

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT**

R G	)	
	)	
v.	)	
	)	
DIVISION OF VOCATIONAL REHABILITATION	)	OAH No. 15-0964-VOC
<hr/>	)	Agency No. 15123

**DECISION**

**I. Introduction**

This case is R G’s appeal of the Alaska Division of Vocational Rehabilitation (Division)’s Administrative Review decision to deny her request to pay for the costs of additional training in order for Ms. G to try to qualify for a CDL-A commercial driver’s license.

A hearing was held on November 5, 2015. Ms. G represented herself. Elizabeth Bakalar, Assistant Attorney General, represented the staff of the Division. Based on the evidence presented, the Administrative Review decision denying Ms. G’s request for the Division to pay for more training is affirmed. The evidence in the record shows that the Division correctly denied this request because Ms. G has already been provided with more than enough training for her to obtain a CDL-A if she has the capacity to be likely to pass the test and both obtain and maintain employment that requires a CDL-A license.

**II. Facts**

The Division provides counseling and training services to Alaskans with disabilities with the goal of helping them obtain and maintain employment.<sup>1</sup> The Division first determined that Ms. G was eligible for the Division’s services in 2009. Based on Ms. G’s application and supporting documentation, the Division determined Ms. G needed services because she suffers from Post-Traumatic Stress Disorder (PTSD) and anxiety, and has a specific learning disability, as well as intermittent back pain in the L3-S1 area of her back.<sup>2</sup>

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<sup>1</sup> Recording of Hearing.

<sup>2</sup> Agency Record at A26 & A59 & Recording of Hearing.

The Division worked with Ms. G to develop her first Individualized Plan for Employment (IPE) in 2009, after her application for services was approved. This IPE set the goal of Ms. G finding employment as a truck driver.<sup>3</sup>

This original IPE has been amended twelve times. In the Administrative Review decision, the Division found that, after her application was approved in 2009, Ms. G received vocational rehabilitation services which included the Division having spent \$102,300.09 in order to help her achieve the goals set out in her IPEs. These expenditures included \$28,580.00 for training; \$13,030.00 to help with job searches; \$3,090.00 to help with job readiness; \$2,017.00 for preliminary assessments; \$659.00 for situational assessments; \$9,457.00 for medical exams; \$5,569.00 for medical treatment; \$15,511.00 for transportation; and \$24,387.09 for other services.<sup>4</sup>

Ms. G received training four times between 2009 and 2010. After each of these four training sessions, she took the CDL-A driver's test and failed. Finally, in 2011, after a fifth training session, Ms. G took and passed the CDL-B driver's test.<sup>5</sup>

At the hearing, Ms. G asserted that the training she received was not adequate for someone with her PTSD and anxiety issues. Ms. G testified that in her opinion, she was not given enough one-on-one training to overcome the problems she had passing the CDL-A test, which were primarily problems with backing up.<sup>6</sup>

Ms. G was employed operating a loader by the Kensington mine in 2010, driving a truck in 2014, and by Alaska Travel Adventures in 2015. None of these jobs led to permanent year-round employment.<sup>7</sup>

In 2015, the Division denied Ms. G's request to write a new IPE, which included more training to pass the CDL-A test. Specifically, the request that was denied was for a six-week training course that would cost an estimated \$6,500. Ms. G filed a request for an Administrative Review of this decision on May 21, 2015. The decision was upheld in an Administrative Review decision dated June 12, 2015.

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<sup>3</sup> Agency Record at A61-A193 & Recording of Hearing.

<sup>4</sup> Agency Record at C75 & Recording of Hearing.

<sup>5</sup> Recording of Hearing.

<sup>6</sup> Agency Record at C75 & Recording of Hearing.

<sup>7</sup> Agency Record at B57, B71-B72, B89-B94, B150, B152-B154, A196-A197 & Recording of Hearing.

