

Approved

A.W. Douville 1-21-89
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:08 a.m./~~p.m.~~ on January 18, 1989 in room 526-S of the Capitol.

All members were present except:

Representative Patrick - Excused
Representative Roper - Excused

Committee staff present:

Jerry Donaldson - Legislative Research Department
Jim Wilson - Revisor of Statutes' Office
Kay Johnson - Committee Secretary

Conferees appearing before the committee:

Robert A. Anderson - Director of Division of Workers Compensation, Department of Human Resources
William F. Morrissey - Assistant Director of Division of Workers Compensation, Department of Human Resources
David A. Shufelt - Assistant Director of Division of Workers Compensation, Department of Human Resources
Richard L. Thomas - Rehabilitation Administrator of Division of Workers Compensation, Department of Human Resources
Chris Cowger - Kansas Insurance Department

The meeting was called to order at 9:08 a.m. by the Chairman, Representative Arthur Douville. Robert Anderson introduced his staff, attachment #1, and gave a brief overview of the Division of Workers Compensation. Specifically, he discussed a) Administration of the Workers Compensation Division, b) the new act (July 1, 1987) and c) minor changes to the Workers Compensation Act that need to be considered by the committee. (Attachment #2) One proposed amendment to KSA 44-523(c) was to be able to assign a case to a Special Administrative Law Judge, rather than an Assistant Director, if the case hasn't been decided by an Administrative Law Judge in a timely manner. Mr. Anderson said that this has been done in the past. Representative Hensley asked if this is being done now. Mr. Anderson responded that the language in the statute says the Director, on his own accord, can reassign cases and that cases are currently being assigned to Assistant Directors and to Special Administrative Law Judges to help reduce the backlog. He said he feels the strictest interpretation of the statute allows cases to be reassigned to Assistant Directors only and would like the language of the statute clarified to include Special Administrative Law Judges.

William F. Morrissey addressed the committee regarding computerization efforts of the Division of Workers Compensation. The process of converting from a manual operation to main frame computer began 3 (three) years ago, attachment #3.

David A. Shufelt gave a brief overview of the Judicial Section and discussed efforts to eliminate the backlog, attachment #4 and attachment #5. Representative Whiteman asked what was the turn around time on a director's review. Mr. Shufelt responded 1 (one) month is the goal, but some are over that now. Mr. Anderson confirmed that currently there is a 60-75 day turn around, but it will be 1 (one) month in 2 (two) or 3 (three) months.

Richard L. Thomas gave a summary of the Vocational Rehabilitation Section, attachment #6 and attachment #7.

Chris Cowger addressed the committee on the Workers Compensation Fund, attachment #8, attachment #9, attachment #10 and attachment #11. Representative Douville asked what percentage of total disbursements is currently being paid by the fund.

CONTINUATION SHEET

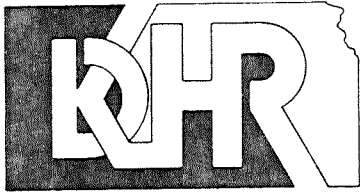
MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:08 a.m./~~p.m.~~ on January 18, 1989.

Mr. Cowger responded that for fiscal year 1988 it was 6%.

The following information was provided to the committee:

- Attachment #12, book, Kansas Workers Compensation Law & Rules, July 1, 1987
(Can be obtained from the Department of Human Resources Division
of Workers Compensation, 900 SW Jackson, Room 651-S.)
- Attachment #13, organizational chart for Division of Workers Compensation, Department
of Human Resources.
- Attachment #14, list of Administrative Law Judges and their respective areas.
- Attachment #15, Rehabilitation Issues (definitions, questions and answers).
- Attachment #16, Rehabilitation Case Management.
- Attachment #17, Vocational Rehabilitation - proposed legislative changes.
- Attachment #18, Advantages of Hiring Handicapped Employees under the Kansas Workers
Compensation Act (K-WC 125).
- Attachment #19, Forms Furnished at No Cost (K-WC 134).
- Attachment #20, Notice of Handicap, Disability or Physical Impairment (K-WC 88).
- Attachment #21, Kansas Workers Compensation Act (Form 118).
- Attachment #22, Workers Compensation Information (K-WC 127).
- Attachment #23, Workers Compensation Decision Tree
- Attachment #24, Message to Injured Workers (K-WC 103).
- Attachment #25, Independent Contractor or Employee? (K-WC 126).
- Attachment #26, Resume - Robert A. Anderson
- Attachment #27, Resume - William F. Morrissey
- Attachment #28, Resume - David A. Shufelt
- Attachment #29, Resume - Richard L. Thomas

The meeting adjourned at 9:55 a.m.. The next meeting of the committee will be
on Thursday, January 19, 1989 at 9:00 a.m. in the capitol rotunda.



DIVISION OF WORKERS COMPENSATION

Landon State Office Building, 900 S.W. Jackson, Room 651-S
Topeka, Kansas 66612-1276
913-296-3441

Mike Hayden, Governor

Dennis R. Taylor, Secretary

January 18, 1989

House Labor, Industry & Small Business Committee
State Capitol
Topeka, Kansas 66612

Dear Committee Member:

Thank you for allowing me and other staff members from the Division of Workers Compensation to appear before your committee today. I realize the level of expertise or understanding of the Kansas Workers Compensation Act may vary among committee members since some of you are newly elected, and others, although veteran Legislators, are newly assigned members of the House Labor, Industry & Small Business Committee.

Your packet contains executive summaries, statistics from the Workers' Compensation Fund and the Vocational Rehabilitation Section, explanatory forms and a complimentary copy with Addendum of the Kansas Workers Compensation Law and Rules book, July 1, 1987. The packet obviously contains more information than can possibly be covered in our brief session today; however, I have included all this material to help you deal with constituents' questions concerning workers' compensation and as reference to each of the brief introductory comments the various speakers will make. I suspect that we will make reference to some of the materials provided today in future appearances before your committee.

Your packet should contain the following materials in the order listed:

1. An Executive Summary from Robert A. Anderson (Re: Centralization).
2. An Executive Summary from Robert A. Anderson (Re: Administration of the Division of Workers Compensation; the New Act; and Recommendations for Minor Changes in Act).
3. Executive Summary (Outline) by William F. Morrissey (Re: Computerization).
4. Executive Summary - David A. Shufelt (Re: Overview of Judicial Section and Efforts to Eliminate Judicial Backlog).
5. Executive Summary - Dick Thomas (Vocational Rehabilitation Section).

HOUSE LABOR AND INDUSTRY
Attachment #1
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6. Executive Summary, Chris Cowger, Kansas Insurance Department (Workers' Compensation Fund).
7. Administrative Law Judge gridmap (color).
8. List of Administrative Law Judges and their respective areas.
9. Organizational chart for Division of Workers Compensation, Department of Human Resources
10. Kansas Employer Coalition on Health Workers' Compensation Decision Tree.
11. Rehabilitation Issues (Definitions; & Questions and Answers).
12. Rehabilitation Section caseload data.
13. Rehabilitation Case Management.
14. Vocational Rehabilitation - Proposed Legislative Changes
15. Statistics from the Kansas Workers' Compensation Fund.
16. Workers' Compensation Fund report for December, 1988.
17. Workers' Compensation Fund Statistical Information.
18. Workers Compensation Information - Form K-WC 127
19. Message to Injured Workers - Form K-WC 103
20. Information to Employers on the Kansas Workers Compensation Act - Form 118.
21. Independent Contractor or Employee - Form K-WC 126.
22. Advantages of Hiring Handicapped Employees under the Kansas Workers Compensation Act (Pamphlet, Form K-WC 125).
23. Notice of Handicap, Disability or Physical Impairment - Form K-WC 88.
24. Forms Furnished at No Cost - Form K-WC 134.
25. Resume - Director Robert A. Anderson.
26. Resume - Assistant Director William F. Morrissey.
27. Resume - Assistant Director David A. Shufelt.
28. Resume - Vocational Rehabilitation Administrator Richard L. Thomas.

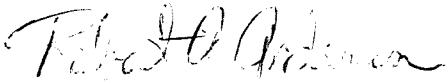
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29. Complimentary copy with Addendum of Kansas Workers Compensation Law and Rules book (July 1, 1987).

30. Table of Maximum Benefits card.

Once again, thank you for allowing us to appear before your committee today.

Yours truly,



Robert A. Anderson
Workers Compensation Director

RAA:lre

Attachments

cc: Ray Siehndel
Acting Secretary of Human Resources

AN EXECUTIVE SUMMARY FROM ROBERT A. ANDERSON, DIRECTOR
DIVISION OF WORKERS COMPENSATION, DEPARTMENT OF HUMAN RESOURCES
PREPARED FOR THE HOUSE LABOR, INDUSTRY & SMALL BUSINESS
COMMITTEE FOR A BRIEFING JANUARY 18, 1989

TOPIC: Director's Report to Committee on (1) the administration of the Division of Workers Compensation; (2) on how the new act (July 1, 1987) is working; and (3) on minor changes to the Workers Compensation Act that need to be considered by the Committee.

I. THE ADMINISTRATION OF THE DIVISION OF WORKERS COMPENSATION.

A. DIRECTOR'S INITIAL ASSESSMENT OF THE DIVISION OF WORKERS COMPENSATION JUNE 1 THROUGH JULY 20, 1988. (As reported to Governor Hayden and former (DHR) Secretary Dennis, in a DHR staff meeting Taylor and Acting Secretary Ray Siehndel, Department of Human Resources on July 20, 1988. (After taking office on June 1, 1988 as Director designate, and working closely with former Director John Rathmel; until July 1, 1988 and when I assume full responsibility for the Division of Workers Compensation; and after working for three weeks I made an initial assessment.) I found:

1. Justifiable criticism of Director's office's failure to timely decide Director's Reviews.
 - (a) Backlog of undecided Reviews; some more than thirteen (13) months old.
 - (b) K.S.A. 44-523(c) applications for transfer of case from Administrative Law Judge to Assistant Director.
 - (c) Written criticism by employees/employers to governmental branch.
2. Justifiable criticism of the Director's Office, failure to give meaningful review of contested Administrative Law Judges' decisions.
 - (a) Public perception that Director's Office was rubber stamping decisions (affirming Administrative Law Judges decision without reviewing evidence).
 - (b) Written criticism in newspaper editorials, industry magazines.

3. Inconsistent rulings by Administrative Law Judges on clear, concise statutory issues.
4. Director's Office failure to decide controversial statutory issues or enforce Director's rules.
5. Director's Office attitude to "Err in favor of the claimant" alienated industry and employers causing system to lose its balance of equity (when considered in light of the burden of proof requirement of the Act).
6. Failure to use widespread advertisement to fill vacant Administrative Law Judge positions, which limited qualified applicant pool.

B. DIRECTOR IMMEDIATE GOALS AS OF JULY 30, 1988.

1. To place the Division of Workers Compensation in a position to expeditiously deliver the legislative mandated service to all parties involved in Workers Compensation litigation.
2. To have timely, consistent, fair and impartial application of the Workers Compensation Act on a statewide basis.
3. To provide a timely and meaningful appellate process at the Director's Review level.

C. DIRECTOR'S LONG RANGE OBJECTIVES FOR DIVISION OF WORKERS COMPENSATION IN FISCAL YEAR 1989, AS PROJECTED ON JULY 20, 1988.

1. Increase efficiency of administrative services of the Division of Workers Compensation through computerization and establish timely judicial decisions and Director's Reviews.
2. Establish a meaningful appellate review of contested Administrative Law Judge's decisions and abolish the perception of "rubber stamp" affirmations.
3. Cost reduction to industry, insurance companies and injured workers, to include medical costs containment, and proposed medical fee schedules.
4. Establish meaningful dialogue between the Director's Office and labor and industry; and create an effective working relationship with Labor and Industry Committee legislators.
5. Consistent interpretation of old and "new act" that

gives expression to the legislative intent of the statutes.

6. Reestablish the integrity of the agency and return the balance of the system from a "liberal interpretation doctrine" to a fair and impartial application of the Workers Compensation Act on new application cases, in compliance with statutory mandates.

D. DIRECTOR'S PROPOSALS TO MEET OBJECTIVES FOR DIVISION OF WORKERS COMPENSATION IN FISCAL YEAR 1989:

1. Computerization of public service task such as (a) record research; (b) employer insurance coverage records and (c) implementation of electronic mail.
2. Docketing statements to be used with all applications for Director's Reviews.
3. Strongly enforce docket control of Administrative Law Judges' dockets and enforcement of terminal dates, eliminating overburden some evidentiary records.
4. Reduction of the evidentiary record by the use of discovery depositions, reducing the need for some preliminary hearings and encouraging settlements.
5. Co-locate offices of the Division of Workers Compensation with existing Department of Human Resource facilities.
6. Redistricting three of the current Administrative Law Judges' territories and establishing a new territory of north central Kansas.
7. Reestablish a tri-annual or quarterly newsletter, and utilize Department of Human Resources "resource" newsletter.
8. Conduct the annual seminar at co-locations and change the programs format to be more informative.
9. Statewide advertisement for open positions through legal publications.
10. To form a task force to study the need for medical fee schedules in Kansas for Workers Compensation.

E. PROJECTED DERIVATIVE RESULT FROM REACHING GOALS

1. A reestablish equatable balance to the administration of the Workers Compensation Act; a

redirected public perception of the Division of Workers Compensation to that of a fair and impartially administered public agency; and as an encouragement to old businesses to remain in Kansas and new businesses to explore development in Kansas, which should create and save more jobs and give a much needed boost to the State's economic development.

F. PROGRESS REPORT ON ACTUAL IMPLEMENTATION OF DIRECTOR'S PLAN.

1. The Division of Workers Compensation is now computerized, with nine (9) separate docket screens. We expect by July 1, 1989 to be completely "on-line" with all regional offices, and have the old records entered into the computer for easy access on research requests.
2. Docketing statements are now received in 95% of cases, which has resulted in some settlements, and reduced the time it takes to review the evidentiary record. We suspect other Director's Reviews are not filed, that would have been filed by knee jerk reactions to an adverse award by litigants being forced to specify their grievances in writing through the docketing statements.
3. Docket control by Administrative Law Judges has resulted in more settlements, and a closer controlled system, which is beginning to ease the judicial backlog.
4. Discovery depositions are being utilized by all parties, and it is believed that more settlements are being held, fewer preliminary hearings are being held, and employers are voluntarily providing information more timely; and finally, parties are discussing their cases outside the courtroom which results in more settlements.
5. Our centralization efforts with DHR have resulted in our computerization goals being reached, and establishing the ability to use the PROFS system.
6. A new Administrative Law Judge hired in October, 1988 has reduced the driving time of three (3) Administrative Law Judges, and relieve the total number of cases assigned to those Judges. (See Administrative Law Judges group map.)
7. The newsletter has been expanded to include information and training. Our circulation has increased by over 30% from 1900 to 2500. We have

decreased improper applications for review on preliminary hearings from 4 or 5 a week to 1 or 2 a month due to information noted in the newsletter.

8. This years' seminar attracted 350 people in Wichita and another 750 people in Topeka for a total attendance of over 1,100.
9. The Division of Workers Compensation advertisement efforts in the Kansas Bar Association Journal resulted in over 30 applications received and 22 applicants being interviewed for the Assistant Director and the new Administrative Law Judge position, in September, 1988; and in over 20 applicants received, 16 applicants interviewed for the Kansas City Administrative Law Judge position to replace retiring Administrative Law Judge George Corcoran.
10. A medical cost containment/fee schedule task force was formed; it has 25 members representing all interests, and has had two productive meetings.

II. THE JULY 1, 1987 ACT HAS REESTABLISHED AN EQUATABLE BALANCE TO THE ADMINISTRATION OF THE WORKERS COMPENSATION ACT FROM A "LIBERAL INTERPRETATION DOCTRINE" TO A FAIR AND IMPARTIAL APPLICATION.

A. SETTLEMENTS INCREASED IN FISCAL YEAR '89.

1. Although accidents increase from 67,386 in fiscal year '87 to 69,933 in fiscal year '88; settlements on cases set for hearings increased by 30% from 2,514 in fiscal year '87 to 3,264 in fiscal year '88.
2. No awards on work disability under the new Act have been decided at the Director's level. Some possible explanations are:
 - (a) Litigants are settling their differences and buying out of vocational rehabilitation expenses.
 - (b) No litigant wants to be the attorney who made the new "case law".
 - (c) They could be by-passing the Director's Office and applying for judicial review directly to the District Court.
 - (d) The presumption of no work disability for the injured employee who returns to the same employer or another employer at comparable wage

is being generally accepted.

