

DECISION

THE NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES
VOCATIONAL REHABILITATION

In the Matter of

██████████ ██████████

Petitioner

Against

Office of Adult Career and Continuing
Education Services – Vocational Rehabilitation (ACCES-VR)

Respondent

Before: ██████████ Esq.
Impartial Hearing Officer

For Petitioner: ██████████ ██████████ Petitioner

For Respondent: ██████████
District Manager, ██████████ District Office
ACCES-VR

██████████
Senior Vocational Rehabilitation Counselor, ACCES-VR

██████████
Director of Counseling, ACCES-VR

Place: Office of Adult Career and Continuing Education Services
Vocational Rehabilitation
██████████ District Office

██████████
New York ██████████

Date: ██████████ 2016

INTRODUCTION

On [REDACTED] 2016, the Office of Career and Adult Career and Continuing Education Services- Vocational Rehabilitation (“ACCES-VR”) of the New York State Department of Education appointed me to act as the Impartial Hearing Officer (IHO) in a case brought by [REDACTED] [REDACTED] Petitioner (“Consumer”). (Arbitrator Ex. 1) The Consumer requested the hearing by filing a due process complaint with ACCES-VR dated [REDACTED] 2016¹ (Arbitrator Ex. 2). A list of exhibits is attached to this decision.

ISSUE

Whether ACCES-VR improperly terminated services to the Consumer and closed out [REDACTED] case with the agency. (t. 20-21)

PETITIONER’S POSITION

Petitioner asserts that ACCES-VR employees engaged in unlawful practices such as falsification of documents by contractors under pressure from the Respondent, unrealistic performance demands and corrupt handling of the work tryout and withholding [REDACTED] employee [REDACTED] feedback and improper termination of [REDACTED] case. (t. 20-21), Arbitrator Ex. 2) Respondent seeks reinstatement of services from Respondent in the form of having [REDACTED] case with ACCES-VR re-opened.

¹ The due process complaint is originally dated [REDACTED] 16. That date is crossed out and replaced with [REDACTED] 16. The date of the due process complaint was not an issue at the hearing.

RESPONDENT'S POSITION

It is the position of the Respondent that the closure of the Consumers case was appropriate and warranted. The Consumer has had prior cases closed with the agency.² Respondent felt strongly that the Consumer should attend mental health services to benefit from the agency's vocational services, which [REDACTED] did. ACCES-VR then developed a vocational plan to provide supported employment for the Consumer with [REDACTED] a contractor. The Consumer, during the provision of supported employment services, acted improperly and displayed behavior that was inappropriate in a job setting. The Consumer was terminated from the employment opportunity which resulted in the termination of services and closure of [REDACTED] case.

FINDINGS OF FACT

The Consumer applied for vocational services in or around [REDACTED] 2015. The Consumer was assigned to a Vocational Rehabilitation Counselor ("VRC"), [REDACTED] [REDACTED] supervisor was [REDACTED] Senior Vocational Rehabilitation Counselor ("SVCR"). As SVRC [REDACTED] reviewed all decisions that were made on behalf of the agency relating to service provision. [REDACTED] testified that Consumer was eligible for ACCES-VR services based on [REDACTED] disability of Mental Illness. The disability was documented through a psychiatric evaluation (Agency Ex.1) which was provided by the Consumer and provided by what [REDACTED] [REDACTED] characterized as "vocational implications." The psychiatric evaluation stated that the "...patient struggles with [REDACTED] inability to find or keep employment, which [REDACTED] continues to attribute to others with a significant paranoid and delusional theme. [REDACTED] refuses to accept that

² The instant case closure is the eighth case closure for the Consumer with ACCES-VR. The Consumer does not dispute the prior closures. (t.104-06)

any aspect of [REDACTED] difficulties might be related to [REDACTED] mental illness and therefore refuses antipsychotic medication which may potentially help.” Respondent was not in treatment for [REDACTED] disability when [REDACTED] applied for ACCES-VR services. It was made a condition of [REDACTED] receipt of services that [REDACTED] enter treatment and comply with treatment recommendations to meet a work readiness requirement. (t. 73-76, 93-94, Agency Ex. 2)

The Consumer complied with the requirement that [REDACTED] re-enter treatment and an Individualized Plan for Employment (“IPE”) was developed. The IPE is dated [REDACTED]/15 and it authorized supported employment services using the services of an agency vendor. The vendor, [REDACTED] (“[REDACTED]”) provided supported employment services. The IPE set a work goal of supported employment-stock clerk (light duty)³, assembled or related, as well as evaluation milestones related to supported employment. The IPE goal is agreed upon between the Consumer and the VRC. The evaluation milestones included that [REDACTED] follows the rules of the work site, achieve acceptable work relationships with supervisors and coworkers, follow suitable job leads and work cooperatively with [REDACTED] job coach. (t. 77-78, 116, Agency 3)

[REDACTED] provided ACCES-VR with monthly progress reports starting with [REDACTED] 2015 and ending in [REDACTED] 2016. In the [REDACTED] 2015 progress report [REDACTED] advised that the Consumer had an interview set up with [REDACTED] as a barcoder, but the interview was cancelled as “the employer was not pleased with the way [REDACTED] spoke on the phone, [REDACTED] was very rude to the employer...” [REDACTED] counseled the Consumer on the importance of appropriate communication with employers and seeking assistance from the [REDACTED] staff. [REDACTED] testified that the

³ The Consumer was adamant that the work goal in the IPE should be in manufacturing. (t. 120, Agency 3)

reports noted that the Consumer was successful in generating job interviews but was hesitant about pursuing employment.

