

Approved

Date

Arthur Douville 4-7-87

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:40 a.m./~~pm~~ on March 23, 1987 in room 526-S of the Capitol.

All members were present except:

Representative Cribbs - Excused  
Representative Hensley - Excused  
Representative Holmes - 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:

Chairman Douville called attention to the amendment made on the last page of H.B. 2573 regarding the retroactive date for preliminary award, saying that it had been pointed out that in some cases it would be too unreasonable. The reason for this being, that in some cases where the employee is off work for a prolonged period of time and the carrier may not have been fulfilling its obligation, a hardship is incurred by the employee. One suggested solution was that a preliminary award for temporary total disability may be retroactive for not more than 10 weeks prior to the application for a preliminary hearing under this section. This would apply to temporary total only, not medical. Medical would be allowed only from the date of application.

Representative O'Neal questioned whether this wouldn't allow the possibility of a judge making such an award on a routine basis.

The chairman conceded that it was a difficult question, that it was a matter of interpretation on the part of the judge and that maybe it should be unusual circumstances with the director being given some rules on that area.

Representative Bideau indicated that he could support such an action as long as it was not repealing the director's rule and the language was tracked to make sure that it was highly unusual circumstances. He was in agreement with Representative O'Neal's concern that if there were not specifics regarding such an award that it would be made in the majority of cases.

Representative Green asked if the judge had the authority to deny the 10 weeks. The answer was affirmative.

"Unusual circumstances" is in the current statute. Chairman Douville asked Bill Morrissey, Department of Human Resources - Division of Workers' Compensation, how the rule was being applied at present.

Mr. Morrissey stated that generally the award was from the date of the application unless there were circumstances that indicated no real reason for not having taken compensation, no contest or some very good reason for an application not having been filed.

Representative O'Neal concluded that it may be best to leave the language as it is in the current statute giving the director the latitude to make such decisions in such unusual cases.

Mr. Morrissey made note that it would then be necessary to strike the language in lines 0301, 0302 and 0303, page 8 of H.B. 2573, attachment #1.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry

room 526-S, Statehouse, at 9:40 a.m./~~p.m.~~ on March 23, 1987

Representative Patrick made a motion to strike lines 0301, 0302 and 0303 from H.B. 2573. Representative Bideau seconded the motion which carried on a voice vote.

Chairman Douville reiterated that striking this section leaves the statute as it stands currently and the director will be relied upon to see that the rule is enforced.

Representative Whiteman proposed an amendment on line 0281 after the word "compensation", to insert "and for any matter relative to the furnishing of vocational rehabilitation". She stated the purpose would be to allow raising the issues of medical, the payment of temporary total and any difficulty regarding the furnishing of vocational rehabilitation at the preliminary hearing.

The chairman noted that Kansas does not have a procedure where a preliminary hearing can be held on a formal basis without an employee filing for one, which most employees are reluctant to do. Missouri has provision for a preliminary hearing in which the parties can come in even though they are not represented by an attorney.

Representative Bideau noted that the employee is the only party having the right to file for a preliminary hearing, thus the employer has no avenue for any objection to the vocational evaluation process. He found no fault with the language of the amendment but stated that it did not solve the problem.

Chairman Douville called attention to the fact that with a preliminary hearing there is no appeal on the basis of medical or temporary total.

Representative Whiteman stated that though her proposed amendment may not go far enough, it provides for any difficulty involving vocational rehabilitation to be addressed at the preliminary hearing.

Representative Whiteman made a motion that her proposed amendment be adopted. Representative Green seconded the motion which carried.

Representative O'Neal restated his concern for the time limit regarding what would appear to be automatic temporary total as the law is now written. He expressed some suggestions for changes. Chairman Douville stated that the issue would be further addressed on Thursday.

The meeting was adjourned at 10:04 a.m.

The next meeting will be March 24, 1987, at 9:00 a.m.