- (e) Major employers (Boeing, etc.) are taking injured workers back with accommodations.
 - (f) Education through seminars, and newsletters has informed litigants what to expect in the form of judicial decisions on litigated issues.
 - (g) Employees for the most part really want to continue work; and vocational rehabilitation is working.
 - (h) It is still too soon to have viable statistics.
3. Fewer claims for repetitive use syndrome accidents are being filed; and those filed now usually allege onset of symptoms prior to July 1, 1987.
- (a) This may be explained by pure economics; i.e. employees are less willing to lose job security by alleging injury for a condition that no longer "rings the \$75,000 work disability bell".
 - (b) That is not to say that carpal tunnel syndrome and other repetitive use injuries are not serious, painful and disabling to employees.
 - (c) Employers are becoming educated in risk management and loss prevention, and closely watch body mechanics, etc. and make efforts to avoid industrial accidents from repetitive use.
 - (d) There is a push by meat packing industry to redesign machines and line work to prevent repetitive use injuries. (As evidence by a Wichita Eagle Beacon news report).
4. The fair and impartial language has eliminated some appellate delay through a perception of consistent application, and enforcement of statutory mandates.
- (a) Administrative Law Judges are interrupting the Act consistently, in compliance with legislative mandates.
 - (b) Director's Reviews are following the legislative mandates.
 - (c) Derivative result is predictability, on non-vocational rehabilitation issues and increased settlements for functional impairments.

III. THE COMMITTEE SHOULD CONSIDER MINOR AMENDMENTS TO THE NEW ACT, TO CLARIFY WHAT IS ALREADY IMPLIED, BUT MAY BE SUBJECT TO ADVERSE JUDICIAL INTERPRETATION WITHOUT CLARIFICATION.

A. K.S.A. 44-523(c) "...to an Assistant Director [or a Special Administrative Law Judge]... This would allow Director to appoint Specials to hear backlogged cases, and not overburden Assistant Directors who are hearing Director's Reviews.

B. K.S.A. 44-534(b)(1) "...if compensation in the form of medical benefits or temporary total disability benefits [or vocational rehabilitation benefits] has been paid...

K.S.A. 44-556(d) "compensation" [to include medical benefits, temporary total disability benefits or vocational rehabilitation benefits]. This would encourage employers to voluntarily pay vocational rehabilitation benefits without time consuming hearings.

C. K.S.A. 44-510g(d) "...employee is unable to perform work for the same employer [at a comparable wage] with or without accommodations or for which such employee has previously training, education, qualifications or experience to enter open labor market and earn comparable wage]. This merely clears up apparent oversight, (see handout).

D. DIRECTOR'S DECISIONS INTERPRETING LEGISLATIVE INTENT ON ISSUES OF FIRST IMPRESSION. These decisions have not been "overturned" by a Kansas Appellant Court to date, and you may want to be apprised of these decisions; these have been decided since July 1, 1988.

1. Graber vs. Pawnee Products, Inc., Docket No. 126,849 (once an application for hearing has been received by the Division of Workers Compensation evoking the jurisdiction of the Workers Compensation Act, any party effected by the hearing or proceeding may cause a **discovery** deposition of any witness to include the claimant or employer in the manner prescribed by law for like depositions in civil actions in District Courts in this state. This includes oral depositions pursuant to K.S.A. 60-230, and depositions upon written questions pursuant to K.S.A. 60-231).

2. Nelson vs. Cargill-Nutrena Feed Division and General Adjustment Bureau, and Workers Compensation Fund, Dockets No. 94,319 and 94-320, (A claimant whose case is administratively transferred to the inactive docket, can have his/her claim reinstated by filing a motion to reinstate with the Administrative Law Judge).

3. Graham vs. Ralph Frakes and Kansas Workers' Compensation Fund, Docket No. 107,387 [K.S.A. 44-514 which prohibits levy, execution, attachment, garnishment or any other collection procedure to be used against an award of compensation for the recovery or collection of a **debt**, does not apply to the fees of a reporter for a hearing or depositions assessed against the party pursuant to K.S.A. 44-555 and K.A.R 51-2-4(d), which are actual litigation expenses incurred, assessed as costs and not a debt.)
4. Dickmeyer vs. dischert d/b/a/ Nautilus Fitness Center and Kansas Workers' Compensation Fund, Docket No. 110,154 (1) (the Director, even where he has previously signed a Director's Order as the approving authority, may review the orders [awards] of the Assistant Director's or the order [award] of the Director, pursuant to K.S.A. 44-528, upon the application of any interested party for good cause shown on issues of law until the final payment of an award or until transfer of jurisdiction from the Director's Office to a District Court by a party's petition for judicial review pursuant to K.S.A. 44-556; and (2) a claimant is not entitled to an award of attorney's fees from the Workers' Compensation Fund for his efforts in establishing his burden, pursuant to K.S.A. 44-532a(a) that the employer is either [1]) financially unable to pay compensation to an injured worker as required by the Workers' Compensation Act; or [2] that such employer cannot be located and required to pay such compensation).
5. Saltkill vs. A.J. Shirk Roofing Co. and CNA Insurance Companies, Docket No. 124,874 (K.S.A. 44-555 allows an Administrative Law Judge to order a claimant to pay a respondent reimbursement ordered pursuant to K.A.R. 51-2-4(d) for court reporter's fees from an award of permanent partial disability compensation as an off set.)
6. Jackson vs. Cooper's Animal Health, Inc., Aetna Life and Casualty Company and Kansas Workers' Compensation Fund, Docket No. 122,986 (it is the duty of the Director as final approving authority pursuant to K.S.A. 44-551(a) to amend an award of compensation **sua sponte** where an Administrative Law Judge has erred, even when the parties have not raised specific issues on appeal, to ensure that the caveat "all the law in intends is just compensation - no more, no less - and neither side should be penalized where it can be avoided" as stated by the Kansas Supreme Court in Ratzlaff vs. Freideman

Service Store, 200 Kan. 430, 435, 436 Pd.2 389 (1968) is fulfilled.)

7. Whitley vs. Chevrolet-Pontiac-Canadian Group General Motors Corporation, Docket No. 115,735 (1)(the Director may not receive or consider additional evidence not previously introduced as evidence before the Administrative Law Judge after the record is closed and an award is written; and (2) the Director may not remand a case back to an Administrative Law Judge for consideration of additional evidence not previously offered before the record is closed and an award is written.)
8. Ackerly vs. Standard Oil Company, Docket No. 107,985 (an Administrative Law Judge may authorize medical treatment or evaluation by an out-of-state physician, even when there are well qualified physicians available in the state of Kansas, pursuant to K.S.A. 44-510(a).
9. Hudson vs. Martin Ebey Construction Co. and Aetna Casualty Insurance Company and Kansas Workers Compensation Fund, Docket No. 129,181 (an Administrative Law Judge or Special Administrative Law Judge lacks jurisdiction to entertain an application for preliminary hearing when written notice and a application for a preliminary hearing (form E-3) has not been filed pursuant to K.S.A. 44-534a on any preliminary hearing, whether it is the initial or any subsequent preliminary hearing).

(a) Copies of any of these decisions will be made available to Committee members upon their request.

cc: Acting Secretary Ray D. Siehndel
Each Legislator

DIVISION OF WORKERS COMPENSATION UTILIZATION OF DEPT OF
HUMAN RESOURCES COMPUTER

1. Records retention and retrieval

WCSL - Work Comp Social Security Number List
WCAL - Work Comp Accident Report List
WCDL - Work Comp Docket List
WCEL - Work Comp Election List
WCFL - Work Comp Final Release List
WC8L - Work Comp Form 88 List
WCRL - Work Comp Rehabilitation List

2. Daily work processing files

WCQL - Work Comp Rehab Qualification List
WCML - Work Comp Employer List
WCLL - Work Comp Lawyer List
WCJL - Work Comp Admin. Law Judge List
WCCL - Work Comp Insurance Carrier List
WCIL - Work Comp Insurance Coverage List

3. Docket Control and Docket Information Activities

Establish case and generate notices
Case tracking

4. Vocational Rehabilitation case monitoring

Screening accident reports for potential cases
Automatic time limit tracking

5. Wish list of functions

Access to data base from outside computers
Standardized central word processing

AN EXECUTIVE SUMMARY FROM DAVID A. SHUFELT
DEPARTMENT OF HUMAN RESOURCES, DIVISION OF WORKERS COMPENSATION
PREPARED FOR HOUSE LABOR, INDUSTRY & SMALL BUSINESS
COMMITTEE FOR A BRIEFING ON JANUARY 18, 1989

TOPIC: An overview of the Judicial Section of the Division of Workers Compensation and efforts to eliminate the backlog of submitted cases not decided in a timely manner.

BACKGROUND: The Judicial Section of the Division of Workers Compensation is currently comprised of 8 Administrative Law Judges and 20 Special Administrative Law Judges. Prior to October 18, 1988, there were only 7 Administrative Law Judges for the state of Kansas. The Administrative Law Judges are full-time state employees and are located across the state. Each office consists of an Administrative Law Judge and Secretary, and in a few instances, additional part-time clerical help. The Special Administrative Law Judges are practicing attorneys who hear workers' compensation settlement hearings and preliminary hearings on a part-time basis. Occasionally, the Special Administrative Law Judges will conduct the regular hearing and enter the award. The fees for the services of the Special Administrative Law Judges are limited by a fee schedule set by the Director. The fees are assessed as costs against the parties to the action, normally the employer.

NEW JUDICIAL POSITION: The Division of Workers Compensation was given statutory authority to hire three additional Administrative Law Judges and one position was filled on October 18, 1988. A concerted effort by the Director to widely advertise the new position led to an impressive list of applicants. Twenty-two qualified applicants for the position were interviewed and the position was filled by the appointment of George R. Robertson of Salina, Kansas as the new Administrative Law Judge. Judge Robertson attained his bachelor of arts degree in English from Southwestern College in Winfield, Kansas. His master's degree in English from Pittsburg State University in Pittsburg, Kansas and his Juris Doctor degree from Washburn University School of Law in Topeka, Kansas. Judge Robertson was in the private practice of law for five years and his practice included representation of claimants in workers' compensation cases. The last three and a half years Judge Robertson was employed as a public defender for the Kansas Board of Indigent Defense with extensive jury trial experience.

VACANT POSITION: Former Administrative Law Judge George W. Corcoran of Kansas City, Kansas retired December 18, 1988, following 16 years service as a Workers Compensation Hearing Examiner and Administrative Law Judge. Following statewide advertisement of the vacancy, 16 qualified applicants were interviewed for the judgeship vacated by Judge Corcoran's retirement. Judge Robert H. Foerschler of Kansas City, Kansas was selected to fill the vacancy. Judge Foerschler has spent the

past 32 years practicing law both as a partner in a law firm and as a sole practitioner. Most recently Judge Foerschler was a District Court Judge in Wyandotte County. Judge Foerschler began his duties as the new Administrative Law Judge in Kansas City, Kansas on January 9, 1989.

REDISTRICTING: The addition of an eighth Administrative Law Judge necessitated a redistricting of the judicial territories. A new district was formed in north central Kansas and Judge Robertson will office in Salina, Kansas. The new district was formed from three existing territories. The redistricting eliminated some existing and all future caseloads from the three Administrative Law Judges that were formerly assigned this territory. The redistricting also eliminated or reduced travel time for the three Judges that had formerly served this territory with resultant cost and time savings. The new district includes Reno, Harvey, McPherson counties which were formerly assigned to Administrative Law Judge David Jackson. Saline County which was formerly assigned to Administrative Law Judge James Ward and Rice, Barton, Ellsworth, Russell, Lincoln, Osborne, Mitchell, Smith, Jewell, Republic, Cloud and Ottawa counties which were formerly assigned to Administrative Law Judge Thomas Richardson. Judge Robertson will hold hearings in Salina, Great Bend, and Hutchinson.

ELIMINATION OF JUDICIAL BACKLOG: A primary goal of the Director is the elimination of the backlog of submitted workers' compensation cases that have not been decided in a timely manner by the Administrative Law Judges. A concerted effort has been recently undertaken to eliminate the backlog and to prevent its recurrence. In November and December, approximately 50 cases that had not been decided in a timely manner were reassigned for immediate decision. The cases were assigned to Special Administrative Law Judges, an Assistant Director, and an Administrative Law Judge. The Special Administrative Law Judges that were assigned cases were either former Administrative Law Judges or attorneys whose practices were predominantly in the workers' compensation field. Concurrently, the new Administrative Law Judge position in north central Kansas will further reduce the caseload of the existing Judges, who were formerly assigned that territory.

Consistent forms and procedures are being developed and implemented on a statewide basis to expedite the litigation process. Emphasis has been placed on aggressive implementation of pretrial hearing and settlement conferences by the Administrative Law Judges. This effort will either reduce the issues that need to be decided by the Judges or encourage settlement in appropriate cases. The result will be a more economical utilization of the Judges' time to decide issues that are truly controverted. The future addition of the two additional Administrative Law Judges authorized by statute will allow further redistricting and equitable distribution of assigned cases for all of the Administrative Law Judges. We hope to put one Administrative Law Judge in southeast Kansas, and an additional Judge in Shawnee

County, and then redistrict all territories for equitable distribution. The cumulative effect should be a judicial system that delivers a consistent, fair, impartial application of the Workers Compensation Act in a timely manner.

Area #1 - Richardson A. 1,086
 316-624-6200 Liberal B. 849

Area #2 - Clark A. 1,085
 316-266-8650 Wichita B. 943

Area #3 - Jackson A. 1,042
 316-266-8650 Wichita B. 707

Area #4 - Howard A. 1,166
 913-642-7650 Overland Park B. 1,187

Area #5 - Foerschler A. 1,290
 913-342-4500 Kansas City B. 1,194

Area #6 - Ward A. 1,468
 913-296-7012 Topeka B. 1,211

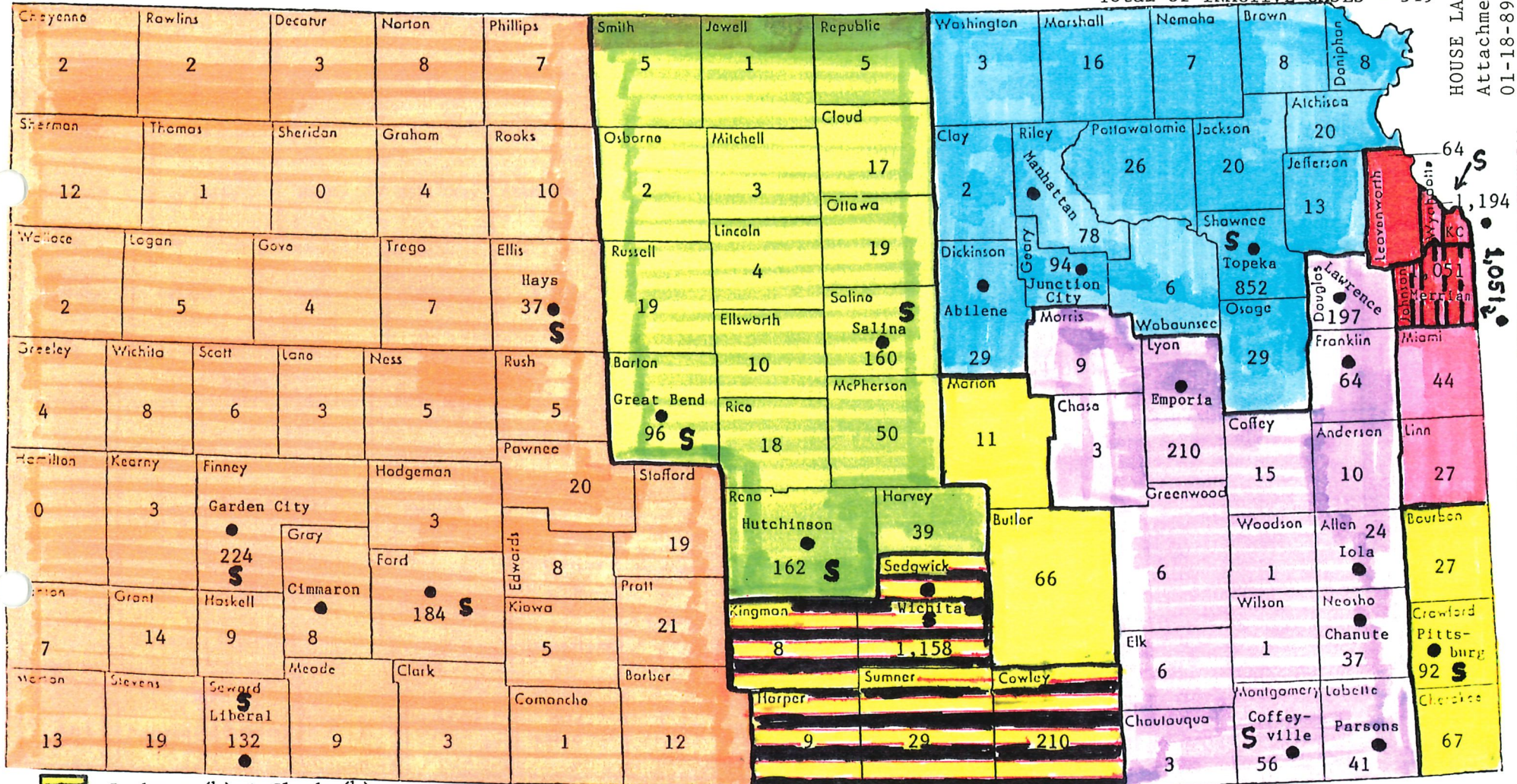
Area #7 - Robertson A.
 913-827-0724 Salina B. 618

Area #8 - Witwer A.
 913-831-4887 Overland Park B. 698

Total of A - 7,918

Total of B - 7,399

Total of INACTIVE CASES = 519



HOUSE LABOR AND INDUSTRY
 Attachment #5
 01-18-89

Jackson (1/2) & Clark (1/2)

Foerschler (1/2) & Howard (1/2)

* Venue is determined by location of accident not by residence.

