

MINUTES OF THE House COMMITTEE ON Labor and Industry

Held in Room 526-S, at the Statehouse at 9:00 a. m./~~PM~~,

on March 2, 1983.

All members were present except:

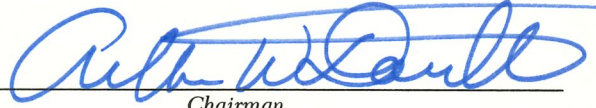
Representative Holderman/Excused

The next meeting of the Committee will be held at 9:00 a. m./~~PM~~,

on March 3, 1983.

These minutes of the meeting held on _____, 19____ were

considered, corrected and approved.


Chairman

The conferees appearing before the Committee were:

Bill Morrissey, Div. of Workmans' Compensation
John Brookins, KS Bar Assoc.
Gary Jordon, KS Trial Lawyers Assoc.
Kathleen Sebelius, KS Trial Lawyers Assoc.

Chairman Douville called the meeting or order at 9:10 a.m.

Chairman Douville went over H.B. 2379 with the committee.
With emphasis on attachment #1.

Chairman Douville then called Bill Morrissey to the speakers stand to answer questions regarding H.B. 2379. A discussion followed.

Mr. John Brookins spoke as a proponent to H.B. 2379. A short discussion followed.

Chairman Douville then explained to the committee what a functional disability is, and also went over attachment #2 with the committee.

Kathleen Sebelius then introduced Mr. Gary Jordon to the committee. Mr. Jordon gave testimony and in conclusion said that section 3 should be struck from the bill.

Because of time limitations a continuation of hearings on H.B. 2379 will continue tomorrow.

Chairman Douville adjourned the meeting at 10:00 a.m.

Guest List

3-2-83

Steve Entz	Iowa Beef Packers	KACI
Rob Hofer	Topeka	KACI
Ralph McGee	TOPKA	KS.AFL-CIO
Hummer Smith	"	Budget
ARNOLD BERTAN	"	DHR
Gary Jordan	KTCA	Ottawa
Bill Morrissey	DHR	Topeka
Raymond Moon	"	" "
Morris Taylor	DHR	Topeka
George Welch	DoA	Topeka
Wayne Maikel	Kansas AFL-CIO	Top
Hugh Wahl	Maun High School	Maun Ks.
Suzanne Steward	Marion High School	Florence, KS
Brenda O'Dell	Marion High School	Florence, Ks.
Amie Buckner	Topeka	Kans. Bar Assn.
Kathleen Seiders	Topeka	KTCA
Mark Bennett	Topeka	aJa

44-508. Definitions.

- (a) No changes.
- (b) No changes.
- (c) (1) No changes.
- (c) (2) No changes.

(3) "Wholly dependent child or children" means:

(A) "A natural or adopted child ~~or a stepchild~~ of the employee who ~~lives in the employee's household~~ except a child whose relationship to the employee has been severed by adoption;

(B) ~~a natural or adopted child of the employee, not living in the employee's household, but to whom the employee has legal obligations to pay the majority of support, whether or not such support has been ordered by a court and whether or not such support is actually paid; or~~ a stepchild of the employee who lives in the employee's household; or

(C) any other child ~~for whom~~ who is actually dependent in whole or in part on the employee provides the majority of support and who is related to the employee by marriage or consanguinity.

- (d) No changes.
- (e) No changes.
- (f) No changes.
- (g) No changes.
- (h) No changes.
- (i) No changes.
- (j) No changes.

44-510g. Medical, physical and vocational rehabilitation; appointment and duties of rehabilitation administrator; application, evaluation and hearing for rehabilitation; expenses and temporary total disability compensation; cancellation of compensation; review and modification. (a) A primary purpose of the workmen's compensation act shall be to restore the injured employee to substantial and gainful employment. To this end, the director shall appoint, subject to the approval of the secretary, a specialist in medical, physical and vocational rehabilitation, who shall be referred to as the "rehabilitation administrator." The rehabilitation administrator shall be in the classified service. The rehabilitation administrator shall: (1) Continuously study the problems of physical and vocational rehabilitation; (2) investigate and maintain a directory of all rehabilitation facilities, public or private, in this state, and,

