

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

1 **IN RE: DAVID J. DEJONGE**) **DOCKET NO. 12 18304**
2)
3 **CLAIM NO. AA-79960**) **DECISION AND ORDER**

4 **APPEARANCES:**

5 Claimant, David J. DeJonge, by
6 Williams, Wyckoff & Ostrander, PLLC, per
7 Dane D. Ostrander

8 Employer, Shoreline Condominiums, LLC,
9 None

10 Department of Labor and Industries, by
11 The Office of the Attorney General, per
12 Scott A. Douglas, Assistant

13 The claimant, David J. DeJonge, filed an appeal with the Board of Industrial Insurance
14 Appeals on July 13, 2012, from an order of the Department of Labor and Industries dated
15 June 21, 2012. In this order, the Department suspended time-loss compensation benefits as
16 provided by RCW 51.32.110, effective June 21, 2012, for failure to comply with the accountability
17 agreement or plan interruption due to the worker's own actions as stated in RCW 51.32.099. The
18 Department order is **REVERSED and REMANDED.**

19 **ISSUES**

- 20 1. Was the vocational plan interrupted as a result of Mr. DeJonge's actions within
21 the meaning of RCW 51.32.099(5), warranting the suspension of benefits as
22 provided by RCW 51.32.110(2)?
- 23 2. Did Mr. DeJonge fail to abide by the Worker Accountability Agreement he
24 signed on November 9, 2011, within the meaning of RCW 51.32.099(3)(a),
25 warranting the suspension of benefits pursuant to RCW 51.32.110(2)?

26 **OVERVIEW**

27 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
28 review and decision. The Department filed a timely Petition for Review of a June 26, 2013
29 Proposed Decision and Order, in which the industrial appeals judge reversed the June 21, 2012
30 Department order. The claimant filed a Response on August 23, 2013.

31 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
32 no prejudicial error was committed. The rulings are affirmed.

1 The industrial appeals judge determined that Mr. DeJonge had good cause within the
2 meaning of RCW 51.32.110 for failing to continue with his vocational retraining program. She
3 reversed the Department order suspending benefits and remanded with direction to reinstate
4 time-loss compensation benefits effective June 21, 2012. We agree that the Department should
5 not have suspended Mr. DeJonge's time-loss compensation benefits, but we do not agree with
6 the industrial appeals judge's analysis.

7 The Department suspended Mr. DeJonge's benefits for failure to comply with the
8 vocational accountability agreement, per RCW 51.32.099(3), and because the vocational plan
9 was interrupted due to the worker's own actions, per RCW 51.32.099(5). The industrial appeals
10 judge stated the issue as whether the suspension of time-loss compensation benefits was correct
11 under RCW 51.32.099. However, she analyzed the evidence and entered findings and
12 conclusions exclusively under RCW 51.32.110(2), with no discussion of the accountability
13 agreement or whether the vocational plan was interrupted due to Mr. DeJonge's own actions
14 within the meaning of RCW 51.32.099. Her starting point should have been RCW 51.32.099 as
15 explained in our recent Decision and Order, *In re Dennis L. Staudinger, Jr.*, Dckt. No. 12 15477
16 (June 18, 2013).

17 In addition, as the Department says in its Petition for Review, it was inappropriate to direct
18 the reinstatement of time-loss compensation benefits as of June 21, 2012, under the vocational
19 statute, RCW 51.32.095. The industrial appeals judge relied on *In re Judith F. Evans*, Dckt.
20 No. 07 23750 (March 5, 2009) as authority for doing so. For clarity, we will refer to this case as
21 *Evans 2*, because it refers back to a prior appeal in *In re Judith F. Evans*, Dckt. No. 05 20452
22 (April 9, 2007), which we will call *Evans 1*.

23 In *Evans 1*, the claimant appealed an August 22, 2005 Department order affirming a
24 March 16, 2005 order that suspended benefits effective January 13, 2004, because the claimant
25 refused to cooperate with vocational rehabilitation. We reversed the Department order, holding
26 that the Department could not suspend benefits retroactively. We directed the Department to
27 reinstate "Ms. Evans' right to benefits effective January 13, 2004, and to provide any benefits to
28 which she would have been entitled . . . from January 13, 2004, forward." *Evans 1*, at 16.

