

**RULES
OF
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
BUREAU OF WORKERS' COMPENSATION**

**CHAPTER 0800-02-28
VOCATIONAL RECOVERY ASSISTANCE PROGRAM**

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0800-02-28-.01 PURPOSE AND SCOPE.

The vocational recovery assistance program connects permanently disabled injured workers with public institutions and monetary resources to acquire the knowledge, skills, and abilities they need to return to meaningful employment.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.02 DEFINITIONS.

The following definitions are for the purpose of this chapter only:

- (1) "Administrator" means the chief administrative officer of the Bureau of Workers' Compensation, with full authority over the Vocational Recovery Assistance Program, or the Administrator's designee.
- (2) "Applicant" means an injured worker who has submitted a request for vocational recovery assistance on the form prescribed by the Administrator.
- (3) "Award Letter" means the Administrator's written notification of the conditioned award of monies from the Fund.
- (4) "Bureau" means the bureau of workers' compensation of the department of labor and workforce development.
- (5) "Certificate" means a credential, other than a degree or diploma, the receipt of which indicates satisfactory completion of training in a program of study offered by an eligible educational institution.
- (6) "Compensation Period" is the number of weeks after maximum medical improvement, calculated by multiplying the applicant's impairment rating by four hundred fifty (450) weeks.
- (7) "Continuous Enrollment" means enrollment in consecutive fall and spring semesters from matriculation until certificate or degree completion.
- (8) "Date of Final Payment" means the date of issuance of the payment of a resulting award as that term is defined in T.C.A. § 50-6-207(3)(B) and/or additional permanent partial disability benefits by the insurance carrier.

(Rule 0800-02-28-.02, continued)

- (9) "Degree" means a two-year associate's degree or four-year bachelor's degree conferred on students by an eligible educational institution.
- (10) "Director of the Subsequent Injury and Vocational Recovery Fund" is a licensed Tennessee attorney appointed by the Administrator to oversee the defense of all workers' compensation claims made against the Fund and to provide administrative assistance to the Vocational Recovery Assistance Program.
- (11) "Eligible Educational Institution" means any public postsecondary institution located in Tennessee and designated by T.C.A. § 50-6-208(j) or any business eligible to contract with the State of Tennessee to provide vocational training, vocational assessment, job analysis, employment training, or general educational development (GED) services.
- (12) "Employment training" means any program, class, or course of study listed by the Tennessee Department of Labor and Workforce Development as an Eligible Training Provider and is a public institution located in Tennessee.
- (13) "Financial Aid" means monetary assistance obtained through the Free Application for Federal Student Financial Aid (FAFSA) and may also include state and federal assistance obtained through Pell Grants, American Job Center Scholarships, Tennessee Promise Scholarships, the Tennessee Student Assistance Awards, Tennessee Connect Scholarships, and other assistance programs.
- (14) "Fiscal Year" means the State of Tennessee fiscal year (July 1–June 30) or as otherwise noted by the Tennessee Department of Finance and Administration.
- (15) "Form" or "Application" means the "Request for Vocational Recovery Assistance" form approved by the Administrator pursuant to T.C.A. § 50-6-208(j)(1)(B), which the applicant must submit to the Bureau to apply for monetary assistance from the Fund.
- (16) "Free Application for Federal Student Aid" or "FAFSA" shall have the same meaning as set forth in T.C.A. § 49-4-902.
- (17) "Fund" means the Subsequent Injury and Vocational Recovery Fund as defined in T.C.A. § 50-6-208(c), (d).
- (18) "Fund Allocation Committee" means a group of three (3) or more individuals with knowledge of job opportunities in Tennessee and available to advise the Vocational Rehabilitation Assistance Program regarding the allocation of funds.
- (19) "Immediate Family Member" means a spouse, parent, grandparent, child, or sibling.
- (20) "Maximum Medical Improvement" shall have the same meaning as set forth in T.C.A. § 50-6-207.
- (21) "Program" means the staff within the Bureau responsible for administering T.C.A. 50-6-208(j), otherwise known as the "Vocational Rehabilitation Assistance Program."
- (22) "Recipient" means an applicant selected by the Administrator to receive vocational recovery assistance and on whose behalf the Program has submitted payment of vocational recovery assistance funds to an eligible educational institution.
- (23) "Satisfactory Academic Progress" means progress in a course of study in accordance with the standards and practices used by the eligible educational institution at which the applicant is currently enrolled.