Ms. G appealed. Administrative Law Judge Mark T. Handley was appointed to hear and decide Ms. G's appeal. The hearing was held on November 5, 2015. Ms. G represented herself. Elizabeth Bakalar, Assistant Attorney General, represented the staff of the Division. Ms. G called herself and one of her former Division counselors, Larry Corbin, to testify. The Division called Division employees James Swanson, Cindy Murphy-Fox, and Maria Kruger. The record closed on November 5, 2015.<sup>8</sup>

At the hearing, Mr. Corbin testified that he became Ms. G's rehabilitation provider several years ago, and worked with Ms. G for two weeks before he realized that she had issues with anger, distrust of strangers, and a learning problem. Mr. Corbin explained that he believes these issues are related to experiences Ms. G had in the past, and a current problem with PTSD. Mr. Corbin believes that due to PTSD, Ms. G has problems paying attention, sleeping and resting, and that her PTSD impacts her ability to learn.<sup>9</sup> Mr. Corbin explained Ms. G's PTSD was confirmed through a referral to a psychiatrist.<sup>10</sup>

Mr. Corbin explained that he could relate to Ms. G's issues because he has PTSD himself. Mr. Corbin explained that he has difficulty being around other people and reacts negatively toward them. Mr. Corbin believes that when Ms. G gets into a stressful situation, such as learning a new skill, she needs more mentoring and hands-on training without the distraction of other people who are being pushed through a program with her.<sup>11</sup>

Mr. Corbin explained that, because of her PTSD, Ms. G will not learn like everyone else. Mr. Corbin believes that Ms. G needs to have the pace of training slowed down. Mr. Corbin testified that Ms. G would probably have been more successful if the Division had just provided a class with more individualized focus and less pressure. Mr. Corbin testified that he had a very positive experience teaching a parking move to Ms. G, but if someone gets after her or creates an environment of tension during training, he might as well send her home.<sup>12</sup>

Mr. Corbin explained that his experience is that PTSD makes both him and Ms. G hypersensitive to negative emotions. Mr. Corbin explained that he has experienced frustration over how others fail to understand how deep Ms. G's PTSD issues are, and how easy it is to

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<sup>8</sup> Recording of Hearing.

<sup>9</sup> Recording of Hearing – Testimony of Larry Corbin.

<sup>10</sup> Recording of Hearing – Testimony of Larry Corbin.

<sup>11</sup> Recording of Hearing – Testimony of Larry Corbin.

<sup>12</sup> Recording of Hearing – Testimony of Larry Corbin.

create a hostile environment for her. Mr. Corbin testified that he believes he could train her to pass the CDL-A driver's test, because what she needs is practicum behind the wheel without other people, just her and an instructor, and she would get through a CDL-A driver's course successfully. Mr. Corbin believes Ms. G has been frustrated because she has not been able to take full advantage of the training the Division has provided due to her PTSD.<sup>13</sup>

The Division's witnesses explained that, before Ms. G requested more training in 2015, she had already received more training than the Division would normally provide to pass the CDL-A driver's test. The Division's witnesses also explained how the limitations caused by PTSD, which Ms. G claims made her prior training less effective, would also limit her ability to perform the duties of a truck driver. The Division's witness Cindy Murphy-Fox, who conducted the Administrative Review on appeal, testified that her review of the agency record led her to conclude that additional training would be unlikely to result in Ms. G passing the CDL-A driver's test, and that even in the unlikely event that Ms. G did pass, she would not be likely to be successful in obtaining or holding onto a job that required a CDL-A driver's license.<sup>14</sup>

Prior to the hearing, Ms. G provided a detailed summary of her training and work history, which included her perspective on her successes with, and on the shortcomings of, the training she received. This summary also included her issues with her prior employers and prior employment, and explained why she believes CDL-A work would be a good fit for her. At the hearing, Ms. G explained the problems she experienced with the training opportunities that the Division had provided previously, as well as her success obtaining most of the skills needed to pass the CDL-A test. Ms. G believes she would pass the test if she was provided with the type of hands-on, one-on-one training described by Mr. Corbin, and that she needs a CDL-A driver's license in order to obtain and maintain suitable employment. Ms. G believes being a truck driver is work she could do well, and work that her PTSD would not cause her to lose.<sup>15</sup>

Based on the evidence in the record, I find it is more likely than not that the additional training that was denied for Ms. G would not result in her passing the CDL-A driver's test, and that Ms. G would not be successful in obtaining or holding onto a job that required a CDL-A drivers' license if she did obtain one.