29 In *Evans 2*, the self-insured employer appealed Department orders imposing penalties for
30 the unreasonable delay of benefits. In affirming those orders, we discussed the prior appeal.
31 Neither *Evans 1* nor *Evans 2* has any application here, for the following reasons.

1 In *Evans 1*, the date of the order under appeal was August 22, 2005, and the effective date
2 for the suspension of benefits was January 13, 2004. Thus, in *Evans 1*, the entire period of
3 January 13, 2004, through August 22, 2005, was before us. In contrast, in the current appeal, the
4 date of the Department order and the effective date for the suspension of benefits are the same,
5 June 21, 2012. Our scope of review does not extend beyond the date of the order under appeal.

6 Furthermore, Mr. DeJonge was unable to continue with the vocational retraining plan due
7 to his accepted neurogenic bladder condition that required further treatment. As Mr. DeJonge's
8 vocational witness, Karin Larson, testified that the proper approach was to close vocational
9 services until Mr. DeJonge reached maximum medical improvement and might once again be
10 able to participate in vocational rehabilitation. He therefore could not have been entitled to time-
11 loss compensation benefits while "actively and successfully undergoing a formal program of
12 vocational rehabilitation" under RCW 51.32.095(3)(a), as determined by the industrial appeals
13 judge.

14 At the same time, the Department has already determined that Mr. DeJonge is
15 unemployable without retraining, so he is likely entitled to time-loss compensation benefits under
16 RCW 51.32.090. But that determination is for the Department to make. The only issue before us
17 in this appeal is whether time-loss compensation benefits should have been suspended under
18 RCW 51.32.099 and RCW 51.32.110(2) as of June 21, 2012. The answer is no. The June 21,
19 2012 order is therefore reversed and the claim is remanded to the Department to vacate its
20 suspension order and take further action consistent with this order.

21 DECISION

22 RCW 51.32.099(3) provides:

23 (3)(a) All vocational plans must contain an accountability agreement
24 signed by the worker detailing expectations regarding progress,
25 attendance, and other factors influencing successful participation in the
26 plan. Failure to abide by the agreed expectations shall result in
27 suspension of vocational benefits pursuant to RCW 51.32.110.

28 WAC 296-19A-100(1)(j) fleshes out the required elements of an accountability agreement.

29 RCW 51.32.099(5) provides, in relevant part:

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

1 (b) . . . A vocational plan interruption is considered outside the control of
2 the worker when . . . documented changes in the worker's accepted
3 medical conditions prevent further participation in the vocational plan.

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

13 RCW 51.32.110(2) provides:

14 [I]f any injured worker shall...refuse or obstruct evaluation or examination
15 for the purpose of vocational rehabilitation or does not cooperate in
16 reasonable efforts at such rehabilitation, the department or the
17 self-insurer upon approval by the department, with notice to the worker
18 may suspend any further action on any claim of such worker so long as
19 such refusal, obstruction, noncooperation, or practice continues and
20 reduce, suspend, or deny any compensation for such period:
21 PROVIDED, That the department or the self-insurer shall not suspend
22 any further action on any claim of a worker or reduce, suspend, or deny
23 any compensation if a worker has good cause for refusing to submit to or
24 to obstruct any examination, evaluation, treatment or practice requested
25 by the department or required under this section.

26 We have recently discussed the interplay between RCW 51.32.099 and RCW 51.32.110(2)
27 in *In re Dennis L. Staudinger, Jr.*, Docket No. 12 15477 (June 18, 2013). The industrial appeals
28 judge in *Staudinger* did the same thing the industrial appeals judge did here—she analyzed the
29 evidence under RCW 51.32.110(2) without reference to RCW 51.32.099. The Department
30 petitioned for review and we held:

31 The Department is correct in its Petition for Review requesting that the
32 Board analyze the facts of this case under RCW 51.32.099(5)(c) initially,
before analyzing whether Mr. Staudinger had "good cause" for failing to
cooperate with the vocational plan. See, *In re Timothy Kelly*, Dckt.
No. 11 21191 (November 28, 2012). We conclude that under the facts of
this case, a suspension of benefits is not consistent with the provisions in
RCW 51.32.099(5) and thus, we do not reach the "good cause" issue.