(Rule 0800-02-28-.02, continued)

- (24) "Semester" means the period as defined in T.C.A. § 49-4-902.
- (25) "Tuition and Mandatory Fees" means fees required for the enrollment or attendance of all students at eligible educational institutions and shall include, but not be limited to, fees charged for classroom courses, TN eCampus courses, books, other online courses, tools, laboratory classes, or other supplies.
- (26) "Vocational Recovery Assistance" shall have the same meaning as set forth in T.C.A. § 50-6-208(j)(2).
- (27) "Vocational Testing" and "Vocational Assessment" means any standardized procedure(s) approved by the Administrator intended to establish the range, quality, or reliability of the applicant's occupational or employment abilities.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.03 SEVERABILITY.

- (1) If any provision of these Rules or the application thereof to any person or circumstance is, for any reason, held to be invalid, the remainder of the Rules and the application of the provisions to other persons or circumstances shall not be affected in any respect whatsoever.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.04 ELIGIBILITY.

To be eligible to receive Vocational Recovery Assistance, the applicant shall:

- (1) Have a permanent impairment rating, as that term is used in T.C.A. § 50-6-204, greater than zero attributable to a compensable work-related injury under the Tennessee Workers' Compensation Law; and
- (2) Pursuant to T.C.A. § 50-6-208(j):
 - (a) Suffer a compensable work-related injury under the Tennessee Workers' Compensation Law;
 - (b) Not have returned to any employment because of the work-related injury, or have returned to work but earning less than 100% of the salary or wage the applicant received from the applicant's pre-injury employer on the date of injury;
 - (c) Have received all permanent partial disability benefits permitted under T.C.A. § 50-6-207(3), including the original award, the resulting award, and any additional permanent disability benefits that may be owed because of education, age, or unemployment rate; and
 - (d) Submit the Form to the Program within ninety (90) days of the date of final payment for all permanent partial disability benefits under T.C.A. § 50-6-207(3).

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.05 APPLICATION PROCESS.

To apply for Vocational Recovery Assistance, the applicant must meet the above eligibility requirements and shall:

- (1) Complete the Form and submit it to the Program.
- (2) At the Administrator's discretion, register with the Division of Workforce Services of the Tennessee Department of Labor and Workforce Development and complete a Free Application for Federal Student Aid. The Program may also require additional vocational assessments upon the request of the Fund Allocation Committee and approval of the Administrator.
- (3) Complete an eligibility interview, either in person or over the phone with a representative of the Program.
- (4) Upon receipt of an Award Letter from the Program, successfully register for coursework or training required for a degree, diploma or certificate at an eligible educational institution.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.06 PROGRAM ASSISTANCE.

To promote vocational recovery, the program shall:

- (1) Educate interested parties about the Program, including how to navigate the application process;
- (2) Assist applicants with accessing resources to define the applicant's knowledge, skills, abilities, and interests;
- (3) Inform interested parties about educational opportunities;
- (4) Assist with enrollment in eligible educational institutions;
- (5) Identify potential problems or obstacles with obtaining or maintaining eligibility;
- (6) Assist with discovering and implementing solutions to overcome common obstacles faced by applicants;
- (7) Assess individual outcomes related to educational attainment and employment; and
- (8) Develop performance measures for the purposes of program evaluation.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.07 RENEWAL PROCESS.

- (1) To receive vocational recovery assistance in subsequent fiscal years, any recipient of vocational recovery assistance funds must reapply by submitting to the Program a "Request for Vocational Recovery Assistance Renewal" at least two (2) months prior to the end of the fiscal year in which benefits were last administered.

(Rule 0800-02-28-.07, continued)

- (2) Renewal of vocational recovery assistance may not be granted if the Fund lacks adequate excess reserves pursuant to T.C.A. § 50-6-208(j)(4); the applicant no longer meets eligibility requirements pursuant to Rule 0800-02-28-.04; a terminating event occurs pursuant to Rule 0800-02-28-.11; or the Administrator, in consultation with the Fund Allocation Committee, denies the assistance request.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.08 AWARD AMOUNTS.

