

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

CRB No. 15-032

FAHAD N. AL-KHATAWI,
Claimant-Petitioner,

v.

HERSONS GLASS Co. and CNA INS. Co.,
Employer/Insurer-Respondent/Cross-Petitioner.

Appeal from a January 29, 2015 Compensation Order By
Administrative Law Judge Gregory P. Lambert
AHD No. 11-231, OWC No. 560167

(Decided August 3, 2015)

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COMPENSATION REVIEW
BOARD
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Matthew Peffer for Claimant
Joseph C. Veith, III for Employer

Before MELISSA LIN JONES and JEFFREY P. RUSSELL, *Administrative Appeals Judges* and
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On October 5, 2000, Mr. Fahad N. Al-Khatawi injured his back while working for Hersons Glass Company (“Hersons”). Mr. Al-Khatawi underwent back surgery in March 2001. Post-surgery conservative treatment did not alleviate his back pain, but Mr. Al-Khatawi declined a second surgery.

In April 2010, Mr. Al-Khatawi underwent a functional capacity evaluation; he was capable of working full-time in a sedentary job with restrictions. In January 2011, Dr. Donald G. Hope performed an independent medical evaluation at Hersons’ request and concluded Mr. Al-Khatawi was capable of returning to full-duty work without restrictions.

Although Hersons made voluntary payments of compensation, a dispute arose over Mr. Al-Khatawi’s entitlement to permanent total disability benefits from November 6, 2006 to the date

of the formal hearing and continuing as well as his failure to cooperate with vocational rehabilitation and voluntary limitation of income. Consequently, the parties proceeded to a formal hearing, and an administrative law judge (“ALJ”) denied Mr. Al-Khatawi’s claim for relief. The ALJ also suspended Mr. Al-Khatawi’s benefits from May 2011 to October 2011 for failure to cooperate with vocational rehabilitation but ruled Mr. Al-Khatawi had not limited his income. Both parties appealed the February 4, 2013 Compensation Order. *Al-Khatawi v. Hersons Glass Company*, AHD No. 11-231, OWC No. 560167 (February 4, 2013) (“Compensation Order”).

On appeal, the Compensation Review Board (“CRB”) affirmed the ruling that Mr. Al-Khatawi failed to cooperate with vocational rehabilitation. It vacated the portion of the Compensation Order suspending Mr. Al-Khatawi’s benefits from May 2011 to October 2011 and remanded the case “for the limited purposes of specifically defining Mr. Al-Khatawi’s period of non-cooperation and for a determination as to whether Mr. Al-Khatawi voluntarily limited his income by failing to follow-up on job leads provided by the vocational rehabilitation counselor including but not limited to whether or not those job leads qualify as suitable, alternative employment.” *Al-Khatawi v. Hersons Glass Company*, CRB No. 13-023, AHD No. 11-231, OWC No. 560167 (November 14, 2013) (“Decision and Remand Order”).

The original ALJ retired, and after proper notice, another formal hearing took place before a different ALJ. That ALJ issued a Compensation Order on Remand ruling that Mr. Al-Khatawi failed to cooperate with vocational rehabilitation from its inception to the date of the formal hearing and continuing. The ALJ did not decide the issue of voluntary limitation of income. *Al-Khatawi v. Hersons Glass Co.*, AHD No. 11-231, OWC No. 560167 (January 29, 2015) (“Compensation Order on Remand”).¹ Again, both parties have filed an appeal.

Mr. Al-Khatawi asserts the ALJ exceeded the parameters of the CRB’s remand instructions because the CRB purportedly restricted the ALJ to identifying “a specific date in May of 2011 wherein the failure to cooperate began and a specific date in October of 2011 wherein the failure to cooperate terminated.” Memorandum of Points and Authorities in Support of Application for Review, p. 6. In addition, even if the ALJ were permitted to reassess the extent of Mr. Al-Khatawi’s failure to cooperate with vocational rehabilitation, Mr. Al-Khatawi asserts the ALJ’s imposition of an ongoing suspension is contrary to the law because Mr. Al-Khatawi was not given notice of his alleged refusal so as to provide an opportunity to cure. Mr. Al-Khatawi requests the CRB reverse the Compensation Order on Remand and grant his claim for relief.