A = Total actual cases assigned 8 full-time ALJs./ 20 Special ALJs.
 B = Total actual cases in regional area
 ● = Counties where regular and preliminary hearings are held.
 S = Counties where Special Administrative Law Judges are located.

JANUARY 16, 1989 / Division of Workers Compensation/DHR.

SUMMARY OF THE REHABILITATION EFFORTS
UNDER THE JULY 1, 1987 LEGISLATION

RICHARD L. THOMAS
REHABILITATION ADMINISTRATOR
1-18-89

During the first 18 months the Rehabilitation Section as it is today was established and the following has been accomplished.

STAFF

Staff was hired to fill the positions created by the legislation.

Rehabilitation Administrator--Richard L. Thomas
Asst. Rehabilitation Administrator-Dick Santner
Asst. Rehabilitation Administrator-Robin O'Dell
Asst. Rehabilitation Administrator-Mark Conboy
Asst. Rehabilitation Administrator-Alan Stanton

As of the last of December 1988 all the positions were filled.

REPORTING GUIDELINES

The Rehabilitation Section has developed reporting guidelines and forms necessary to report the program and outcomes of the rehabilitation efforts. These forms are currently being reviewed for revisions and changes. These guidelines and forms are available if anyone wishes to have a copy.

EDUCATIONAL EFFORTS

The first 18 months have required many presentations and meetings with parties interested in the Rehabilitation aspect of the new law. I personally have participated in over 60 presentation and meetings throughout the state of Kansas. Participants included the following groups:

Employers
Claimants
Insurance Companies
Adjusters
Education Facilities
Vendors

VENDORS

Kansas Currently has 31 qualified vendors working with the injured workers. Prior to the passage of the law there were seven or eight companies providing services in Kansas.

There has been over 200 individuals qualified to provide services as a vocational counselor, vocational evaluator and job placement specialists.

The Division will host a second vendor meeting in Topeka on February 2nd to discuss the progress under the new law and to discuss areas of conflicts.

As expected the percent of the rehabilitation cases served by private vendors has sharply increased while public rehabilitation percentages has dramatically decreased. Currently 70% of the active cases are assigned to private sector rehabilitation vendors.

MEDIATIONS

We are seeing an increase in the mediation process as the number of assessments and plans increase. The mediation process usually consist of either a face to face meeting or a telephone conference with the attorneys, vendor, claimant and the Rehabilitation Administrators assigned to the case.

This mediation process will decrease the number of cases that will require hearings on rehabilitation issues and should identify the major issues on those cases where mediation doesn't result in an agreement between the individuals involved.

CASELOAD DATA

The attachment indicates the activity that has occurred during the past 18 months. The Rehabilitation Section began the computerization of the case files the first part of February 1988. The statistics of the past 6 months more accurately reflect the rehabilitation activity of the Rehabilitation Section. The Rehabilitation Section has added 1735 new active cases since 7-1-88. There has been 261 vocational assessments and 187 vocational plans received during the 6 month reporting period.

The total active cases on hand as of 12-31-88 were 3120. Of those active cases 1928 or 62% are currently working with a rehabilitation vendor either in rehabilitation or medical management.

Our records indicate that 120 claimants returned to work through the efforts of involvement with rehabilitation vendors (public and private) during the past 6 months.

DIVISION OF WORKERS COMPENSATION
REHABILITATION SECTION

CASELOAD DATA	7-1-87 to 6-30-88*	7-1-88 to 12-31-88	2-1-88 to 12-31-88
ASSESSMENTS RECEIVED		261	305
PLANS RECEIVED	55-60	187	241
Approved		84	110
Approved with Recommendations		51	64
TOTAL		135	174
PLAN AMENDMENT RECEIVED		21	27
Amendment Approved		12	14
ORDERS FOR VOCATIONAL EVALUATIONS			209
TOTAL NO. OF ACTIVE CASES	2193	1735	3120
Rehabilitation			
New Law	829	369	821
Old Law	489	97	344
TOTAL	1318	466	1165
Medical Management	352	493	763
No Vendor Involved	523	776	1192
Closed Cases	728	240	1742
REHAB/MEDICAL MANAGEMENT RETURN TO WORK	198	120	318

*Rehabilitation Section began computerization February 1988, therefore these totals do not reflect all activity for this period.

Kansas Workers' Compensation Fund

Program Objectives:

Statutorily, the objective of this program is to encourage the employment of persons handicapped as a result of specific impairments by relieving employers, wholly, or partially, of workers' compensation liability resulting from compensable industrial accidents suffered by these employees. Generally, this program's objectives are derived from the following four basic services, which are implemented under the provisions of the Kansas Workers' Compensation Fund Act: 1) providing payment of workers' compensation benefits to handicapped employees, who suffer compensable injuries pursuant to K.S.A. 44-567 (second injury); 2) payments to injured workmen whose employers are uninsured and financially unable to pay compensation K.S.A. 44-532a (insolvent employer); 3) reimbursement to employers who make payments of compensation or medical expenses either voluntary or pursuant to a preliminary award or pending an appeal to an appellate court and it is later determined that said payments exceed actual liability pursuant to K.S.A. 44-534a(b) and K.S.A. 44-556d (reimbursement provisions); and 4) receipt of payments by employers where an employee is killed in an otherwise compensable accident, but in which there are no eligible dependents pursuant to K.S.A. 44-570 (non-dependent death).

Program Explanation:

- 1) Defend claims against, and if necessary, make payments on behalf of the Kansas Workers' Compensation Fund to those employers or employees entitled to payment pursuant to Kansas Statute. This duty imposes an additional duty of maintaining files on all cases in which the Kansas Workers' Compensation Fund may be held liable.
- 2) Annually report to the Governor and Legislature the receipts and expenditures from the Workers' Compensation Fund during the preceding fiscal year.
- 3) Levy an annual assessment against insurance companies and self-insurers covering workmen's compensation risks in the State of Kansas. This is to pay all amounts which may be required to be paid from the Kansas Workers' Compensation Fund during the current fiscal year, less amounts required to be transferred from the State General Fund, presently capped at \$4 million dollars.
- 4) Prepare, as a part of the budget of the Kansas Insurance Department, an analysis for the annual budget for the Kansas Workers' Compensation Fund.

Statutory History:

Effective July 1, 1974, the Kansas Legislature enacted House Bill No. 1715, creating the Kansas Workers' Compensation Fund. The administration of the Fund was assigned to the Commissioner of Insurance.

Proposed FY 1989 Operations:

The primary objective of the Kansas Workers' Compensation Fund is to administer and defend claims, and when necessary, make payment on behalf of the Workers' Compensation Fund. Presently, the Fund has 3,599 active claims. These claims are defended by staff of the Workers' Compensation Fund and by 67 outside contract attorneys. We anticipate liability in approximately 66% of these files. It is estimated that the Fund will expend approximately \$26.5 million dollars to pay claims and administer the Fund in Fiscal Year 1989.

Long Term Trends:

Projected long term trends seem to reflect a constant growth in expenditures for the Kansas Workers' Compensation Fund; however, the Kansas Workers' Compensation Fund statutes have been and will continue to be vulnerable to legislative amendments or judicial interpretation. That is, this Department fully cannot control the precise amount of expenditures which will be assessed against the Kansas Workers' Compensation Fund but only provide defenses against claims against the Fund so that all statutory requirements have been met.

WORKERS' COMPENSATION REPORT FOR DECEMBER, 1988

TO: CHRIS COWGER, ATTORNEY
 FROM: VERLENE EVANS, ACCOUNTANT

Work Comp Fund Balance	\$17,621,429.97
Deposits	210.37
Compensation	1,421,876.09
Medical	314,297.06
Court Reporting	23,569.32
Attorney Fees	200,469.04
Other Operating	12,173.77
FY 88 Cancelled Checks	-0-
Refund	516.98
Balance on December 31, 1988	<u>15,648,738.08</u>

Total December Expenditures 1,972,902.26

Other Operating Expense Limits	164,801.00
Expenses to Date	59,060.08
Balance	<u>105,740.92</u>

89 YTD Comp Expense	7,882,203.44
89 YTD Medical Expense	1,834,933.92
89 YTD Court Reporter Expense	110,917.72
89 YTD Attorney Fee Expense	1,172,619.57
89 YTD Other Operating Expense	59,077.08 *
39 YTD Refund	516.98
89 YTD All Expense	<u>11,060,268.71</u>

89 Beginning Balance	9,124.65
89 Appropriation	4,000,000.00
89 YTD Deposits	22,699,882.14
89 YTD Expenses	11,060,268.71
December 31, 1988 Fund Balance	<u>15,648,738.08</u>

New Cases for December

Non-Dependent Death	0
Insolvent Employer	10
Reimbursement	3
Second Injury	130
	<u>143</u>

New Cases YTD

Non-Dependent Death	5
Insolvent Employer	27
Reimbursement	3
Second Injury	882
	<u>917</u>

Closed Cases for December

Non-Dependent Death	0
Insolvent Employer	7
Reimbursement	2
Second Injury	141
	<u>150</u>

Closed Cases YTD

Non-Dependent Death	1
Insolvent Employer	21
Reimbursement	4
Second-Injury	705
	<u>731</u>

* FY 88 \$17.00 encumbrance is in this total

Workers' Compensation Fund Statistical Information

Number of Impleadings Involving
the Workers' Compensation Fund

<u>Fiscal Year</u>	<u>Number</u>
1984	1,194
1985	1,260
1986	1,405
1987	1,603
1988	1,862
1989 (Estimated)	2,025

Active Cases Against the
Workers' Compensation Fund

<u>At the End of Fiscal Year</u>	<u>Number</u>
1984	1,711
1985	2,027
1986	2,515
1987	2,955
1988	3,413
1989 (Through Dec. 1988)	3,599

Monthly Payments Made From the
Workers' Compensation Fund

<u>At the End of Fiscal Year</u>	<u>Number</u>	<u>Total Amount of Monthly Payments</u>	<u>Average Monthly Payment Per Case</u>
1984	137	\$ 37,682	\$275
1985	151	44,367	294
1986	227	79,610	351
1987	248	102,717	414
1988	301	132,531	440
1989 - (Through Dec. 1988)	305	140,877	462

Awards Against the Workers'
Compensation Fund by Fiscal Year

<u>Fiscal Year in which Awards were Made</u>	<u>Number of Awards</u>	<u>Average Amount of Award</u>
1984	542	\$12,837
1985	486	12,616
1986	540	16,072
1987	788	14,967
1988	836	14,932

Percentage of Impleadings that Resulted
in Awards Being Made Against
the Workers' Compensation Fund
(Extracted from Closed Claim Reports)

<u>Cases Closed in Fiscal Year</u>	<u>Number of Impleadings</u>	<u>Number of Awards</u>	<u>Percentage of Impleadings Resulting in Awards</u>
1984	1,114	719	65%
1985	951	490	52%
1986	924	468	51%
1987	1,127	639	57%
1988	1,455	1,037	71%

RN:cras
ASRN/TXTFMS

KANSAS WORKERS' COMPENSATION FUND

Prepared by the Kansas Insurance Department

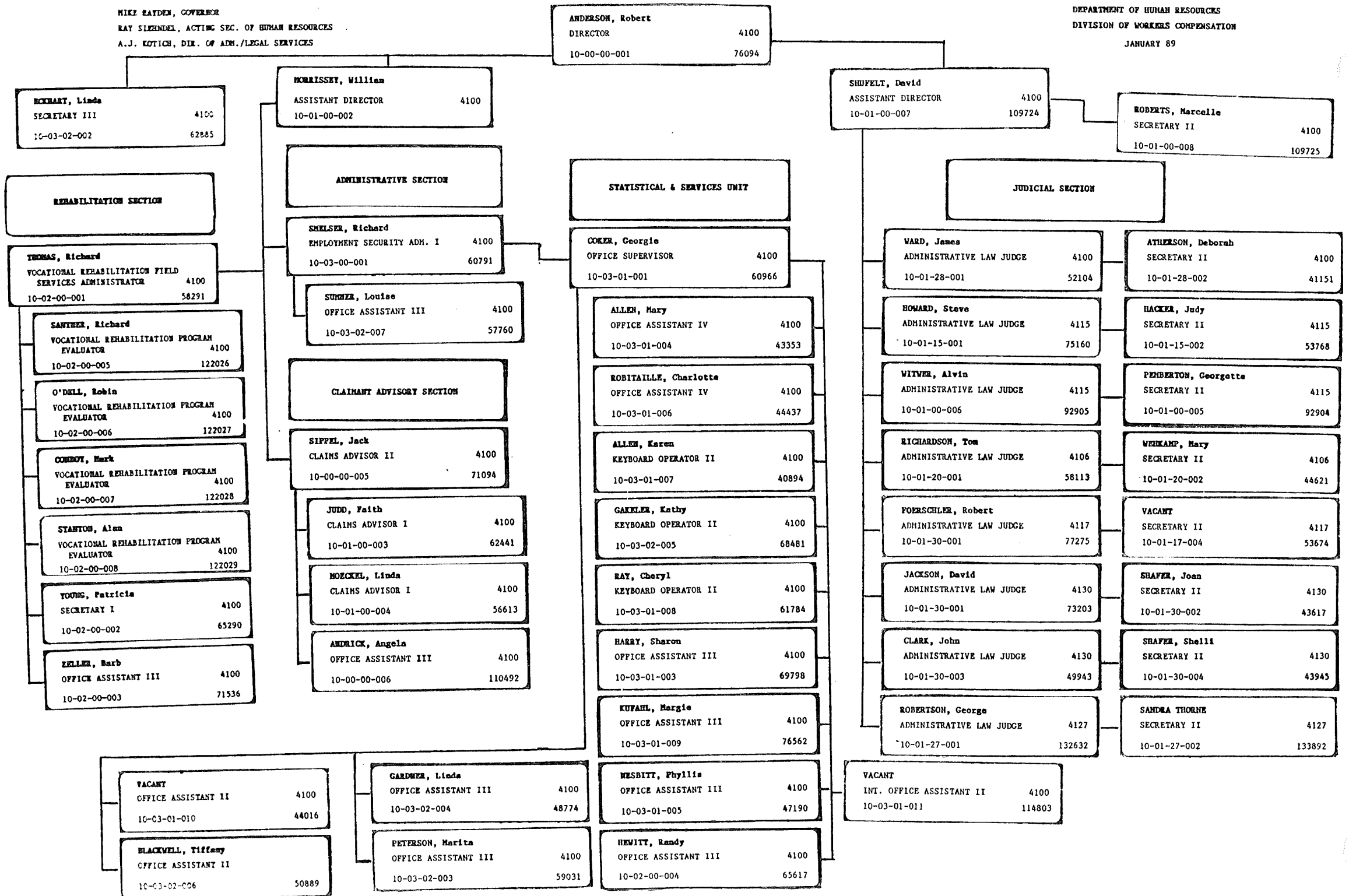
Description	CASE LOAD SCHEDULED		
	FY 1988	FY 1987	FY 1986
Total Number of Impleadings	1,862	1,603	1,405
Total Number of Closed Cases	1,455	1,170	929

RECEIPTS ANALYSIS

	FY 1988	(% of Total)	FY 1987	(% of Total)	FY 1986	(% of Total)
Assessment Receipts	\$17,983,751.16	(80.89)	\$ 6,542,599.05	(55.75)	\$ 1,644,419.98	(16.27)
General Fund Entitlement	4,000,000.00	(17.99)	4,000,000.00	(34.07)	4,000,000.00	(39.59)
Non-Dependent Death Receipts	163,131.02	(.62)	153,000.00	(1.30)	122,250.00	(1.21)
Miscellaneous Reimbursements	92,052.31	(.42)	127,846.50	(1.08)	63,530.40	(.63)
TOTAL RECEIPTS	22,211,934.49		10,823,445.55		5,830,200.38	
Previous Year Carryover Balance	16,552.56	(.07)	908,156.20	(7.73)	4,273,895.29	(42.30)
TOTAL FUNDS AVAILABLE	\$22,231,728.57	(100.)	\$10,104,095.65	(100.)	\$10,104,095.67	(100.)

