Approved AWDouville 4-8-87
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry.

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

9:11 a.m./p.m. on March 20, 1987 in room 526-S of the Capitol.

All members were present except:

R.D. Miller - 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:

An amended version of H.B. 2573 was distributed to the committee, attachment #1. Jim Wilson explained that these were technical amendments made on page 9 (attachment #1, March 19, 1987) and page 3 of the amended version.

Representative Buehler made a motion to incorporate the language at the bottom of page 3 into H.B. 2573. Representative Sifers seconded the motion which passed on a voice vote.

Jim Wilson explained that policy changes from H.B. 2186 are shown as old language in this amended draft. He proposed to the committee this be done so that two versions of the same section not be enacted and avoid conflict. He stated that the only policy change was underlined.

Regarding Section 3 - It takes 44-567 (Second Injury Fund Section) as it is amended into H.B. 2186, showing those policy changes in H.B. 2186 as old and the new section at the bottom of page 3, which was just adopted, as the new language.

Representative Hensley made a motion to incorporate the balance of this amendment into H.B. 2573. Representative Patrick seconded and the motion carried.

Representative Bideau suggested that the committee would want to assure that criteria for the rehabilitation section of the bill was the same as the disability section of H.B. 2186, regarding "performs work in the open labor market and earned comparable wages".

Jim Wilson asked if the phrase, "as determined in accordance with 44-510e and amendments thereto" would accomplish that aim.

Representative Patrick made a motion to adopt that phrase, Representative Acheson seconded the motion which carried on a voice vote.

John Ostrowski, representative of the AFL-CIO, asked for clarification on language regarding preliminary awards only being retroactive to the date of the filing of the application. He contended that, as written in the bill, this would affect payment of temporary total disability to the injured employee.

A great deal of discussion on this point ensued.

Chairman Douville asked Bill Morrissey, Department of Human Resources - Department of Workers' Compensation if the director had announced any policy regarding handling preliminary awards with respect to going back and picking up compensation and medical prior to the application.

Mr. Morrissey responded that the policy is just as in the rules, - for some unusual circumstance. Medical would be covered unless it were a large amount and in that case, the director would not order those paid because they are more substantial.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

He further stated that there is a regulation that says that the compensation is ordered prior to application for a preliminary hearing only in unusual circumstances.

Jim Wilson observed that, "The test of the regulation is in 'highly unusual circumstances'."

Representative O'Neal stated that according to H.B. 2573 as soon as an employee is accepted into referral-evaluation process, he begins receiving temporary total which continues until the recommendation is approved.

Mr. Morrissey replied that while that was true, if the employee did not agree, then there is no enforcement of the payment except a hearing. An employer can only be required to pay temporary total if ordered to do so by an administrative law judge.

There was a great deal of discussion on this point.

Chairman Douville emphasized the language at the bottom of page 2, (referring to the employee having been off work for 90 days) and saying that he hoped the director would understand that time period as the basic requirement. He went on to say that he hoped the director would understand the large responsibility and not wait the time limit if the need for rehabilitation is obvious. The chairman also stated that it was assumed that the official responsibility in the Department of Human Resources - Workers Compensation would not automatically order rehabilitation and initiate temporary total when an employee indicates filing a motion for a hearing.

Mr. Morrissey responded that the orders for evaluation that are issued are on request.

The chairman also stated that there is a provision in the law that either a claimant or respondent may request a hearing.

Mr. Morrissey confirmed that was true if the case were at a point where it could be resolved in 30 days.

Representative Bideau stated a concern regarding section d on compensability.

The chairman affirmed that the point was well taken and suggested the committee further study the amendment over the weekend and meet on Monday, March 23, 1987.

The meeting was adjourned at 9:58 a.m.

The next meeting will be March 23, 1987.

HOUSE COMMITTEE
ON
LABOR AND INDUSTRY

GUEST LIST DATE March 20, 1987

Name	City	Representing
Mark Beshears	Topeka	KCCI
Bill Morrissey	"	DHR/Work Comp
Bud Langston	"	" " "
Dick Thomas	"	SRS / KRS
Bob Hodgen	"	KCCI
John Ostrowski	"	AFL-CIO
Dave Johnson	"	Ks Ins Dept

PROPOSED AMENDMENT TO HOUSE BILL NO. 2573

Be Amended:

On pages 8 and 9 by striking all of section 2 and inserting in lieu thereof, the following sections:

"Sec. 2. K.S.A. 44-534a, as amended by section 12 of 1987 House Bill No. 2186, is hereby amended to read as follows: 44-534a. (a) After filing an application for a hearing pursuant to K.S.A. 44-534 and amendments thereto, the employee may make application for a preliminary hearing, in such form as the director may require by rules and regulations, on the issues of the furnishing of medical treatment and the payment of temporary total disability compensation under the workers compensation act. At least seven days prior to filing an application for a preliminary hearing, the employee shall notify the employer of the employee's intent to file such an application and shall confirm such notice by letter. Upon receipt of an application for such a preliminary hearing, the director shall give seven days' written notice by mail to the employer of the date set for such hearing. Such preliminary hearing shall be summary in nature and shall be held by the director or an administrative law judge in any county designated by the director or administrative law judge, and the director or administrative law judge shall exercise such powers as are provided for the conduct of full hearings on claims under the workmen's compensation act. Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the director or administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim. The decision in such preliminary hearing shall be rendered within five days of the conclusion of such hearing. A preliminary award under this section may be retroactive only to the date of the application

for a preliminary hearing under this section. No such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

(b) If compensation in the form of medical benefits or temporary total disability benefits has been paid by the employer or the employer's insurance carrier either voluntarily or pursuant to a preliminary award entered under this section and, upon a full hearing on the claim, the amount of compensation to which the employee is entitled is found to be less than the amount of compensation paid or is totally disallowed, the employer and the employer's insurance carrier shall be reimbursed from the workers' compensation fund established in K.S.A. 44-566a and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation that the employee is entitled to as determined in the full hearing on the claim. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

Sec. 3. K.S.A. 44-567, as amended by section 15 of 1987 House Bill No. 2186, is hereby amended to read as follows: 44-567. (a) An employer who operates within the provisions of the workers compensation act and who knowingly employs or retains a handicapped employee, as defined in K.S.A. 44-566 and amendments thereto shall be relieved of liability for compensation awarded or be entitled to an apportionment of the costs thereof as follows:

(A) Whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the director awards compensation therefor and finds that the injury, disability or

the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability or death shall be paid from the workers' compensation fund.

(B) Subject to the other provisions of the workers compensation act, whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the director finds that the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the director shall determine in a manner which is equitable and reasonable the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workers' compensation fund.

(b) In order to be relieved of liability under this section, the employer must prove either that the employer had knowledge of the preexisting impairment at the time the employer employed the handicapped employee or that the employer retained the handicapped employee in employment after acquiring such knowledge. The employer's knowledge of the preexisting impairment may be established by any evidence sufficient to maintain the employer's burden of proof with regard thereto. If the employer, prior to the occurrence of a subsequent injury to a handicapped employee, files with the director a notice of the employment or retention of such employee, together with a description of the handicap claimed, such notice and description of handicap shall create a presumption that the employer had knowledge of the preexisting impairment. <u>If the employer files a written notice of an employee's preexisting impairment with the director in a form approved by the director therefor, such notice establishes the existence of a reservation in the mind of the employer when deciding whether to hire or retain the employee.</u>

(c) Knowledge of the employee's preexisting impairment or handicap at the time the employer employs or retains the employee in employment shall be presumed conclusively if the employee, in connection with an application for employment or an employment medical examination or otherwise in connection with obtaining or retaining employment with the employer, knowingly: (1) Misrepresents that such employee does not have such an impairment or handicap; (2) misrepresents that such employee has not had any previous accidents; (3) misrepresents that such employee has not previously been disabled or compensated in damages or otherwise because of any prior accident, injury or disease; (4) misrepresents that such employee has not had any employment terminated or suspended because of any prior accident, injury or disease; (5) misrepresents that such employee does not have any mental, emotional or physical impairment, disability, condition, disease or infirmity; or (6) misrepresents or conceals any facts or information which are reasonably related to the employee's claim for compensation.

(d) An employer shall not be relieved of liability for compensation awarded nor shall an employer be entitled to an apportionment of the costs thereof as provided in this section, unless the employer shall cause the commissioner of insurance, in the capacity of administrator of the workers' compensation fund, to be impleaded, as provided in K.S.A. 44-566a and amendments thereto, in any proceedings to determine the compensation to be awarded a handicapped employee who is injured or disabled or has died, by giving written notice of the employee's claim to the commissioner of insurance prior to the first full hearing where any evidence is presented on the claim.

(e) Amendments to this section shall apply only to cases where a handicapped employee, or the employee's dependents, claims compensation as a result of an injury occurring after the effective date of such amendments.

(f) The total amount of compensation due the employee shall be the amount for disability computed as provided in K.S.A.

44-503a, 44-510 through 44-510g and 44-511, and amendments thereto, and in no case shall the payments be less nor more than the amounts provided in K.S.A. 44-510c and amendments thereto.";

And by renumbering sections accordingly;

And by amending the repealer and the title accordingly;