HOUSE COMMITTEE  
ON  
LABOR AND INDUSTRY

Name	GUEST LIST City	DATE <u>March 23, 1987</u> Representing
Donald E. Willoughby	Watota City, NE	IBP
Rob Hodges	Topeka	KCCI
Mark Beshears	Topeka	KCCI
Robert J. Brown	Topeka	SRS/KRS
Bud Ferguson	Topeka	DHR/WC
Roy Petty	Topeka	KACEH/DHR
Butt Curbisat	Topeka	KTLB
Tom Hammond	Topeka	Machinist
John Ostrowski	Topeka	AFL-CIO
Bill Morrissey	Topeka	DHR/Work Comp
Lori Callahan	Topeka	am. & bus. assoc.

## HOUSE BILL No. 2573

By Committee on Appropriations

3-19

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0017 AN ACT concerning workers' compensation; relating to rehabil-  
0018 itation; preliminary hearings; amending K.S.A. 44-510g and  
0019 44-534a and repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 44-510g is hereby amended to read as fol-  
0022 lows: 44-510g. (a) A primary purpose of the ~~workmen's~~ workers  
0023 compensation act shall be to restore to the injured employee ~~to~~  
0024 ~~substantial and gainful employment~~ *the ability to perform work*  
0025 *in the open labor market and to earn comparable wages.* To this  
0026 end, the director shall appoint, subject to the approval of the  
0027 secretary, a specialist in medical, physical and vocational reha-  
0028 bilitation, who shall be referred to as the rehabilitation adminis-  
0029 trator. The rehabilitation administrator shall be in the classified  
0030 service *under the Kansas civil service act.* The rehabilitation  
0031 administrator shall: (1) Continuously study the problems of  
0032 physical and vocational rehabilitation; (2) investigate and main-  
0033 tain a directory of all rehabilitation facilities, public or private, in  
0034 this state, and, where such rehabilitation administrator deter-  
0035 mines necessary, in any other state; and (3) be fully knowledge-  
0036 able regarding the eligibility requirements of all state, federal  
0037 and other public medical, physical and vocational rehabilitation  
0038 facilities and benefits. With respect to private facilities and  
0039 agencies providing medical, physical and vocational rehabilita-  
0040 tion services, *including rehabilitation service programs pro-*  
0041 *vided directly by employers,* the director shall approve as quali-  
0042 fied such facilities, institutions, *agencies, employer programs*  
0043 and physicians as are capable of rendering competent rehabili-  
0044 tation services. No such facility ~~or~~, institution, *agency or em-*  
0045 *ployer program* shall be considered qualified unless it is specif-

0046 ically equipped to provide rehabilitation services for persons  
0047 suffering from either some specialized type of disability or some  
0048 general type of disability within the field of occupational injury  
0049 or disease, and is staffed with trained and qualified personnel  
0050 and, with respect to medical and physical rehabilitation, unless it  
0051 is supervised by a physician qualified to render such service. No  
0052 physician shall be considered qualified unless such physician  
0053 has had such experience and training as the director may deem  
0054 necessary.

0055 (b) Under the direction of the director, and subject to the  
0056 director's final approval, the rehabilitation administrator shall  
0057 have the duties of directing and auditing medical, physical and  
0058 vocational rehabilitation of employees in accordance with the  
0059 provisions of this section.

0060 (c) An employee who has suffered an injury shall be entitled  
0061 to prompt medical and physical rehabilitation services; as may  
0062 be reasonably necessary to restore *to such employee to substan-*  
0063 *tial and gainful employment the ability to perform work in the*  
0064 *open labor market and to earn comparable wages* and as pro-  
0065 vided in this section.

