

Approved A W Douville 2-1-89
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:05 a.m./~~p.m.~~ on February 22, 1989 in room 526-S of the Capitol.

All members were present except:

- Representative Patrick - Excused
- Representative Whiteman - 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, Division of Workers' Compensation

Chairman Douville called the meeting to order at 9:05 a.m.. Robert A. Anderson, Director, Division of Workers' Compensation addressed the committee as a response to comments from lobbyists and private vendors about their concerns of the vocational rehabilitation laws and how the Division of Workers' Compensation is interpreting the language of the new law, attachment #1. Mr. Anderson indicated that several members of his staff were present to answer questions.

Mr. Anderson stated that, to date, there has been only one appeal to the Director's office and no decisions by a Kansas appellate court involving either work disability or certain vocational rehabilitation issues. Responding to criticism of the term "ability", Mr. Anderson stated that it is the duty of the Division of Workers' Compensation to effect the intentions of the legislature as expressed in the new law, rather than to determine what the law should or should not be. The following exhibits were provided to the committee, attachment #2:

- Attachment # 3 - Executive Summary/Rebuttal of "Public Comments" made to the committee on January 26, 1989 and February 8, 1989. This exhibit explains how the Division of Workers' Compensation defines the term "ability".
- Attachment # 4 - Rehabilitation Issues. If the worker can do the same job as before, the Division of Workers' Compensation cannot force the employer to take the employee back. This exhibit has several questions and answers covering different situations.
- Attachment # 5 - Page 15 to Kansas Trial Lawyers Association Seminar.
- Attachment # 6 - Rehabilitation Notes. An advisory committee is being established to study vocational rehabilitation issues.
- Attachment # 7 - The Joint Advisory Committee is being re-established.
- Attachment # 8 - Vendor List. The Division is in the process of studying information to help with vendor control, ethics control and the exchange of information between parties. The Howard case is possibly the worst example of unethical conduct and to what magnitude such cases are occurring is unknown, but it is being investigated and studied by the Division.
- Attachment # 9 - Proposed changes to K.A.R. 51-24-5.
- Attachment #10 - Proposed changes to K.A.R. 51-24-4.
- Attachment #11 - Docket No. 126,562; Howard case.
- Attachment #12 - Recommended amendments to the new law. Mr. Anderson asked if the committee members see merit to the proposed amendments, to effect them this year if possible.
- Attachment #13 - K.S.A. 44-523(c).
- Attachment #14 - Proposed amendments to K.S.A. 44-523(c).
- Attachment #15 - K.S.A. 44-534a(b).
- Attachment #16 - Proposed amendments to K.S.A. 44-534a(b). This would encourage employers to voluntarily pay vocational rehabilitation assessments.
- Attachment #17 - K.S.A. 44-510g(d).
- Attachment #18 - Proposed amendments to K.S.A. 44-510g(d). The language change will make it consistent with the rest of the act.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:05 a.m./~~p.m.~~ on February 22, 1989.

Attachment #19 - Chart listing vocational rehabilitation language.

In closing, Mr. Anderson stated that when you are 18-20 months into a new act and there have been no appellate decisions, then something must be working. The Division's statistics show that there is not an increase in litigation and that a lot of cases are being settled and employers are putting people back to work. Mr. Anderson cited the example of Boeing which has 25,000 employees, 9,000 of which are handicapped. The new law is working throughout the state. He asked the act not be changed in any material sense, only the minor amendments as proposed by the Division.

Representative Green, referring to attachment #18, asked for an example of "comparable wage". Mr. Anderson said that the open labor market in existence in the immediate area would be used in making a determination. The term "open labor market" has not been defined by law. Representative Green asked if a law judge was going to set the "comparable wage". Mr. Anderson said yes, based on the evidence presented, the law judge would make a determination.

Chairman Douville asked if Mr. Anderson knew of any definitions by any other states with respect to "comparable wage". Mr. Anderson said he was not aware of any as the issue had not been brought before him yet.