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<sup>13</sup> Recording of Hearing – Testimony of Larry Corbin.

<sup>14</sup> Recording of Hearing.

<sup>15</sup> Ms. G's Pre Hearing Brief & Recording of Hearing – Testimony of R G.

### III. Discussion

The evidence in the record does not support Ms. G's position that, with more training for a CDL-A driver's license, she would be likely to pass the test or obtain and maintain employment. Ms. G has failed to pass the test for that license despite several training courses paid for by the Division. Ms. G and Mr. Corbin explained what type of training they believe Ms. G needs to pass this test, but their testimony on this issue was not persuasive, and they did not show that this type of training could be made available to Ms. G. The problems that both Ms. G and Mr. Corbin identified with Ms. G's ability to adapt to the training she has already received, which include poor performance in stressful situations, hypersensitivity to negative feedback, and difficulty dealing with strangers, are all likely to limit her performance in the testing environment as well as in employment in which a CDL-A driver's license is required.

The evidence shows that it is probably Ms. G's PTSD that is the primary reason she has been unable to pass the test, rather than insufficient training. Ms. G has demonstrated that she is intelligent. Mr. Corbin credibly testified that she is a good driver under circumstances where her PTSD issues are not triggered. Lack of training that makes accommodations for her PTSD is unlikely to be the primary reason she had difficulty passing the test. Most individuals without PTSD find driving tests to be stressful; difficulty performing well under stress is likely to limit an individual's ability to perform well on this test.

Given Ms. G's history of five separate training periods for commercial truck driving between 2009 and 2011, failing the CDL-A driver's license test four times, and her employment history of failing to hold onto jobs, it can reasonably be inferred that insufficient training is not what was primarily responsible for her failure to pass this test. It is also reasonable to infer that Ms. G would unlikely be able to successfully deal with the stress of employment as a CDL-A driver. This history supports the Division's decision not to include more CDL-A training in a renewed IDE.

Ms. G had the burden to show that she was eligible to receive the service that the Division denied.<sup>16</sup> Because the evidence in the record shows that Ms. G would be unlikely to gain employment as the result of the requested training, Ms. G failed to meet her burden to show that she required this training to secure employment.

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<sup>16</sup> AS 42.62.460(e)(1).

Eligible services, including those requested by Ms. G, are limited to those required to obtain or maintain employment.<sup>17</sup> Implicit in this eligibility requirement is an unemployed applicant's ineligibility for services, such as training, that are unlikely to lead to employment. This implicit limitation on eligibility for services is consistent with the Division's policy of denying requests for services that are not required for employment, and services in support of a goal not compatible with the applicant's abilities and limitations.<sup>18</sup>

While Division policies do not have the force of law in this case, the Division's policies reflect the correct interpretation of the applicable statute.<sup>19</sup> At the hearing, Mr. Corbin was very credible when he expressed his frustration with the Division's failure to understand the depth to which Ms. G's PTSD impacts her abilities. The evidence indicates that both the Division and Ms. G underestimated how Ms. G's PTSD would limit her ability to gain and maintain employment in a job that required a CDL-A driver's license. However, the evidence in the record shows that the Division correctly determined that such employment is not compatible with her abilities and limitations in making the determination that Ms. G's request for additional CDL-A driver's license training should be denied.

#### **IV. Conclusion**

The Division's Administrative Review decision dated June 12, 2015, which upheld the denial of R G's request to add training and the funding to cover the costs of training to a renewed Individualized Plan for Employment is AFFIRMED.

Dated this 9<sup>th</sup> day of December, 2015.

*Signed*

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Mark T. Handley  
Administrative Law Judge

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<sup>17</sup> 29 U.S.C. § 722(a)(1)(B).

<sup>18</sup> DVR Policy 3.0.3.2.

<sup>19</sup> AS 42.62.460(e)(1).

## Adoption

On behalf of the Commissioner Labor and Workforce Development, the undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1) Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 19<sup>th</sup> day of January, 2016.

By: Signed  
Signature  
Heidi Drygas  
Name  
Commissioner, DOLWD  
Title

[This document has been modified to conform to the technical standards for publication.]