33 *Staudinger*, 8-9.

34 With this legal framework in mind we turn to a review of the evidence. Mr. DeJonge was
35 born on March 8, 1978. He finished the ninth grade and later received his GED. He has always
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1 worked in construction and was injured in an 18-foot fall from a ladder on October 13, 2006,
2 causing multiple problems, including a low back condition and a related neurogenic bladder
3 condition. The Department has accepted that Mr. DeJonge cannot return to work as a
4 construction laborer. DT Raymond North developed a vocational retraining plan involving a two-
5 year academic program at Grays Harbor Community College with the goal of becoming a
6 construction project manager. The Department approved the plan in late 2011, and the first day
7 of classes was April 9, 2012. As part of the plan approval process Mr. DeJonge signed a Worker
8 Accountability Agreement on November 9, 2011, Exhibit No. 2. Mr. DeJonge last attended
9 classes on April 20, 2012. The question is whether he failed to abide by the accountability
10 agreement and whether the interruption of the vocational plan was the result of his actions.

11 Mr. DeJonge's neurogenic bladder condition, which causes a sense of urgency and a need
12 for multiple trips to the bathroom, is critical to the resolution of this appeal. On August 19, 2011,
13 the Department denied responsibility for the neurogenic bladder condition. Mr. DeJonge
14 protested on October 3, 2011. On October 5, 2011, the Department indicated it would reconsider
15 the order. On November 29, 2011, the Department affirmed the August 19, 2011 order. On
16 January 26, 2011, Mr. DeJonge appealed to this Board. On June 4, 2012, we issued an Order on
17 Agreement of Parties directing the Department to accept responsibility for the condition. On
18 June 8, 2012, the Department issued a ministerial order to that effect. On June 14, 2012,
19 Mr. North submitted a closing report indicating Mr. DeJonge was non-cooperative with vocational
20 rehabilitation and the Department suspended benefits on June 21, 2012.

21 **Daniel Mark Brown, M.D.:** Mr. DeJonge presented the testimony of his urologist,
22 Daniel Mark Brown, M.D., who diagnosed the neurogenic bladder condition on March 31, 2011,
23 and has been treating Mr. DeJonge ever since. In his opinion, the neurogenic bladder was
24 caused by Mr. DeJonge's low back condition related to the industrial injury.

25 Dr. Brown detailed multiple problems caused by the urinary frequency associated with the
26 condition. He said the condition was unstable as of June 21, 2012, and required further treatment
27 to get it under control before Mr. DeJonge could participate in a retraining program. The
28 Department presented no medical evidence to rebut Dr. Brown's opinions.

29 **Charles Regets, Ph.D.:** The claimant presented the testimony of Charles Regets, Ph.D.,
30 a psychologist who performed a battery of tests on August 9, 2012, and diagnosed a learning
31 disorder. He said the course requirements for the construction project manager program
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1 Mr. DeJonge was enrolled in would be overwhelming for him. In his opinion, Mr. DeJonge would
2 not be able to complete the retraining plan.

3 The Department presented little in rebuttal, relying on the vocational testimony of
4 Mr. North, who relied on the testing performed by another vocational counselor, Jamie Hodge, on
5 May 19, 2009. Dr. Regets pointed out the problems with reliance on Ms. Hodge's limited testing
6 and noted that Ms. Hodge had completed a report on February 15, 2013, saying she would defer
7 to Dr. Regets. Mr. North was not aware of Ms. Hodge's February 15, 2013 report. He did
8 acknowledge that Ms. Hodge's results were inconsistent with Dr. Regets' testing and conclusions.

