

## **Staudinger, Dennis**

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### **SUSPENSION OF BENEFITS (RCW 51.32.110)**

#### **Vocational benefits (RCW 51.32.099; RCW 51.32.110)**

Where the Department suspends benefits for failure to cooperate with a vocational program, the provisions of RCW 51.32.099(5) must first be applied to determine if the vocational plan interruption is beyond the control of the worker or whether it is the result of the worker's action. If it is determined that the vocational plan interruption is the result of the worker's action, analysis turns to RCW 51.32.110, the only authority to suspend benefits. ...*In re Dennis Staudinger, BIIA Dec., 12 15477 (2013)*

### **VOCATIONAL REHABILITATION**

#### **Suspension of vocational benefits (RCW 51.32.110(2); RCW 51.32.099(5))**

Where the Department suspends benefits for failure to cooperate with a vocational program, the provisions of RCW 51.32.099(5) must first be applied to determine if the vocational plan interruption is beyond the control of the worker or whether it is the result of the worker's action. If it is determined that the vocational plan interruption is the result of the worker's action, analysis turns to RCW 51.32.110, the only authority to suspend benefits. ...*In re Dennis Staudinger, BIIA Dec., 12 15477 (2013)*

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1 **IN RE: DENNIS L. STAUDINGER, JR. ) DOCKET NOS. 12 15477 & 12 15478**  
2 **CLAIM NO. AE-85830 ) DECISION AND ORDER**

3 **APPEARANCES:**

4  
5 Claimant, Dennis L. Staudinger, Jr., by  
6 The Walthew Law Firm, per  
7 Jonathan K. Winemiller

8 Employer, Custom Manufacturing & Design,  
9 None

10 Department of Labor and Industries, by  
11 The Office of the Attorney General, per  
12 William A. Garling, Jr., Assistant

13 In Docket No. 12 15477, the claimant, Dennis L. Staudinger, Jr., filed an appeal with the  
14 Board of Industrial Insurance Appeals on May 8, 2012, from an order of the Department of Labor  
15 and Industries dated March 8, 2012. In this order, the Department determined that vocational  
16 benefits were suspended effective March 8, 2012, for failure to cooperate. The Department order is  
17 **REVERSED AND REMANDED.**

18 In Docket No. 12 15478, the claimant, Dennis L. Staudinger, Jr., filed an appeal with the  
19 Board of Industrial Insurance Appeals on May 8, 2012, from a payment order of the Department of  
20 Labor and Industries dated March 9, 2012. In this order, the Department determined that time-loss  
21 compensation benefits ended March 8, 2012, because benefits were suspended. The Department  
22 order is **REVERSED AND REMANDED.**

**DECISION**

23 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for  
24 review and decision. The claimant and Department filed timely Petitions for Review of a Proposed  
25 Decision and Order issued on February 22, 2013, in which the industrial appeals judge reversed  
26 and remanded the orders of the Department dated March 8, 2012, and March 9, 2012.

27 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
28 no prejudicial error was committed. The rulings are affirmed.  
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1 The issue presented by these appeals and the evidence presented by the parties are  
2 adequately set forth in the Proposed Decision and Order. We have granted review to discuss the  
3 interplay between RCW 51.32.099(5) and RCW 51.32.110(2); apply those statutory provisions to  
4 the facts of this appeal; and make changes to the findings of fact and conclusions of law.

#### 5 **EVIDENCE PRESENTED**

6 Dennis L. Staudinger, Jr., sustained an industrial injury to his right foot on April 12, 2007, for  
7 which this claim was allowed. The claim was closed and then reopened. The claimant has been  
8 on time-loss compensation benefits since December 10, 2008, due to limitations caused by this  
9 industrial injury. In 2009, Robert K. Moore, VRC, a vocational rehabilitation counselor, was  
10 assigned to Mr. Staudinger's claim. He conducted an ability to work assessment and found that  
11 Mr. Staudinger did not possess the skills necessary to return to any form of gainful employment that  
12 he was physically capable of performing. During vocational plan development the job of help desk  
13 technician was identified as a suitable goal for retraining. Two years of community college courses  
14 were required to be completed at Lower Columbia College. An accountability agreement was  
15 signed by Mr. Staudinger as required by RCW 51.32.099(3)(a). The exact contents of this  
16 agreement are not in the record.

