

Approved _____

Date

Arthur Douville

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:00 a.m./~~p.m.~~^{XX} on January 28, 1987 in room 526-S of the Capitol.

All members were present except:

Representatives R. D. Miller and Webb -Excused

Committee staff present:

Jerry Ann Donaldson, Research Department
Jim Wilson, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Lloyd (Bud) Langston, Rehabilitation Administrator - Department of Human Resources

Chairman Douville called the meeting to order and recognized John Rathmel, Director, Division of Workers' Compensation, who addressed the committee yesterday. The chairman stated that the director had been asked to address the committee on problems involved with vocational rehabilitation, what it means and what role the Division of Workers' Compensation, Division of Vocational Rehabilitation and private industry should be.

Director Rathmel introduced Bud Langston, Rehabilitation Administrator - Department of Human Resources, saying that Mr. Langston's remarks would be based on his experience as a counselor of vocational rehabilitation and possibly some suggestions on how to improve the system.

Mr. Langston came forward and addressed the committee, see attachment #1. Many questions were asked during Mr. Langston's presentation which had to be terminated due to time restrictions. Chairman Douville told Mr. Langston that he would be asked to return at another time so that he could finish his presentation.

The meeting was adjourned at 9:55 a.m.

The next meeting is scheduled for January 29, 1987, at 9:00 a.m.

(Attachment #1 also contains a copy of a letter from Joan Watson, Commissioner of Rehabilitation Services, SRS, to Chairman Douville dated February 6, 1987; with attached statistics; and a copy of the "Cooperative Agreement Between The Kansas Office of the Director of Workers' Compensation and the Kansas Rehabilitation Services".)

HOUSE COMMITTEE
ON
LABOR AND INDUSTRY

Name	GUEST LIST City	DATE <u>January 28, 1987</u>	Representing
RICHARD THOMAS	TOPEKA		SRS/KANSAS REHABILITATION SERVICES
RON CACHES	WICHITA		BMAA
Rob Hodges	Topeka		KCCJ
Jim Dethoff	Lawrence		KSAH/CTO
Bob Nebuthut	Topeka		KTLH
Wayne Maucher	"		K. AFL-CIO
Ray Petty	Topeka		LACEH/DHR
John Kollman	"		KAMR/WC
Bud Langston	"		"

A primary purpose of Workers' Compensation is to return the injured worker to substantial gainful employment.

Rehabilitation of injured workers can occur in two ways.

Private vendor or public sector. Each has a specific role in providing of services. The public sector, Social and Rehabilitation Services, uses general tax fund monies to provide evaluation, testing, medical services and training. These services are provided not only to injured workers, but to any Kansas citizen who meets their eligibility criteria. The test for eligibility for SRS services is: A physical or mental disability. This disability must constitute a substantial vocational handicap and the providing of services must indicate a reasonable chance of employment. These services are provided through first dollar payment by SRS. If Federal or State funds are not available, then the employer may bear the cost of the rehabilitation. First dollar SRS funding is through a cooperative agreement between SRS and Workers' Compensation. In most other cases SRS looks to other sources as first dollar provider. Absence of State or Federal funding in SRS may require the plan to be approved by administrative law judge and his entering an order against employer to defray training costs and payment of temporary total benefits.

Services provided by rehabilitation services consist of independent medical examinations, vocational and psychological evaluation, and a development of vocational plan to reach a vocational objective. A plan may consist of on-the-job-training, placement directly into a position, or formal training. The method is dictated by the clients disability, past work experiences, and capabilities.

If a client has transferrable skills that would allow him to obtain employment he may not be eligible for services.

Also if the client has the financial ability to fund his own rehabilitation program and no other substantial services can be provided, he may not be eligible for services. The family income, and number of family members dictates economic eligibilty under federal guidelines.

Private Sector:

The private vendor does not receive any referrals from the Division of Workers' Compensation because of the cost involved. The service provided by the private vendor is charged against the employer at an hourly rate. Therefore the private vendor is retained directly by the insurance carrier.

The services of the private vendor consists of management of medical services to hold down costs, talking with employer to assist in return of employee to job, or modification of job to fit client. If return to same employer is not feasible then placement with other employers is investigated. The early intervention by private sector is a luxury not available to the public sector.

