

To suspend an employee's benefits for failure to comply with vocational rehabilitation the employer must file a petition with the Industrial Commission. After a telephonic hearing, the Commission then renders a decision. But what must the employer prove to suspend benefits?

In Powe v. Centerpoint Human Resources, the Court of Appeals answered this question. The Industrial Commission had determined that the employee failed to 'fully comply' with vocational rehabilitation. The Court of Appeals, however, held that full compliance is not the appropriate standard.

The Court looked at N.C.G.S. 97-25, the statute that allows the suspension of benefits, and noted that the statute 'requires a 'refusal' to accept rehabilitative services. Interpreting the word 'refusal,' the Court determined that an employer must prove that the employee has willfully and intentionally rejected vocational rehabilitation services.

The Court's focus on willfulness and intent is important. An employee who is merely inattentive or dilatory has not intentionally 'rejected' vocational services. Rather, the employer must prove that the injured worker is actually trying to sabotage vocational rehabilitation or is participating in such a minimal way as to thwart the purposes of rehabilitation.

Thus, the question that the Industrial Commission must answer in determining whether to suspend benefits is not whether the employee is fully complying with rehabilitation. Rather, the question is 'whether the employee is substantially complying with those services and not significantly interfering with the vocational rehabilitation specialist's efforts to assist the employee in returning to suitable employment.'

This is clearly the appropriate standard. It allows employers to suspend the benefits of injured workers who are 'gaming the system' and malingering. However, the standard also protects injured workers who have made some mistakes in vocational rehabilitation but are participating in a meaningful way.

For example, in a recent case of mine, the employer sought to suspend the benefits of a client who had never missed a vocational meeting, researched jobs at the Employment Security Commission at least twice a week, and actually went on several interviews. The employer accused my client of failing to follow up on a couple of job leads and of filling out some applications in a sloppy manner. Suspending my client's benefits would have been a real injustice. He

had little education, and with some instruction and help from his rehab counselor, did a much better job completing applications.

Happily, the Power case ensures that injured workers like my client won't have their benefits suspended. At the same time, employers can still punish malingerers for their noncompliance.