0066 (d) When as a result of an injury or occupational disease  
0067 which is compensable under the ~~workmen's~~ *workers* compensa-  
0068 tion act, the employee is unable to perform work *for the same*  
0069 *employer with or without accommodation* or for which such  
0070 employee has previous training, education, qualifications or ex-  
0071 perience, ~~or when such employee is unable to perform other~~  
0072 ~~substantial and gainful employment,~~ such employee shall be  
0073 entitled to such vocational rehabilitation services, including  
0074 retraining and job placement, as may be reasonably necessary to  
0075 restore *to such employee to substantial and gainful employment*  
0076 *the ability to perform work in the open labor market and to earn*  
0077 *comparable wages* and as provided in this section.

0078 (e) (1) *If the employee has remained off work for 90 days or*  
0079 *if it is apparent to the director that the employee requires*  
0080 *vocational rehabilitation services and, in either case, if ap-*  
0081 *proved rehabilitation services are not voluntarily furnished to*  
0082 *the employee by the employer,* the director, on such director's

0083 own motion or upon application of the employee or employer,  
0084 and after affording the parties an opportunity to be heard and to  
0085 present evidence any party, may refer the employee to a quali-  
0086 fied physician or qualified public agency, if the employee is  
0087 eligible, or private agency or facility, or the employer's rehabil-  
0088 itation service program, if qualified, for evaluation and for a  
0089 report of the practicability of, need for, and kind of service,  
0090 treatment, training or rehabilitation which is or may be necessary  
0091 and appropriate to render such employee fit for substantial and  
0092 gainful employment able to perform work in the open labor  
0093 market and to earn comparable wages. The costs of such evalu-  
0094 ation and report shall be at the expense of the employer. Each  
0095 report shall contain a rehabilitation plan which shall adhere to  
0096 the following priority listing of rehabilitation goals:

0097 (A) The first priority is to return the employee to the same  
0098 work for the same employer;

0099 (B) the second priority is to return the employee to the same  
0100 work, with accommodation, for the same employer;

0101 (C) the third priority is to return the employee to other work,  
0102 with or without accommodation, for the same employer;

0103 (D) the fourth priority is to return the employee to the same  
0104 work for another employer;

0105 (E) the fifth priority is to return the employee to other work  
0106 for another employer; and

0107 (F) the sixth priority is to provide vocational rehabilitation,  
0108 reeducation and training.

0109 (2) Within 30 days after such referral, the report shall be  
0110 submitted to the rehabilitation administrator. Within 10 days  
0111 after receipt by the rehabilitation administrator, the rehabili-  
0112 tation administrator shall assign a rehabilitation coordinator to  
0113 review the report. If all parties do not agree with the report, the  
0114 rehabilitation coordinator shall confer with the rehabilitation  
0115 service provider, the employee and the employer to review the  
0116 evaluation and the proposed rehabilitation plan in the report.  
0117 The rehabilitation coordinator shall ensure that the evaluation  
0118 and the rehabilitation plan are objective and reasonable and  
0119 that the rehabilitation goal is reasonably obtainable. Within 10

0120 *days after such review and approval of the report, the rehabilita-*  
 0121 *tion coordinator shall deliver copies of the approved report,*  
 0122 *including any revisions of the rehabilitation plan, to each party,*  
 0123 *to the rehabilitation administrator and to the assigned admin-*  
 0124 *istrative law judge, if there is one. Upon receipt of such report,*  
 0125 *and after affording the parties an opportunity to be heard and*  
 0126 *present evidence, the director:*

0127 ~~(1)~~ (A) *May order that any treatment, or medical and physical*  
 0128 *rehabilitation, as recommended in the report or as the director*  
 0129 *may deem necessary, be provided at the expense of the em-*  
 0130 *ployer;*

0131 ~~(2)~~ (B) *where the employee is unable to engage in any type of*  
 0132 ~~substantial and gainful employment, and~~ *vocational rehabilita-*  
 0133 *tion, reeducation or training is recommended in the report, or is*  
 0134 *deemed necessary by the director to restore to the employee to*  
 0135 ~~some type of substantial and gainful employment, the director~~  
 0136 *the ability to perform work in the open labor market and to earn*  
 0137 *comparable wages, may direct the employee to the appropriate*  
 0138 *federal, state or other public facility or agency where such*  
 0139 *services will or may be provided at no cost to the employer,*  
 0140 *except as hereinafter otherwise provided in this section , or,*  
 0141 *upon the request of the employer, to a qualified rehabilitation*  
 0142 *service program provided directly by the employer; and*