17 Mr. Staudinger completed the first academic quarter courses without any problems. During  
18 his second quarter of classes, he underwent emergency gall bladder surgery, a condition that was  
19 not accepted under this claim, missed some classes, and resulted in a grade of "Incomplete" in a  
20 required math class. Mr. Staudinger remained in compliance with his vocational plan because  
21 Mr. Moore was able to modify it so that the course could be completed during the next quarter,  
22 allowing the plan to be completed within the cost and time parameters originally established.  
23 RCW 51.32.099(5)(a). Mr. Staudinger completed that course and the next two quarters of classes.

24 However, in the fall of 2011, Mr. Staudinger developed shoulder and right foot problems, the  
25 latter of which was required surgery for a condition accepted under this claim. As a result, he failed  
26 three math and computer science classes that quarter. Without completion of these classes, he  
27 would not be employable as a help desk technician, nor could he be employed in related fields such  
28 as office manager. Unfortunately, because so little time (two quarters) was left in the duration of  
29 the plan, and because funds for classes were similarly limited, retaking them would extend the plan  
30 beyond the statutory time and money limits for the plan. Mr. Moore was not able to further modify  
31 the vocational plan or its goals such that it could be completed within the required time. He wrote a  
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1 vocational closing report stating that had the plan been completed, Mr. Staudinger would have been  
2 capable of working but instead he still was not. Mr. Moore testified that because the claimant did  
3 not meet the performance standards from the accountability agreement, it had been breached  
4 although Mr. Staudinger had made great efforts to overcome the problems as confirmed by the  
5 progress reports written by his instructors. The Department declared Mr. Staudinger to be  
6 non-cooperative with his vocational plan and suspended his benefits. Neither Mr. Moore, nor  
7 David Rosi, the claimant's class advisor and instructor at the college, could state any reason for  
8 concluding that a plan violation occurred other than the delays caused by the illnesses, which  
9 prevented Mr. Staudinger from completing the course work in the allotted time.

### 10 DISCUSSION

11 In the Proposed Decision and Order the industrial appeals judge determined that  
12 Mr. Staudinger had good cause, within the meaning of RCW 51.32.110(2), for failing to meet  
13 performance standards related to his vocational plan, such failure not being due to non-cooperation  
14 or obstruction on his part. The Department argues that RCW 51.32.099(5) must be applied to the  
15 facts before RCW 51.32.110(2). Therefore, the interruption in Mr. Staudinger's vocational plan  
16 must be considered as the result of his own actions and the suspension of his benefits affirmed.

17 RCW 51.32.110(2) states:

18 If the worker refuses to submit to medical examination, or obstructs the same, or, if  
19 any injured worker shall persist in unsanitary or injurious practices which tend to  
20 imperil or retard his or her recovery, or shall refuse to submit to such medical or  
21 surgical treatment as is reasonably essential to his or her recovery or refuse or  
22 obstruct evaluation or examination for the purpose of vocational rehabilitation or does  
23 not cooperate in reasonable efforts at such rehabilitation, the department or the  
24 self-insurer upon approval by the department, with notice to the worker may suspend  
25 any further action on any claim of such worker so long as such refusal, obstruction,  
26 noncooperation, or practice continues and reduce, suspend, or deny any  
27 compensation for such period: PROVIDED, That the department or the self-insurer  
28 shall not suspend any further action on any claim of a worker or reduce, suspend, or  
29 deny any compensation if a worker has good cause for refusing to submit to or to  
30 obstruct any examination, evaluation, treatment or practice requested by the  
31 department or required under this section.

32 RCW 51.32.099(5) states, in relevant part:

(a) As used in this section, "vocational plan interruption" means an occurrence which  
disrupts the plan to the extent the employability goal is no longer attainable . . .