where such rehabilitation administrator determines necessary, in any other state; and (3) be fully knowledgeable regarding the eligibility requirements of all state, federal and other public medical, physical and vocational rehabilitation facilities and benefits. With respect to private facilities and agencies providing medical, physical and vocational rehabilitation services, the director shall approve as qualified such facilities, institutions and physicians as are capable of rendering competent rehabilitation services. No such facility or institution shall be considered qualified unless it is specifically equipped to provide rehabilitation services for persons suffering from either some specialized type of disability or some general type of disability within the field of occupational injury or disease, and is staffed with trained and qualified personnel and, with respect to medical and physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless such physician has had such experience and training as the director may deem necessary.

(b) Under the direction of the director, and subject to the director's final approval, the rehabilitation administrator shall have the duties of directing and auditing medical, physical and vocational rehabilitation of employees in accordance with the provisions of this section.

(c) An employee who has suffered an injury shall be entitled to prompt medical and physical rehabilitation services, as may be reasonably necessary to restore such employee to substantial and gainful employment and as provided in this section.

(d) When as a result of an injury or occupational disease which is compensable under the workmen's compensation act, the employee is unable to perform work for which such employee has previous training, education, qualifications or experience, or when such employee is unable to perform other substantial and gainful employment, such employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore such employee to substantial and gainful employment and as provided in this section.

(e) The director, on such director's own motion or upon application of the employee or employer, and after affording the parties

an opportunity to be heard and to present evidence, may refer the employee to a qualified physician or facility for evaluation and for a report of the practicability of, need for, and kind of service, treatment, training or rehabilitation which is or may be necessary and appropriate to render such employee fit for substantial and gainful employment. The costs of such evaluation and report shall be at the expense of the employer. Upon receipt of such report, and after affording the parties an opportunity to be heard and present evidence, the director: (1) May order that any treatment, or medical and physical rehabilitation, as recommended in the report or as the director may deem necessary, be provided at the expense of the employer;

(2) Where the employee is unable to engage in any type of substantial and gainful employment, and vocational rehabilitation, reeducation or training is recommended in the report, or is deemed necessary by the director to restore the employee to some type of substantial and gainful employment, the director may direct the employee to the appropriate federal, state or other public facility or agency where such services will or may be provided at no cost to the employer, except as hereinafter provided in this section; and

(3) If the employee is not eligible for such vocational rehabilitation, reeducation or training through any such state, federal or other public facility or agency, or where such services through such facilities or agencies are not available to the employee within a reasonable period of time, the director may order that such services be provided at the expense of the employer at any qualified facility in this state or any state contiguous to this state. Any such services to be provided at the expense of the employer under this paragraph (3), shall not extend for a period of more than twenty-six (26) weeks, except that in extremely unusual cases, after a hearing and the presentation of evidence, the director, by special order, may extend the period for not more than an additional twenty-six (26) weeks. The employer shall have a right to appeal to the district court any such special order by the director for any extension of the initial twenty-six (26) week period, within the time and in the manner provided in K.S.A. 44-556, and amendments thereto, and any such special order shall be stayed until the district court

has determined the appeal. There shall be no right of appeal to the Kansas supreme court from a judgment of the district court sustaining or overruling any such special order of the director.

(f) Where vocational rehabilitation, reeducation or training is to be furnished at the expense of the employer under this section, and such services require that the employee reside at or near a facility or institution, away from the employee's customary residence, either in or out of the state of Kansas, the reasonable costs of the employee's board, lodging and travel, not to exceed a maximum total of two thousand dollars (\$2,000) for any twenty-six (26) week period, shall be paid by the employer, except that, in unusual cases where, after a hearing and the presentation of evidence the director finds that the costs are clearly reasonable and necessary, the director may require by special order that the employer pay an additional amount for the costs of the employee's board, lodging and travel, of not more than one thousand dollars (\$1,000).

