

In the Matter of the Vocational Assistance Dispute of
Knutzen, Loy , Claimant

Contested Case No: HH01-033

AMMENDED PROPOSED & FINAL ORDER

April 3, 2002

LOY KNUTZEN, Petitioner
SAIF CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

Administrative Law Judge Paul Vincent conducted a telephone hearing in this matter on June 31, 2001. Petitioner Loy Knutzen (claimant or Knutzen) appeared with his attorney J. Michael Casey. Respondent SAIF Corporation (insurer or SAIF) appeared through attorney John Motley. The Workers' Compensation Division (WCD) waived appearance. The petitioner appeals an administrative order by the Workers' Compensation Division, Rehabilitation Review Unit (the director or RRU) finding claimant ineligible for vocational assistance. Testimony was taken from Loy Knutzen, Darrel Holmes and Robert Crymes.

The record of this proceeding, consisting of a tape recording of the hearing, all evidence received, and all hearing papers filed, has been considered. The findings of fact and conclusions of law are based upon the entire record.

ISSUE

The issue is whether claimant's vocational goal of building inspector is a suitable goal under ORS chapter 656 and OAR chapter 436.

EVIDENTIARY RULINGS

WCD Exhibits 1-28 were admitted into the record without objection. Petitioner's Exhibits 10A, 10B, 13A, 26A and 26B were admitted into the record without objection. The record closed at the hearing's conclusion.

FINDINGS OF FACT

I adopt the findings of the Administrative Order issued by RRU in this matter on January 31, 2001. (Ex. 27). I also make the following supplementary findings: Claimant was employed as a permanent, year-round green chain puller for P & M Cedar Products (P&M) when he was injured on-the-job in 1997. Insurer accepted L4-5 disc herniation on the left and L5-S1 left-sided neural element compromise as disabling. Temporary total disability was based on a weekly wage of \$453.20. There has been a 67 cent per hour raise for green chain pullers. Claimant was awarded 25 percent unscheduled permanent partial disability (PPD) through a Notice of Closure dated January 20, 1999. The award was increased to 37 percent unscheduled PPD by an August 9, 1999 Order on Stipulation.

Claimant's previous work history prior to injury included green chain puller, chaser, fire fighter, logger and ball mill operator. Claimant has completed school through eighth grade.

On April 6, 1999, insurer's vocational eligibility consultant, Areta Sturges of Sturges Consulting (Sturges), completed an eligibility evaluation report and recommended claimant receive vocational services. (Ex. 4). On May 12, 1999, insurer found claimant eligible for vocational services. (Ex. 5).

During vocational counseling with Sturges, claimant identified a vocational goal of building inspector or project manager/cost estimator. Claimant took entrance exams at Chemeketa Community College (Chemeketa) for building inspector and at Northwest Technical for cost estimator. He also participated in an information interview for potential on-the-job training as a cost estimator.

On February 29, 2000, Sturges sent claimant a counseling letter in regard to his failure to receive scores on his Chemeketa tests that would qualify him for the Building Inspection program. Claimant was informed that he would have to pass an alternate Writing test. (Ex. 10). Claimant did so. (Testimony of Claimant).

In a March 30, 2000 vocational evaluation report, Sturges again reported that claimant had chosen vocational goals of building inspector and cost estimator. Sturges recommended that claimant be made eligible for ATP status. (Ex. 11).

On June 9, 2000, Chemeketa sent Sturges a notification that claimant had been accepted into the building inspector program for fall term 2000, but that after discussing claimant course schedule with him, "we decided that additional courses (courses other than those required for the program) were needed for Mr. Knutzen to be successful in his academic pursuit." (Ex. 12). Chemeketa advised claimant to enroll in Writing Skills and College Textbook Reading courses. (Ex. 12).

On June 20, 2000, Sturges completed a labor market survey for claimant's identified vocational goal of building inspector. Of thirteen employers that responded to the survey, three indicated that claimant would be qualified for employment after completing training at Chemeketa. The other ten employers all noted that they required "A Level" certification, whereas successful completion of the Chemeketa program would only qualify claimant for a "B Level" certification. They would only hire claimant if they were certain claimant could qualify for A Level certification within 6 months of hire.

Sturges also contacted the director of the Chemeketa Building Inspection program, Darrel Holmes. He informed Sturges that the Chemeketa two-year program prepares students for B Level certification, and a student can then sit for A Level certification within six months to one year of hire. He also noted that Chemeketa's experience is that employers will settle for B Level inspectors. He also explained the difference between the one-year Building Inspector program, which only qualifies students for a single certification, and the two-year Building Inspector program, which qualifies students for multiple B level certifications and A level certification. (Ex. 13). The State of Oregon Buildings Code Division reviewed claimant's application and

found that upon completion of an approved 2-year building inspection program at Chemeketa claimant would be eligible to sit for eight different examinations. (Ex. 17).

On June 28, 2000, claimant passed a GED examination. The GED score sheet provides individual percentile scores for various subject matter. Claimant's writing score was placed in the 19th percentile, his social studies score in the 55th percentile, his science score in the 26th percentile, literature and arts score in the 55th percentile, and his math score in the 25th percentile.