In response, Hersons disagrees that the ALJ exceeded his authority on remand:

In its cross-appeal in CRB No. 13-023, the Employer had questioned not only the lack of precise dates in the ALJ’s findings as to the period of suspension for non-cooperation, but, more importantly, the lack of evidence supporting the ALJ’s finding that the Claimant had cured his non-cooperation. The Employer noted in its appeal that the only evidence cited by the ALJ in support of this finding was the fact that he, the Claimant, was continuing to meet with the counselor, something he had done all along, while the finding of non-cooperation had been

¹ Although the Compensation Order was signed on January 28, 2015, according to the Certificate of Service, it did not issue until January 29, 2-15.

based upon had been based upon [sic] the Claimant's failure to maintain job logs follow-up on job leads, and otherwise demonstrate an active participation in the rehabilitation process. The Employer also noted that the ALJ had specifically found that the claimant's testimony that he had done everything requested of him, including following up on job leads and conducting his own job search, was not credible.

Opposition of Respondents, Employer and Carrier, to Application for Review, p. 6. Hersons contends the finding that Mr. Al-Khatawi had cured his non-cooperation was not affirmed in the Decision and Remand Order; it was vacated thereby requiring the ALJ define the period of non-cooperation based upon the evidence. Furthermore, it contends that the ALJ's ruling regarding Mr. Al-Khatawi's failure to cooperate is supported by substantial evidence and should be affirmed.

On the other hand, Hersons filed a cross-appeal on the grounds that the ALJ failed to rule on the issue of voluntary limitation. Hersons asserts "[t]he Claimant's voluntary limitation of income, if so found, could impact his entitlement to further benefits." Memorandum of Points and Authorities in Support of Cross-Appeal, unnumbered p. 5. Thus, Hersons requests the CRB reverse the ruling that the issue of voluntary limitation of income is moot and remand this matter for further analysis of that issue.

ISSUES ON APPEAL

1. Did the ALJ exceed the parameters of the CRB's instructions on remand as set forth in the Decision and Remand Order?
2. Does the Act require notice of an alleged failure to cooperate as a prerequisite to imposing an ongoing suspension of benefits?
3. Is the issue of voluntary limitation of income moot?

ANALYSIS²

Importantly, after the CRB issued the Decision and Remand Order, this matter was reassigned to a new ALJ because the ALJ who had authored the Compensation Order had retired:

This case was properly reassigned to me. Responding to a July 25, 2014 Order to Show Cause, Mr. Al-Khatawi's counsel requested a new hearing in correspondence dated August 6, 2014. A new hearing was scheduled and

² The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code § 32-1501 to 32-1545 ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

supplemental exhibits were received, namely Claimant's Exhibits 2A and 7A. After further review of the record, the hearing was canceled and the parties submitted briefs in lieu of the hearing. But after review of the briefs, the hearing was rescheduled for December 17, 2014 so that a credibility determination could be made. During pre-hearing discussions, counsel for both parties represented that they were comfortable with a decision based on the current record. The hearing was canceled and this Order follows.

Compensation Order at p. 2. In other words, the issues that the CRB had affirmed remained the law of the case, but the parties started anew regarding the issues on remand. The second ALJ was not restricted by the prior ALJ's determinations. Even if the ALJ had been so restricted, the CRB finds no error regarding the resolution of the issue of failure to cooperate with vocational rehabilitation.

In the Decision and Remand Order, the CRB determined that

[a]fter reviewing the evidence submitted by each party, the ALJ determined Mr. Al-Khatawi did not cooperate with vocational rehabilitation for reasons other than his failure to attend meetings:

I find that evidence in the record reflects that the Claimant was provided with information and instruction in techniques and strategies in how to perform job searches and identifying suitable job openings and instructed to conduct these job searches periodically and to maintain a job search log indicating the jobs he had identified through his []own efforts. I find that the evidence in the record reflects that the Claimant consistently did not perform these activities as part of the vocational rehabilitation process as instructed. I find that the evidence in the record reflects that the Claimant was provided with specific job leads of available jobs by his vocational rehabilitation counselor to pursue and follow up on, and the evidence in the record reflects that the Claimant failed or declined to pursue or follow up on the job leads that were provided to him.

