

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

on March 3, 19 83.

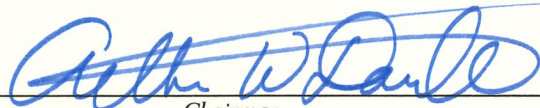
All members were present except:

All members were present.

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

on March 4, 19 83.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

- Gary Jordon, KS Trial Lawyers Assoc.
- Jim Gregory, Beech Aircraft Corporation
- Larry Shoaf
- Rich Enochs
- Stew Entz, Iowa Beef Packers

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

The committee was given Attachment #1, a Substitute for H.B. 2379.

Gary Jordon was called to the speakers stand to continue his testimony from the previous day. He handed out to the committee attachment #2. Mr. Jordon presented several scenarios to the committee to show why he is opposed to H.B. 2379.

Jim Gregory then introduced Larry Shoaf to the committee. Mr. Shoaf spoke as a proponent to H.B. 2379.

Chairman Douville then called Rich Enochs to the speakers stand. Mr. Enochs spoke as a proponent to H.B. 2379. Chairman Douville called Stew Entz, to the speakers stand, who also spoke as a proponent to H.B. 2379.

Chairman Douville adjourned the meeting as 9:55 a.m.

House Labor & Industries
March 3, 1983

Bill Morrissey Topeka DHR

Jim Grokens Topeka Kan Bar Assn

Tom Moore Topeka DHR

Wayman Topeka K. AFL-CIO

Ralph McGee Topeka Ks. BFL-CIO

William Sneed Topeka Ks. Ins. Dept.

Gene Smith Topeka Budget

3-3-83

#1

3 RS 1206

Substitute for HOUSE BILL NO. 2379

By Committee on Labor and Industry

AN ACT concerning workers' compensation; relating to benefits in cases of death and permanent partial general disability; amending K.S.A. 44-508, 44-510e and 44-510g and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 44-508 is hereby amended to read as follows: 44-508. As used in the workmen's compensation act:

(a) "Employer" includes any person or body of persons, corporate or unincorporate, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, association or partnership; and the state, or any department, agency or authority of the state, any city, county, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof.

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, ambulance attendants, mobile intensive care technicians, firemen or fire fighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any

Attch. 1

contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; and minors, whether such minors are legally or illegally employed. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a, such terms shall not include individual employers, limited or general partners or self-employed persons.

(c) (1) "Dependents" means such members of the employee's family as were wholly or in part dependent upon the employee at the time of the accident.

(2) "Members of a family" means only surviving legal spouse and children; or if no surviving legal spouse or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section, parents include stepparents, children include stepchildren, grandchildren include stepgrandchildren, brothers and sisters include stepbrothers and stepsisters, and children and parents include that relation by legal adoption. In the meaning of this section, a surviving spouse shall not be regarded as a dependent of a deceased employee or as a member of the family, if the surviving spouse shall have for more than six (6) months willfully or voluntarily deserted or abandoned the employee prior to the date of the employee's death.

(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 such 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~~ 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) "Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workmen's compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

(e) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence.

(f) The words "arising out of and in the course of employment" as used in the workmen's compensation act shall not be construed to include injuries to the employee occurring while ~~he or she~~ the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.

(g) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true.

(h) "Director" means the director of workers' compensation as provided for in K.S.A. ~~1979-Supp.~~ 75-5708 and amendments thereto.

(i) The words "physician," "surgeon" or "doctor" shall mean and include any person licensed, by the proper licensing authority of this state, another state or the District of Columbia, to practice medicine and surgery, osteopathy, chiropractic, dentistry, optometry or podiatry.

(j) "Secretary" means the secretary of human resources.

Sec. 2. K.S.A. 44-510e is hereby amended to read as follows: 44-510e. (a) Should the employer and the employee be unable to agree upon the amount of compensation to be paid in the case of injury not covered by the schedule in K.S.A. ~~510d~~ ~~as amended~~ 44-510d, the amount of compensation shall be settled according to the provisions of the workmen's compensation act as in other cases of disagreement: ~~Provided, except~~ except that in any case of temporary or permanent partial general disability not covered by such schedule, the ~~workman~~ worker shall receive weekly compensation as determined in this subsection (a) during such period of temporary or permanent partial general disability not exceeding a maximum of ~~four-hundred-fifteen-(415)~~ 415 weeks. Weekly compensation for temporary partial general disability shall be ~~sixty-six-and-two-thirds-percent-(66-2/3%)~~ 66 2/3% of the difference between the average gross weekly wage that the ~~workman~~ worker was earning prior to such injury as provided in the workmen's compensation act and the amount ~~he~~ the worker is actually earning after such injury in any type of employment, ~~such-weekly-compensation~~ except that in no case ~~to~~ shall such weekly compensation exceed the maximum as provided for in K.S.A. ~~44-510c~~ ~~as amended~~. Permanent partial general disability exists when the ~~workman~~ worker is disabled in a manner which is partial

in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d, ~~as amended~~. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the workman worker to engage in work of the same type and character that he the worker was performing or was able to perform at the time of ~~his~~ the worker's injury, has been reduced. The amount of weekly compensation for permanent partial general disability shall be determined: (1) By multiplying the average gross weekly wage of the workman worker prior to such injury by the percentage of permanent partial general disability as determined under this subsection (a); and (2) by then multiplying the result so obtained by ~~sixty-six-and-two-thirds-percent--(66-2/3%)~~ 66 2/3%. The amount of weekly compensation for permanent partial general disability so determined shall in no case exceed the maximum as provided for in K.S.A. 44-510c, ~~as amended~~. If there is an award of permanent disability as a result of the compensable injury, there shall be a presumption that disability existed immediately after such injury. In any case of permanent partial disability under this section, the workman worker shall be paid compensation for not to exceed ~~four-hundred-fifteen-(415)~~ 415 weeks following the date of such injury, subject to review and modification as provided in K.S.A. 44-528, ~~as amended~~.