EXPENDITURE ANALYSIS

	FY 1988	(% of Total)	FY 1987	(% of Total)	FY 1986	(% of Total)
Disability Compensation	\$15,945,464.32	(71.75)	\$8,167,171.06	(69.66)	\$6,328,251.19	(68.82)
Medical						
Doctor	152,173.10	(.68)	97,933.13	(.84)	73,522.55	(.80)
Hospital	246,717.49	(1.11)	163,295.83	(1.39)	108,855.68	(1.15)
Drugs	15,413.29	(.07)	6,509.09	(.06)	5,250.77	(.06)
Misc. (braces, etc.)	12,736.48	(.06)	11,957.03	(.10)	5,935.03	(.06)
Other Services (mileage, etc.)	12,994.80	(.06)	7,762.79	(.07)	5,121.72	(.06)
Reimbursements to Insurance Co. (K. S. A. 44-569(a) and 44-569)	3,118,949.78	(14.04)	1,054,083.62	(9.00)	907,162.86	(9.86)
Attorneys Fees	2,330,799.05	(10.49)	1,953,605.41	(16.66)	1,497,818.13	(16.29)
Court Costs and Depositions, Medical Reports, etc.	233,153.07	(1.05)	125,989.31	(1.07)	124,216.84	(1.35)
Refunds (non-dependent death cases)	50.00	(.00)	7,492.80	(.06)	18,500.00	(.20)
Other Operating Expenses	154,152.59	(.69)	127,988.12	(1.09)	121,404.70	(1.32)
TOTAL EXPENDITURES	\$22,222,602.92	(100.)	11,724,535.19	(100.)	\$9,195,939.47	(100.)



ADMINISTRATIVE LAW JUDGES & THEIR RESPECTIVE AREAS

RICHARDSON (016)

Barber
Cheyenne
Clark
Comanche
Decatur
Edwards
Ellis
Finney
Ford
Gove
Graham
Grant
Gray
Greeley
Hamilton
Haskell
Hodgeman
Kearny
Kiowa
Lane
Logan
Meade
Morton
Pawnee
Phillips
Pratt
Rawlins
Rooks
Rush
Scott
Seward
Sheridan
Sherman
Stafford
Stanton
Stevens
Thomas
Trego
Wallace
Wichita

CLARK (004)

Bourbon
Butler
Cherokee
Cowley (½)
Crawford
Harper (½)
Kingman (½)
Marion
Sedgwick (½)
Sumner (½)

JACKSON (009)

Cowley (½)
Harper (½)
Kingman (½)
Sedgwick (½)
Sumner (½)

HOWARD (007)

Johnson (½)
Leavenworth
Wyandotte (½)

FOERSCHLER (042)

Johnson (½)
Linn
Miami
Wyandotte (½)

WARD (020)

Atchison
Brown
Clay
Dickinson
Donihan
Geary
Jackson
Jefferson
Marshall
Nemaha
Osage
Pottawatomie
Riley
Shawnee
Wabaunsee
Washington

ROBERTSON (036)

Barton
Cloud
Ellsworth
Harvey
Jewell
Lincoln
McPherson
Mitchell
Osborne
Ottawa
Reno
Republic
Rice
Russell
Saline
Smith

WITWER (022)

Allen
Anderson
Chase
Chautauqua
Coffey
Douglas
Elk
Franklin
Greenwood
Labette
Lyon
Montgomery
Morris
Neosho
Wilson
Woodson

REHABILITATION ISSUES

DEFINITIONS

ACCOMMODATION: As used in this outline, accommodation means the changing of job duties either by changing or modifying the means, method, weight, speed, hours, location or other feature of the work to be performed for the purpose of enabling an injured worker to perform the work within restrictions imposed because of an injury.

VENDOR: As used in this outline, vendor means a company, qualified by the director to provide vocational rehabilitation services by employing qualified vocational rehabilitation counselors, evaluators and job placement specialists

ENTITLEMENT

44-510g(d) If "...the employee is unable to perform work for the same employer with or without accommodation..."

1. QUESTION: If employee is "able" to perform the same work for the same employer but the employer will not take the employee back, is the employee entitled to a referral for an evaluation to determine the need for vocational rehabilitation services?

RESPONSE: No. Section 44-510g in subsection (a) provides: "A primary purpose of the workers compensation act shall be to restore to the injured employee the ability to perform work in the open labor market and to earn comparable wages...". The theme and goal of vocational rehabilitation in Workers Compensation is to restore to the employee the ability to return to comparable wage work. If the physicians' reports indicate that the employee still has the ability to return to the same job and earn comparable wages, there is nothing to "restore" to the employee. The fact that the employer does not want to re-employ the claimant does not alter the fact that the employee has the ability to perform the work without accommodation.

2. QUESTION: If the employee's ability to return to work for the same employer was only possible because of accommodation by the employer, and the employer does not accommodate the employee is the employee entitled to a referral for vocational evaluation?

RESPONSE: Yes. The employer's decision to not re-employ the claimant removes any opportunity for accommodation. Without the accommodation the employee's status remains that he cannot return to the work he was doing when injured and the employee thus meets the threshold requirements of being entitled to a referral.

3. QUESTION: If the employee has the ability to return to work for the same employer and the employer offers work with or without accommodation, must the offered work pay comparable wages?

RESPONSE: Yes. 44-510 in subsection (a) makes one of the goals of the act to restore to the employee the ability to perform work in the open labor market and earn comparable wages. If a job offer at lower wages defeated claimant's rights to rehabilitation, the stated purpose of restoring the ability to earn comparable wages would not be accomplished. Additionally, the entire scheme of the new provisions of the act is to gauge vocational rehabilitation and permanent partial disability to comparable wages. It must be presumed that the legislature intended that a "comparable wages" requirement was implied.

4. QUESTION: Must a job offered by the claimant's employer be "reasonable" or "suitable" for the claimant? If the offered job is less desirable than the job claimant was doing when injured, i.e., night shift, menial tasks, dirty work, or work at which claimant has proved unsuccessful, do those factors affect the "reasonableness" or "suitableness" of the offer?

RESPONSE: The particular facts in each case must be reviewed to determine the reasonableness. In general, the offered work must be appropriate for the individual. It might not be appropriate to offer night work to a single parent with small children unless that person was working a night shift when injured. It might not be appropriate to offer a sales job to a person who is not suited to sales work or has been unsuccessful at it before.

5. QUESTION: If a person is offered work or a plan contemplates work in a town other than where claimant lives or works would that affect the appropriateness of the work? Is there a region or area concept that must be implied?

RESPONSE: Again, it would be necessary to look at the facts peculiar to the case. While it might not be appropriate to require a person with a family to move from their lifetime home, it might be appropriate to require a person to drive an hour commuting distance. As a general rule, it would probably be very rare that a person would be required to move to a different town to accept a job, but not so rare to look at the idea of commuting and take into account the community involved and its proximity to cities with available jobs.

FORM R87-1: INSURANCE CARRIER STATUS REPORT

44-510(e)(1) "If the employee has remained off work for 90 days or if it is apparent to the director the employee requires vocational rehabilitation services and, in either case, if approved rehabilitation services are not voluntarily furnished to the employee by the employer, the director, on such director's own

motion or on application of any party,... may refer the employee ... for evaluation and for a report..."

6. QUESTION: If a claimant, who has been off work for over 90 days but has not been referred to a vendor by the employer, asks the rehabilitation administrator to make a referral, what factors determine whether a referral should be made?

RESPONSE: If a current Form R87-1 is on file with the administrator, a referral will not be made if the form indicates:

1. that the claim is being denied as non-compensable;
2. that the claimant's medical condition is not stable enough to begin assessment;
3. that claimant is expected to return to work for the same employer at comparable wages;
4. that claimant has already returned to comparable wage work;
5. that claimant is not interested in vocational rehabilitation;

If a current R87-1 is on file a referral will be made if the rehabilitation administrator is satisfied that the claim is compensable, the claimant apparently needs rehabilitation and:

1. the employer declines making a referral after being given the opportunity to do so;
2. an order from an administrative law judge directs that a referral be made;

If a current R87-1 is not on file with the administrator, a referral will be made if:

1. the claimant apparently needs rehabilitation and contact with the employer or insurance carrier has been attempted to determine whether valid reasons exist to not make a referral;
2. referral has been ordered by an administrative law judge

7. QUESTION: Does claimant (with or without an attorney) have any input into the choice of vendor, either to approve or object? Is this different if the referral is by order of an administrative law judge?

RESPONSE: No. Whether the question of the appointment of a vendor is before the rehabilitation administrator or an administrative law judge the answer is the same. Just as in the furnishing of medical treatment, it is the employer's responsibility to furnish vocational rehabilitation and therefore the vendor, like the treating physician is chosen by the employer subject to the situations discussed earlier and subjects brought before an administrative law judge. Claimant might have right to object to a particular vendor if there is some reason that vendor could be shown to be inappropriate. Claimant could legitimately have input in applying for the appointment of a vendor initially or a change of vendor but not to name a particular vendor since vendors, when appointed by the director, are appointed on a rotating basis.

HEARINGS

8. QUESTION: Is a party entitled to a hearing on whether there should be a referral to a vendor in a claim that is admittedly compensable?

RESPONSE: No. It is clear the legislature did not intend for there to be a hearing under the act for a determination as to whether the claimant should be referred for an evaluation. The provision in K.S.A. 44-510g(e)(2) speaking about affording the parties an opportunity to be heard and present evidence, deals with those situations in which it is necessary to have a hearing on a substantive issue such as compensability of the claim, and the evaluation is being ordered after-the-fact following an affirmative ruling on compensability. This hearing provision first occurs after the referral provisions are completed. The placement of this section after the plan has been developed indicates that the provision was intended to relate to hearings needed beyond completion of the normal referral process.

9. QUESTION: Is any party entitled to have a regular hearing before completion of vocational rehabilitation?

RESPONSE: No. Until an injured worker has completed the rehabilitation process, whether it is completed by evaluation or by fully executing an approved plan, there cannot be a regular hearing. The hearing cannot be held because the evidence necessary to present on the issue of work disability or the proper computation of a scheduled disability is not available and cannot be made available until the completion of the rehabilitation process.

TEMPORARY TOTAL BENEFITS

10. QUESTION: What is the "date of the evaluation" mentioned in 44-510g(e)(2)(B) from which temporary total disability compensation is to be paid?

RESPONSE: It is the date the injured worker is referred to a vendor for vocational assessment.

11. QUESTION: Is an injured worker entitled to payment of temporary total disability compensation during vocational assessment and rehabilitation plan development. If so, does claimant automatically have to apply for preliminary hearing to get compensation started?

RESPONSE: Payment of temporary total disability compensation during vocational assessment and plan development is payable for not more than 70 days from the date of the evaluation and not more than an additional 30 days if circumstances outside of the control of the employee prevents completion of the evaluation or the

formulation of the rehabilitation plan. The topic of the payment of temporary total compensation during an evaluation is touched in 44-510g(e)(2)(B) where it provides that the director may order it paid. This implies that it is payable but nowhere does it tell the employer to pay except in connection with an order. The director interprets the statute to require automatic payment from the day the claimant is referred to a vendor, unless the claim is being denied totally, otherwise the evaluation process would be stymied. The delay in getting a setting for a hearing and getting an order thereafter does not mesh with the limited time frames of the evaluation process. In too many cases the delay would defeat the rehabilitation process because claimants, without income, could not afford to wait.

12. QUESTION: K.S.A. 44-510g(g) provides, in part, "...The employer shall pay temporary total disability compensation during any period of vocational rehabilitation, reeducation or training..." Does this section require the employer to pay during attempted job placement if the approved plan includes job placement?

RESPONSE: Yes. The legislature constructed a list of priorities to be followed in determining a proper rehabilitation plan. If the priority found appropriate is returning the employee to work, that plan must be fully executed just as it would be required to be fully executed if the plan were reeducation. It is obvious that a plan calling for reeducation would not be completed until the schooling was completed. Likewise a plan that includes job placement as a part of the service necessary to return an employee to work is not completed until job placement is accomplished.

13. QUESTION: When a plan is approved, is it required that the claimant apply for hearing to obtain an order for payment of temporary total disability compensation during the execution of the plan?

RESPONSE: No. The act is intended to be self-enacting and not require the invoking of the hearing process. The director is considering the possibility of devising a new method of confirming an agreed plan to an award format. The attached draft of a "STIPULATION AND ORDER APPROVING REHABILITATION PLAN" would be used in those situations in which the parties and the rehabilitation administrator agree to an appropriate plan for rehabilitation and one or more parties wish to have the agreement made into an enforceable order.

SERVICES

44-510g(e)(2)(D) "... may order such services be provided at the expense of the employer by any qualified private agency or facility in this state or any state contiguous to this state..."

14. QUESTION: If the claimant lives in a state outside the State of Kansas which is not contiguous with Kansas or moves out of state, is the employer required to provide a vocational evaluation and/or vocational rehabilitation services?

RESPONSE: No. The limitation that the director cannot order rehabilitation paid by the employer except in this state or a contiguous state must be followed. If an employee does not live in Kansas or a contiguous state when the accident occurs or if the employee moves to a non-contiguous state and needs rehabilitation, special problems are presented and each case will be judged on the facts of that case. The employer must keep in mind, however, that the purpose of rehabilitation is to decrease the employee's work disability. If rehabilitation is not furnished, the work disability may well be higher.

15. QUESTION: Can the rehabilitation administrator approve a plan which provides for rehabilitation services beyond 36 weeks?

RESPONSE: No. The limitation that the director cannot order rehabilitation paid by the employer for more than 36 weeks (with the possibility of a 36 week extension) is another type of case in which special problems are presented and which must be judged on the facts of that case. However, like the non-contiguous state problem, the employer must keep in mind that the purpose of rehabilitation is to decrease the employee's work disability. If rehabilitation which is otherwise appropriate is not furnished because it exceeds the weeks limitation, the work disability may well be higher than if the excess rehabilitation service had been provided.

16. QUESTION: If, during the evaluation process, the counselor receives medical reports which conflict as to the employee's restrictions, is the counselor bound to consider all the medical reports?

RESPONSE: Yes. Not only must all the medical reports be considered, but they must be considered fairly giving due deference to reports of specialists in the type of injury from which claimant suffers. Undue weight or credence must not be given to specific reports solely because the report was furnished by one party or favors one party or the other.

REFUSAL TO COOPERATE

K.S.A. 44-510g(i) provides in part "... if the injured worker without good cause refuses to undertake the rehabilitation, education, or training program determined by the director to be suitable for such employee or refuses to be evaluated under the provisions of subsection (e)..."

17. QUESTION: If the injured worker refuses to allow a medical

manager or a vocational rehabilitation counselor to attend a medical appointment with the injured worker, does that constitute a refusal to cooperate with the evaluation or the approved plan?

RESPONSE: NO. The medical manager is not considered as a participant in the vocational evaluation as this service must be completed by a qualified vocational rehabilitation counselor. Medical management is an optional service that the injured worker may choose to cooperate with to assist in medical recovery.

The answer is also no for the vocational rehabilitation counselor. The vocational rehabilitation counselor may obtain medical records from the physician and can meet with the physician to clarify restrictions and to discuss the limitations as they relate to claimants ability to return to or to participate in an employment plan. If the injured worker and the physician do not object they can attend the medical appointment. However, refusal to allow them to attend is not refusing to cooperate. The injured worker has the right of meeting privately with the physician.

18. QUESTION: Does the refusal to allow a medical manager or the vocational rehabilitation counselor to attend medical appointments constitute a refusal to submit to medical examination as set out in K.S.A. 44-518?

RESPONSE: No. Neither the medical manager nor the vocational rehabilitation counselor have a role in medical treatment decisions, therefore are not a recognized participant in the medical examination. If the injured worker and the physician give them permission they can attend the appointments. .