The public sectors counselors may have as high as 150 clients where the private vendor has a case load of about 15 clients per counselor. Therefore more time can be devoted to each client by the private vendor. The private sector can meet with employer and keep him up-to-date on progress of client in an attempt to return client to employment. The public sector generally has the more severely disabled client and requires a change of occupations. The length of the private sectors

involvement is considerably shorter than the public sector due to the lack of incentives to maintain the private counselor at his hourly rate. Therefore after maximum medical improvement has been obtained the carrier will generally end the contract with private vendor. The lack of incentives also causes problems in public sector. The employer is not eager to spend money on rehabilitation, be it temporary total benefits, training costs, or both and not receive credit against the work disability. As long as Antwi is in place, rehabilitation will suffer.

There are other problems that are a deterrent to the public sectors involvement. Only about 11% of all workers compensation referrals are rehabilitated. This statistic above would not speak well to SRS obligating funds which are audited by federal investigators, for future allocation of matching dollars. Also only 25% of the workers' compensation referrals are severely disabled. This is a prime target group for rehab dollars and if funding is short the last priority for services would go to injured workers. (Statistics are in testimony of Commissioner Watson. A copy is attached.) The lack of successful rehabilitation is mainly refusal of services by client. Basically the role of the private sector is one of medical management. The role of the public sector is to determine the need for rehabilitation just as they do for any other citizen of Kansas and provide services as indicated.

The current role of the Rehabilitation Administrator for the Department of Human Resources, Division of Workers' Compensation is one of referral source and coordinator of paper work between all involved parties. He has no authority in determination of a rehabilitation plan by either the private or public vendor. He reviews all accident reports for possible referral and contacts employees that may need services. Requests and reviews medical for determining which injured worker needs for referral. Acts on the order of administrative law judge in seeking a vocational evaluation. Keeps all parties informed of progress or back of same in rehabilitation program.

Possible resolutions to existing problems.

Give employer incentive to cooperate with rehabilitation of injured workers. Reduce or eliminate work disability by rehabilitation. And in return of injured worker to comparable gainful employment. This is employment that is reasonably attainable in the locale of injured worker that fits his qualifications, (physical, intellectually and interest) and is as close as possible to pre-injury economic status. The difference between pre-injury earnings are post rehab earnings would constitute permanent partial general disability.

The injured employee would be given the option of availing himself of rehabilitation services or settling ONLY for functional disability. In no case would injured worker get less than his functional rating of disability. A workers compensation/rehabilitation fund would be assessed by and administered through the Division of Workers' Compensation. This assessment against the insurance carrier would be sufficient to defray the cost of the rehabilitation of injured workers. This fund would allow for priority and timeliness of services to the workers' compensation recipient.

A rehabilitation bill that would encourage the cooperation of all parties could reduce the cost of Workers' Compensation and reach a primary purpose of the law, that of returning injured workers to employment.

"Comparable Gainful Employment" - Employment which is reasonably attainable, which the employee can reasonably perform, and which returns the employee as close as is feasible to preinjury economic status.

"On-The-Job-Training" - A regimen of formal and informal instruction in a workplace setting designed to enable a successful pupil to acquire a new marketable skill in comparable gainful employment.

"Job Placement" - Placing a person in comparable gainful employment which is expected to be a permanent placement in a permanent job but which does not necessarily enable the person to acquire a new marketable skill.

The director shall appoint a specialist in vocational rehabilitation who shall be referred to as the rehabilitation administrator. The rehabilitation administrator shall be in the classified service, and if the administrator has served in this capacity for a period of one year prior to the passage of this act, the administrator shall be considered permanent in the classified service.

The rehabilitation administrator shall study the problems of vocational rehabilitation education, on-the-job training and job placement; investigate and maintain a directory of all rehabilitation facilities, public or private; and be fully knowledgeable regarding the eligibility requirements of all state, federal and other public vocational rehabilitation facilities and the benefits offered by each.



STATE OF KANSAS

RECEIVED

FEB - 9 1987

Ks. St. Workers Compensation

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

REHABILITATION SERVICES

ROBERT C. HARDER, SECRETARY

February 6, 1987

2700 WEST 6TH STREET
TOPEKA, KANSAS 66606
(913) 296-3911
KANS-A-N 561-3911

The Honorable Arthur Douville
House of Representatives
9300 West 110th, Suite 690
Overland Park, Kansas 66210

Dear Representative Douville:

I appreciate your leadership in developing Worker's Compensation legislation in which rehabilitation is an integral component. Kansas Rehabilitation Services supports a rehabilitation law that promotes active participation toward rehabilitation on the part of both employees and injured workers.

After the February 3rd Committee meeting, my staff and I discussed rehabilitation needs with staff from the Division of Worker's Compensation.