0143 ~~(3)~~ (C) *if the employee is not eligible for such vocational*  
 0144 *rehabilitation, reeducation or training through any such state,*  
 0145 *federal or other public facility or agency, or where such services*  
 0146 *through such facilities or agencies are not available to the em-*  
 0147 *ployee within a reasonable period of time, the director may order*  
 0148 *that such services be provided at the expense of the employer at*  
 0149 *by any qualified private agency or facility in this state or any*  
 0150 *state contiguous to this state or by a qualified rehabilitation*  
 0151 *service program provided directly by the employer.*

0152 (3) *Except as otherwise provided by this section, the em-*  
 0153 *ployer shall pay temporary total disability compensation, com-*  
 0154 *puted as provided in K.S.A. 44-510c and amendments thereto,*  
 0155 *during the period of vocational rehabilitation evaluation and*  
 0156 *continuing until the rehabilitation plan is approved as provided*

0157 *in subsection (e)(2). Temporary total compensation paid solely*  
0158 *because of involvement in the vocational rehabilitation evalua-*  
0159 *tion process shall not be payable for more than 120 days from*  
0160 *the date of referral by the rehabilitation administrator, except*  
0161 *that such temporary total compensation may be continued by*  
0162 *the rehabilitation administrator for an additional period of not*  
0163 *more than 30 days if circumstances outside the control of the*  
0164 *employee prevents completion of the evaluation or the formu-*  
0165 *lation or approval of the rehabilitation plan. The first 10 weeks*  
0166 *during which temporary total disability compensation is paid*  
0167 *during vocational rehabilitation evaluation shall be deducted*  
0168 *from the maximum number of weeks available for the payment*  
0169 *of disability compensation under the schedule provided in*  
0170 *K.S.A. 44-510d and amendments thereto.*

0171 (4) Any ~~such services~~ vocational rehabilitation, reeducation  
0172 or training to be provided at the expense of the employer under  
0173 ~~this paragraph (3);~~ subsection (e)(2) shall not extend for a period  
0174 of more than 26 weeks, except that in extremely unusual cases,  
0175 after a hearing and the presentation of evidence, the director, by  
0176 special order, may extend the period for not more than an  
0177 additional 26 weeks. The employer shall have a right to appeal to  
0178 the district court any such special order by the director for any  
0179 extension of the initial twenty-six-week period, within the time  
0180 and in the manner provided in K.S.A. 44-556; and amendments  
0181 thereto; and any such special order shall be stayed until the  
0182 district court has determined the appeal. There shall be no right  
0183 of appeal to the Kansas supreme court *or court of appeals* from a  
0184 judgment of the district court sustaining or overruling any such  
0185 special order of the director.

0186 (f) Where vocational rehabilitation, reeducation or training is  
0187 to be furnished at the expense of the employer under this  
0188 section, and such services require that the employee reside at or  
0189 near a facility or institution, away from the employee's customary  
0190 *county of residence*, either in or out of the state of Kansas, the  
0191 reasonable costs of the employee's board, lodging and travel, not  
0192 to exceed a maximum total of ~~\$2,000~~ \$3,500 for any twenty-six-  
0193 week period, shall be paid by the employer, except that, in



0194 unusual cases where, after a hearing and the presentation of  
0195 evidence the director finds that the costs are clearly reasonable  
0196 and necessary, the director may require by special order that the  
0197 employer pay an additional amount for the costs of the em-  
0198 ployee's board, lodging and travel, of not more than \$1,000  
0199 \$2,000.