KANSAS WORKERS COMPENSATION LAW & RULES

JULY 1, 1987



44-510g. Medical, physical and vocational rehabilitation; administrator and assistants, appointment, duties; entitlement; procedures; purpose and priorities of rehabilitation; evaluation and plan for employee; expenses and disability compensation; cancellation of compensation; review and modification. (a) A primary purpose of the workers compensation act shall be to restore to the injured employee the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto. 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 director shall appoint, subject to the approval of the secretary, four assistant rehabilitation administrators. The rehabilitation administrator and the assistant reha-

bilitation administrators shall be in the classified service under the Kansas civil service act. The rehabilitation administrator and the assistant rehabilitation administrators, subject to the direction of 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, including rehabilitation service programs provided directly by employers, the director shall approve as qualified such facilities, institutions, agencies, employer programs and physicians as are capable of rendering competent rehabilitation services. No such facility, institution, agency or employer program 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 to such employee the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto, and as provided in this section.

(d) When as a result of an injury or occupational disease which is compensable under the workers compensation act, the employee is unable to perform work for the same employer with or without accommodation or for which such employee has previous training, education, qualifications or experience, such employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore to such employee the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto, and as provided in this section.

(e) (1) If the employee has remained off work for 90 days or if

it is apparent to the director the employee requires vocational rehabilitation services and, in either case, if approved rehabilitation services are not voluntarily furnished to the employee by the employer, the director, on such director's own motion or upon application of any party, may refer the employee to a qualified public agency, if the employee is eligible, or private agency or facility, or the employer's rehabilitation service program, if qualified, 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 able to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto. The costs of such evaluation and report shall be at the expense of the employer. Each report shall contain a rehabilitation plan which shall adhere to the following priority listing of rehabilitation goals:

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

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

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

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

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

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

(2) Within 50 days after such referral, the report shall be submitted to and reviewed by the rehabilitation administrator and copies shall be furnished to each party. If all parties do not agree with the report, the rehabilitation administrator shall confer with the rehabilitation service provider, the employee and the employer to review the evaluation and the proposed rehabilitation plan in the report. The rehabilitation administrator shall ensure the evaluation and the rehabilitation plan are objective and reasonable and the rehabilitation goal is reasonably obtainable. Within 20 days after the initial review of the report, the rehabilitation administrator shall deliver copies of the report, together with the rehabilitation administrator's recommendations and any revisions of or objections to the rehabilitation plan, to each party, to the director and to the assigned administrative law judge, if there is one. Within 10 days after receipt of such report, any party may request a hearing before the director on any matter contained in the report or any such recommendations or revisions. After affording the parties an opportunity to be heard and present evidence, the director:

(A) May order any treatment, or medical and physical reha-

bilitation, as recommended in the report or as the director may deem necessary, be provided at the expense of the employer;

(B) may order the employer to pay temporary total disability compensation, computed as provided in K.S.A. 44-510c and amendments thereto, or temporary partial disability compensation, computed as provided in K.S.A. 44-510e and amendments thereto, during the period of rehabilitation evaluation and continuing through the date the rehabilitation plan is delivered to the director as provided in subsection (e)(2). Temporary total or temporary partial disability compensation paid solely because of involvement in the rehabilitation evaluation process shall not be payable for more than 70 days from the date of the evaluation, except such temporary total or temporary partial disability compensation may be continued by the director for an additional period of not more than 30 days if circumstances outside the control of the employee prevents completion of the evaluation or the formulation of the rehabilitation plan;

(C) where vocational rehabilitation, reeducation or training is recommended in the report, or is deemed necessary by the director to restore to the employee the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto, 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 otherwise provided in this section, or, upon the request of the employer, to a qualified rehabilitation service program provided directly by the employer; and

(D) 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, may order such services be provided at the expense of the employer by any qualified private agency or facility in this state or any state contiguous to this state or by a qualified rehabilitation service program provided directly by the employer.

(3) Any vocational rehabilitation, reeducation or training to be provided at the expense of the employer under subsection (e)(2) shall not extend for a period of more than 36 weeks, except, 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 36 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 thirty-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 or

court of appeals 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 county of 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 \$3,500 for any thirty-six-week period, shall be paid by the employer, except, in unusual cases where, after a hearing and the presentation of evidence the director finds 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 \$2,000.

(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. Subject to a maximum of 26 weeks, the number of weeks during which temporary total disability compensation is paid during vocational rehabilitation, reeducation or training shall not be deducted from the maximum number of weeks available for the payment of disability compensation under the schedule provided in K.S.A. 44-510d and amendments thereto.

(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 there is a reasonable probability that with appropriate medical, physical or vocational rehabilitation, reeducation or training, a person, who is entitled to compensation for permanent total disability, partial disability or any other disability under the workers compensation act, may be rehabilitated to the extent such person can become able to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto, and it is for the best interests of such person to undertake such rehabilitation, 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) and the refusal is not due to the employee's physical or mental ability to do so, the employee shall be considered as having elected not to participate in such rehabilitation, reeducation or training and the director may suspend the payment of any disability compensation until the employee consents to undertake such program or to be so evaluated. The director may reduce the disability compensation otherwise payable if any such refusal persists for a period in excess of 90 days, except disability compensation shall not be reduced to less than that payable for permanent partial disability in accordance with K.S.A. 44-510d and amendments thereto or for permanent partial general disability for functional impairment in accordance with K.S.A. 44-510e and amendments thereto.

(j) At such time as any medical, physical or vocational rehabilitation, 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 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 the director determines the employee is rehabilitated so such employee is able to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto, the director shall modify any award of compensation or, if no such award has been made, the director shall make an award to reflect only such disability, if any, as exists at the conclusion of such rehabilitation. Any award of partial disability, or modification of an existing award, made pursuant to this subsection (j) shall be subject to the provisions of K.S.A. 44-510d and 44-510e and amendments thereto.

44-518. Refusal of medical examination. If the employee refuses to submit himself for examination upon request of the employer as provided for in K.S.A. 44-515, or if the employee or his physician or surgeon unnecessarily obstructs or prevents such examination by the physician or surgeon of the employer, the employee's right to payment of compensation shall be and remain suspended until he shall submit to examination and until such examination shall have taken place, and no compensation shall be payable under this act during the period of suspension: *Provided further*, That in the event the employee shall refuse to submit himself to examination while any proceedings are pending for the purpose of determining the amount of compensation due, said proceedings shall be dismissed upon showing being made of said refusal of said employee to submit himself for examination.

44-534a. Preliminary hearing; application and notice; medical and temporary total compensation; vocational rehabilitation; reimbursement from workers' compensation fund. (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 and for any matter relative to the furnishing of vocational rehabilitation in accordance with and subject to the provisions of K.S.A. 44-510g and amendments thereto. 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 workers 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. 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

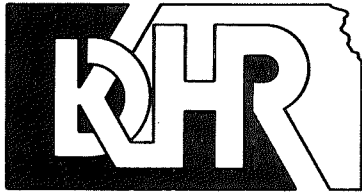
which are in excess of the amount of compensation the employee is entitled to as determined in the full hearing on the claim. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify 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.

REHABILITATION CASE MANAGEMENT
FOR THE PERIOD FROM 07/01/87 TO 12/31/88

	TOTAL		OLD LAW		NEW LAW	
	ACTIVE	INACTIVE	ACTIVE	INACTIVE	ACTIVE	INACTIVE
ADMINISTRATOR 1						
MEDICAL MANAGEMENT	13	35	0	4	13	31
INSURANCE CARRIER STATUS	17	55	2	21	15	34
REHABILITATION CASES	59	198	24	179	35	19
TOTAL CASES	89	288	26	204	63	84
ADMINISTRATOR 2						
MEDICAL MANAGEMENT	225	92	4	16	221	76
INSURANCE CARRIER STATUS	103	87	27	18	76	69
REHABILITATION CASES	385	290	121	190	264	100
TOTAL CASES	713	469	152	224	561	245
ADMINISTRATOR 3						
MEDICAL MANAGEMENT	270	116	12	12	258	104
INSURANCE CARRIER STATUS	123	179	20	37	103	142
REHABILITATION CASES	299	279	102	214	197	65
TOTAL CASES	692	574	134	263	558	311
ADMINISTRATOR 4						
MEDICAL MANAGEMENT	254	86	8	14	246	72
INSURANCE CARRIER STATUS	98	60	15	4	83	56
REHABILITATION CASES	386	256	94	200	292	56
TOTAL CASES	738	402	117	218	621	184
ADMINISTRATOR 5						
MEDICAL MANAGEMENT	0	0	0	0	0	0
INSURANCE CARRIER STATUS	0	0	0	0	0	0
REHABILITATION CASES	2	0	0	0	2	0
TOTAL CASES	2	0	0	0	2	0
ADMINISTRATOR 999						
MEDICAL MANAGEMENT	1	0	0	0	1	0
INSURANCE CARRIER STATUS	851	9	21	0	830	9
REHABILITATION CASES	34	0	3	0	31	0
TOTAL CASES	886	9	24	0	862	9
TOTALS						
MEDICAL MANAGEMENT	763	329	24	46	739	283
INSURANCE CARRIER STATUS	1,192	390	85	80	1,107	310
REHABILITATION CASES	1,165	1,023	344	783	821	240
TOTAL CASES	3,120	1,742	453	909	2,667	833

VOCATIONAL REHABILITATION

PRIMARY PURPOSE 44-510g(a)	WORK DISABILITY (GENERAL BODY INJURIES) 44-510e(a)	THRESHOLD FOR REHAB 44-510g(d)	VOCATIONAL REHABILITATION SERVICES 44-510g(d)
<p>A primary purpose of the Workers Compensation Act shall be to restore to the injured employee the <u>ability to perform work in the open labor market and to earn comparable wages.</u></p>	<p>The extent of <u>permanent general disability</u> shall be the extent, expressed as a percentage, to which the ability of the employee <u>to perform work in the open labor market and to earn comparable wages</u> has been reduced.</p>	<p>Employee is unable to perform work for the same employer with or without accommodation or for which such employee has previous training, education, qualification or experience.</p> <p><u>RECOMMENDATION</u></p> <ol style="list-style-type: none"> 1. Same employer at a <u>comparable wage.</u> 2. Previous training, education, qualification or experience to enter <u>open labor market and to earn comparable wage.</u> 	<p>Including re-training and job placement as may be reasonably necessary to restore to such employee the ability to <u>perform work in the open labor market and to earn comparable wages.</u></p>



DIVISION OF WORKERS COMPENSATION
 Landon State Office Building, 900 S.W. Jackson, Room 651-S
 Topeka, Kansas 66612-1276
 913-296-3441

Mike Hayden, Governor

Dennis R. Taylor, Secretary

FORMS FURNISHED AT NO COST

HEARINGS

- E-1 Application for Hearing
- E-2 Dependent's Application for Hearing
- E-3 Application for Preliminary Hearing

SETTLEMENTS

- 12 Worksheet for Settlement Injury Case
- 13 Worksheet for Settlement Death Case

INFORMATIONALS

- 15 Claim for Workers Compensation
- 103 Digest of Law for Employees
- 40 Posting Notice
- 88 Notice of Handicap, Disability or Physical Impairment
- 108 Employers Authorizing Medical
- 118 For Employers explaining Workers Compensation Act
- 125 Advantages of Hiring Handicapped Employees
- 126 Independent Contractor or Employee?
- 127 Workers Compensation Information

ELECTIONS

- 50 Employee Not to Come Under Act, 10% or more shareholder
- 50a Cancellation of Form 50
- 51 Employer to Come Under Act, gross annual payroll is \$10,000 or less or agricultural pursuits
- 51a Cancellation of Form 51
- 113 Individual, Partner or Self-Employer to Come Under Act
- 114 Cancellation of Form 113
- 123 Employer to Provide Coverage for volunteer workers
- 124 Cancellation of Form 123
- 135 Employer to Provide Coverage for persons performing community service
- 135a Cancellation of Form 135

MISCELLANEOUS FORMS

- 41 Subpoena
- 41a Subpoena Duces Tecum
- 41b Deposition Subpoena/Deposition Supoena Duces Tecum
- 107 Benefit Cards (New cards are issued each July 1st)
- 112 Surviving Spouse Annual Statement
- 128 Research Request for Previously Filed Form 88's
- 64 Processing a Workers Compensation Claim

HOUSE LABOR AND INDUSTRY
 Attachment #19
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WORKERS COMPENSATION LAW BOOK - July 1, 1987

Make checks payable to: Division of Workers Compensation and include \$4.00 with request.

FORMS NOT FURNISHED BY THIS OFFICE

Accident Reports (1101a)

***Final Release (Form D)**

Physician's Report Blank (Form G)

may be obtained from:

Uniform Printing & Supply *Not Form D
P. O. Box 189
Kendallville, IN 46755
(219) 347-3000
1-800-382-2424 (other states)
1-800-845-2933 (Indiana)

Paragon Press, Inc.
130 S. Delaware Street
Indianapolis, IN 46204
(317) 637-1424

ARP-1-KS - Assigned Risk Application for Workers Compensation Insurance may be obtained from:

NCCI, Kansas Service Office
P.O. Box 1577
Topeka, Kansas 66601-1577
(913) 273-6660

OSHA Forms 100 & 200 may be obtained from:

DHR, Industrial Safety & Health Section
512 W. 6th Street
Topeka, Kansas 66603-3150
(913) 296-4386

NCCI Policy Termination/Cancellation/Reinstatement Notice, Form #WC 89 06 09, order blanks for ordering this form may be obtained from:

National Council on Compensation Insurance
Attention: Bernadette Lally
Order Processing Department
750 Park of Commerce Drive
Boca Raton, FL 33431
(305) 997-4605

NAME, ADDRESS AND TELEPHONE NUMBER INFORMATIONAL

1. Kansas Insurance Department toll free number for claimant's use:
1-800-432-2484

2. Workers Compensation Rates,
Rules & Policy Forms, Group Self-Insureds

Bill Wempe, Supervisor
Commercial Multi-Perils Section
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612
(913) 296-3071

4. State Self-Insurance Fund
State of Kansas Employees

George Welch, Director
State Self-Insurance Fund
Landon State Office Building
900 S. W. Jackson, Room 951-S
Topeka, Kansas 66612
(913) 296-2364

3. Workers' Compensation Fund

Chris Cowger, Attorney
Kansas Insurance Department
420 S. W. 9th Street
Topeka, Kansas 66612
(913) 296-3071

5. OSHA Representative - Topeka

Department of Human Resources
Industrial Safety & Health Section
512 West 6th Street
Topeka, Kansas 66603-3150
(913) 296-4386

6. Workers Compensation Assigned Risk
Plan & general rating questions:

Margaret Gartner, Supervisor
NCCI, Kansas Service Office
S. W. Plaza Bldg., Suite 248
3601 S. W. 29th Street
Topeka, Kansas
(913) 273-6660

Mailing Address:

NCCI, Kansas Service Office
P. O. Box 1577
Topeka, Kansas 66601-1577

7. Workers Compensation Classification of Risk &
Experience Modification Checks

All inquiries pertaining to experience ratings, endorsements, cancellations of policy, notice of termination policies, policies information page, ERM-14, Form WC 89 06 90, etc... should be sent to:

NCCI Midwest Division
P. O. Box 19430
Springfield, IL 62794-9430
(217) 793-1100

8. Workers Compensation Act, Elections, Handicapped
Employees, Rehabilitation, Benefits, Individual Self-
Insureds, Advice for Claimants, Hearing Procedures

Department of Human Resources
Division of Workers Compensation
Landon State Office Building
900 S. W. Jackson, Room 651-S
Topeka, Kansas 66612-1276
(913) 296-3441
Toll free number for claimants use
1-800-332-0353 (intra state only)

Department of Human Resources
DIVISION OF WORKERS COMPENSATION
Landon State Office Building, 900 S.W. Jackson, Room 651-S
Topeka, Kansas 66612-1276

**NOTICE OF HANDICAP,
DISABILITY OR PHYSICAL IMPAIRMENT**

Employer: _____

Address: _____
(Street) (City) (State) (Zip Code)

The following employees were hired and/or retained by this employer with full knowledge of a handicap, disability or physical impairment; pursuant to K.S.A. 44-566. Notice is hereby given to the Director pursuant to K.S.A. 44-567.

Name of Employee	Social Security Number	Date Employed	List Category Number (see below)*	Concise Description of the Nature of the Impairment
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____
6. _____	_____	_____	_____	_____
7. _____	_____	_____	_____	_____
8. _____	_____	_____	_____	_____
9. _____	_____	_____	_____	_____
10. _____	_____	_____	_____	_____

(Employer or Agent)

(Date)

INSTRUCTIONS TO EMPLOYERS: List all employees known to have any handicap, disability or physical impairment, including psychoneurotic or mental disease or disorder. Employees who have sustained physical injury must be included if the resulting condition causes them to be more susceptible to future injury or if the injury resulted in permanent impairment. Separate entries are required for each identifiable disability. Be specific. The State of Kansas encourages the employment of handicapped persons, and filing this form with the state preserves certain legal defenses to which you may be entitled under the Kansas Workers Compensation Laws. Questions regarding the use of this form should be directed to your insurance claims representative.