- (1) The award amount shall be limited to expenses provided by T.C.A. § 50-6-208(j)(2), including tuition and mandatory fees.
- (2) Amounts paid to an eligible educational institution shall be applied to the recipient's student account balance after registration for coursework and after all other sources of financial aid, not including loans or other forms of student debt, are applied.
- (3) The total amount paid on behalf of any recipient shall not exceed more than \$5,000 per fiscal year, nor shall it exceed more than \$20,000 per recipient for all years.
- (4) The total aggregate amount to be paid from the Fund to all recipients shall not exceed \$500,000 in any calendar year.
- (5) The Program may award amounts less than the maximum allowed by this section.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.09 FUND ALLOCATION COMMITTEE.

- (1) The Administrator shall appoint a Fund Allocation Committee comprised of representatives of employees, employers, and the medical and/or vocational rehabilitation communities with knowledge of job opportunities, ability or vocational assessment, or employment training, to assist and advise the Administrator regarding the selection of recipients and the allocation of funds.
- (2) In advising the Administrator, the committee members shall consider the applicant's eligibility and likelihood of successful matriculation. In the event the committee requests more information after review of an application, it may hold the application in abeyance and request that the applicant submit for vocational testing, at the cost of the Program, upon approval of the Administrator.
- (3) The Director of the Subsequent Injury and Vocational Recovery Fund shall serve as a non-voting ex-officio member of the committee.
- (4) Members of the committee shall serve without compensation but, when engaged in the conduct of their official duties as members of the committee, shall be entitled to reimbursement for travel expenses in accordance with uniform regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.
- (5) The Administrator may conduct quarterly committee meetings and shall conduct each meeting in any manner practical for the effective consideration of the applicants, including allowing for telephonic, electronic, or in-person interactions.

(Rule 0800-02-28-.09, continued)

- (6) Each member appointed shall serve a term of four (4) years and may be reappointed by the Administrator. If a member leaves the position prior to the expiration of the term, the Administrator shall appoint an individual meeting the qualifications of this section to serve the unexpired portion of the term. The individual may be reappointed by the administrator upon expiration of the term.
- (7) In making the initial appointments, the Administrator shall have the authority to shorten and stagger the terms of the committee members to ensure that the terms of no more than one-half of the committee members shall terminate at the same time.
- (8) The Administrator shall have authority to remove a committee member during an unexpired term for the nonperformance of duties or for cause.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.10 DISTRIBUTION OF FUNDS.

- (1) The Program shall notify the applicant and the eligible educational institution of the applicant's selection as an award recipient. Notice shall be in writing, in a manner prescribed by the Administrator.
- (2) The Program shall submit payment for covered expenses directly to the eligible educational institution on the behalf of recipients who are eligible.
- (3) No Funds shall be distributed prior to the Program confirming the recipient's registration for coursework in an eligible educational institution or employment training program.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.11 TERMINATING EVENTS.

- (1) The following events may cause the immediate discontinuance of payments from the Fund:
 - (a) Failure to meet any eligibility requirement;
 - (b) Failure to timely re-apply for benefits;
 - (c) Failure to maintain continuous enrollment absent an approved personal or medical leave of absence pursuant to Rule 0800-02-28-.12;
 - (d) Failure to maintain satisfactory academic progress; or
 - (e) Failure to communicate with the Program.
- (2) The following events shall cause the immediate discontinuance of payments from the Fund:
 - (a) Payment to the recipient of \$5,000 in a fiscal year or \$20,000 for all years;
 - (b) Payment of \$500,000 from the Fund to all recipients in a calendar year;
 - (c) Sunset of the Subsequent Injury and Vocational Recovery Fund statute, T.C.A. § 50-6-208; or
 - (d) Death of the recipient.

(Rule 0800-02-28-.11, continued)

- (3) Attainment of a degree or certificate shall cause discontinuance of payments from the Fund. The same recipient may be eligible to receive vocational recovery assistance for another degree or certificate. In such instances, the same recipient must submit a request for vocational recovery assistance renewal pursuant to Rule 0800-02-28-.07.
- (4) A recipient shall provide the Program notice of any terminating event within fifteen (15) business days of the occurrence of the terminating event. Failure to provide the required notice may result in the denial of any future applications.
- (5) The Program shall send notice of the termination of benefits via electronic communication, or via certified mail to the last known address, within thirty (30) days of knowledge of the terminating event pursuant to Rule 0800-02-28-.11. The notice shall cite the terminating event, specify the termination of benefits, and identify the process to appeal the termination of benefits.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.12 PERSONAL OR MEDICAL LEAVE OF ABSENCE.