At 6.2

(g) The employer shall pay temporary total disability compensation during any period of vocational rehabilitation, reeducation or training, computed as provided in K.S.A. 44-510c, and amendments thereto, but the employer shall receive credit for any weekly, monthly or other monetary payments made to the employee or such employee's family by any state, federal or other public agency during any such period, exclusive of any such payments for the board, lodging, and travel expenses of the employee.

(h) The director shall cooperate with federal, state and other public or private agencies for vocational rehabilitation, reeducation or training, or medical or physical rehabilitation. The employer shall not be required to pay the reasonable costs of the employee's board, lodging and travel where such costs are borne by any federal, state or other public agency, nor shall any costs for vocational rehabilitation, reeducation or training be assessed to the employer if such vocational rehabilitation, reeducation or training is in fact furnished by and at the expense of any federal, state or other public agency.

(i) Whenever the director determines that there is a reasonable probability that with appropriate medical, physical or voca-

tional rehabilitation or reeducation or training, a person who is entitled to compensation for permanent total disability, partial disability, or any other disability under the workmen's compensation act, may be rehabilitated to the extent that such person can become substantially and gainfully employed or increase his or her earning capacity, and that it is for the best interests of such person to undertake such rehabilitation or reeducation or training, if the injured employee without good cause refuses to undertake the rehabilitation, educational or training program determined by the director to be suitable for such employee, or refuses to be evaluated under the provisions of subsection (e) of this section, the director shall suspend the payment of any compensation until the employee consents to undertake such program or to be so evaluated, and the director shall cancel the compensation otherwise payable if any such refusal persists for a period in excess of ninety (90) days.

(j) At such time as any medical, physical or vocational rehabilitation or reeducation or training has been completed under this section, the employer shall have the right, by the filing of an application with the director, to seek a modification of any award which has been rendered granting any compensation to the employee for any disability. Upon at least twenty (20) days notice by registered mail to all parties, the director shall set the application for hearing and the parties shall present all material and relevant evidence. In the event that the director determines that the employee is rehabilitated medically, physically or vocationally, so that such employee is able to engage in substantial and gainful employment, the director shall cancel any award of compensation for temporary total or permanent total disability, subject to review and modification pursuant to K.S.A. 44-528, and amendments thereto, and shall modify any existing award of partial disability, or, if no such award has been made, the director shall make an award of partial disability, to reflect only such partial disability, if any, as exists at the conclusion of such rehabilitation, reeducation or training. Any award of partial disability made pursuant to this subsection shall be subject to the provisions of K.S.A. 44-510d, and amendments thereto, and K.S.A. 44-510e, and amendments thereto.

(k) If an incumbent rehabilitation ad-

ministrators has served in such office for one year or more on the effective date of this act, such rehabilitation administrator shall be considered as having attained permanent status as a rehabilitation administrator.

History: L. 1974, ch. 203, § 17; L. 1976, ch. 370, § 19; L. 1980, ch. 146, § 2; July 1.

Cross References to Related Sections:

Rehabilitation program for handicapped adults, see 39-1201 et seq.

Division of vocational rehabilitation, department of social and rehabilitation services, see 72-4308 et seq.

Law Review and Bar Journal References:

Mentioned in "Potential Federalization of State Workmen's Compensation Law—The Kansas Response," James C. Wright and James P. Rankin, 15 W.L.J. 244, 260, 261, 262 (1976).

Mentioned in "Workmen's Compensation—An Introduction to Changes in the Kansas Statute," Bryce B. Moore, 24 K.L.R. 603, 605, 606 (1976).

Mentioned in "Workmen's Compensation—Major Changes in Employments Covered, Benefits, Defenses, Offsets, and Other Changes," Alvin D. Herrington, 24 K.L.R. 611, 618 (1976).

Discussed in "Workmen's Compensation—Rehabilitation Benefits," Vivien Hanna, 24 K.L.R. 649, 650, 651, 652, 653 (1976).

CASE ANNOTATIONS

1. Award of partial disability following rehabilitation program must reflect extent worker's ability to perform work of same type and character being done when injured has been reduced, as provided in 44-510e. *Antwi v. C-E Industrial Group*, 5 K.A.2d 53, 57, 58, 59, 61, 612 P.2d 656.