HOUSE LABOR AND INDUSTRY
Attachment #20
01-18-89

* For your information the law lists the following categories:
Indicate whether impairment is due to (1) epilepsy, (2) diabetes, (3) cardiac disease, (4) arthritis, (5) amputated foot, leg, arm or hand, (6) loss of sight of one or both eyes or a partial loss of vision of more than seventy-five percent (75%) bilaterally, (7) residual disability from poliomyelitis, (8) cerebral palsy, (9) multiple sclerosis, (10) Parkinson's disease, (11) cerebral vascular accident, (12) tuberculosis, (13) silicosis or asbestosis, (14) psychoneurotic or mental disease or disorder established by medical opinion or diagnosis, (15) loss of or partial loss of use of any member of the body, (16) any physical deformity or abnormality, (17) any other physical impairment, disorder or disease, physical or mental, which is established as constituting a handicap in obtaining or in retaining employment. (Such as prior back injury, muscle strains, etc.)

INFORMATION TO EMPLOYERS ON THE KANSAS WORKERS COMPENSATION ACT

WHAT WORKERS COMPENSATION IS

Workers Compensation is an insurance plan provided by the employer (by law) to pay certain benefits to employees who are injured in accidents that arise out of and in the course of the employment. The first law in Kansas regarding workers compensation was enacted in 1911 and has been changed considerably since that time. Initially, the law covered only hazardous employments and there were certain exemptions in regard to the number of employees. The present law, however, covers all employers in the state of Kansas no matter how many employees they have or the nature of the work, except where the employer has less than an estimated \$10,000 annual payroll in any calendar year. Wages paid to the employer or his immediate family are not used in the computation of the \$10,000 wage figure. Agricultural pursuits are exempted under the Workers Compensation Act.

HOW TO OBTAIN WORKERS COMPENSATION COVERAGE FOR EMPLOYEES

Workers Compensation is a private insurance plan where the benefits are *not paid by the state of Kansas*, but paid by the employer through his insurance carrier or a self-insured plan. Self-insurance can only be allowed where there is application to the Division of Workers Compensation and approval made by the Director. Normally a fairly large financial reserve and excess insurance is required. For information on self-insurance requirements, contact the Division of Workers Compensation. To obtain insurance for employees, the employer should contact his insurance agent to obtain this insurance. Any difficulty an employer has in getting insurance should be referred to the Kansas Insurance Commissioner, Honorable Fletcher Bell, First Floor, State Office Building, Topeka, Kansas, 66612, telephone 913-296-3071. Also the Insurance Commissioner can answer questions in regard to rates and the proper amount for the insurance premium in individual cases. The Kansas Division of Workers Compensation has no jurisdiction in regard to setting premium rates.

BENEFITS EMPLOYEES ARE ENTITLED TO WHEN THEY ARE INJURED IN A JOB-RELATED ACCIDENT

When a worker is injured on the job, the worker is entitled to certain benefits while off work from his injury and also medical expenses and vocational rehabilitation assistance, if found eligible. Benefits are paid at the rate of 2/3 of the employee's average weekly wage while the worker is off work up to a maximum amount based on a percentage of the state's average weekly wage. All medical benefits are paid to cure and/or relieve the worker of the effects of the injury. If an employee dies as a result of a job-related injury, the surviving spouse or dependents can receive compensation based on a rate of 66 2/3 % of the employee's average weekly wage up to the applicable maximum amount. Any questions in regard to benefit levels should be referred to the Division of Workers Compensation. Also the Division maintains a Claimant Advisory Section that will advise and help injured employees on their claims. The Division also has a special information sheet available for injured workers which can be ordered in quantity and contains complete dollar benefit information.

WHAT THE EMPLOYER SHOULD DO WHEN AN ACCIDENT OCCURS

The law does require an employer to furnish the Kansas Division of Workers Compensation with a Form 1101A, Accident Report, if an employee is injured on the job. The employer should immediately report any accidents to his insurance carrier, and either the insurance carrier or the employer will submit the original Accident Report to the Division of Workers Compensation. Self-insureds also should file the original Accident Report with the Division of Workers Compensation.

CAN AN EMPLOYER OR AN EMPLOYEE ELECT OUT OF THE ACT?

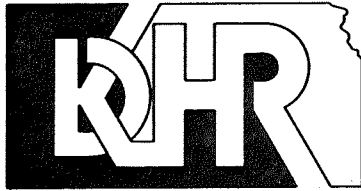
An employer cannot elect out of the Act if he is mandatorily covered. The employee cannot waive his rights as to coverage under the Act. An employee is restricted from electing out of the Act except where the employee owns 10% or more of the corporate stock in the corporation for which he works. The election out of such by an employee who owns 10% or more of the corporate stock is done on a Form 50 which is furnished by the Division of Workers Compensation and can be obtained by writing to the Division. An individual employer, partner or self-employer can elect to cover himself under the Act if desired. This is done by contacting your insurance agent and filing a Form 113 with the Division of Workers Compensation.

This informational outlines provisions of the Kansas Workers Compensation Law. Complete statutes and regulations are found in Kansas Statutes Annotated and Kansas Administrative Regulations. Copies of the Workers Compensation Law and Rules are available from the Division of Workers Compensation at a nominal cost. Billfold size benefit cards are also available in quantity and can be ordered from the Division of Workers Compensation.

For information write:

Kansas Division of Workers Compensation
Landon State Office Building, 900 S.W. Jackson, Room 651-S
Topeka, Kansas 66612-1276
(913) 296-3441

HOUSE LABOR AND INDUSTRY
Attachment #21
01-18-89



DIVISION OF WORKERS COMPENSATION
Landon State Office Building, 900 Jackson, Room 651-S
Topeka, Kansas 66612-1276
(913) 296-3441

Mike Hayden, Governor

Dennis R. Taylor, Secretary

WORKERS COMPENSATION INFORMATION

Workers Compensation is a plan under which employers furnish benefits to employees who are disabled by work-related accidents or occupational diseases.

COVERAGE

The present law covers all employers in the state of Kansas except for employers in agricultural pursuits and employers with less than \$10,000 gross annual payroll. All payroll is taken into account whether paid in Kansas or elsewhere. If the employer is a sole proprietor or a partnership, the wages paid to such employer(s) and his/her (their) family are not used in the computation of the \$10,000 gross annual payroll.

Employers not automatically subject to the Workers Compensation Act can elect to cover themselves and can later reject such coverage. Employers cannot reject coverage of the Act if they meet the \$10,000 payroll criteria. An employee cannot reject coverage of the Act unless the employee owns 10 percent or more of the corporate stock of the corporation which employs them. Volunteer workers can be covered by the filing of an election form with the Director's office by the insurance carrier. Election forms are furnished by the Workers Compensation Director's office.

To determine whether a person is an employee or an independent contractor, Kansas uses the common law test which is based on several factors. Some of those factors are: Whose interest is being furthered by the work being done; who has the right to control the workers; who has the right to hire and fire workers; in what manner are wages paid. Questions involving the employer/employee relationship can be referred to the Director's office. Also, Form 126, an information on independent contractors, can be requested.

Workers compensation benefits are not paid by the state of Kansas except to state employees. Benefits are provided and paid for by the employer through insurance or self-insurance. Employees pay no portion of the cost of workers compensation. Self-insurance can only be undertaken after application is made and approval is given by the Director's office. Normally, only large, substantial companies are permitted to self-insure. Most employers provide coverage by purchasing workers compensation insurance. To obtain insurance, or information as to its cost, an employer should contact an insurance agent. The Kansas Insurance Commissioner's office can answer questions in regard to insurance policies, rules, rates, and forms. Group self-insurance is now available for those that qualify, and the program is administered by the Kansas Insurance Department, phone (913) 296-3071.

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REPORTING ACCIDENTS

Employers should immediately submit an accident report to the director and insurance carrier, so the carrier can investigate the accident while witnesses are still available and details can be remembered. The report must be filed with the Workers Compensation Director's office within 28 days.

The employer must furnish the medical treatment and has the right to designate the doctor the employee is to see. If the employer does not designate a doctor or allows the employee to choose the doctor, any doctor the employee selects is considered authorized to treat the employee. The employer can also authorize the employee to change doctors. On application, the Director of Workers Compensation can authorize the employee to change doctors. The employee, without authorization, may go to another doctor but is limited to \$350 for any examination, rating or treatment.

WEEKLY DISABILITY BENEFITS

Some brief definitions:

Temporary total disability - temporary complete inability to work.

Permanent total disability - permanent complete inability to work.

Temporary partial disability - ability to work part-time or do light work on temporary basis.

Permanent partial general disability - partial reduction in ability to work on permanent basis.

Permanent partial loss of use - a partial loss of the use of a member of the body which is called a scheduled injury.

The maximum weekly benefit for any type of compensation claim is 75 percent of the state's average weekly wage. The rate changes the 1st of July each year.

Maximum weekly benefits:	July 1, 1983 - June 30, 1984	\$218
	July 1, 1984 - June 30, 1985	\$227
	July 1, 1985 - June 30, 1986	\$239
	July 1, 1986 - June 30, 1987	\$247
	July 1, 1987 - June 30, 1988	\$256
	July 1, 1988 - June 30, 1989	\$263

The maximum total compensation for permanent total disability is \$100,000 for injuries occurring between July 1, 1979 and June 30, 1987 and \$125,000 for injuries occurring July 1, 1987 and later. For temporary total and other types of disability, \$75,000 is the total amount for injuries occurring between July 1, 1979 and June 30, 1987 and \$100,000 is the total amount for injuries occurring July 1, 1987 and later.

Temporary Total and Permanent Total Disability

No compensation (other than medical and hospital benefits) is paid during the first week of temporary total disability unless the period of disability exists for three consecutive weeks. After the first week the worker is paid benefits at two-thirds of his gross wage but not more than the current maximum benefit.

Temporary Partial Disability

If a worker is unable to return to full work but does earn some lesser wages he may be entitled to temporary partial disability benefits. The weekly benefit for temporary partial general disability is two-thirds of the difference between the average gross weekly wage that the worker was earning prior to injury, and the actual earnings after injury but not more than the current maximum benefit.

Scheduled Injury Disability

When an injured employee has disability to a member of the body, generally the compensation for temporary and permanent disability is based on a schedule of weeks. Scheduled loss of use benefits are computed by subtracting the weeks of temporary total disability from the schedule and multiplying the remaining weeks by the percent of loss of use. All weekly benefits for scheduled injuries are paid at the individual's maximum rate.

<u>Scheduled Member</u>	<u>Schedule of Weeks</u>
Loss of thumb	60
Loss of first finger (index)	37
Loss of second finger (middle)	30
Loss of third finger (ring)	20
Loss of fourth finger (little)	15
Loss of hand	150
Loss of forearm	200
Loss of arm	210
Loss of great toe	30
Loss of great toe, end joint	10
Loss of foot	125
Loss of lower leg	190
Loss of leg	200
Loss of eye	120
Loss of hearing in one ear	30
Loss of hearing in both ears	110

In scheduled injury cases the Director may allow 10 percent additional weeks healing period up to 15 weeks.

Permanent Partial General Disability

Permanent partial disabilities which are not scheduled are compensated on the basis of 415 weeks of benefits. The number of weeks of temporary total disability is subtracted from 415 and the remaining number of weeks are compensated at a weekly rate determined by multiplying the percentage of disability by two-thirds of the worker's gross average weekly wage.

The percentage of permanent disability for both scheduled and general injuries is usually established by the doctor's rating at the time he releases the person. Compensation for a general disability is computed by a formula that utilizes the doctor's functional disability rating or the degree to which the injury prevents the worker from working in the open labor market at comparable wages, whichever is the higher percentile.

DEATH BENEFITS

Benefits for death resulting from an injury on the job are payable to the spouse and to dependents. Weekly benefits are the same as for total disability. The statutory maximum death benefits payable to dependents for injuries occurring between 7-1-79 and 6-30-87 is \$100,000.00. For injuries occurring on or after 7-1-87 the maximum amount payable is \$200,000.00. The surviving spouse receives appropriate weekly benefits for life or until the statutory maximum has been expended. Remarriage of the surviving spouse will terminate the benefits; however the spouse will receive a marriage dowry in a lump sum equal to 100 weeks of benefits. Minor dependents are entitled to appropriate weekly benefits to age 18, or to age 23 if a full time student in an accredited institution of higher education or vocational education, or if physically or mentally incapable of earning wages in any type of substantial and gainful employment. If there is no surviving spouse or are no wholly dependent children, other persons wholly dependent on the deceased employee receive weekly compensation benefits to a maximum of \$18,500 until death, remarriage, or until other income exceeds 50 percent of their support.

If there are no wholly dependent survivors, partially dependent survivors will receive compensation determined by the amount of support provided by the deceased employee. Burial expenses are paid up to \$3,200.

REHABILITATION

A worker is entitled to prompt medical and physical rehabilitation service, as may be reasonably necessary to cure and relieve the worker from the effects of the injury. Medical and physical rehabilitation services have no maximum time or dollar limit.

An injured worker may be entitled to vocational rehabilitation services if they are unable to return to his or her previous occupation with or without job accommodations or other occupations which they are already qualified to do. In either case the work must be at comparable wage.

Injured workers are entitled to a vocational evaluation if they have remained off work 90 days and medical records indicate permanent restriction that will not allow them to return to their previous employment or another job with accommodations that pay comparable wages and is within their physical restrictions.

Injured workers receive disability compensation during the evaluation and plan development process and continue through an approved rehabilitation plan.

Vocational rehabilitation programs vary from job placement, on the job training to a formal training or education.

An injured worker desiring vocational rehabilitation services should contact the Rehabilitation Section at the Division of Workers Compensation.

A toll free number (1-800-332-0353) is available for claimants who reside in the state. The regular number is (913) 296-3441.

HANDICAPPED EMPLOYEES

Our workers compensation law contains a provision which is known as the Kansas Workers Compensation Fund. Most states have similar provisions and many refer to them as the Second Injury Fund.

The purpose of the Workers Compensation Fund is to create an inducement to employers to hire handicapped employees. Since a person with an existing disability might expose the employer to greater risk of an injury claim, this Fund was created to remove that added risk. The word "handicapped" as used in these sections, does not only refer to severely handicapped persons, but also to others with minor disabilities that constitute a hurdle to getting and keeping employment.

If a handicapped employee's name is filed with the Director's office, or if the employer proves he/she knew of a preexisting handicap and that employee sustains an injury, the employer can claim relief from payment from the Workers Compensation Fund. Whether and to what degree the Fund pays the compensation depends upon the facts of the case.

There are three types of situations in which the Fund may be found responsible for payment of benefits for preexisting impairments.

1. If an accident occurs in which an employee is injured and that accident would not have occurred "but for" the preexisting condition then all compensation would be paid by the Fund.

2. If the employee's preexisting condition did not cause the accident to occur, but the employee sustains disability that is all attributable to the preexisting condition, then part of the compensation would be paid by the Fund.

3. If the preexisting impairment did not cause the accident to occur but the employee sustains disability that is partly attributable to the preexisting condition, then part of the compensation would be paid by the Fund.

For the purpose of filing the names of handicapped employees, the Director has adopted Form 88 which is available from our office.

WRITTEN CLAIM

The law requires that an employee serve written claim for compensation **upon the employer** within 200 days after the accident, the last compensation paid, or the last payment for medical service. An accident report is **not** written claim.

Claim may be served in person or by certified mail, return receipt requested. A letter containing the following information will suffice. See the sample below:

CLAIM FOR WORKERS COMPENSATION

Date _____, 19____

To: _____
(employer's name and address)

You are herewith informed that I claim compensation in accordance with the workers compensation laws of Kansas by reason of an accident which arose out of and in the course of my employment with you on or about (date) _____, 19____.

Sign _____
(worker making claim)

Social Security Number _____

Street _____

City _____ State _____ Zip _____

APPLICATION FOR HEARING

If the worker's entitlement to compensation cannot be agreed upon between the worker and the employer and insurance carrier, any party may apply to the Director for a hearing to have the party's rights decided by an Administrative Law Judge of the Workers Compensation Division.

POSTING NOTICE REQUIREMENTS

Regulation 51-13-1 provides that employers operating under the Workers Compensation Act shall post notices advising employees what to do in case of injury. The notices are available without cost from our office.

BLANK FORMS FURNISHED

A list of blank forms furnished free of charge by this office may be requested. Also included on the listing are forms not furnished and the firms from which they may be ordered.