Representative Webb, referring to attachment #19, asked if these were changes the Division has asked for or has been putting in place now. Mr. Anderson referred the question to Richard Thomas, Vocational Rehabilitation Administrator. Mr. Thomas responded that attachments #9 and #10 are proposed changes. Representative Webb asked if these were some of the changes that Bud Langston suggested. Mr. Thomas said they were from several vendors, Bud Langston included.

Representative Hensley commented about the deadline for the committee to introduce new legislation. Representative Hensley asked Jim Wilson if HB 2437 would be an appropriate vehicle to incorporate the recommended changes the Division of Workers' Compensation has proposed. Mr. Wilson said that 24-510(d) is one of the proposed changes and it is in HB 2437, so yes, that would be an appropriate vehicle. One of the other recommendations is included in the bill authorized by the committee on Monday, February 20, 1989 relating to reimbursement of overpaid compensation, pending appeal. Representative Hensley said that the concern over a deadline to introduce legislation is really a mute point as there is already legislation which can be amended. Mr. Wilson said yes, you can choose to amend any legislation. Representative Hensley asked Mr. Anderson what steps were being taken to investigate the Howard case. Mr. Anderson responded that the case had been appealed, which would have given him a direct avenue to review the case, but it was settled two days before he was to hear it. However, he has the authority to meet with the individuals involved and to read the case file, depositions included. He will then determine if a new hearing should be scheduled and make recommendations to other administrative bodies dealing with discipline of attorneys or vendors. Representative Hensley asked if Mr. Anderson would share his recommendations before the committee when he completed his review. Mr. Anderson said yes, that is his intent.

Chairman Douville questioned Mr. Wilson about the two bills which the committee authorized on Monday, February 20, 1989. Mr. Wilson said one bill was received yesterday, and the other would be received today.

The meeting adjourned at 9:45 a.m.. The next meeting is scheduled for Tuesday, February 28, 1989 at 9:00 a.m. in room 526-S.

Mr. Chairman, members of the House Labor & Industry Committee:

Good morning. It is a pleasure to appear before you again. Chairman Douville asked me to speak to you today and answer any questions you may have about the administration of the Division of Workers Compensation and to respond to the comments made by John Ostrowski and Bud Langston on January 26, 1989, and by Tom Hammond and John Ostrowski on February 8, 1989.

I would like to give you a brief idea of what I am going to talk about. You have all been provided with another packet, and I will be addressing each handout, if only for a second.

I will first respond to the earlier "public comments," and second, advise you of the recent Department of Human Resources and Division of Workers Compensation's efforts to control the perceived vendor problems and other problems within the administration of the Division of Workers Compensation; third, I will report to you on the investigation of the Howard v. Airwick/Airkem case discussed earlier by "public comment"; and finally, I will be making a formal presentation to you on recommended amendments to the New Act. Those are the recommendations I previously made orally in early January. I am aware that the time has passed for this committee to introduce new legislation; however, I would respectfully request that Chairman Douville consider asking the Appropriations Committee, or another like committee, to introduce the changes if you agree with our recommendations.

I hope my total presentation will take less than 30 minutes. I have asked Dick Thomas, Vocational Rehabilitation Administrator, and his four Assistant Vocational Rehabilitation Administrators to be present today. I have also asked Chris Cowger of the Kansas Insurance Department, who administers the Workers' Compensation Fund, to be present. If any of you have any questions during my presentation, or after my presentation, for me or others, we will be more than happy to answer your questions.

Late last month and early this month, lobbyists representing the Kansas State Federation of Labor and one representing private vendor concerns, gave public comments about their perceptions of the vocational rehabilitation laws, how the Division, and more specifically how I, was interpreting the language of the new vocational rehabilitation statutes.

I would like to offer some brief rebuttal.

The July 1, 1987, Kansas Workers Compensation Act ("New Act") was the result of months of hard work and compromise by the Senate Labor, Industry & Small Business Committee; the House Labor & Industry Committee and lobbyists from labor and industry organizations.

