$20,000 require approval of the DD.

---

---

---

---

---

---

---

---

### Employment Placement

- Placement with previous employer
  - Interruptions. PPE may be interrupted or extended beyond 120 days when surgery, the need for medical treatment, or a change in work limitations warrants.
- Placement new employer

---

---

---

---

---

---

---

---

### Plan Development

- Medically Suitable - The job requirements must not exceed the claimant's work abilities.
- Vocationally Suitable- The targeted positions are vocationally suitable.
- Reasonable Availability-Vocationally suitable for the claimant are also available in sufficient numbers to make successful placement reasonable.
- Job do not have to be currently available.

---

---

---

---

---

---

---

---

### Examples of Voc Rehab

- Intensive services provided in catastrophic claims. This can be done in coordination with the FN and can include setting up home health care, arranging for medical transport, etc.
- Functional Capacity Evaluations (FCE), work hardening, or any other physical therapy program aimed at producing work tolerance limitations.
- Speech therapy, orthotics, prosthetics
- Psychiatric counseling, drug addiction counseling, pain management clinics.
- Housing and vehicle modifications.

---

---

---

---

---

---

---

---

### Medical Rehabilitation

- Medical rehabilitation refers to those medical services necessary to correct, minimize or modify the impairment caused by a disease or injury with the goal of returning the injured worker 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.
- Medical rehabilitation may include services such as physical, occupational or speech.
- Therapy, orthotics, prosthetics, psychiatric counseling, occupational rehabilitation programs (ORPs) and others.

---

---

---

---

---

---

---

---

### Examples of medical rehabilitation supervised

- an injured worker who has been bedridden for a prolonged period for a job-related fracture needs physical therapy to restore stamina and flexibility to return to work;
- a worker with a stroke precipitated by job stress is depressed and needs limited psychiatric counseling.

---

---

---

---

---

---

---

---

### Serious Conditions Requiring Long-Term Medical Rehabilitation.

- In cases of catastrophic conditions such as spinal or brain injuries, amputations, severe burns, etc., intensive medical rehabilitation services are required and are initially provided in a hospital setting.
- Injured workers covered under the FECA, the RS can recommend early referral of these cases to nurses familiar with rehabilitation who serve as liaisons between the injured workers, CEs and medical teams and who encourage return to work when appropriate.

---

---

---

---

---

---

---

---

Effects of Substance Abuse

- (1) Ordinarily, inpatient care will be limited to a one-time 28-day stay at a reputable facility, though in unusual circumstances additional inpatient care may be authorized. The facility selected should be within 25 miles of the claimant's residence wherever feasible.
- Outpatient treatment may be recommended by itself or as a follow-up measure to inpatient care. Such treatment may be authorized when recommended by the attending physician, as may medications prescribed to alleviate the effects of addiction. Likewise, counseling in a group setting may be undertaken at OWCP expense.

---

---

---

---

---

---

---

---

Effect on Vocational Rehabilitation

- The claimant should be notified that non-completion of the program, or continued abuse of the substance after the treatment ends, may result in suspension of compensation benefits under 5 U.S.C. 8113 at the salary level of the job which is the goal of the vocational rehabilitation plan .
- Any suspension of benefits will continue until the claimant reenters a program and/or discontinues use of the substance.

---

---

---

---

---

---

---

---

Non-Cooperation and Sanction Decisions

- Refusing or Impeding Placement Previous Employer The CE should provide the claimant with 30 days to begin cooperating with the vocational rehabilitation effort or show good cause for refusing to cooperate. Release of this letter satisfies the requirement to issue a pre-reduction notice to the claimant.

---

---

---

---

---

---

---

---

**Refusing or Impeding OWCP-  
Approved Training Program**

- CE will issue 30 warning letter
- If good cause not found compensation benefits will be reduced to reflect potential WEC.
- If the claimant later complies with the Office's direction to undergo vocational rehabilitation after a formal decision has been issued reducing compensation under Section 8113(b), compensation should be reinstated prospectively at the previous rate.

---

---

---

---

---

---

---

---

**Failure to Cooperate in Vocational  
Rehabilitation Efforts**

- If the claimant refuses or impedes reduction of monetary compensation benefits to zero.
- HB and OLI deductions stop.
- If injured employee later complies: compensation should be reinstated prospectively at the previous rate. HB/OLI coverage is to be reinstated retroactively to the date of termination.
- Election of OPM: Do not discourage as OWCP will issue final decision reducing compensation to zero .

---

---

---

---

---

---

---

---

**Assisted Reemployment**

- Assisted Reemployment will allow for three years of partial reimbursement of salaries to employers, other than the original employer and no subsidy may be offered the DOI employer.
- These wage subsidies to the employer plus the LWEC payment to the claimant shall never exceed the amount of compensation allowable 75% or 66 2/3%
- Should compensation be terminated (work-related disability ceases), wage subsidies to the employer should also be discontinued.
- The subsidy is not transferrable from one employer to another.

---

---

---

---

---

---

---

---

### Determining WEC Based on Constructed Position

- Vocational rehabilitation efforts do not succeed.
- Determining WEC Based on Constructed Position. In some situations, vocational rehabilitation efforts do not succeed, and the claimant's WEC must be determined on the basis of a position deemed suitable but not actually held. In making this determination, the test is whether the claimant's WEC based on the selected job appears reasonable, giving due regard to the factors specified in [5 U.S.C. 8115](#).

---

---

---

---

---

---

---

---

### Factors Considered for Constructed LWEC

- Factors Considered. Under section 8115 (a), the CE must consider the following aspects of the case in assessing suitability and availability:
- (1) The nature of the injury.
- (2) The degree of physical impairment (including impairments resulting from both injury-related and pre-existing conditions).
- (3) The usual employment.
- (4) The claimant's age.
- (5) Qualifications for other employment, including education, previous employment, and training as well as work limitations imposed by the injury-related and pre-existing impairments.
- (6) The availability of suitable employment

---

---

---

---

---

---

---

---

### How Does the CE select the Constructed Position

- The availability of the employment
- Reasonable availability of the jobs in that area.
- Lack of current job openings does not equate to a finding that the position was not performed in sufficient numbers to be considered reasonably available.
- CE will be given two jobs to pick from when issuing a constructed LWEC.

---

---

---

---

---

---

---

---

### Factors in Selecting a Constructed LWECE

- The availability of the employment :
- Usually evaluated with respect to the area where the injured employee resides at the time the determination is made, rather than the area of residence at the time of injury.
- When the employee voluntarily moves to an isolated locality with few job opportunities, the question of availability should be applied to the area of residence at the time of the injury.

---

---

---

---

---

---

---

---

### Other Factors for Issuing Constructed LWECE

- The CE has to take into consideration any pre-existing conditions and the work-related injury and its residuals.
- CE does not have to consider medical conditions subsequent to date of injury medical condition.

---

---

---

---

---

---

---

---

### Contact Information

Craig DeMello  
[Craig.DeMello@va.gov](mailto:Craig.DeMello@va.gov)

Kristin Coyle  
[Kristin.Coyle@va.gov](mailto:Kristin.Coyle@va.gov)

---

---

---

---

---

---

---

---