9 **Robert G. R. Lang, M.D.:** The claimant presented the testimony of Robert G. R.
10 Lang, M.D., regarding his low back condition. Dr. Lang first saw Mr. DeJonge on January 10,
11 2012, on referral from Scott Haga, the physician's assistant who had signed off on the vocational
12 plan. Based on Mr. DeJonge's clinical findings and a December 1, 2011 MRI, Dr. Lang
13 diagnosed a bilateral disc protrusion at L3-4 with pain into the legs, as well as mechanical back
14 pain. Because there was evidence of retrolisthesis, Dr. Lang also obtained x-rays to check for
15 instability and said there looked like there might be some abnormal movement. According to
16 Dr. Lang, Mr. DeJonge's L3-4 disc protrusion was caused at least in part by the industrial injury.

17 Dr. Lang imposed physical restrictions, which he said would still have applied in
18 June 2012, when benefits were suspended. He testified that due to his low back condition
19 Mr. DeJonge could not have driven to Astoria, Oregon, as required for part of his training
20 program, without being provided overnight accommodations. Dr. Lang also assisted Mr. DeJonge
21 in obtaining a disabled parking pass, before classes began, after Mr. DeJonge visited the campus
22 and noted the difficulties he was likely to encounter. On the application, Dr. Lang checked the
23 box indicating that Mr. DeJonge was "severely limited in ability to walk due to arthritic,
24 neurological, or orthopedic condition." Dr. Lang has been providing ongoing treatment in the form
25 of injections, which suggests that, like the neurogenic bladder, the back condition was not stable
26 in June 2012.

27 **George Harper, M.D.:** The Department's only medical witness was George Harper, M.D.
28 He addressed Mr. DeJonge's low back condition but deferred to others regarding his neurogenic
29 bladder condition. Dr. Harper evaluated Mr. DeJonge on January 16, 2010, more than two years
30 before the relevant time period. His opinions are not persuasive for several reasons.

1 First, his testimony is contrary to the position the Department has already taken by
2 approving a vocational retraining plan. Dr. Harper said Mr. DeJonge could return to work as a
3 construction worker, the job of injury. But in approving vocational retraining, the Department was
4 first required to go down the list of priorities in RCW 51.32.095(2) and eliminate each option,
5 beginning with return to work at the job of injury, before arriving at short-term retraining and job
6 placement. RCW 51.32.095(2)(a) through (i). By approving the plan, the Department has already
7 accepted that nothing short of retraining will render Mr. DeJonge employable. It has accepted
8 that he cannot return to work at the job of injury.

9 Dr. Harper's assessment of the extent of the low back condition related to Mr. DeJonge's
10 18-foot fall from a ladder is also unpersuasive in comparison with Dr. Lang's. In Dr. Harper's
11 opinion, Mr. DeJonge suffered a lumbar strain. He said the MRI and x-ray findings were
12 100 percent related to obesity, smoking, age, and deconditioning. Yet he agreed Mr. DeJonge,
13 whose date of birth is March 8, 1978, is "pretty young." Harper Dep. at 36. And he agreed that
14 there was no evidence that Mr. DeJonge's back was symptomatic prior to the injury. He also
15 agreed that a December 14, 2010 EMG provided objective evidence supporting the claimant's
16 radiculopathy complaints. Dr. Harper was not asked and did not offer any opinion regarding
17 Mr. DeJonge's participation in the vocational plan, other than agreeing with Dr. Lang's
18 assessment that his back condition would preclude him from driving 200 miles a week.

19 **DT Raymond North:** The Department presented the vocational opinions of DT Raymond
20 North, who testified that he had received a Bachelor of Arts degree in psychology, a masters in
21 organizational development, and was a certified disability management specialist, as well as
22 being certified by the American Board of Vocational Experts as a vocational expert. The claimant
23 presented the testimony of Karin Larson, who has a Bachelor of Arts degree in psychology, a
24 masters in counseling psychology, and is a nationally certified rehabilitation counselor. She said
25 she was certified to perform forensic work for the Department and that Mr. North was not.

26 The industrial appeals judge apparently relied on that statement as the basis for putting the
27 words "Vocational Expert" in quotes before Mr. North's name, and saying he was not a certified
28 vocational rehabilitation counselor. Proposed Decision and Order, at 2. As the Department
29 points out in its Petition for Review, Mr. North is in fact a qualified vocational expert.