In one instance, the Consumer was concerned that a job offer was not going to lead to full time employment and would not accept the position. The Consumer wanted a guarantee that [REDACTED] would not be fired. (t. 77-83, Agency Ex. 4, 5, 6, 7)

In [REDACTED] 2016 the Consumer was offered full time employment with [REDACTED] a manufacturing company in [REDACTED], New York, as a machine operator. The Consumer advised [REDACTED] staff that [REDACTED] was reluctant to take the job because [REDACTED] was afraid if [REDACTED] lost the job [REDACTED] would not be eligible for ACCES-VR services in the future. The Consumer did accept the job and started work on [REDACTED] 2016. (t. 84, Agency Ex.4)

ACCES-VR offered an incentive to [REDACTED] in hiring the Consumer in the form of a Work-Try-Out (WTO). The incentive is that ACCES-VR will reimburse the employer for a portion of [REDACTED] salary for the first 12 weeks of employment. The WTO is an evaluation period which gives the employer and the employee the opportunity to see if they are a good fit and is designed to give both parties enough time to make the decision. It can run up to 12 weeks of full time pay. However, there are no guarantees at the end of that period that the person will be retained. The Consumer had concerns about the WTO program and the program was explained to [REDACTED] by [REDACTED] VRC. (t. 84-85, 128-129, Agency Ex. 8, 10, 16)

The Consumers IPE was updated to reflect the WTO at [REDACTED] in mid-[REDACTED] 2016. Through both the IPE and correspondence from his VRC the Consumer was advised that [REDACTED] is

expected to, among other things, follow the rules of the work site, as explained by the employer, maintain acceptable work relationships with supervisors and other employees and show responsibility in areas of safety, attendance, and quality of work.

The Consumer was further advised that “Continuation of sponsorship by ACCES-VR is dependent upon compliance with attendance requirements of the employer and on your continued cooperation with both the employer and ACCES-VR”. (t. 85-88, 130-3, Agency 9,10)

In early [REDACTED] the Consumer was injured on the job at [REDACTED]. It appears that it was a re-injury of an injury that happened at home. The Consumer had a meeting with the General Manager and Human Resources Manager, among others and [REDACTED] refused to sign a medical letter regarding the injury and challenged the General Manager when asked a question about [REDACTED] injury. In the meeting, the Consumer stated that [REDACTED] knew they only hired [REDACTED] because of the incentives despite being told [REDACTED] was hired based on [REDACTED] skill set. The meeting left the General Manager feeling uncomfortable and the Human Resources Manager stating that [REDACTED] believed [REDACTED] might be a danger to [REDACTED] or others. The Consumer also stated that [REDACTED] did not need to go to a doctor regarding the injury despite that being work protocol. The Consumer was terminated by [REDACTED] (t. 88-90, Agency 11 Ex. 11, 12)

On [REDACTED] [REDACTED], 2016, the Consumers case at ACCES-VR was closed and the IPE ended. The case was closed out based on a finding that the Consumer had not made reasonable efforts to cooperate in carrying out [REDACTED] vocational plan. [REDACTED] testified that ACCES-VR’s mission is to help individuals with disabilities who would like to work and to help them obtain

competitive employment. [REDACTED] testified that based on a review of the record and considering what transpired at [REDACTED] that the Consumer was not demonstrating vocational readiness and [REDACTED] made the decision to close the case. A closure letter was sent by the VRC advising the Consumer that [REDACTED] had made attempts to contact the Consumer to discuss the termination and reason for the case closure but received no response. A response was received to the closure letter from the Consumer dated [REDACTED] [REDACTED] 2016. (t. 90-92, 106-108, Agency Ex. 13, 14, 15)

On [REDACTED] 2016, an Administrative Review of the decision to close the Consumers case was upheld. The Consumer was present at the Administrative Review. By letter dated [REDACTED] 2016 a decision was made by [REDACTED] Director of Counseling, [REDACTED] District Office of ACCES-VR to support the decision to close the Consumers case. (Agency Ex.17)

[REDACTED] testified that [REDACTED] did not find that the wage reimbursement for the Consumers WTO with [REDACTED] was out of the ordinary and it did not exceed the 480 hours allowed in the agency policy and that the benefits of the longer amount of times gives both the employer and employee the opportunity to see if they are a good fit. (t. 141-43)