0200 (g) The employer shall pay temporary total disability com-  
0201 pensation during any period of vocational rehabilitation, reedu-  
0202 cation or training, computed as provided in K.S.A. 44-510c and  
0203 amendments thereto, but the employer shall receive credit for  
0204 any weekly, monthly or other monetary payments made to the  
0205 employee or such employee's family by any state, federal or  
0206 other public agency during any such period, exclusive of any  
0207 such payments for the board, lodging and travel expenses of the  
0208 employee.

0209 (h) The director shall cooperate with federal, state and other  
0210 public or private agencies for vocational rehabilitation, reeduca-  
0211 tion or training, or medical or physical rehabilitation. The em-  
0212 ployer shall not be required to pay the reasonable costs of the  
0213 employee's board, lodging and travel where such costs are borne  
0214 by any federal, state or other public agency, nor shall any costs  
0215 for vocational rehabilitation, reeducation or training be assessed  
0216 to the employer if such vocational rehabilitation, reeducation or  
0217 training is in fact furnished by and at the expense of any federal,  
0218 state or other public agency.

0219 (i) Whenever the director determines that there is a reason-  
0220 able probability that with appropriate medical, physical or voca-  
0221 tional rehabilitation ~~or~~, reeducation or training, a person, who is  
0222 entitled to compensation for permanent total disability, partial  
0223 disability, or any other disability under the ~~workmen's~~ *workers*  
0224 compensation act, may be rehabilitated to the extent that such  
0225 person can become ~~substantially and gainfully employed or~~  
0226 ~~increase such person's earning capacity,~~ *able to perform work in*  
0227 *the open labor market and to earn comparable wages* and that it  
0228 is for the best interests of such person to undertake such reha-  
0229 bilitation ~~or~~, reeducation or training, if the injured employee  
0230 without good cause refuses to undertake the rehabilitation, edu-

0231 cational or training program determined by the director to be  
 0232 suitable for such employee; or refuses to be evaluated under the  
 0233 provisions of subsection (e); *and the refusal is not due to the*  
 0234 *employee's physical or mental ability to do so, the employee*  
 0235 *shall be considered as having elected not to participate in such*  
 0236 *rehabilitation, reeducation or training and the director shall*  
 0237 *may suspend the payment of any disability compensation until*  
 0238 *the employee consents to undertake such program or to be so*  
 0239 *evaluated; and. The director shall ~~cancel~~ may reduce the dis-*  
 0240 *ability compensation otherwise payable if any such refusal per-*  
 0241 *sists for a period in excess of 90 days, except that disability*  
 0242 *compensation shall not be reduced to less than that payable for*  
 0243 *permanent partial disability in accordance with K.S.A. 44-510d*  
 0244 *and amendments thereto, less any weeks of compensation de-*  
 0245 *ducted as provided in subsection (e)(3), or for permanent partial*  
 0246 *general disability for functional impairment in accordance with*  
 0247 *K.S.A. 44-510e and amendments thereto.*

0248 (j) At such time as any medical, physical or vocational reha-  
 0249 bilitation ~~or~~, reeducation or training has been completed under  
 0250 this section, the employer shall have the right, by the filing of an  
 0251 application with the director, to seek a modification of any award  
 0252 which has been rendered granting any compensation to the  
 0253 employee for any disability. Upon at least 20 days' notice by  
 0254 registered mail to all parties, the director shall set the application  
 0255 for hearing and the parties shall present all material and relevant  
 0256 evidence. In the event that the director determines that the  
 0257 employee is rehabilitated ~~medically, physically or vocationally,~~  
 0258 so that such employee is able to ~~engage in substantial and gainful~~  
 0259 ~~employment perform work in the open labor market and to earn~~  
 0260 ~~comparable wages,~~ the director shall ~~cancel~~ *modify* any award of  
 0261 compensation for ~~temporary total or permanent total disability,~~  
 0262 ~~subject to review and modification pursuant to K.S.A. 44-528 and~~  
 0263 ~~amendments thereto, and shall modify any existing award of~~  
 0264 ~~partial disability,~~ or, if no such award has been made, the  
 0265 director shall make an award of ~~partial disability,~~ to reflect only  
 0266 such ~~partial~~ disability, if any, as exists at the conclusion of such  
 0267 rehabilitation; ~~reeducation or training.~~ Any award of partial dis-

0268 ability, or modification of an existing award, made pursuant to  
0269 this subsection (j) shall be subject to the provisions of K.S.A.  
0270 44-510d and 44-510e, and amendments thereto.