30 Mr. North testified regarding Exhibit No. 2, the Accountability Agreement that was signed
31 on November 9, 2011. He said that Mr. DeJonge had failed to abide by the agreement by
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1 ceasing to attend classes on April 20, 2012; failing to notify Mr. North of his absences; and failing
2 to notify Mr. North about his concerns regarding his abilities or physical capacity. Mr. North
3 acknowledged that Mr. DeJonge had e-mailed him on April 17, 2012, asking for help, but said the
4 claimant had not contacted him after that. Mr. North described what happened when
5 Mr. DeJonge contacted him on April 17, saying his computer classes were over his head.
6 Mr. North's response was to refer Mr. DeJonge to his advisor to see if he could get into a lower
7 level class. Mr. North also said that typically his office would refer workers to college resources
8 for tutoring, although he did not say he had done that in this case.

9 Mr. North detailed the attendance problems that Mr. DeJonge's instructors notified him of.
10 He said the last date Mr. DeJonge attended the college success class was April 12; the last day
11 he attended the computer class was April 16; the last day for English was April 19, with an
12 indication that Mr. DeJonge had done some online work on April 20; and the last day for math
13 was April 20. According to Mr. North, the last contact he had from Mr. DeJonge was the April 17
14 e-mail about his difficulties in computer class. Mr. North said he tried to contact Mr. DeJonge on
15 May 2, and got an e-mail back from his wife on May 8, saying Mr. DeJonge would contact him the
16 next day, but he did not hear from him. Mr. North testified that he learned of Mr. DeJonge's
17 attendance problems from his instructors on May 10, 2012. He said the vocational plan failed
18 because Mr. DeJonge failed to attend classes. Mr. North agreed he had not taken the neurogenic
19 bladder condition into account and he was apparently unaware of the June 8, 2012 Department
20 order accepting responsibility for the condition.

21 **David J. DeJonge:** Mr. DeJonge described his difficulties with participating in the
22 vocational retraining plan, ranging from the problems caused by his neurogenic bladder condition
23 and his frequent urge to urinate, to the fact that the classes Mr. North had chosen for him were
24 too advanced. He said he had not taken the necessary prerequisites, and he needed a laptop to
25 do his schoolwork, which Mr. North declined to provide. As a result, Mr. DeJonge and his wife
26 had to scrape together the money to buy one after school started. According to Mr. DeJonge, the
27 delay in getting the laptop put him further behind. In addition, he later learned that Computer 100
28 and 101 were recommended as prerequisites for his English class, which had a significant online
29 component. He had not taken those classes, and Mr. North had also signed him up for the more
30 advanced Computer 102, for which Mr. DeJonge was not qualified.

1 Mr. DeJonge tried to get help by using a tutor for math and discussing how to navigate the
2 online portion of his English class with his instructor. He told Mr. North he was not doing well in
3 his classes. Mr. DeJonge tried to work with the college disability coordinator, who was not
4 particularly helpful, although Mr. DeJonge was given an ergonomic chair and the use of a podium
5 to ease his back problems.

6 According to Mr. DeJonge, he had his wife tried multiple times to contact Mr. North about
7 the issues he was having at school, to no avail. Eventually, he got so far behind that he stopped
8 attending classes. Mr. DeJonge and his attorney met with Mr. North on May 17, 2012, and raised
9 the neurogenic bladder issue. According to Mr. DeJonge, Mr. North said it no longer mattered
10 and that he should withdraw so he would not receive Fs in his classes.

11 **Karin Larson:** The claimant's vocational expert, Karin Larson, testified that the first day of
12 classes was April 9, 2012, and on April 10, 2012, at 7:47 am, Mr. DeJonge notified Mr. North's
13 office that he needed a laptop and software. According to Ms. Larson, this was a reasonable
14 request that she would have accommodated. However, Bonnie Lozado responded on behalf of
15 Mr. North, referring Mr. DeJonge to various computer labs as an alternative. Ms. Larson
16 explained why that was not a good solution, detailing all the problems with trying to use the labs
17 as a substitute for a laptop.