1 (b) When a vocational plan interruption is beyond the control of the worker, the  
2 department or self-insurer shall recommence plan development. If necessary to  
3 complete vocational services, the cost and duration of the plan may include credit for  
4 that expended prior to the interruption. A vocational plan interruption is considered  
5 outside the control of the worker when it is due to the closure of the accredited  
6 institution, when it is due to a death in the worker's immediate family, or when  
7 documented changes in the worker's accepted medical conditions prevent further  
8 participation in the vocational plan.

9 (c) When a vocational plan interruption is the result of the worker's actions, the  
10 worker's entitlement to benefits shall be suspended in accordance with  
11 RCW 51.32.110 . . . . A vocational plan interruption is considered a result of the  
12 worker's actions when it is due to the failure to meet attendance expectations set by  
13 the training or educational institution, failure to achieve passing grades or acceptable  
14 performance review, unaccepted or postinjury conditions that prevent further  
15 participation in the vocational plan, or the worker's failure to abide by the  
16 accountability agreement per subsection (3)(a) of this section.

17 While both statutes discuss grounds for suspension for benefits, it is only under the authority  
18 of RCW 51.32.110(2) that benefits may be suspended. RCW 51.32.099(5) incorporates the  
19 suspension provisions of RCW 51.32.110(2). RCW 51.32.110 includes grounds for suspension of  
20 benefits arising from problems within the vocational process; RCW 51.32.099 provides more  
21 specific statements as to those grounds. The latter grounds are within the new vocational  
22 rehabilitation pilot program currently in effect. The Department is correct in its Petition for Review  
23 requesting that the Board analyze the facts of this case under RCW 51.32.099(5)(c) initially, before  
24 analyzing whether Mr. Staudinger had "good cause" for failing to cooperate with the vocational plan  
25 *See, In re Timothy Kelly*, Dckt. No. 11 21191 (November 28, 2012). We conclude that under the  
26 facts of this case, a suspension of benefits is not consistent with the provisions in  
27 RCW 51.32.099(5) and thus, we do not reach the "good cause" issue.

28 A suspension of benefits may be appropriate when a vocational plan interruption is the result  
29 of the worker's actions. RCW 51.32.099(5)(c). A suspension of benefits may also be appropriate  
30 when a worker fails to abide by the agreed expectations in the vocational plan accountability  
31 agreement. RCW 51.32.099(3)(a). Because Mr. Staudinger's vocational rehabilitation plan could  
32 no longer be completed within the allotted time and cost, it is undisputed that both the vocational  
plan was interrupted and the vocational accountability agreement violated. The circumstances that  
prevented completion of the plan and constituted the breach of the accountability agreement were  
the same: failing required courses which, because they occurred near the close of the plan when  
there was insufficient time and money available for plan modification, prevented its completion.

1 According to RCW 51.32.099(5)(b), documented changes in the worker's accepted medical  
2 conditions that prevent further participation in the vocational plan is a circumstance that results in  
3 the vocational plan interruption for reasons beyond the control of the worker. According to  
4 RCW 51.32.099(5)(c), unaccepted or post-injury conditions that prevent further participation in the  
5 vocational plan is a circumstance that categorizes the vocational plan interruption as being the  
6 result of the worker's actions. Suspension of the worker's benefits may be appropriate only in the  
7 latter instance, when the plan interruption is beyond the worker's control. According to Mr. Moore,  
8 Mr. Staudinger was cooperative throughout the life of the plan, with good attendance and good  
9 effort in his coursework, but it was the issues caused by his right foot surgery and shoulder  
10 problems that could not be overcome.

11 Mr. Staudinger's industrial injury was to his right foot. The gall bladder surgery that resulted  
12 in the earlier plan modification as well as the shoulder condition that arose later are unaccepted  
13 post-injury conditions within the meaning of RCW 51.32.099(5)(c). The right foot surgery was  
14 treatment for an accepted condition under this claim. The claimant's required surgical treatment for  
15 this accepted condition constitutes a documented change in an accepted medical condition within  
16 the meaning of RCW 51.32.099(5)(b). Because the right foot condition required surgical treatment  
17 and the shoulder condition did not, leads to the inference that the former condition was the more  
18 significant medical issue. RCW 51.32.099(5)(b) is the statute that is applicable under the  
19 circumstances of this case. Under the terms of that statute, suspension of Mr. Staudinger's  
20 benefits is not appropriate. Instead the Department must recommence plan development and  
21 reinstate time-loss compensation benefits. With regard to the limits for cost and time of a  
22 vocational plan, the Department should consider, if necessary to complete vocational services in  
23 this case, whether the cost and duration of the plan may include credit for that expended prior to the  
24 interruption as directed by RCW 51.32.099(5)(b).