I recognize the Claimant's argument that the jobs which were identified and provided to him by the vocational rehabilitation counselor were not suitable alternative employment, for one reason or another. However, notwithstanding that argument, and assuming it to be true, there is no evidence that there was anything that prevented the Claimant from performing his own independent job search, as he was encouraged to do, and identifying employment opportunities that he considered were suitable alternative job opportunities. While the Court of Appeals has held to defeat a claim of total disability, that the burden is on the employer to show that work for which the claimant is qualified was in fact available, *Joyner v. DOES*, 502 A.2d 1027, at 1031, n.

4 (D.C. 1986), it has explained that “however, that the employer can meet that burden ‘by proof short of offering the claimant a specific job or proving that some employer specifically offered claimant a job,’” stating that a contrary rule, would invite at least some claimant’s to adopt a passive, or even negative, attitude about pursuing re-employment, since workers’ compensation benefits could be terminated only after the claimant refused a specific offer. There might be no specific offer if the claimant failed to take the steps necessary to procure offers (*e.g.*, investigating job opportunities, circulating resumes, interviewing, etc.).

Id. at 1031; *also see Logan v. DOES*, 805 A.2d 237, 243 (D.C. 2002).

In addition to the above, I find that the Claimant was not a credible witness when he testified that he did everything that was requested of him in cooperating with vocational rehabilitation, including following up on job leads, and performing his own independent job search activities. HT pp. 59-61, 67-69.

I find based upon the evidence in the record, that the Claimant took a passive approach to the vocational rehabilitation job search reflecting a lack of motivation, and in doing so failed to cooperate with vocational rehabilitation thereby justifying a suspension of compensation benefits from May 2011 to October 2011, the period of his non-cooperation. [Footnote omitted.]

There is no justification for disturbing the ALJ’s findings or conclusion; however, the law requires we remand this matter for the limited purpose of specifically defining Mr. Al-Khatawi’s period of non-cooperation based upon those findings and conclusions.

A suspension of benefits pursuant to §32-1507(7)(d) of the Act lasts only until the claimant cures the non-cooperation. [Footnote omitted.] In this case, the ALJ imposed a suspension from an unspecified date in May 2011 to an unspecified date in October 2011 “in recognition of the Claimant’s testimony that he is presently continuing to meet with the counselor and attempting to cooperate with vocational rehabilitation efforts.” [Footnote omitted.] It is unclear precisely when the period of suspension begins and ends; it also is unclear what evidence the ALJ relied upon to reach the conclusion that Mr. Al-Khatawi cured his failure to cooperate, particularly in light of the credibility ruling against Mr. Al-Khatawi.

In order to conform to the requirements of the D.C. Administrative Procedures Act (“APA”), [D.C. Code §2-501 *et seq.* as amended,] (1) the agency’s decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law

must follow rationally from the findings. [Footnote omitted.] Thus, when an ALJ fails to make factual findings on each materially contested issue, an appellate court is not permitted to make its own finding on the issue; it must remand the case for the proper factual finding. [Footnote omitted.]

The CRB is no less constrained in its review of Compensation Orders. [Footnote omitted.] Moreover, whether an ALJ's decision complies with the APA requirements is a determination limited in scope to the four corners of the Compensation Order under review. Thus, when, as here, an ALJ fails to make express findings on all contested issues of material fact, the CRB can no more "fill the gap" by making its own findings from the record than can the Court of Appeals but must remand the case to permit the ALJ to make the necessary findings. [Footnote omitted.] For this reason, the law requires we remand this matter.

Decision and Remand Order. On remand, the CRB directed the ALJ to make findings of fact regarding Mr. Al-Khatawi's participation in vocational rehabilitation and to reach conclusions of law regarding a suspension of benefits justified by those findings of fact. After a detailed examination of the record, the ALJ suspended Mr. Al-Khatawi's benefits from April 26, 2011 to the date of the formal hearing and continuing:

Mr. Al-Khatawi's unreasonable failure to cooperate was previously identified by ALJ Boddie. This Order addresses the dates that he was uncooperative.