[REDACTED] did not find that [REDACTED] feedback was taken in to consideration, other than determining eligibility, in [REDACTED] case. (t.143-144) In addition, [REDACTED] testified that [REDACTED] did not find the expectations of the consumer to be unrealistic or there to be any document falsification by the contractor agency. In coming to [REDACTED] conclusions, [REDACTED] relied on the case record including the feedback from [REDACTED] as well as the employer [REDACTED] the VRC and SVRC. [REDACTED] also reviewed the policies of the Agency as well as what the Consumer told [REDACTED]. [REDACTED] testified that the

Consumer indicated that [REDACTED] needed to have support 100% of the time to help [REDACTED] deal with issues at the work site. [REDACTED] stated that having staff with you all the time defeats the purpose of supported employment because it should be competitive and to have a job coach with you all the time is not competitive employment. The Consumer also told [REDACTED] that [REDACTED] has some anger management issues which [REDACTED] stated [REDACTED] witnessed in the Administrative Review when [REDACTED] raised [REDACTED] voice and at times would point [REDACTED] finger in [REDACTED] face. [REDACTED] stated that [REDACTED] saw things that were concerning and illustrated that there was a readiness issue. In [REDACTED] written determination, [REDACTED] suggested to the Consumer that [REDACTED] might consider prevocational or readiness training to work on coping skills, anger management, cognitive behavior remediation or therapy.

CONCLUSION

I find that ACCES-VR acted appropriately when the decision was made to terminate services to the Consumer and close out [REDACTED] case. I credit the testimony of [REDACTED] SVRC, [REDACTED] Director of Counseling and the documents submitted by the Respondent. I find that they support a finding that the Consumer had not made reasonable efforts to cooperate in carrying out [REDACTED] vocational plan and that [REDACTED] was not demonstrating vocational readiness. The mission of ACCES-VR is to assist individuals with disabilities to obtain competitive employment.

Based on the testimony and the documents submitted by the Respondent the Consumer needed more intensive prevocational training and psychiatric therapy to be ready for competitive employment. The Respondent makes numerous charges in the due process complaint asserting that the “Termination of services factually due to ACCES personnel’s unlawful practices” and describe those practices as “Document falsification by associated contractor and [REDACTED] clinic in IPE. Unrealistic performance demands made to an uninformed client. Corrupt handling of Work Tryout incentive...” There is nothing in the record to support a finding that ACCES-VR personnel engaged in any unlawful conduct or practices or that there was any document falsification. Further, there is nothing in the record to support a finding that the demands on the Consumer, and the terms of [REDACTED] WTO, were out of the ordinary. The Consumer, in support of [REDACTED] position, submitted documents into evidence. I did not find those documents persuasive. In view of the foregoing, the Due Process Request filed by the Consumer is dismissed.

██████████
Impartial Hearing Officer

Dated: ██████████, 2016

RIGHT TO APPEAL

This decision will become final and ACCES-VR will begin to implement the decision within 20 (twenty) days. If Petitioner disagrees with my decision, ██████ may seek judicial review of my decision in either New York State Supreme Court or United States District Court.

EXHIBITS

Arbitrator Ex. I	Notice of Hearing, dated [REDACTED]/16, 2 pages
Arbitrator Ex. II	Due Process Request, dated [REDACTED] 16, 2 pages
Consumers Ex. A	Documents with ACCES-VR & [REDACTED], various dates, 44 pages
Consumers Ex. B	Various Correspondence Post Case Closure, 22 pages
Agency Ex. 1	Psychiatric Evaluation for [REDACTED] [REDACTED] dated [REDACTED]/14, 13 pages
Agency Ex. 2	Letter from [REDACTED] to [REDACTED] [REDACTED] dated [REDACTED]/15, 1 page
Agency Ex. 3	IPE, dated [REDACTED]/15, 7 pages
Agency Ex. 4	Monthly progress reports for employment, dated [REDACTED]/16/27 pages
Agency Ex. 5	Email, dated [REDACTED]/15, 1 page
Agency Ex. 6	Chronological Case History, dated [REDACTED]/16 1 page
Agency Ex. 7	Chronological Case History, dated [REDACTED]/16, 1 page
Agency Ex. 8	Letter from [REDACTED] to [REDACTED] [REDACTED] dated [REDACTED]/16, 2 pages
Agency Ex. 9	IPE, dated [REDACTED] 16, 2 pages
Agency Ex. 10	Letter from [REDACTED] to [REDACTED] [REDACTED] dated [REDACTED]/16, 1 page
Agency Ex. 11	Email, [REDACTED]/16-[REDACTED]/16, 1 page
Agency Ex. 12	Email, [REDACTED]/16, 1 page
Agency Ex. 13	Closure Summary Case Note, dated [REDACTED]/16, 1 page
Agency Ex. 14	Letter from [REDACTED] to [REDACTED] [REDACTED] dated [REDACTED]/16, 2 pages
Agency Ex. 15	Letter from [REDACTED] [REDACTED] to [REDACTED] [REDACTED] dated [REDACTED] 16, 2 pages
Agency Ex. 16	Work Try-Out/On the Job Training Policy, dated [REDACTED], 8 pages
Agency Ex. 17	Letter from [REDACTED] to [REDACTED] [REDACTED] dated [REDACTED]/16, 1 page