Sturges administered a General Aptitude Test Battery (GATB) to claimant. On July 6, 2000, Sturges' test report indicated that claimant's scores for general learning ability was between low and below average. His scores for numerical and verbal aptitudes were below average. Mr. Sturges found that the *Dictionary of Occupational Titles* indicates that success in the occupational field of building inspector requires above average general learning ability and numerical aptitude, and average verbal ability. (Ex. 16). Even allowing for one standard error measurement to claimant's scores, Sturges found that claimant had a "low" aptitude for the vocational objective of building inspector. Generally, the probability for success for someone with a "high" score is about 75%, for medium it is about 50%. It is much lower than 50% for someone with a low aptitude. (Ex. 18-2; Testimony of Robert Crymes).

On July 27, 2000, SAIF notified claimant that it would not approve a return-to-work goal of building inspector for claimant "based on the information received from employers in the labor market survey and your tested aptitudes." (Ex. 19).

On August 28, 2000, Sturges prepared a report identifying alternative vocational goals for claimant. Sturges found that claimant had an identifiable aptitude and interest for the occupations of forest conservation, corrections road crew supervisor, and employment at Oregon Safety and Health Administration (OSHA). (Ex. 21).

Claimant has consistently stated that he is very motivated to succeed in the Chemeketa building inspector program. Claimant has researched publications such as *JA Jobs Available* which lists jobs available as a building inspector throughout the United States. Claimant is willing to locate outside of the state of Oregon upon completion of training to obtain employment. (Ex. 27; Testimony of Claimant).

FINDINGS OF ULTIMATE FACT

Claimant's vocational goal of building inspector is not suitable.

OPINION AND CONCLUSIONS OF LAW

Standard of Review

I may modify the director's order only if it: violates a statute or rule; exceeds the statutory authority of the agency; was made upon unlawful procedure; or was characterized by an abuse of discretion or clearly unwarranted exercise of discretion. ORS 656.283(2)(c). In determining whether one of those criteria exists, I may admit evidence, which was not before RRU, and make

independent findings of fact. *Colclasure v. Washington County School District No. 48-J*, 317 Or 526, 537 (1993); *Joseph A. Richard*, 1 WCSR 3 (1996); see also *Timothy W. Stone*, 1 WCSR 378 (1996). The burden of proof rests on the proponent of that fact or position. ORS 183.450(2).

Claimant asserts that RRU erred by placing too much emphasis on his test scores in finding that the vocational goal of building inspector is not suitable. Insurer argues that RRU was correct on the facts and law and should be affirmed. It was readily apparent from the record and testimony presented at hearing that the claimant is highly motivated to complete the training program that he seeks. However, I agree with the insurer that the record supports the insurer's and RRU's decision that the desired program is inappropriate.

RRU correctly stated that the purpose of training is to prepare the worker for suitable employment as defined by the applicable administrative rules. OAR 436-120-0440(1) states that "A training plan assists a worker to obtain suitable employment." Suitable employment is defined by OAR 436-120-0005 which provides:

- (9) Suitable employment or "suitable job" means employment or a job:
 - (a) For which the worker has the necessary physical capacities, knowledge, skills, and abilities;

Thus, a training program must be designed to prepare a worker for employment or a job for which the worker has the necessary physical capacities, knowledge, skills and abilities. Both insurer and RRU were reasonably persuaded that claimant's test scores do not indicate he is likely to succeed in the Chemeketa program. While claimant passed the entrance exam for the building inspector program at Chemeketa, the college also recommended that claimant complete additional coursework before starting the building inspector program. More persuasively, the vocational aptitude testing performed by Sturges indicate that the GATB, a standardized indicator of likely success in a occupation, indicates that claimant's scores were significantly deficient in several of the areas necessary for success in the field of building inspection, even with the benefit of error in measurement. Based on these factors, I find that the chosen training program would not lead to employment for which the claimant has the necessary knowledge, skills or abilities.

The claimant also disagrees with RRU's decision that the Sturges labor market survey supports a finding that a reasonable labor market exists for the desired vocational goal. I agree with insurer that RRU did not err. Pursuant to OAR 436-120-0410(6):

- (a) A labor market is needed when ... there are questions about a worker's specific limitations, training and skills, which must be addressed with employers to determine if a reasonable labor market exists.

The labor market survey persuasively document that employer's have a preference for A Level inspectors, which claimant would not have upon completion of training at Chemeketa. While Mr. Holmes stated that it is the experience of the Chemeketa program that employers will hire workers with "B" level certification, he was not able to provide any documented statistics for the success of the program in placing graduates. Like RRU, I am persuaded that the Sturges

labor market survey should be given more weight than the statements of Holmes.

ATTORNEY FEE

Claimant has not prevailed at this contested case hearing and his attorney is therefore not entitled to a fee. ORS 656.385(1).

ORDER

IT IS HEREBY ORDERED that the RRU's order in this matter, dated January 31, 2001, is affirmed.

DATED this 3rd day of April, 2002.

By: _____
Paul Vincent, Hearing Officer
Hearing Officer Panel