Mr. Al-Khatawi did not independently search for jobs. Although his computer skills are limited, he received training on how to access job search software. EE 2; HT at 133 ("I would spend a lot of time showing him how to operate the computer terminal, how to access the database."). But Mr. Encinas observed that Mr. Al-Khatawi "could not access the center's data base [sic] because he had not conducted job search since our last meeting ..." EE 2 (email dated September 19, 2011; also noting that "I have been working with him since 2/2/2011 and he was still struggling with conducting proper search[es] at [the] job center"). And although he was expected to conduct an independent job search, Mr. Al-Khatawi did not submit job logs as required. EE 2; HT at 133 ("he was asked to conduct his own job search"); HT at 146-147 (did not bring job logs to meetings); HT at 151 (sole submission was "half a job form" that Mr. Al-Khatawi was filling out at the time of his meeting with Mr. Encinas).

Mr. Al-Khatawi did not follow-up on job leads from his vocational counselor. Mr. Encinas provided Mr. Al-Khatawi with anywhere from two to four job leads every time they met. HT at 136; *see also* HT at 137 ("These were jobs that would allow Mr. Al-Khatawi to perform on a full-time basis on a sedentary level."); *see also* HT at 178 (discussion of Dr. Hope and the FCE to define jobs Mr. Al-Khatawi was eligible for). Without job logs to verify his participation in the process, Mr. Al-Khatawi's testimony becomes even more important when addressing the number of positions he applied to. Momentarily setting aside ALJ

Boddie's adverse credibility determination, Mr. Al-Khatawi testified that he applied to only seven or eight positions between April 26, 2011, the date of his first appointment with the vocational counselor, through October 6, 2011, which was the date of the hearing. HT at 81. That is fewer than two applications a month, which is inadequate.

The record suggests fewer applications were submitted. After independently contacting employers that Mr. Al-Khatawi said he had applied to, Mr. Encinas found that those employers had not received applications from Mr. Al-Khatawi. *See, e.g.*, EE 2 (September 6, 2011: "[f]ollow up on job leads revealed claimant had not conducted contact with job referrals as requested."); EE 2 (September 19, 2011: "I advised him that follow up on previous referrals given to him had revealed he had not conducted proper follow up/contact with employers as required."); HT at 144 ("It's difficult to do follow up, but at no time during my follow up attempt with employers was there any indication that Mr. Al-Khatawi had actually applied or contacted the employer."). Mr. Encinas wrote that Mr. Al-Khatawi "is in non-compliance and has not followed up on my recommendations and couching [sic]. This guy is doing nothing (NADA)" EE 2 (September 19, 2011 email); *see also* EE 2 ("During past meetings claimant has been couched [sic] and counseled on becoming engaged in his own job search, apparently this gentleman has not paid attention ... It appears that claimant is just not involved with his own job search."); HT at 155 ("[M]ost of the time I worked with Fahad, that [full engagement with the job search] was not there."). Mr. Al-Khatawi was advised that he was in non-compliance. EE 2.

Although Mr. Encinas's opinion is ultimately persuasive, evidence from Ms. Koslow was also submitted. CE 1; HT at 82 *et seq.* Her discussion of Mr. Al-Khatawi's Functional Capacity Evaluation suggested that there were few jobs that he could perform, and she challenged whether he is capable of performing sedentary work. *See* CE 1; HT at 96 ("Well, it's [the FCE] not consistent."); EE 4 (FCE); *see also* HT at 98 (discussion of Labor Market Survey). But Ms. Koslow testified that she rarely performs active vocational rehabilitation. HT at 110. And she had not contacted any of the prospected employers listed in the Labor Market Survey to prequalify them, as Mr. Encinas had done. HT at 119. Ms. Koslow had limited contact with Mr. Al-Khatawi. HT at 117. In contrast, Mr. Encinas's opinions merit more weight because of his greater familiarity with Mr. Al-Khatawi and his case. *See generally* EE 2.

Mr. Al-Khatawi did not keep a job log, failed to search for positions on his own, and failed to follow-up on the job leads provided by Mr. Encinas. Considering all of these factors, Mr. Al-Khatawi failed to cooperate with vocational rehabilitation beginning on April 26, 2011, which is the date of the first meeting he had with his vocational rehabilitation counselor.