To date, no case involving either work disability or certain vocational rehabilitation issues under the "New Act" has been appealed to the Director's office or decided by a Kansas appellate court.

HOUSE LABOR AND INDUSTRY
Attachment #1
02-22-89

Notwithstanding the lack of appellate review, there has been criticism of the Division's interpretation of the language of the new vocational rehabilitation statutes. Labor lobbyists testified before both the Senate Labor, Industry & Small Business Committee and the House Labor & Industry Committee on January 26, 1989, and before the House Labor & Industry Committee on February 8, 1989. They alleged the use of "ability" to perform work as a sole consideration in interpreting K.S.A. 44-510e and 44-510g(d) is the narrowest possible construction and defeats legislative intent and all aspects of vocational rehabilitation.

The lobbyists complained that the Division's interpretation of the new statutes operates unjustly towards the injured worker. Although there may be merit to the lobbyists' concerns, the fact that the application of the Workers Compensation Act may seem to operate unjustly affords no grounds for the courts to substitute rules different from those enacted by the legislature. If a practical operation of the law is found to bring disproportionate or unjust results, it may be assumed that the legislature will amend it, but that function belongs to that body alone.

Since July 1, 1988, when I was appointed as Director, we have followed the fundamental rule of statutory construction when interpreting legislative intent of the "New Act." We recognize that the purpose and intent of the legislature governs when the intent can be ascertained from the statutes, and that it is to be determined by a general consideration of the entire Act. It is our duty at the Director's level to reconcile the different provisions to make them consistent, harmonious and sensible and, where a statute is plain and unambiguous, we must give effect to the intentions of the legislature as expressed, rather than to determine what the law should or should not be.

I, with the assistance of Dick Thomas, have taken the liberty to prepare an executive summary/rebuttal of the "public comments." A copy is attached marked Exhibit A.

That summary points out K.S.A. 44-510g(a) and the use of the word "ability." I submit to you that the word "ability" is not ambiguous; however, I have listed four interpretations which are associated with various interest groups. You will note that interpretation No. 1 is the position expressed in the earlier "public comments." Interpretation No. 4 is a national rehabilitation concept and the definition that the Division of Workers Compensation has adopted.

Also enclosed is a copy of Rehabilitation Issues marked as Exhibit B. Question No. 1 of that handout was quoted by both John Ostrowski and Tom Hammond, and each alleged that I have interpreted the use of the word "ability" improperly.

The lobbyists also suggested that, given the Division's interpretation, there will never be any work disability. Enclosed please find, as Exhibit C, Page 15 of a 20 page outline I prepared for the Kansas Trial Lawyers Association "Country Lawyer" seminars. That one page clearly demonstrates work disability is still available in

Kansas if the evidence is presented. I have not attempted to limit your access to that entire outline, and any member who wishes to have the entire outline will be provided with a copy.

Let me turn now to address Bud Langston's comments. I'll have to say quite frankly that what Mr. Langston had to say was accurate, meaningful and on all fours with what the Division, and specifically Vocational Rehabilitation Administrator Thomas, had been contemplating.

We have studied, and will continue to study, the need for peer assessment and an ethics committee to resolve vocational rehabilitation vendor problems. We are forming a Joint Advisory Committee to study vocational rehabilitation issues and vendor control. Enclosed as Exhibit D is an article about the Advisory Committee and other articles concerning rehabilitation notes that will appear in our soon to be mailed newsletter. You will note from those various articles that the Division does not have a narrow interpretation to the vocational rehabilitation act as alleged, but rather has a fair and impartial application of the act as this legislative body has mandated we have.

Also enclosed is an article about the formation of a Joint Advisory Committee being selected by Secretary Ray Siehndel to study the vocational rehabilitation act and to make any viable recommendations to this committee and the Senate Labor, Industry & Small Business Committee. You will note from that article it has been eight years since that committee has met. We expect the committee to be active, well representative of all interest groups and to assist, not hinder, this learned legislative committee, if not this session, certainly next session.