Inquiries regarding workers compensation should be directed to:

Department of Human Resources
Division of Workers Compensation
Landon State Office Building
900 S.W. Jackson, Room 651-S
Topeka, Kansas 66612-1276
Telephone: (913) 296-3441

We also have regional offices in Liberal, Kansas City, Overland Park, Wichita and Salina.

A toll free, in-state telephone number to Topeka Claimant Advisory Section exists for claimants' use. The number is 1-800-332-0353. If the claimant resides outside the state, (913) 296-3441 must be used.

ELECTION INFORMATIONAL

K.S.A. 44-505 provides that the Workers Compensation Act shall apply to all employments except (1) agricultural pursuits, (2) employments with less than \$10,000 gross annual payroll, and (3) members of a Firemen's Relief Association which has elected not to come under the Act.

The method of determining whether or not an agricultural pursuit is under the Act generally follows the rule that only purely agricultural pursuits are exempted while servicing agricultural pursuits are considered under the Act.

In computing the \$10,000 payroll to determine whether an employer is mandatorily covered, all payroll would be counted in a corporate business, but in a non-corporate situation, that portion of the payroll that is paid to a member of the employer's family is not required to be counted. The various election forms presently in use are set out below.

A. Forms 50 and 50a deal with the election out of the Act by certain corporate employees. The form can only be used by an employee of a corporation who owns more than 10 percent of the corporate stock. Such an employee so electing by use of the Form 50 exempts himself from coverage under the Act. The form to cancel a Form 50 election previously filed is the Form 50a.

B. Forms 51 and 51a are to be used by employers who are exempted from the law and wish to be covered. This would include employers with less than \$10,000 payroll and agricultural pursuits. The Form 51 is the election by which these employers can make themselves subject to the Act. The Form 51a cancels the Form 51 election.

C. Form 113 is an election filed by an individual, proprietor, or partner to cover himself or herself under the Act. The **Form 114** cancels the Form 113. Both the 113 and 114 must be signed by an insurance company underwriter or other official of the insurance carrier. A signature of an agent either captive or general is **not acceptable**.

D. Form 123 is an election whereby the employer can elect to provide coverage for all or part of his volunteer workers. **Form 124** is a cancellation of Form 123.

E. Form 135 is an election of employer to provide workers compensation coverage for persons performing public or community service as a result of a contract of diversion, assignment to a community corrections program or suspension of sentence or as a condition of probation or in lieu of a fine. **Form 135a** is a cancellation of Form 135.

Examples of Use

Assume a partnership of two persons with two employees, one of those employees a member of the partner's family, the other employee not a member of the family, the second of the employees not earning \$10,000 per year. That employment **would not be subject** to the Workers Compensation Act since they do not have a gross annual payroll paid to non-family members in excess of \$10,000. Assume that the partnership files an election Form 51. That would make the business subject to the Act by their election. The coverage, therefore, would be for the two employees, the one member of the family and the other non-member. Although the member of the family payroll is not used to determine whether the business is mandatorily subject to the Act, the election to bring the business subject to the Act automatically extends the coverage to the family employee and the non-family employee. There is no coverage of each of the partners since they are not employees, but rather employers. Form 50 and 50a would have no application to this business whatsoever since the business is not a corporation. If the partners also filed an election Form 113 on each of the partners along with the Form 51 coverage would extend not only to the two employees but also to each of the individual partners.

Kansas Employer Coalition on Health Workers' Compensation Decision Tree

Introduction

The decision tree on the reverse of this document is a pioneering effort by the Kansas Employer Coalition on Health. The purpose of the chart is to improve understanding on the part of KECH members about the workings of the Kansas law governing Workers' Compensation.

The chart starts at the top left, in the oval called "Accident." The flow of activity generally proceeds downward, unless otherwise indicated. Rectangles show activities. Diamonds show choice points, with the flow going one of two ways, depending on how you answer the question on the diamond. Ovals show end points.

The chart is intended only for educational purposes and as an overview of a complex system. The chart intentionally omits some activities and connections that were deemed by KECH to be of lesser importance. Appeals procedures, in particular, are generally omitted.

A large (approx. 28"x14"), laminated poster of the chart is available free to KECH members who request it. The poster greatly improves legibility and is particularly well suited as an educational tool.

One suggested use for the attached chart is to make photo-copies for insertion in injured employees' files. A highlighter pen can then be used to mark the progress of the individual through the system. Managers can then see at a glance what choices are at hand and what outcomes are available.

This is the first version of the chart. The KECH Education Committee intends to improve the accuracy and functionality of the chart as feedback returns from users. Suggestions and comments are welcome at KECH offices.

Glossary of Terms*

Accident: An undesigned, sudden and unexpected event or events not necessarily accompanied by a manifestation of force.

Personal Injury or Injury: A lesion or change in the physical structure of the body so that it gives way under the stress of the worker's usual labor.

Notification of accident by employee:

- A) Verbal notification must be given to employer within ten (10) days of accident.
- B) Written notification must be made on employer within 200 days of accident or last payment of compensation.

Compensation benefits:

- A) "Temporary total" payments: during a period of healing when worker is medically unable to engage in employment.
- B) Medical Benefits are provided at the direction of the employer. Such medical benefits are considered authorized and are unlimited.
- C) Rehabilitation: Assistance in return to work.

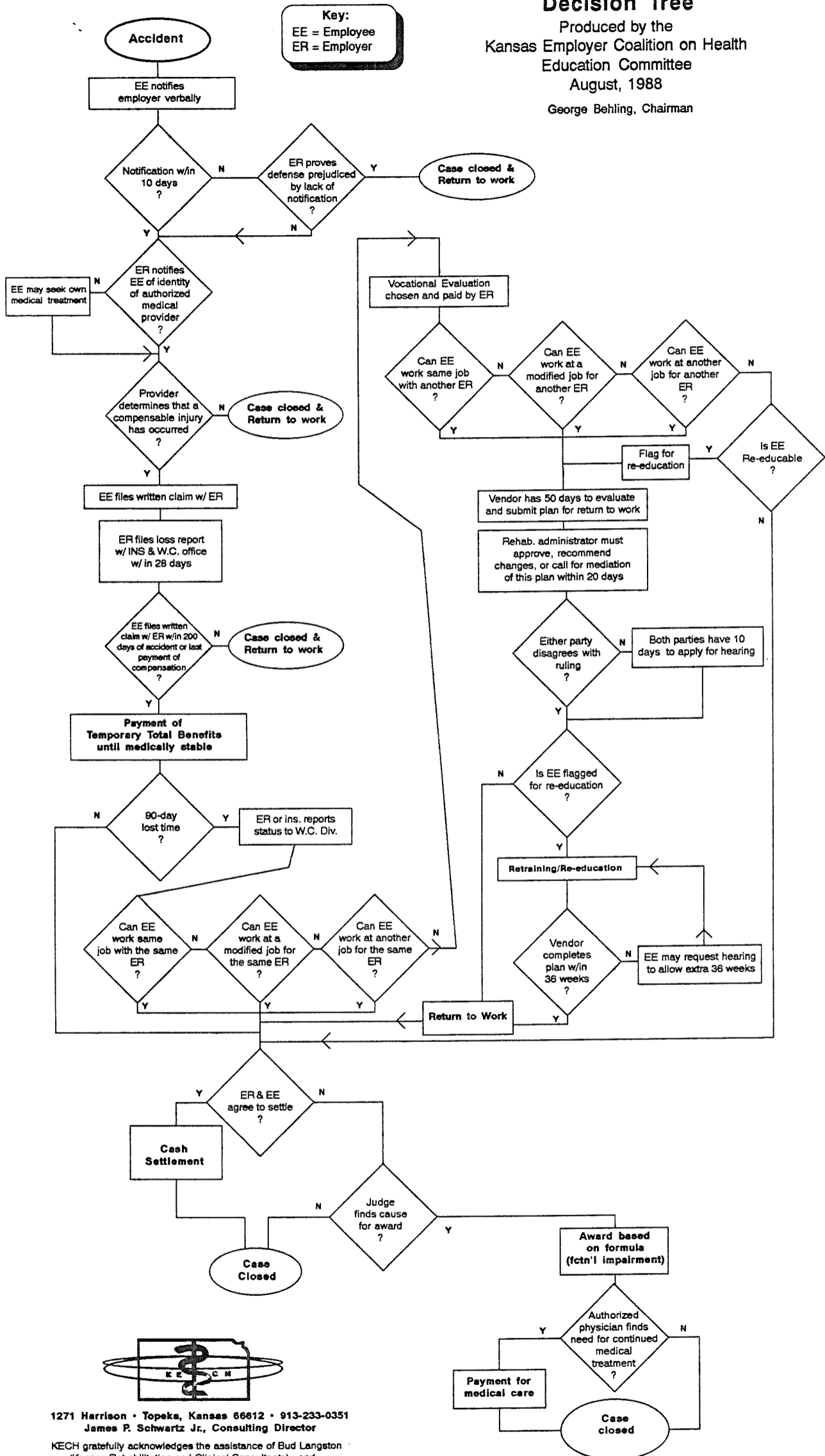
Closing cases:

- A) *Settlement:* Negotiated between employee and employer. Usually in one lump sum.
- B) *Award:* Paid on weekly amounts for a period not to exceed 415 weeks.

Source: Bud Langston, Kansas Rehabilitation and Clinical Consultants

Kansas Workers' Compensation Decision Tree

Produced by the
 Kansas Employer Coalition on Health
 Education Committee
 August, 1988
 George Behling, Chairman

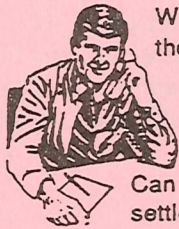


1271 Harrison • Topeka, Kansas 66612 • 913-233-0351
 James P. Schwartz Jr., Consulting Director
 KECH gratefully acknowledges the assistance of Bud Langston
 (Kansas Rehabilitation and Clinical Consultants), and
 Edward J. Hester, PhD. (The Menninger Foundation)

STATE OF KANSAS
DEPARTMENT OF HUMAN RESOURCES - DIVISION OF WORKERS COMPENSATION

An Important Message to Injured Workers: If you have suffered a job-related injury and benefits are not being paid or you have questions in regard to your rights under the law, please contact the Division of Workers Compensation Claimant Advisory Section. Personnel of that section will work with you to answer your questions and to explain your rights and obligations under the law. When you call, please ask to speak to the **Claimant Advisory Section**. If you are calling from within the state of Kansas, use our toll free number, 1-800-332-0353. If you live outside the state of Kansas, call 913-296-3441, ask for the Claimant Advisory Section, leave your name and telephone number and someone will return your call. You can also write to the Division of Workers Compensation, Landon State Office Building, 900 SW Jackson, Room 651-S, Topeka, KS 66612-1276.

HAVE A PROBLEM WITH YOUR CLAIM? LET US TRY TO HELP.



What do I have to do to start the processing of my claim?

Should I file for a hearing?

Can you explain what is a proper settlement amount?

My medical bills aren't paid yet!!

How much do I receive a week?



Se requiere que el patrón proporcione tratamiento médico y compense al empleado mientras que éste esté incapacitado para trabajar debido a un golpe ocasionado en, o por causa de se trabajo. Para mayor información, sírvase llamar al teléfono 913-296-3441, o escriba a la Division of Workers Compensation, Landon State Office Building, 900 SW Jackson, Room 651-S, Topeka, KS 66612-1276.

WORKERS COMPENSATION INFORMATION

The Division of Workers Compensation has prepared this informational sheet to provide information about the Kansas Workers Compensation Law. It is designed to give a general picture about the rights and obligations a person has under the law if injured on the job.

WHAT IS WORKERS COMPENSATION?

Most employers conducting business in the state of Kansas are required to provide compensation to workers injured on the job. The workers compensation benefits are paid directly by the employer or from insurance purchased by your employer from a private insurance company. The benefits include weekly compensation if you miss over one week of work, all reasonable medical expenses and help with vocational and physical rehabilitation. If permanent disability results from the injury, you may be entitled to further weekly compensation.

THE IMPORTANT REQUIREMENT FOR FILING A WRITTEN CLAIM

The Kansas Workers Compensation Law contains a time limit in which to make a claim. If you wish to proceed with a claim, you are required to file a **written** claim within 200 days of the occurrence of the accident or the last date compensation is paid (weekly compensation or authorized medical treatment). This written claim is in addition to any report the employer may file. A claim should be filed even though you are presently receiving weekly compensation or medical treatment. **This written claim is filed with the employer**, not the Division of Workers Compensation. The claim can be served upon the employer by (1) taking it to the employer and having the employer sign the receipt portion of the form; or by (2) sending it to the employer by certified mail and requesting a return receipt from the post office.

WEEKLY BENEFITS FOR AN INJURED EMPLOYEE

The Kansas Workers Compensation Law requires that the employer or insurance carrier pay an injured worker 2/3 of the employee's gross average weekly wage up to the maximum listed below. Employees are not paid benefits for the first week they are off work except medical benefits; however, if they are off over 7 days, then they are entitled to receive weekly compensation (if off 3 weeks, employee can receive compensation for the first week). To determine the maximum that is applicable, check the maximum in effect for the year of the injury provided by the schedule below. The maximum in effect at the date of the injury does not change once set. Remember also that if 2/3 of the gross average weekly wage is below the maximum listed below, the actual amount one would receive would be only 2/3 of the gross average weekly wage.

MAXIMUM COMPENSATION SCHEDULE

Date of Injury	July 1, 1983 - June 30, 1984	\$218.00
Date of Injury	July 1, 1984 - June 30, 1985	\$227.00
Date of Injury	July 1, 1985 - June 30, 1986	\$239.00
Date of Injury	July 1, 1986 - June 30, 1987	\$247.00
Date of Injury	July 1, 1987 - June 30, 1988	\$258.00
Date of Injury	July 1, 1988 - June 30, 1989	\$263.00

HOUSE LABOR AND INDUSTRY
Attachment #24
01-18-89

Weekly compensation is payable at the above rate until the doctor releases you to return to work; however, in no case can such payments exceed a total of \$125,000 for permanent total or \$100,000 for partial or temporary disability.

YOU MAY BE ENTITLED TO VOCATIONAL REHABILITATION SERVICES

The Division of Workers Compensation, by law, provides services to injured workers who need vocational rehabilitation. Vocational rehabilitation may consist of training, on-the-job training, or assistance in job placement. Our goal is to return injured workers to gainful employment as soon as possible. If you desire assistance, you may either phone or write the Rehabilitation Administrator, Division of Workers Compensation, Landon State Office Building, 900 SW Jackson, Room 651-S, Topeka, KS 66612-1276; telephone 913-296-3441.

WHAT ARE THE MEDICAL AND HOSPITAL BENEFITS?

A person injured on the job is entitled to all medical treatment that may be needed to cure or relieve the effects of the injury. Under the law, the employer has the right to choose the treating physician. If the worker seeks treatment from a doctor not authorized or agreed upon by the employer, the insurance company is only liable up to \$350 toward such medical bills. An injured worker is generally entitled to mileage reimbursement for trips to see the physician if the distance is over 5 miles for the round trip. If the worker must hire transportation, this can also be reimbursed.

SETTLEMENT OF YOUR WORKERS COMPENSATION CLAIM

If you have received a permanent injury as a result of your work-related accident, you may be entitled to permanent disability benefits. The law allows a certain number of weeks of compensation to be paid for various injuries to the listed members of the body (see Schedule List below). If the injury is not on the schedule, compensation may be required to be paid over a 415 week period.

Although the law requires that compensation be paid for a certain period of weeks, you and your employer or your employer's insurance carrier have the right to settle your claim on a lump-sum basis. Before you agree to such a settlement, we suggest you contact the Division of Workers Compensation Claimant Advisory Section to discuss your situation. Many factors can affect your decision to accept a lump-sum settlement of your claim. We cannot make the decision to accept or reject an offer of settlement for you nor will we act as your legal counsel. However, we will discuss your rights and obligations under the law with you so any decision you make will be an informed decision.

SCHEDULE LIST

<u>Accidental Injury Disability</u>	<u>Weeks Payable</u>	<u>Accidental Injury Disability</u>	<u>Weeks Payable</u>
Arm	210	Thumb	60
Forearm	200	1st (index) finger	37
Hand	150	2nd (middle) finger	30
Leg	200	3rd (ring) finger	20
Lower Leg	190	4th (little) finger	15
Foot	125	Great toe	30
Eye	120	Great toe, end joint	15
Hearing, both ears	110	Each other toe	10
Hearing, one ear	30	Each other toe, end joint	5

Amputation through a joint is considered loss to next higher schedule.