Compensation Order on Remand, pp. 3-4. In the Compensation Order, the original ALJ

commented in a footnote that

The Claimant's benefits are suspended due to his non-cooperation based upon the evidence in the record, and pursuant to *D.C. Code § 32-1507(7)(d)*, stating that it should be for the period of non-cooperation, and in recognition of the Claimant's testimony that he is presently continuing to meet with the counselor and attempting to cooperate with vocational rehabilitation efforts, sounding as in he is attempting to "cure" any previous non-cooperation. *Darden v. DOES*, 911 A.2d 410 (D.C. 2006).

Compensation Order, p. 8, nt. 1. The current ALJ, after a review of the evidence in the record including newly submitted exhibits, disagreed that meeting with the counselor cured Mr. Al-Khatawi's vocational-rehabilitation effort defects, and the evidence in the record supports the findings that from the start, Mr. Al-Khatawi did not perform a reasonable job search, did not keep a job log, and did not follow-up on job leads provided to him. Moreover, the evidence in the record supports the finding that even though Mr. Al-Khatawi may have attended additional meetings with his vocational rehabilitation counselor, he has not cured his vocational-rehabilitation derelictions:

But a claimant may lift the suspension of benefits at any time "by cooperating with vocational rehabilitation or by merely expressing a willingness to do so." *Brown v. Potomac Electric Power Co.*, CRB No. 10-141(2)(R), 2014 DC Wrk. Comp. LEXIS 146, at *25 (April 7, 2014). "Claimants have strong incentives to cooperate with vocational rehabilitation ... [but] the threshold for undoing the suspension is so low as to be readily accomplished even within one year under the worst of circumstances." *Id.* This is a "minimal showing." *Id.*

The record does not support a conclusion that Mr. Al-Khatawi demonstrated a genuine desire to cooperate with vocational rehabilitation services. Mr. Al-Khatawi testified at the original hearing that he continued to meet with his vocational counselor. HT at 55-56. He also made some calls to his counselor prior to the 2011 hearing. HT at 177. But he has not, for example, submitted evidence showing that he has begun to keep a job log or perform other actions suggestive of an intent to cooperate. Further, Mr. Encinas opined that Mr. Al-Khatawi was not cooperating at the time of the hearing. HT at 155.

Under the circumstances of this case, Mr. Al-Khatawi's attendance at vocational rehabilitation meetings is insufficient to cure a failure to cooperate. That is because his lack of cooperation centers on his limited participation in the process (for example, his failure to pursue job leads), not his attendance. Mr. Al-Khatawi's failure to cooperate with vocational rehabilitation is ongoing, which means he is currently ineligible for benefits under the Act.

Compensation Order on Remand, pp. 4-5. The CRB disagrees with Mr. Al-Khatawi's argument that an ongoing suspension is contrary to the law because he was not given notice of his alleged failure so as to provide an opportunity to cure. There is no requirement in the Act or the regulations that an employer must provide written notice to a claimant to cure a failure to

cooperate. When, as here, (1) “Mr. Al-Khatawi was advised that he was in non-compliance. EE 2.” Compensation Order on Remand, p. 4 (2) the prior ALJ questioned Mr. Al-Khatawi’s credibility when testifying that he had followed-up on job leads and had performed independent job searching, (3) the current ALJ offered to conduct a new hearing and permitted submission of additional exhibits, and (4) the CRB had remanded the case for further analysis of Mr. Al-Khatawi’s already-adjudicated failure to cooperate with vocational rehabilitation, Mr. Al-Khatawi’s narrow reading of the Decision and Remand Order did not excuse his responsibility to cure his failure to cooperate with vocational rehabilitation.

At this time it is appropriate to address the validity or vitality of what we shall call the “notice and cure” rule, that being the argument that there is an obligation upon the employer to specifically advise an allegedly non-cooperative vocational rehabilitation recipient that (1) it views the claimant’s conduct to constitute non-cooperation under the Act, and (2) if the non-cooperation continues, it will suspend ongoing benefits (if being paid voluntarily) or seek modification of any order under which benefits are being paid to suspend those benefits for the duration of the non-cooperation.

The rule was first announced by the Director of Department of Employment Services (DOES) when review authority over Compensation Orders vested in that office. The history of the case is somewhat lengthy, but a short recital of that history is useful in considering its value.