(b) If a workman worker has received an injury for which compensation is being paid ~~him~~ to the worker, and ~~his~~ the worker's death is caused by other and independent causes, any payment of compensation already due ~~him~~ to the worker at the time of ~~his~~ death and then unpaid shall be paid to ~~his~~ the worker's dependents directly or to ~~his~~ the worker's legal representatives if ~~he~~ the worker left no dependent, but the liability of the employer for the payments of compensation not yet due at the time of the death of such workman worker shall cease and be abrogated by ~~his~~ the worker's death.

(c) The total amount of compensation that may be allowed or awarded an injured workman worker for all injuries received in

any one accident shall in no event exceed the compensation which would be payable under the workmen's compensation act for permanent total disability resulting from such accident.

(d) Where a minor or ~~his~~ a minor's dependents are entitled to compensation under the workmen's compensation act from the employer, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or cause of action against ~~said~~ such employer shall inure or accrue to or exist in favor of the parent or parents of such minor employee on account of any damage resulting to such parent or parents on account of the loss of earnings or loss of service of such minor employee.

(e) In any case of injury to or death of a female employee, where the ~~said~~ female employee or her dependents are entitled to compensation under the workmen's compensation act from the employer, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or action shall inure, accrue to or exist in favor of the surviving husband or any relative or next of kin of such female employee against such employer on account of any damage resulting to such surviving husband or any relative or next of kin on account of the loss of earnings, services, or society of such female employee or on any other account resulting from or growing out of the injury or death of such female employee.

Sec. 3. K.S.A. 44-510g is hereby amended to read as follows: 44-510g. (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)~~ 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)~~ 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~~ twenty-six-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~~ more than a maximum total of ~~two-thousand-dollars~~ ~~(\$2,000)~~ \$2,000 for any ~~twenty-six-(26)-week~~ twenty-six-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)~~ \$1,000.

(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 vocational 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~~ such person's 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)~~ of more than 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~~ 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 administrator 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.

Sec. 4. K.S.A. 44-508, 44-510e and 44-510g are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

3-3-83 #2

Gary L. Jordan

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Memorandum To: House Labor and Industry Committee

In re: House Bill #2379

Section 3 of this bill should be deleted. The phrase "or was able to perform" at line 0290 on page eight of the bill would eliminate workers' compensation as we know it in the State of Kansas. It would eliminate permanent partial disability in most cases, causing seriously injured workers to receive no compensation whatsoever once they were released by their doctors.

The language in lines 0291 through 0303 on page eight of the bill would cause an explosion of litigation clogging the administrative, district, and appellate courts for years to come. This language would make vocational rehabilitation a contested issue in almost every case, whereas it is presently a contested issue in only a very few cases. This language would also cause an extreme increase in the number of rehabilitation cases handled by the State Department of Social and Rehabilitation Services. This language would cost the taxpayers of the State of Kansas enormous sums of money as a result of the heavy burdens it would create on the Workers' Compensation Division of the Department of Human Resources, the Department of Social and Rehabilitation Services, and the court system.

Recently it was my privilege to participate in a panel discussion on the issue of vocational rehabilitation. This panel discussion took place as a part of the annual seminar conducted by the Workers' Compensation Division of the Department of Human Resources. My participation was as a representative of the injured workers. The panel also contained a representative of the employers and insurance carriers, the Vocational Rehabilitation Administrator of the Workers' Compensation Division, and the Assistant Workers' Compensation Director. It was the unanimous conclusion of the panel that vocational rehabilitation does not work in contested cases and that it presently is very seldom used in contested cases. All of the panel members felt that the workers, employers, and insurance industry would all be

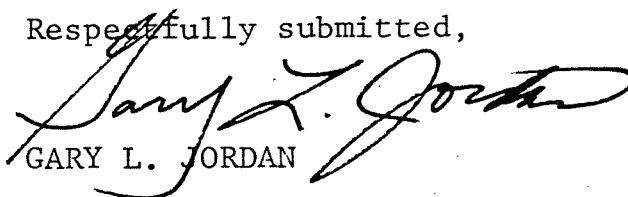
Attch. 2

Memorandum To: House Labor and Industry Committee
In re: House Bill #2379
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best served if vocational rehabilitation was entirely removed from contested workers' compensation cases. As pointed out above, the language in this bill would drastically increase the amount of litigation in this area, rather than decrease it.

The amendments contained in Sections 1 and 2 of this bill can be modified to make desirable clarifications in the law. That is a commendable goal. However, Section 3 should be removed from the bill along with the applicable portion of Section 4. Failure to do so would be catastrophic for all parties concerned and most especially for the injured workers and taxpayers of this state.

Respectfully submitted,



GARY L. JORDAN

GLJ:lb