BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: DAVID J. DEJONGE	DOCKET NO. 12 18304
CLAIM NO. AA-79960	DECISION AND ORDER

APPEARANCES:

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

Employer, Shoreline Condominiums, LLC, None

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

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

ISSUES

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

OVERVIEW

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

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

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

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

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

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

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

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

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

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

DECISION

RCW 51.32.099(3) provides:

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

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

RCW 51.32.099(5) provides, 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 . . ..

> (b) . . . A vocational plan interruption is considered outside the control of the worker when . . . documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.
>
> (c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits shall be suspended in accordance with RCW 51.32.110. . . . A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or post injury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section.

RCW 51.32.110(2) provides:

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

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

> The Department is correct in its Petition for Review requesting that the 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.

Staudinger, 8-9.

With this legal framework in mind we turn to a review of the evidence. Mr. DeJonge was born on March 8, 1978. He finished the ninth grade and later received his GED. He has always

worked in construction and was injured in an 18-foot fall from a ladder on October 13, 2006, causing multiple problems, including a low back condition and a related neurogenic bladder condition. The Department has accepted that Mr. DeJonge cannot return to work as a construction laborer. DT Raymond North developed a vocational retraining plan involving a two-year academic program at Grays Harbor Community College with the goal of becoming a construction project manager. The Department approved the plan in late 2011, and the first day of classes was April 9, 2012. As part of the plan approval process Mr. DeJonge signed a Worker Accountability Agreement on November 9, 2011, Exhibit No. 2. Mr. DeJonge last attended classes on April 20, 2012. The question is whether he failed to abide by the accountability agreement and whether the interruption of the vocational plan was the result of his actions.

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

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

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

Charles Regets, Ph.D.: The claimant presented the testimony of Charles Regets, Ph.D., a psychologist who performed a battery of tests on August 9, 2012, and diagnosed a learning disorder. He said the course requirements for the construction project manager program

Mr. DeJonge was enrolled in would be overwhelming for him. In his opinion, Mr. DeJonge would not be able to complete the retraining plan.

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

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

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

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

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

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

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

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

Mr. North testified regarding Exhibit No. 2, the Accountability Agreement that was signed on November 9, 2011. He said that Mr. DeJonge had failed to abide by the agreement by

ceasing to attend classes on April 20, 2012; failing to notify Mr. North of his absences; and failing to notify Mr. North about his concerns regarding his abilities or physical capacity. Mr. North acknowledged that Mr. DeJonge had e-mailed him on April 17, 2012, asking for help, but said the claimant had not contacted him after that. Mr. North described what happened when Mr. DeJonge contacted him on April 17, saying his computer classes were over his head. Mr. North's response was to refer Mr. DeJonge to his advisor to see if he could get into a lower level class. Mr. North also said that typically his office would refer workers to college resources for tutoring, although he did not say he had done that in this case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

1. On September 11, 2012, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record, as amended, solely for jurisdictional purposes.

2. On October 13, 2006, David J. DeJonge sustained an industrial injury in the course of his employment as a construction laborer for Shoreline Condominiums, LLC, when he fell 18 feet from a ladder. As a result, he has undergone a left shoulder surgery, multiple hernia repairs, and the removal of a testicle. The industrial injury was also a proximate cause of a bilateral disc protrusion at L3-4 with radiculopathy, as well as mechanical back pain, and a neurogenic bladder condition.

3. In 2011 the Department determined that Mr. DeJonge was not employable without retraining. As a result, the Department approved a vocational retraining plan to obtain a two-year associate degree with a goal of becoming a construction project manager.

4. As part of the vocational retraining plan, Mr. DeJonge signed a Worker Accountability Agreement on November 9, 2011.

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

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

7. Mr. DeJonge did not fail to abide by the agreed expectations contained in the accountability agreement and the interruption of the vocational plan was not due to his failure to abide by that agreement.

8. The interruption of the vocational plan was not a result of Mr. DeJonge's actions. His neurogenic bladder condition, an accepted medical condition, was unstable, required treatment, and prevented further participation in the vocational plan.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.

2. Mr. DeJonge did not fail to comply with the accountability agreement nor was the interruption of his vocational plan the result of his actions within the meaning of RCW 51.32.099.

3. The suspension of Mr. DeJonge's time-loss compensation benefits was not appropriate under RCW 51.32.110(2).

4. The June 21, 2012 Department order is incorrect and is reversed. This matter is remanded to the Department to vacate its suspension order and take further action consistent with this order.

Dated: September 19, 2013.

BOARD OF INDUSTRIAL INSURANCE APPEALS

DAVID E. THREEDY — Chairperson

FRANK E. FENNERTY, JR. — Member

JACK S. ENG — Member