HOW TO COMPUTE A SETTLEMENT

(A) Amputation (1) Add weeks on applicable schedule to number of weeks healing period (additional weeks compensation allowed for time you are off work up to 10 percent of the weeks on schedule, but no more than 15 weeks); (2) Multiply these weeks times your weekly compensation payment; (3) Subtract the amount of compensation previously paid. For partial or multiple amputations, contact the Division of Workers Compensation.

(B) Loss of Use to Schedule Member (1) Subtract weeks of compensation already paid to you from number of weeks on Schedule List; (2) Multiply this figure by percent of disability to the member; (3) Multiply this figure by your weekly compensation rate. (This gives the total settlement due.) (Note: Healing period may be allowed in non-amputation cases.)

(C) Permanent Partial Disability to the Body [Example: back, shoulder, and head] (1) Compute your weekly permanent partial compensation rate by multiplying your gross average weekly wage times your percent of disability; (2) Multiply this figure by .6667 (cannot exceed maximum benefit listed on reverse side); (3) Subtract the number of weeks of compensation already paid to you from 415 weeks; (4) Multiply the balance by your permanent partial weekly rate. (This gives the total settlement due.)



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K-WC 126 (Rev. 7-88)

INDEPENDENT CONTRACTOR OR EMPLOYEE?

Special Problems Presented by Truck Drivers, Ministers and Others

This office is frequently contacted in regard to the problem of the independent contractor. The basic question is whether an individual is an independent contractor or an employee. This can be a very important question in regard to whether an employer must cover the worker as an employee or whether the worker is indeed an independent contractor, and therefore, not subject to the employer's insurance coverage. Under the Kansas Workmen's Compensation Law if a worker is an employee, he cannot be required to contribute towards purchasing the workers' compensation insurance. If the worker is an employee, then the employer must purchase the insurance and the employer cannot withhold funds from the employee's pay or commission to purchase the insurance.

In workers' compensation the determination of whether a worker is an employee or an independent contractor is through the so-called "common law test" as applied by the Kansas Supreme Court or Kansas Court of Appeals. In other words there is no statute in our Workmen's Compensation Law that sets the definition for the legal requirements as to whether a certain individual is an employee or an independent contractor. An administrative law judge, or the Director, or other appeal courts will arrive at this determination by examining the prior decisions of our Supreme Court as to how they have defined an employee. In the case of Snyder v. Lamb, 191 Kan. 446, our Supreme Court said, "The question whether, in a given situation, an injured workman occupied the status of an independent contractor--as distinguished from an employee--has been before this court many times. Generally speaking, an independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of his work." The court further noted in that case that the right of control test is not an exclusive test to determine the relationship, but other relevant factors are also to be considered. The court in the case of Evans v. Board of Education of Hays, 178 Kan. 275, noted "...an independent contractor represents the will of his employer only in the result of his work and not as to the means by which it is accomplished." The court further noted in that decision, "It is not the exercise of direction, supervision or control over a workman which determines whether he is a servant or an independent contractor, but the right to exercise such direction, supervision or control."

It is not always easy for an administrative law judge or an appeal judge to determine whether the purported employer did have the right of control over the worker's activities. As the court noted above, it is not whether the right of control is actually exercised, but rather it was reserved. The right to hire or discharge the worker also can be an important element in this test. Generally if an independent contractor does not perform a job he was contracted to do in a satisfactory manner, the legal recourse is not to discharge that person but to sue the person for breach of contract due to faulty workmanship or incomplete services. Usually an independent contractor cannot be discharged at the whim of the person contracting the work. An employee, however, can be subject to this type of termination. Generally where an independent contractor is involved the person engaging the independent contractor usually enters into a written agreement where a certain end result is contracted for and a certain set amount of money will be paid once that end result is completed. For instance if a home owner contracted with a plumbing service to build a bathroom for a certain amount of money and did not engage in the supervision of the independent contractor while he performed the job, then that person performing the job would most probably be an independent contractor. However, if a person was a contractor who built homes and contracted with a certain individual that he would be paid so much an hour while he did the plumbing work, generally gave directions how the plumbing work should be completed and had the right to discharge that person at any time during the progress of the work, that person doing the work would most probably be an employee. The problems that exist are in the "gray" areas where there exists an extremely close question of whether that person is an employee or an independent contractor. All we can advise someone

in that situation is that a person may be taking a financial risk if they do not cover the worker, because if it is determined that the worker is an employee, the employer would be required to pay the benefits even though he is uninsured. Sometimes general contractors and others will require certificates of insurance from all persons doing work for them, and therefore, avoid the contractor vs. employee question and protect themselves from workers' compensation claims. The only problem with this is that some workers might complain that they are being required to carry workers' compensation insurance on themselves even though they believe themselves to be employees. Therefore, the problem can arise even before an accident may occur. Several areas of special interest are noted below in regard to whether the relationship of employer-employee may exist.

When the law was revised in 1974, we had many inquiries whether church ministers would be considered employees or independent contractors. This question arose chiefly due to the fact that the Internal Revenue Service apparently considers most ministers self-employed and not employees. However, applying the "common law test" to most situations involving ministers indicated to our office that these people most probably were in the status of being employees rather than independent contractors. In most cases the minister is subject to discharge by a church board and they do have a certain right of control over his ministerial activities in regard to directions as to his duties and how he generally should perform them. There may be certain special circumstances where the minister would not be considered an employee, but in most cases reviewed, it was felt that the church should provide workers' compensation coverage for the minister.

Another area of prime interest is in the trucking industry. We have somewhat a better guideline in this area due to a fairly recent Supreme Court case, that of Knoble v. National Carriers, 212 Kan. 331. This case can also be applicable to other situations involving the question of employees vs. independent contractor. In the Knoble case the truck driver owned the tractor and leased it to the trucking firm. The employee, with his tractor, towed the trailer of the trucking firm. The truck driver and the trucking firm had a written contract which specifically stated the parties did not intend to create an employer-employee relationship. Truck drivers were not prescribed as to the number of days they had to work or times they had to work; however, they had to conform to the I.C.C. regulations as to the amount of time they could work in a given day. The truck drivers were given advances for expense money which was deducted from their payment on completion of delivery of a load. Some of the evidence brought out in the case was that the drivers received instructions from the dispatcher as to what commodities were to be hauled and where they were to be delivered. The drivers were required to check with the employer on a call-in basis at least once a day. The employee was paid on the basis of 70% of the gross revenue taken in by the truck and no social security or withholding tax was withheld or paid by the trucking firm. The Supreme Court in that case concluded that the lower court was correct in finding an employer-employee relationship to exist. The court in making this finding, noted, "that Respondent (trucking company) exercised or had the right to exercise as much control over the drivers of leased vehicles as it desired or was required to exercise in order to operate efficiently." The court further noted that there was no exact formula which may be used in determining if one is an employee or an independent contractor and concluded, "The determination of the relation in each instance depends upon the individual circumstances of the particular case."

It might also be noted that where one person is exclusively associated with another in order to conduct his business efficiently, the principle in the relationship, as a practical matter, must exercise or reserve some control over the workers' activities. Also it might be observed that a person who is willing to be considered an independent contractor may have a change of feeling as to this status once he is injured on the job.

Generally in a contact by an employer, insurance agent or employee, it is difficult for our office at times to give a definite opinion whether a person is an independent contractor or an employee. We can only point out the case law as noted above. The final determination of this question is up to an administrative law judge or appeal judge. Where an employer-employee relationship is found to exist, the employer would be required to pay the benefits even though he did not carry workers' compensation insurance. The liability can be very high because of unlimited medical and present overall dollar maximums, along with the employer's attorney's fees.

ROBERT ALLEN ANDERSON
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DIRECTOR: June 1, 1988 to present:
Division of Workers' Compensation
Kansas Department of Human Resources
Landon State Office Building
Room 651-S
(913) 296-3441

MEMBER: International Association of Industrial Accident
Board and Commissions (I.A.I.A.B.C.)
Judicial Committee, 1988
Medical Committee, 1989 (Studying medical cost
containment issues, including fee schedules)

International Association of Personnel
Employment Security (I.A.P.E.S.), Kansas
chapter, 1988 to present

Admitted to Kansas Bar, April 1985
United States Federal District Courts
District of Kansas, April 1985

Admitted to United States Court of Appeals
Tenth Circuit, Denver, Colorado, May 1986

GRADUATE: May 1986
National Institute for Trial Advocacy
University of Kansas School of Law
Lawrence, Kansas

**LEGAL
EDUCATION:** December 22, 1984
Washburn University School of Law
Topeka, Kansas 66621
Juris Doctor Degree (Dean's Honors)
Class Rank: 55/179; Top 1/3; G.P.A. 3.09

**LAW SCHOOL
HONORS and
ACTIVITIES:** Washburn Law Journal: 1983-1984
Board of Editors; Associate Notes Editor, 1984
Staff Member, 1983

Washburn Moot Court Council, 1983-1984
President, 1984
Team member, Washburn National Moot Court Team,
Fall 1983;
Washburn Midwest Moot Court Team, Spring 1983

AWARDS: Order of Barristers, 1984
1985 Phi Delta Phi International Graduate of
the Year (Landon Chapter and Province 9)
American Jurisprudence Book Award for Excellence
in Business Associations, 1984
Foundation Press Publishing Company Book Award
(Moot Court Merit), 1983
Callaghan & Company Publishing Company Book
Award (Moot Court Merit), 1984

PUBLICATIONS: **TEXTS:** Kansas Workers' Compensation Law,
Seminar Materials
Professional Education Systems, Inc.
Eau Clair, Wisconsin
1987, 1988

COMMENT: Securities Regulation: Rule 10b-5
of the SEC Act-Tippees Are Not Liable for
Insider Trading Absent A Breach of Insider's
Fiduciary Duty, *Dirks v. SEC*, ___ U.S. ___,
103 S. Ct. 3255 (1983), 23 Washburn L.J.
729 (1984)

NOTE: Discrimination in Insurance: The
Unisex Issue: 24 Washburn L.J. 78 (1984)
(reprinted at NILS Publishing Company's
request in the winter issue of the National
Insurance Law Review, listed in February 11,
1985, The National Law Journal as "Worth
Reading.")

COLLEGE: B.S., Administration of Justice
EDUCATION: University of Wyoming (Dean's Honors)
G.P.A. 3.73, May 1982

EMPLOYMENT December 1984 to June 1, 1988
Legal: Associate attorney
Turner & Boisseau, Chartered
3900 Broadway
Great Bend, Kansas 67530
(316) 792-2441
(Civil trial practice with emphasis on
insurance defense; workers' compensation;
appellate practice; and criminal defense
(over 20 jury trials).

May 1984 to December 1984
Law clerk
Turner & Boisseau, Chartered
Great Bend, Kansas 67530.

January 1984 to May 1984
Law clerk (student intern) (merit selection)
United States Attorney's Office
Topeka, Kansas

Non-legal: September 1979 to January 1981
Lieutenant
Rock Springs Police Department
Rock Springs, Wyoming
(Watch commander, supervised 14-20 employees,
internal affairs investigations).

July 1973 to September 1979
Criminal investigator and patrol officer
Fairfax County Police Department
Fairfax, Virginia

**TEACHING
EXPERIENCE:** 1987 and 1988 (seminar faculty)
Kansas Workers' Compensation Law for
Professional Education Systems
Eau Clair, Wisconsin

September 1979 to December 1980 (night class
instructor)
Western Wyoming Community College
Rock Springs, Wyoming
(taught arson investigation; fundamentals
of criminal investigations).

MILITARY: May 1982 to August 1987
Legal clerk, Judge Advocate General's Corps
Kansas Army National Guard (Sergeant)

September 1981 to May 1982
Wyoming Army National Guard (Sergeant)

July 1970 to April 1973
United States Army (Sergeant) (Airborne)
Honorable Discharge

PERSONAL: Born July 7, 1951, San Francisco, California
Married; three children.
Interests: fishing, hunting, and golf in
leisure time.

William F. Morrissey
Assistant Director
Workers Compensation
Dept of Human Resources

Native of Topeka

BBA '68 Washburn University of Topeka

JD '71 Washburn University School of Law

Workers Compensation Office Manager
August 1962 to February 1971.

Assistant Attorney General
February 1971 to March 1972

Private Law Practice specializing in Workers Compensation
March 1972 to March 1977

Workers Compensation Assistant Director
March 1977 to present

DAVID ALLEN SHUFELT
520 Boulder
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LEGAL EDUCATION:

5-73 Washburn University School of Law
Topeka, Kansas
Juris Doctor Degree with honors

COLLEGE EDUCATION:

5-69 Bachelor of Science in Business Administration
Pittsburg State University
Pittsburg, Kansas

MEMBER:

9-73 Admitted to Kansas Bar
United States Federal District Courts
District of Kansas

EMPLOYMENT:

10-88 to Present Assistant Director
Division of Workers Compensation
Department of Human Resources
Landon State Office Building
900 SW Jackson, Room 651-S
Topeka, Kansas
(913) 296-3441

7-86 to 10-88 Staff Attorney
Department of Administration
Topeka, Kansas
(Exclusively defended workers' compensation cases
for the State Self-Insurance Fund)

2-83 to 7-86 Chief Counsel
Department of Housing & Urban Development
Oklahoma City, Oklahoma
(Provided legal support to all office divisions
regarding Federal Housing and Community Development
Programs)

7-75 to 2-83

Private Practice of Law

Parsons, Kansas

(Sole practice of law including representation of claimants in workers compensation. Municipal Court Judge for Altamont, Erie, Edna and Mound Valley, Kansas)

7-73 to 7-75

Research Attorney

Kansas Supreme Court

Topeka, Kansas

(Researched and drafted opinions for cases on appeal in the Kansas Supreme Court)

PERSONAL:

Born March 3, 1947; Kansas City, Missouri
Married; Three children

RESUME

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PROFESSIONAL OBJECTIVE

Public Administration

EDUCATION

1973	EMPORIA STATE UNIVERSITY M.S. Rehabilitation Counseling	EMPORIA, KS
1969	SOUTHWESTERN MISSOURI STATE UNIVERSITY B.S. Sociology, Minor Psychology	SPRINGFIELD, MO
1967	CROWDER COLLEGE Associates of Arts	NEOSHO, MO

PROFESSIONAL EXPERIENCE

DEPARTMENT OF HUMAN RESOURCES

1987 to Present Rehabilitation Administrator-Division of Workers
Compensation

Specialist in medical, physical and vocational rehabilitation for Kansas Division of Workers Compensation, Responsible for administering the rehabilitation programs as established by statute. Supervise the Rehabilitation Section which monitors the work of public and private rehabilitation counselors, vocational evaluators and job placement specialists. monitors and reports the rehabilitation services for effectiveness in returning injured workers to the competitive work force.

SOCIAL AND REHABILITATION SERVICE TOPEKA, KS

1984 to 1987 Administrative Officer II
Position has job duties as follows:

Facility Specialist - Specialist in the development and use of community based rehabilitation facilities. Analyze the needs for services to strengthen successful existing patterns of service delivery and develop new ones. Negotiation of fee structures for the purpose of purchase of services.

Grant Specialist - Responsible for processing and monitoring program funded grant format. Responsible for monitoring grants totaling in excess of \$1,500,000.

HOUSE LABOR AND INDUSTRY
Attachment #29
01-18-89

Programs With Industry Coordinator - Responsible for coordinating the use of three major PWIs operating in Kansas.

Social Security Specialist - Responsible for technical assistance to field program staff and for reimbursement claims to the Social Security Administrator on successful rehabilitated Social Security and Supplemental Security recipients.

1981 to 1984 Vocational Rehabilitation Supervisor

Training and supervision of Vocational Rehabilitation Counselors. Assign work, approve plans, direct counselor's activities in order to assure effective services to eligible disabled individuals. Knowledgeable in grant writing and administration of services grants.

1978 to 1981 Vocational Rehabilitation Supervisor

Training and supervision of counselors working with the severely disabled. Interpret and implement federal regulations and guidelines that were unique to the Social Security/Vocational Rehabilitation programs. Received letters of outstanding achievement from Regional Office with copies sent to Social Security Administration in Baltimore.

1973 to 1978 Vocational Rehabilitation Counselor

Performed duties consistent with working with physically and mentally disabled adults. Counseling, vocational evaluation, coordination of services, job placement and other duties required to aid the disabled population in habilitation and rehabilitation.

OTHER EXPERIENCE

1971 to 1972 Neighborhood House-Assistant Director, Community Center

1969 to 1971 U.S. Army Medical Corpsman

1965 to 1969 Iron Worker Local #584

PROFESSIONAL AFFILIATIONS

National Rehabilitation Association
Kansas Rehabilitation Association
Rehabilitation Education Advisory Committee-
Emporia State University
International Association of Industrial Accidents
Boards/Commissions/Rehabilitation Committee
Member

LICENSE AND CERTIFICATION

Certified Rehabilitation Counselor #4182