- (1) The Program may grant a recipient a medical or personal leave of absence from continuous enrollment at an eligible educational institution as long as all other applicable eligibility criteria are met. Allowable medical or personal reasons may include illness of the recipient; illness or death of an immediate family member; extreme financial hardship of the recipient or an immediate family member; fulfillment of required military service; or other extraordinary circumstances beyond the recipient's control where attendance creates a substantial hardship.
- (2) To be eligible for a personal or medical leave of absence, the recipient must submit a "Request for Leave of Absence" to the Program within fifteen (15) business days of the withdrawal from the eligible educational institution. The request shall include a copy of the withdrawal filed with the eligible educational institution.
- (3) Any award to a recipient after a personal or medical leave of absence is subject to review by the Fund Allocation Committee and approval by the Administrator.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.13 AWARDS MADE IN ERROR.

- (1) Repayment from the recipient of an award made in error shall not be required if the Bureau determines that the error was through no fault of the recipient.
- (2) Repayment from the recipient of an award made in error shall be required if the Bureau determines that the recipient committed fraud in obtaining the award or that the error was due to the fault of the recipient. When repayment from the recipient is required, the recipient shall not receive additional assistance from the Bureau until repayment is made in full.
- (3) Repayment from the eligible educational institution will be required if the Bureau determines that the error was due to the fault of the institution.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.14 REFUND POLICY.

- (1) If a recipient fails to complete a semester for any reason, the eligible educational institution shall apply its refund policy to determine whether a refund may be required.
- (2) A recipient shall cause any refunded amount to be returned to the Fund.
- (3) Refunds should be returned to the Bureau by check or money order either in person or by U.S. mail and made payable to the Tennessee Bureau of Workers' Compensation.
- (4) Awards returned through the refund policy may be used to make additional awards through the Program. If the refunded amount was originally awarded in a previous calendar year, it shall not be included in the total aggregate awards for the refund calendar year.
- (5) Upon knowledge of the recipient's receipt of monies paid by the Program, whether by error, fraud, or refund, the Program shall contact the recipient telephonically and via written correspondence to arrange for reimbursement of all monies received by the recipient through error, fraud, or refund. In the event the monies are not refunded to the Program within ninety (90) days of the recipient's receipt, the Bureau shall assume the rights of a creditor against the recipient and may, at the discretion of the Administrator, take action to collect those monies paid by the Program.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.15 TIME LIMITS.

- (1) All time limits referenced in these Rules may be extended by the Administrator unless specifically set by statute.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.

0800-02-28-.16 APPEALS.

- (1) In the event the Administrator denies an application for vocational recovery assistance that was submitted within the time limitation set forth by T.C.A. § 50-6-208(j)(1)(B), the applicant may re-file an application to be reconsidered for a future award. For purposes of the aforementioned time limitation, the initial application date will be considered the application date of any subsequent application filed for the same injury, provided, the subsequent application is received within two (2) years of the initial application date.
- (2) Any person whose payments from the Fund are terminated under Rule 0800-02-28-.11 may appeal the Bureau's decision upon providing a written request to the Bureau within fifteen (15) business days of the date the Bureau issues a notice of termination. If a timely appeal is not filed with the Bureau, the Bureau's decision shall become final, not subject to further review. If a request for an appeal is timely filed with the Bureau, the request shall be considered a request for a contested case hearing pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 *et seq.* All rights, duties, obligations, and procedures applicable under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 *et seq.*, are applicable under these Rules.
- (3) Any person from whom the Bureau seeks repayment under Rule 0800-02-28-.13 or Rule 0800-02-28-.14 may appeal the Bureau's decision upon providing a written request to the Bureau within fifteen (15) business days of the date of the Bureau's initial request for repayment. If a timely appeal is not filed with the Bureau, the Bureau's decision shall become

(Rule 0800-02-28-.16, continued)

final, not subject to further review. If a request for an appeal is timely filed with the Bureau, the request shall be considered a request for a contested case hearing pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 *et seq.* All rights, duties, obligations, and procedures applicable under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 *et seq.*, are applicable under these Rules.

Authority: T.C.A. §§ 50-6-208 and 50-6-233. **Administrative History:** Original rules filed September 4, 2018; effective December 3, 2018.