0271 ~~(k) If an incumbent rehabilitation administrator has served in~~  
0272 ~~such office for one year or more on the effective date of this act,~~  
0273 ~~such rehabilitation administrator shall be considered as having~~  
0274 ~~attained permanent status as a rehabilitation administrator.~~

0275 Sec. 2. K.S.A. 44-534a is hereby amended to read as follows:

0276 44-534a. (a) After filing an application for a hearing pursuant to  
0277 K.S.A. 44-534 and amendments thereto, the employee may make  
0278 application for a preliminary hearing, in such form as the director  
0279 may require by rules and regulations, on the issues of the  
0280 furnishing of medical treatment and the payment of temporary  
0281 total disability compensation *under the workers compensation*  
0282 *act*. At least seven days prior to filing an application for a  
0283 preliminary hearing, the employee shall notify the employer of  
0284 the employee's intent to file such an application and shall con-  
0285 firm such notice by letter. Upon receipt of an application for such  
0286 a preliminary hearing, the director shall give seven days' written  
0287 notice by mail to the employer of the date set for such hearing.  
0288 Such preliminary hearing shall be summary in nature and shall  
0289 be held by the director or an administrative law judge in any  
0290 county designated by the director or administrative law judge,  
0291 and the director or administrative law judge shall exercise such  
0292 powers as are provided for the conduct of full hearings on claims  
0293 under the workmen's compensation act. Upon a preliminary  
0294 finding that the injury to the employee is compensable and in  
0295 accordance with the facts presented at such preliminary hearing,  
0296 the director or administrative law judge may make a preliminary  
0297 award of medical *compensation* and temporary total disability  
0298 compensation to be in effect pending the conclusion of a full  
0299 hearing on the claim. The decision in such preliminary hearing  
0300 shall be rendered within five days of the conclusion of such  
0301 hearing. *A preliminary award under this section may be retro-*  
0302 *active only to the date of the application for a preliminary*  
0303 *hearing under this section.* No such preliminary findings or  
0304 preliminary awards shall be appealable by any party to the

0305 proceedings, and the same shall not be binding in a full hearing  
0306 on the claim, but shall be subject to a full presentation of the  
0307 facts.

0308 (b) If compensation in the form of medical benefits or tem-  
0309 porary total disability benefits has been paid by the employer or  
0310 the employer's insurance carrier pursuant to a preliminary award  
0311 entered under this section and the amount of compensation so  
0312 awarded is reduced or totally disallowed upon a full hearing on  
0313 the claim, the employer and the employer's insurance carrier  
0314 shall be reimbursed from the workers' compensation fund es-  
0315 tablished in K.S.A. 44-566a and amendments thereto, for all  
0316 amounts of compensation so paid which are in excess of the  
0317 amount of compensation that the employee is entitled to as  
0318 determined in the full hearing on the claim. The director shall  
0319 determine the amount of compensation paid by the employer or  
0320 insurance carrier which is to be reimbursed under this subsec-  
0321 tion, and the director shall certify to the commissioner of insur-  
0322 ance the amount so determined. Upon receipt of such certifica-  
0323 tion, the commissioner of insurance shall cause payment to be  
0324 made to the employer or the employer's insurance carrier in  
0325 accordance therewith.

0326 Sec. 3. K.S.A. 44-510g and 44-534a are hereby repealed.

0327 Sec. 4. This act shall take effect and be in force from and  
0328 after its publication in the statute book.