25 Nothing in RCW 51.32.099(5) invalidates the good cause proviso in RCW 51.32.110(2).  
26 Nonetheless, we need not reach a conclusion about the existence of "good cause" in this case  
27 because no suspension is appropriate in this matter under the terms of RCW 51.32.099(5).  
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1 **FINDINGS OF FACT**

- 2 1. On July 12, 2012, an industrial appeals judge certified that the parties  
3 agreed to include the Jurisdictional Histories in the Board records solely  
4 for jurisdictional purposes.
- 5 2. Dennis Staudinger suffered an industrial injury to his right foot on  
6 April 12, 2007. The Department of Labor and Industries allowed his  
7 claim on April 30, 2007. The Department determined that  
8 Mr. Staudinger was entitled to time-loss compensation benefits  
9 beginning December 10, 2008, due to the limiting effects of his industrial  
10 injury. The Department approved a vocational plan to aid  
11 Mr. Staudinger in returning to work as a Help-Desk Technician. As part  
12 of the plan, Mr. Staudinger was to attend and complete classes at Lower  
13 Columbia College in order to obtain an AA degree in Technology  
14 Information. Mr. Staudinger was required to complete his classes within  
15 two years. Mr. Staudinger signed a vocational accountability agreement  
16 which mandated his cooperation with the vocational rehabilitation plan.
- 17 3. Mr. Staudinger started attending classes at Lower Columbia College in  
18 the fall of 2010. He gave good effort while participating in his vocational  
19 rehabilitation plan and had good attendance. However, during the  
20 winter quarter 2011, he underwent gallbladder surgery, which delayed  
21 the completion of a necessary math class and required modification of  
22 his vocational plan. He successfully completed this course as well as all  
23 courses in the next two quarters. During the fall quarter of 2011, he  
24 underwent right foot surgery due to his industrial injury, and he reported  
25 shoulder problems. As a result of those issues, he failed three courses  
26 during the fall quarter 2011. There was insufficient time and money  
27 available to modify and complete his vocational plan, which also  
28 breached the vocational accountability agreement.
- 29 4. On March 8, 2012, the Department suspended Mr. Staudinger's  
30 vocational benefits for failure to cooperate with vocational services.
- 31 5. On March 9, 2012, the Department ended Mr. Staudinger's time-loss  
32 compensation benefits because his benefits were suspended.

**CONCLUSIONS OF LAW**

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in these appeals.
2. The vocational plan was interrupted and the vocational accountability agreement breached because of documented changes in the worker's accepted medical conditions that prevented further participation in the vocational plan within the meaning of RCW 51.32.099(5)(b).

- 1 3. Because the vocational plan interruption and the breach of the  
2 vocational accountability agreement were beyond Mr. Staudinger's  
3 control, suspension of his benefits is not appropriate under  
4 RCW 51.32.110(2).  
5 4. The Department order dated March 8, 2012, is incorrect and is reversed.  
6 This claim is remanded to the Department to recommence plan  
7 development pursuant to RCW 51.32.099(5)(b), and thereafter for  
8 further action as indicated by the law and the facts.  
9 5. The Department order dated March 9, 2012, is incorrect and is reversed.  
10 This claim is remanded to the Department to reinstate time-loss  
11 compensation benefits as of March 9, 2012, and thereafter for further  
12 action as indicated by the law and the facts.

13 Dated: June 18, 2013.

14 BOARD OF INDUSTRIAL INSURANCE APPEALS

15 /s/ \_\_\_\_\_  
16 DAVID E. THREEEDY Chairperson

17 /s/ \_\_\_\_\_  
18 FRANK E. FENNERTY, JR. Member

19 /s/ \_\_\_\_\_  
20 JACK S. ENG Member