

Morse, Peter

VOCATIONAL REHABILITATION

Termination of vocational plan

The Department lacks authority to terminate a worker's vocational plan and end time(-loss compensation benefits solely on the basis that the worker is employable where the worker is actually and successfully participating in his approved vocational plan. ...*In re Peter Morse, BIA Dec., 13 25365 (2015)*

Scroll down for order.

1 Mr. Morse injured his right knee during the course of his employment in 2002. The injury
2 resulted in several surgeries including a total knee replacement and subsequent revision.
3 Mr. Morse worked as a brick mason after graduating from high school in 1981, and is limited by the
4 effects of the injury to sedentary employment. He was earlier found to be in need of vocational
5 services but selected Option 2 in 2009. The claim was reopened in 2011, and Mr. Morse was again
6 found eligible for vocational services. He signed an accountability agreement, which detailed
7 expectations regarding progress and attendance, among other factors. By signing the agreement,
8 Mr. Morse acknowledged that his failure to abide by the agreed expectations would cause
9 suspension of vocational benefits under RCW 51.32.110.
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11 A vocational plan was developed for the position of user support analyst. Mr. Morse was to
12 attend computer classes for approximately 19 months, from November 2012 until June 2014. The
13 record suggests that Mr. Morse was not overly motivated and was deemed by his vocational
14 counselors to be a high maintenance individual. However, he was regularly attending and
15 successfully passing his classes until he had trouble with two courses in June 2013, seven months
16 into the plan.
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18 A meeting to discuss the problems was held, probably on June 10, 2013, or June 11, 2013,
19 between Mr. Morse, his vocational counselor Sky Reynolds (who did not testify in this appeal,) and
20 someone from the school. Mr. Morse was told that he had to work harder and put in more time.
21 Exactly what Mr. Morse said in response is somewhat in dispute; he is the only person who
22 attended the meeting who testified in this appeal. His counselor's supervisor, Leslie Weaver,
23 thought from her discussions with Ms. Reynolds that Mr. Morse was not willing to work any harder
24 and refused to do so. According to Mr. Morse, he didn't refuse but conceded that he might have
25 said that he wouldn't spend more time in class. Ms. Weaver conceded that she never spoke to
26 Mr. Morse after the meeting or sought his perspective on what had happened at the meeting.
27 Mr. Morse continued to attend classes, but Ms. Weaver, based on her understanding that
28 Mr. Morse had violated his accountability agreement by refusing to fully participate, contacted the
29 claims manager, who directed her to take steps to determine Mr. Morse's employability based on
30 the courses he had already completed. Based on his training and a new labor market survey
31 completed on June 29, 2013, Mr. Morse was found to be employable in an entry-level help desk
32 position. The Department terminated the vocational plan and ended time-loss compensation
33 benefits on June 24, 2013, because Mr. Morse could work.
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3 **DECISION**

4 The Department did not have the authority to terminate the vocational plan and end time-loss
5 compensation benefits solely on the basis of Mr. Morse's employability while he was actively and
6 successfully participating in his approved plan. Mr. Morse's vocational plan is governed by
7 RCW 51.32.099, in which the Legislature directed the Department to implement a vocational
8 rehabilitation pilot program and articulated as one of its goals that eligible workers, "participate in
9 meaningful retraining in high-demand occupations" ¹ The statute imposes certain
10 responsibilities on injured workers who participate in an approved vocational plan. All vocational
11 plans under the program must contain an accountability agreement signed by the worker specifying
12 such factors as the attendance, progress, and performance expected of the worker. ² If a worker
13 fails to abide by the accountability agreement or disrupts the plan to the extent the employability
14 goal is no longer attainable, benefits are to be suspended under RCW 51.32.110. ³

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16 Besides imposing obligations on the worker, the statutory scheme also confers certain rights
17 to the worker. RCW 51.32.099(3)(e) provides that the worker **shall** receive temporary total
18 disability compensation while actively and successfully participating in a vocational plan (emphasis
19 added). Once Mr. Morse began an approved vocational plan, the Department had to continue
20 paying those benefits if he was actively and successfully participating in his vocational plan. It was
21 error for Department to terminate the vocational plan and end time-loss compensation benefits
22 because Mr. Morse was employable while he was actively and successfully participating in his
23 vocational plan.

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25 Ms. Weaver appears to have thought Mr. Morse had decided not to use his best efforts and
26 had violated his accountability agreement. If he had, the action would have been to suspend
27 benefits under RCW 51.32.110. We note that RCW 51.32.110 requires that a worker be notified of
28 the intention to suspend benefits and permits a worker to show good cause for the action taken. ⁴ If
29 the Department considered that Mr. Morse had violated his accountability agreement, or had
30 disrupted the plan to the extent the employability goal was no longer attainable, he should have
31 been given notice; an opportunity to show good cause for any violation; and the potential to cure

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¹ RCW 51.32.099(1)(a).

46 ² RCW 51.32.099(3)(a).

47 ³ RCW 51.32.099(3)(a); RCW51.32.099(5)(c).

⁴ See *In re Dennis Staudinger*, BIIA Dec.,12 15477 (2013).

1 the violation and have any suspension lifted.⁵ Instead, his vocational plan and time-loss
2 compensation benefits were summarily terminated.
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4 We assume that it must have been clear at the inception of the plan, at least to the
5 vocational experts if not Mr. Morse, that Mr. Morse could be found employable for an entry-level
6 help desk position after seven months of schooling. But the parties agreed to a 19-month plan for
7 the position of user support analyst, presumably a better paying job, and in accord with the
8 Legislature's goal of providing meaningful retraining in high-demand occupations.
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10 If the Department could take the action it took here, the initial vocational plan would be
11 meaningless, and would allow the potential for bait-and-switch operations in which a worker agrees
12 to a meaningful vocational retraining plan of up to two years in duration and in good faith abides by
13 the mandatory accountability agreement, only to be told after a few months he or she is employable
14 in some job that does not require as much training, or pay as much, as the original goal. It also has
15 the potential to put injured workers at the mercy of claims managers or vocational counselors who
16 could end vocational plans and terminate time-loss compensation benefits without providing the
17 worker with any notions of basic fairness.
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19 Based the record, we cannot determine if the original employability goal remains attainable,
20 and therefore whether a vocational plan interruption has occurred.⁶ The plan was not interrupted
21 due to the worker's actions because Mr. Morse was actively and successfully participating in his
22 plan when the Department terminated it. Mr. Morse is entitled to the continuation of his vocational
23 plan if possible. On remand, the Department shall reinstate Mr. Morse's time-loss compensation
24 benefits, and take further action under the facts of this appeal.
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26 **FINDINGS OF FACT**

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- 28 1. On April 15, 2014, an industrial appeals judge certified that the parties
29 agreed to include the Jurisdictional History in the Board record solely for
30 jurisdictional purposes.
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 - 32 2. Peter L. Morse sustained an industrial injury on May 7, 2002, when he
33 injured his right knee after jumping off an embankment and some
34 scaffolding. The injury required several surgeries including total right
35 knee replacement surgery on March 3, 2008, and a subsequent
36 revision.
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45 ⁵ See, RCW 51.32.110(2); *Anderson v. Weyerhaeuser*, 116 Wn. App. 149 (2003).

46 ⁶ See, RCW 51.32.099(5).
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