The following recommendations emerged from that meeting, representing agreed upon priorities for proactive emphasis to rehabilitation:

- . A rehabilitation fund to pay for rehabilitation cost.
The Rehabilitation Administrator should be responsible for fund expenditures and criteria for accessing the fund. Rehabilitation Services should access funds through approval of the Rehabilitation Administrator (WC) for services needed to establish eligibility, and then provide services under an Individualized Written Rehabilitation Plan. I recommend taking a close look at Nebraska's rehabilitation fund, as their experience with such a fund is positive.

Priority of services for KRS is Severely Disabled clients: the past two years only 25% of persons referred by Worker's Compensation were Severely Disabled. Without a rehabilitation fund the non-severely disabled would be in jeopardy of not receiving services when KRS funds are tight.

- . Under Section 44-510g
I would use "comparable employment" in lieu of "gainful employment", and define comparable employment in terms of the following:


Reasonably attainable.
Ability to perform the duties.
Earnings comparable to pre-injury salary.

- . Work Disability
"Capacity for rehabilitation" should include an evaluation of vocational potential if the injured worker is pursuing a wage loss claim, Section 44-510e. If it is determined that there is capacity for rehabilitation, the injured worker would be required to cooperate and participate in a rehabilitation plan or accept only the functional loss as stated in 44-510e. Providing incentives for rehabilitation versus mandatory rehabilitation will result in more injured workers participation in a rehabilitation plan.
- . Payment of temporary total compensation during vocational rehabilitation evaluation or training. This serves as an incentive for injured workers to become involved in rehabilitation at an earlier date.
- . Not deducting payment of temporary total disability paid during vocational evaluation from schedule of weeks of injury. This would provide an incentive for early involvement with rehabilitation. Research has proven that early involvement increases the chances of successful rehabilitation.
- . Employers knowledge of the pre-existing impairment establishes a reservation in the mind of the employer when deciding whether to hire or retain the employee. This is an incentive for the employer to hire injured workers and have some protection under the second injury fund. Completing form 88 would benefit the employer and be a helpful placement tool for rehabilitation counselors.
- . Restrict the Award of Lump Sum Settlements
Lump sum settlements are not an incentive for rehabilitation. Rehabilitation potential should be explored before a lump sum settlement is awarded.

Kansas Rehabilitation Services views worker's compensation as an important referral source. However, referrals from the Division of Worker's Compensation comprise only three to four percent of the total referrals KRS receives annually. The percent of successful rehabilitation for this group is not high as the attached chart indicates. Private rehabilitation agencies play a necessary role in worker's compensation. If an injured worker needs active medical management and follow-up to return to the same employer then private rehabilitation can provide immediate services. On the other hand, if a rehabilitation plan requires a variety of timely longer-term services, then Kansas Rehabilitation Services may be the best resource for the injured worker.

Thank you for the opportunity to share the perspective of the State rehabilitation agency.

Sincerely,


Joan B. Watson
Commissioner

JBW:RLT:jlw

Attachment

cc: Bud Langston (WC)
John Rathmel

Kansas VR Clients Referred by Workers Compensation Closed Case Status

FFY 1985 and 1986

	FFY 1985		FFY 1986	
Number Closed Cases	250		312	
Closure Status	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
Successful	75	30.0	118	37.8
Unsuccessful				
Before Acceptance	126	50.4	153	49.0
After Acceptance	49	19.6	41	13.1
Reason for Closure	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
01 Moved/Unable to Locate	17	9.7	24	12.2
02 Too Severe	21	12.0	28	14.4
03 Refused Services	68	38.9	80	41.2
07 Failure to Cooperate	29	16.6	34	17.5
09 No Vocational Handicap	7	4.0	8	4.1
Age	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
- 29	16	6.4	19	5.8
30 - 39	50	20.6	56	17.9
40 - 49	79	31.6	93	20.2
50 +	105	41.4	144	46.1
Education	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
Below High School	71	31.4	109	36.7
High School	122	54.0	140	47.1
High School Plus	33	14.6	48	16.2
Severely Disabled	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
No	188	82.1	227	75.9
Yes	41	17.9	72	24.1

Cooperative Agreement

Between

The Kansas Office of the Director of Workers' Compensation

and

The Kansas Rehabilitation Services

The following agreement is hereby established between the Kansas Office of the Director of Workers' compensation and Kansas Rehabilitation Services. The major purpose of this agreement is to establish a working relationship whereby the two parties will coordinate provision of services to disabled industrial workers to enable these workers to return to suitable employment as promptly as possible.