18 On the question of whether Mr. DeJonge notified anyone regarding the problems he was
19 having, Ms. Larson testified:

20 Well, my concern was if he was struggling so much in these classes, why
21 wasn't he notifying anybody. So, that was one of the questions I asked
22 him. And he informed me he did talk to those instructors about having
23 problems. And there is an email that was sent from his math instructor
24 that did say, perhaps, he is in the wrong math class. I have discussed
25 with him maybe dropping down into a lower math class until he gets his
26 competencies up. That didn't happen, and I think, in part, because Mr.
27 DeJonge was hoping with the tutor that he would be able to catch up, and
28 get that, do well in that math class. Mr. DeJonge also informed me that
29 he had sent emails to his vocational counselor, and subsequently, to his
30 attorney's office informing them of his struggles with the computer class,
31 and that he wasn't getting any assistance with that. That, he actually
32 went out and bought himself a computer to help him with the CIS 102
class, and he just couldn't get it.

3/18/13 Tr. at 62.

Mr. DeJonge told Ms. Larson his wife had e-mailed Mr. North's office for him and sometimes the
contact was with Mr. North's assistant, Bonnie Lozado.

1 On the subject of what Mr. North should have done once the neurogenic bladder condition
2 was accepted, Ms. Larson noted that neither the vocational plan nor the closing report on which
3 the suspension was based addressed that condition. She said the neurogenic bladder condition
4 needed to be stabilized before retraining could occur and that the Department requires a worker
5 to be at maximum medical improvement before engaging in vocational rehabilitation. In her
6 opinion after the neurogenic bladder condition was accepted on June 8, 2012, Mr. North should
7 have recommended closing vocational benefits because Mr. DeJonge was medically unstable.

8 As to Mr. DeJonge's back condition, Ms. Larson said Mr. North had not taken Dr. Lang's
9 opinions into account, and he had used the wrong labor market for his job analysis of the
10 construction project manager job, Tacoma instead of Grays Harbor County. Using her own job
11 analysis for the correct labor market and comparing that with Dr. Lang's restrictions, she said
12 Mr. DeJonge would be physically unable to perform the job. In her opinion, Mr. DeJonge had
13 good cause for not completing the plan because it required a higher academic level than he had
14 or could achieve.

15 Under Exhibit No. 2, the Accountability Agreement, Mr. DeJonge agreed to fully participate,
16 in compliance with his school's attendance and performance policies; to notify his vocational
17 rehabilitation counselor (VRC) of any absences; to work with his instructors and his VRC if he
18 needed help; and to notify his VRC and claims manager if he had any concerns about his ability
19 to complete the plan. The record demonstrates that he did his best to comply with these
20 requirements, attempting to get the help he needed from Mr. North and the school, without
21 success. The Accountability Agreement does not require success, it requires that the worker let
22 people know he is having problems and try to find solutions. Mr. DeJonge did that to no avail
23 because the fundamental problem was that he was not qualified for the program due to his
24 learning disability and the fact that Mr. North had signed him up for the wrong classes. We
25 conclude that Mr. DeJonge did not fail to abide by the agreed expectations under
26 RCW 51.32.099(3).

27 In addition, Mr. DeJonge was physically unable to participate in the retraining plan because
28 of the neurogenic bladder condition, an insurmountable barrier. The Department was well aware
29 that Mr. DeJonge was contending that the industrial injury had caused that condition. The issue
30 was being litigated in the midst of the implementation of the plan and the Department ultimately
31 agreed to accept responsibility for the condition. Despite that, the Department proceeded to
32

1 suspend Mr. DeJonge's time-loss compensation benefits. Yet the Department presented no
2 medical evidence to rebut Dr. Brown's opinion that the neurogenic bladder condition precluded
3 Mr. DeJonge from participating in the plan. Because of the effects of that condition, we find that
4 the interruption of the vocational plan was outside Mr. DeJonge's control within the meaning of
5 RCW 51.32.099(5).

6 Like the worker in *Staudinger*, Mr. DeJonge has shown that his benefits should not have
7 been suspended under RCW 51.32.110(2) based on the criteria set forth in RCW 51.32.099. As
8 in *Staudinger* there is therefore no need to reach the good cause question under
9 RCW 51.32.110(2). Because Mr. DeJonge did not fail to abide by the accountability agreement
10 and because the interruption of his vocational retraining plan was outside his control, he was not
11 non-cooperative within the meaning of RCW 51.32.110(2). The question of whether he had good
12 cause is therefore moot.