Also enclosed as Exhibit F is a current list of the approved vocational rehabilitation vendors in the state of Kansas; as Exhibit G the draft of proposed changes to K.A.R. 51-24-5 which is the qualifications for counselors, evaluators and job placement specialists; and as Exhibit H the draft recommendations for changes to K.A.R. 51-24-4 which is the qualifications and duties of vendors. You will note that Exhibit G was prepared in December, months before any "public comments" or testimony to this committee was made; however, in all frankness, due to the recommendations and the comments made by Bud Langston, the recommendations for amendments to K.A.R. 51-24-4 which is Exhibit H are going to be made. We also expect the Joint Advisory Committee that will be studying vocational rehabilitation to make other recommendations, as well as the Joint Advisory Committee studying the entire Workers Compensation Act to make similar recommendations.

During the "public comments," the case of Howard v. Airwick/Airkem Professional Products, Docket No. 126,562, was discussed. I will tell you that, although the parties settled their disputes amongst each other, I have not resolved the issue of alleged improprieties and am continuing to investigate that case. Once I have completed my investigation, I will take appropriate action and make recommendations to the appropriate parties for further administrative, ethical or legal action if it appears to be proper. However, in fairness to all parties involved, I will not

discuss with this committee any of the specific allegations at this time until a complete investigation has been conducted. However, since it was apparent at the last meeting that at least one, if not other members, of this committee had access to the actual order written by Judge Jackson, I have taken the liberty to make a copy of that order for each and every member of this committee since that is a matter of public record and I am sure each of you, and your constituents, have questions about it. The order is attached as Exhibit I.

Finally, I have enclosed copies of proposed minor amendments to existing Kansas statutes under the "New Act." You will recall on January 18, 1989, I enclosed in my executive summary a brief list suggesting 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. I have taken the liberty to re-enclose that specific language and have copied it in an enlarged edition. In addition to that list (which is Exhibit J), please find enclosed as Exhibit K the statute K.S.A. 44-523(c) as Exhibit L, the recommendations for changes to that statute.

Please find enclosed as Exhibit M the actual statute, K.S.A. 44-534a(b), and as Exhibit N the recommended changes for that statute.

Please find enclosed as Exhibit O, actual statute K.S.A. 44-510g(d) and, as Exhibit P, the recommended changes, and as Exhibit Q a chart listing vocational rehabilitation statutes and the actual language which suggests the need for amendment to K.S.A. 44-510g(d).

I realize, as I explained earlier, that this committee can no longer introduce new legislation; however, if the committee, in reviewing the proposed changes, feels there is merit, I would respectfully request Chairman Douville to seek introduction of these amendments to the Appropriations Committee. One of the reasons I specifically asked Chris Cowger to be present today is in the event you would have questions concerning the Fund's position on amendments to K.S.A. 44-534a(b) which would affect the Fund liability and increase ultimate liability on a yearly basis. I suspect that Chris would like the opportunity to issue a position paper if you decide to take any action this year.

Although we do not give advisory opinions, it is my belief that the intent behind the Workers Compensation Act and the Workers' Compensation Fund in general would require reimbursement of vocational rehabilitation expenses in those cases where less compensation is awarded than is received, and in those cases in which compensation is ultimately denied although vocational rehabilitation benefits have previously been received.

I will be more than willing to appear before this committee on any other date to discuss any of these matters in more detail as a committee or to discuss with any individual committee member any of your concerns. At this time, I would like to answer any questions the Chairman or committee members may have of me or allow members of my staff to answer questions you may have.

I would like to thank you for allowing me to appear before you today, and to answer those comments previously made concerning the administration of the Division of Workers Compensation and our interpretation of the language found in the new vocational rehabilitation statutes.

Thank you.