The claimant in that case, a legal secretary for the firm Epstein, Becker, was receiving benefits for a work related disability. The employer moved to suspend the employee's workers' compensation benefits because she failed to cooperate with vocational rehabilitation services offered by the employer. A DOES hearing examiner agreed, but the Director reversed that decision, concluding the employee cooperated. The D.C. Court of Appeals reversed the Director's decision and remanded because there was not substantial evidence justifying the basis for the decision. On remand, the Director essentially held that the employer failed to provide the employee with notice of alleged failures to cooperate and an opportunity to cure those failures, so benefits would not be suspended. The employer again appealed. The court found the director could not retroactively apply the novel "notice and opportunity to cure" requirement to the employer's case because that deprived the employer of basic procedural fairness. The court again reversed and ordered a remand for the director to make a proper finding of whether the employer's actions, or inaction, might have led the employee to believe that her cooperation was not in question. However, the Director could not retroactively impose a notice and opportunity to cure requirement on the employer. *See Epstein v. DOES*, 850 A.2d 440 (D.C. 2004).

What happened thereafter is immaterial to our present discussion. What is noteworthy, though, is that the court wrote rather skeptically about the validity of such a rule, and “assumed” its validity for the purposes of the case, since it also ruled that the rule could not be applied in this case. It is equally noteworthy that the Director never again, to our knowledge, applied the rule, and the CRB has likewise never been called upon to address it.

7 DCMR § 255.7 provides “Decisions issued by the Director prior to the establishment of the Board [CRB] shall be accorded persuasive authority by the Board.” Thus, while we owe some deference to Director’s decisions, we are not bound by them except to the extent that we deem them to be persuasive.

The Decision of the Director in which the rule was enunciated is *Johnson v. Epstein, Becker, and Green*, Dir. Dkt No. 01-11, OHA No 98-273B, OWC No. 519621 (January 30, 2003). Although the Director required Epstein, Becker notify the claimant of her failure to cooperate and offer her an opportunity to cure that failure before any suspension could be imposed, the Act has numerous provisions requiring that one party give specific notice of certain facts in order to be in compliance with the Act, and none of these provisions are contained in the law or regulations governing the provision of vocational rehabilitation, and most notably, no such requirement is included in the suspension of benefits provision.

While a claimant is certainly permitted to argue that under the facts of a given case, the failure of someone to advise the claimant that the level of cooperation constitutes a threat to continuing to receive benefits should be a factor in deciding whether the claimant's conduct was unreasonable, the relevance of that fact and the significance that it has on a particular set of facts is a matter best and properly left to the sound discretion of the fact finder.

Thus, we take this opportunity to clearly state that the Director-created "notice and opportunity to cure" rule is not the law under the Act. A claimant's and employer's obligations are defined by the Act and the regulations; they contain no such specific requirement, and we decline to create or perpetuate one.

Turning to the ALJ's failure to rule on the issue of voluntary limitation of income, in the Decision and Remand Order, although the CRB previously had directed the ALJ to make "a determination as to whether Mr. Al-Khatawi voluntarily limited his income by failing to follow-up on job leads provided by the vocational rehabilitation counselor including but not limited to whether or not those job leads qualify as suitable, alternative employment," Decision and Remand Order, that directive was premised upon the understanding that the cure date selected by the prior ALJ may have required such a ruling. The January 29, 2015 Compensation Order on Remand suspending Mr. Al-Khatawi's benefits rendered the issue of voluntary limitation of income not ripe for adjudication because there is no cause for assessing whether Mr. Al-Khatawi has voluntarily limited his income in relation to benefits that are not payable.

CONCLUSION AND ORDER

The ALJ did not exceed the parameters of the CRB's instructions on remand as set forth in the November 14, 2013 Decision and Remand Order by ruling that Mr. Al-Khatawi has failed to cooperate with vocational rehabilitation since it was initiated on April 26, 2011. In addition, the Act does not require notice of an alleged failure to cooperate as a prerequisite to imposing an ongoing suspension of benefits. Finally, the ALJ's resolution of the issue of failure to cooperate rendered the issue of voluntary limitation of income not ripe for adjudication; therefore, the January 29, 2015 Compensation Order on Remand suspending Mr. Al-Khatawi's benefits as of April 26, 2011 is AFFIRMED.

So ordered.