13 The June 21, 2012 order is reversed and the claim is remanded to the Department with
14 direction to vacate the suspension order and take further action consistent with this order.

15 **FINDINGS OF FACT**

- 16 1. On September 11, 2012, an industrial appeals judge certified that the
17 parties agreed to include the Jurisdictional History in the Board record,
18 as amended, solely for jurisdictional purposes.
- 19 2. On October 13, 2006, David J. DeJonge sustained an industrial injury
20 in the course of his employment as a construction laborer for Shoreline
21 Condominiums, LLC, when he fell 18 feet from a ladder. As a result,
22 he has undergone a left shoulder surgery, multiple hernia repairs, and
23 the removal of a testicle. The industrial injury was also a proximate
24 cause of a bilateral disc protrusion at L3-4 with radiculopathy, as well
25 as mechanical back pain, and a neurogenic bladder condition.
- 26 3. In 2011 the Department determined that Mr. DeJonge was not
27 employable without retraining. As a result, the Department approved a
28 vocational retraining plan to obtain a two-year associate degree with a
29 goal of becoming a construction project manager.
- 30 4. As part of the vocational retraining plan, Mr. DeJonge signed a Worker
31 Accountability Agreement on November 9, 2011.
- 32 5. The first day of classes was April 9, 2012, and Mr. DeJonge last
attended classes on April 20, 2012.
6. On August 19, 2011, the Department denied responsibility for
Mr. DeJonge's neurogenic bladder condition. Mr. DeJonge protested
on October 3, 2011. On November 29, 2011, the Department affirmed
the August 19, 2011 order. On January 26, 2011, Mr. DeJonge

1 appealed to the Board of Industrial Insurance Appeals. On June 4,
2 2012, the Board issued an Order on Agreement of Parties directing the
3 Department to accept responsibility for the condition. On June 8,
4 2012, the Department issued a ministerial order to that effect. On
5 June 21, 2012, the Department issued an order suspending time-loss
6 compensation benefits as provided by RCW 51.32.110, effective
7 June 21, 2012, for failure to comply with the accountability agreement
8 or plan interruption due to the worker's own actions as stated in
9 RCW 51.32.099.


7. Mr. DeJonge did not fail to abide by the agreed expectations contained
8 in the accountability agreement and the interruption of the vocational
9 plan was not due to his failure to abide by that agreement.
8. The interruption of the vocational plan was not a result of
10 Mr. DeJonge's actions. His neurogenic bladder condition, an accepted
11 medical condition, was unstable, required treatment, and prevented
12 further participation in the vocational plan.


CONCLUSIONS OF LAW

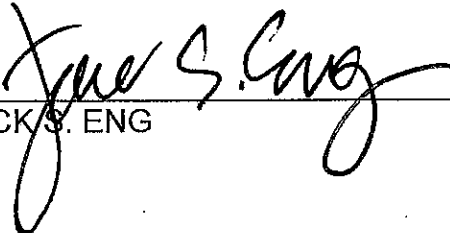
- 13 1. The Board of Industrial Insurance Appeals has jurisdiction over the
14 parties and subject matter in this appeal.
- 15 2. Mr. DeJonge did not fail to comply with the accountability agreement
16 nor was the interruption of his vocational plan the result of his actions
17 within the meaning of RCW 51.32.099.
- 18 3. The suspension of Mr. DeJonge's time-loss compensation benefits
19 was not appropriate under RCW 51.32.110(2).
- 20 4. The June 21, 2012 Department order is incorrect and is reversed.
21 This matter is remanded to the Department to vacate its suspension
22 order and take further action consistent with this order.

23 Dated: September 19, 2013.

BOARD OF INDUSTRIAL INSURANCE APPEALS

24 
25 DAVID E. THREEDY Chairperson

26 
27 FRANK E. FENNERTY, JR. Member

28 
29 JACK S. ENG Member