INDEX OF EXHIBITS

- A. Executive Summary/Rebuttal
- B. Rehabilitation Issues
- C. Page 15 to Kansas Trial Lawyers Association Seminar
- D. Rehabilitation Notes
- E. Joint Advisory Committee
- F. Vendor List
- G. Proposed Amendments to K.A.R. 51-24-5
- H. Proposed Amendments to K.A.R. 51-24-4
- I. Docket No. 126,562 (Howard case)
- J. Recommended Amendments
- K. K.S.A. 44-523(c)
- L. Proposed Amendments to K.S.A. 44-523(c)
- M. K.S.A. 44-534a(b)
- N. Proposed Amendments to K.S.A. 44-534a(b)
- O. K.S.A. 44-510g(d)
- P. Proposed Amendments to K.S.A. 44-510g(d)
- Q. Chart listing Vocational Rehabilitation language - recommended 44-510g(d)

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EXECUTIVE SUMMARY/REBUTTAL OF "PUBLIC COMMENTS" MADE TO HOUSE, LABOR AND INDUSTRY COMMITTEE ON JANUARY 26, 1989 AND FEBRUARY 8, 1989 CONCERNING AN ANALYSIS OF VOCATIONAL REHABILITATION ISSUES UNDER THE KANSAS WORKERS COMPENSATION ACT.

BY: ROBERT A. ANDERSON, DIRECTOR, DIVISION OF WORKERS COMPENSATION AND RICHARD L. THOMAS, VOCATIONAL REHABILITATION ADMINISTRATOR, DIVISION OF WORKERS COMPENSATION

K.S.A. 44-510g(a)

- (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.

How should the phrase " **ability** to perform work in the open labor market" be interpreted?

Black's Law Dictionary, p. 18, defines:

Ability: When the word is used in statutes, it is usually construed as referring to pecuniary ability (i.e., contemplates earning capacity).

Ability is defined in Webster's II, New Revised University Dictionary as follows:

1. Physical, mental, financial, or legal powers to perform.
2. A natural or acquired skill or talent.

Open labor market has not been defined by the legislature or the courts, to date.

This phrase "**ability** to perform work in the open labor market" could be interpreted using a very narrow definition or one that is very broad. Following are some of the possible interpretations that have been presented by various interest groups.

- (1) **Ability** means the physical capacity to perform some type of work that exists in the national labor market as identified in the Dictionary of Occupational Titles (DOT). (Insurance Extreme Position)

If this interpretation is adopted, only the most severely injured and the lowest skilled workers would be eligible for rehabilitation under the Kansas Workers Compensation Act. This is basically the concept used by the Social Security Disability Insurance program. The successful return to work rate of the Social Security referrals made to the state rehabilitation agency is one of the three least successful referral groups.

- (2) Ability to perform work is defined as actually obtaining a comparable wage position. (Labor Position)

Under this interpretation, anyone that has not returned to work at comparable wage would be eligible for a vocational rehabilitation plan. This definition does not take into consideration the need for rehabilitation services. It is an "employment guarantee" for anyone losing a job as a result of a work related injury.

- (3) Ability would take into consideration the physical and mental capacity to perform work at comparable wages. (Industry Position)

Theoretically, the counselor would again be identifying jobs found in the Dictionary of Occupational Titles and would likely be utilizing a computerized transferable skills match that considers the claimant's stated physical and mental capabilities. Eligibility for rehabilitation would be based on the national labor market data. Actual existence of jobs in the claimant's labor market area that are within the claimant's functional restrictions are not addressed. This definition does not take into consideration the need for professional intervention.

- (4) Ability must take into consideration the physical and mental capabilities as well as the "need for rehabilitation services" plus the availability of comparable wage employment in the open labor market. (National Rehabilitation Concept)

Under 44-510g(e)(1) the Legislature set up a system that requires an assessment for these individuals meeting the threshold for evaluation. This assessment " must result in a report of the practicability of need for and kind of services, treatment, training or rehabilitation which may be necessary and appropriate to render such employee able to perform work in the open labor market and to earn comparable wage".

RECOMMENDATION

It is apparent that the Legislature wanted an evaluation for the worker who is injured and cannot return to comparable wage work for the same employer, or who does not already have the skills and ability to return to a comparable wage employment.