Related Services and Benefits Available

Workers' Compensation

The Office of the Director of Workers' Compensation has legal jurisdiction in Kansas over cases involving injuries sustained by employees working in industries covered by the Workers' Compensation Law. This authority includes adjudicating the degree of disability, the employer's responsibility, the amount of compensation due the injured worker and prompt payment of such compensation, the medical and medically related services to be provided by the employer or his/her insurer in accordance with the law, and arranging for necessary vocational rehabilitation services as required by law.

The Office of the Director of Workers' Compensation may cooperate on a reciprocal basis with federal, state, and other agencies for vocational education or for vocational, physical, or medical rehabilitation.

If the employee is not eligible for such vocational rehabilitation, re-education or training through any state, federal, or other public facility or agency, or where such services are not available to the employee within a reasonable length 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, in accordance with the provisions of the law.

Kansas Rehabilitation Services

The state vocational rehabilitation agencies were established to provide vocational rehabilitation services to vocationally handicapped persons. Responsibility for determining eligibility of individuals referred by the Office of the Kansas Director of Workers' Compensation for services to be provided by Rehabilitation Services rests solely with the Kansas Rehabilitation Services.

The counselor must document that the following conditions exist for each applicant determined eligible for vocational rehabilitation services:

- the presence of physical or mental disability(ies) which for the applicant constitutes or results in a substantial handicap to employment; and

- a reasonable expectation that vocational rehabilitation services may benefit the applicant in terms of employability.

Rehabilitation services will place a major emphasis towards returning the injured worker to the company they were working for at the time of the injury. If it is not feasible for the worker to return to the same company (i.e., job modification, adaptive equipment, utilization of transferable job skills) then rehabilitation services will determine if the worker possesses transferable job skills that may be used in placement with another company.

After an individual is determined eligible for rehabilitation services, the services that will be necessary in order to assist the client in reaching their vocational objective are formalized into an Individualized Written Rehabilitation Plan (IWRP). Prior to providing services to the client the rehabilitation counselor must consider economic need, similar benefits and order of selection (if in effect).

Administrative Responsibility Under the
Cooperative Agreement

- A. The Director of Workers' Compensation will retain full jurisdiction over the selection of cases to be referred to Rehabilitation Services and over activities relative to the employee's eligibility for Workers' Compensation benefits.

- B. The Commissioner of Rehabilitation Services and his/her staff will retain full jurisdiction over decisions affecting individual eligibility for services provided by Rehabilitation Services and the nature and scope of services to be provided.

- C. Cases determined by the Workers' Compensation Rehabilitation Administrator to require rehabilitation services will be referred to the appropriate district office of KRS to determine eligibility for services. The Rehabilitation Administrator will have the injured worker sign a release for medical, psychological, vocational, employment related information, and/or reports on the injured worker. The above information will be forwarded to the Rehabilitation Administrator upon request. The KRS counselor will acknowledge the referral and notify Workers' compensation of the eligibility decision.

The KRS counselor will provide a rationale for ineligibility decisions to enable the Worker's Compensation agency to explore other possible resources in a timely manner. The Workers' Compensation agency will be advised when a

rehabilitation plan has been prepared, indicating briefly what service will be provided. Follow-up reporting will be responded to upon request. The Workers' Compensation will be notified by RS R11 of closures, indicating reason and status. Photocopies of case documentation should be sent to the Workers' compensation Rehabilitation Administrator to fulfill the above reporting requirements.

- D. During the period of time the worker is undergoing vocational rehabilitation services, the employer or his/her insurer would normally pay a weekly benefit not to exceed $66 \frac{2}{3}$ of the employee's average weekly wage up to a maximum of 75% of the state average weekly wage. Claims related to medical services are normally the responsibility of the employer or his/her insurer.
- E. The Director of Workers' Compensation and the Commissioner of Rehabilitation Services will be responsible for formulation of policy under this cooperative agreement.
- F. If an applicant, other than a referral from the Workers' Compensation agency, is disabled as a result of an industrial injury and is not aware of benefits for which s/he may qualify, s/he shall be referred to the Workers' Compensation agency on current developments in the field of rehabilitation through bulletins and other information available for distributions.

Review of Agreement

The terms of this agreement become effective on the day, month, and year the signatures are affixed below. Details of this agreement may be reviewed periodically and revised as found necessary with the consent of both parties. Either part may withdraw from the agreement by giving thirty days notice in writing to the other party.

/s/

Director, Worker's Compensation

/s/

Commissioner, Rehabilitation Services