The interpretation found in #4 addresses the physical and mental capabilities of the individual. It also requires the counselor to document whether or not there is a need for rehabilitation services and requires that a plan be developed for those who need services to return to work in the open labor market and to earn comparable wages.

Attached is a copy of the evaluation form that a qualified rehabilitation counselor must complete. The form addresses the person's specific limitations and their impact on the individual's ability to return to work for the same employer or to other work for which he/she is already qualified. The counselor must address whether the injured worker could return to work without assistance. If this is not possible, the counselor is required to identify the specific problems or obstacles the claimant will have in returning to work in the open labor market and in earning comparable wages.

The counselor, in consultation with the injured worker must develop a rehabilitation plan with services that either alleviate or circumvent the "specific problems or obstacles" identified in the vocational assessment.

The law prescribes in 44-510g(e)(1) that the individual's need for rehabilitation services must be determined. In order for rehabilitation to be effective in returning injured Kansans to work, "ability" must be interpreted to include physical and mental capability to return to a position available in the open labor market that would allow the injured worker to earn comparable wages.

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

VOCATIONAL ASSESSMENT/EVALUATION

VENDOR NAME _____ INS. CARRIER _____
VR COUNSELOR _____ ADJUSTOR _____
QRP# _____ PHONE _____
PHONE _____

CLAIMANT _____ SS# _____ D/A _____
ADDRESS _____ CITY _____ STATE _____ ZIP CODE _____
PHONE _____ BIRTHDATE _____ MALE _____ FEMALE _____
EMPLOYER AT D/A _____ WEEKLY EARNINGS AT D/A _____

APPRAISAL OF THE CLAIMANT'S PREVIOUS EDUCATION, TRAINING, QUALIFICATIONS AND WORK EXPERIENCE INCLUDING MENTAL AND PHYSICAL DEMANDS OF OCCUPATION AT TIME OF INJURY.

CURRENT MEDICAL STATUS INCLUDING PHYSICAL AND/OR MENTAL LIMITATIONS IMPOSED BY THE OCCUPATIONAL INJURY OR DISEASE.

CLAIMANT'S NAME _____

DOES CLAIMANT RETAIN THE CAPACITY TO RETURN TO THE SAME JOB, SAME
EMPLOYER? YES _____ NO _____

RESULTS OF TRANSFERABLE JOB SKILLS ASSESSMENT AND/OR FORMAL TESTING
RESULTS(if applicable)

OTHER PERTINENT CONSIDERATIONS

CLAIMANT'S NAME _____

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SUMMARY

IDENTIFY THE SPECIFIC PROBLEMS OR OBSTACLES THE CLAIMANT WILL HAVE IN RETURNING TO WORK IN THE OPEN LABOR MARKET AND EARNING COMPARABLE WAGES. THIS SECTION SHOULD DOCUMENT WHETHER A VOCATIONAL PLAN SHOULD BE DEVELOPED. PROVIDE THE RATIONALE FOR YOUR CONCLUSIONS.

IS A VOCATIONAL REHABILITATION PLAN NEEDED? YES _____ NO _____
IF YES, DATE PLAN WILL BE SUBMITTED TO DIVISION _____

COUNSELOR SIGNATURE _____ DATE _____

(ATTACH MEDICAL AND VOCATIONAL REPORTS TO
SUPPORT VOCATIONAL ASSESSMENT.)

CC:

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.

- u) increased absenteeism;
- v) inability to do portion of present job;
- w) increase in irritability and stress caused by injury;
- x) inability to pass pre-employment physicals;
- y) effects of "traumatic neurosis";

2) These factors may be relevant in Kansas in determining whether or not post-injury-earnings are a reliable measure of loss of earning capacity. However, it is important to note that many of the state statutes applicable to the cases cited by Larson's treatise may vary from the Kansas statute which may limit the relevancy of the above considerations.

3) The claimant has the burden to get these factors into evidence to rebutt the statutory presumption.

G. Burden will shift to employer to prove other work available to claimant

1. It is the Director's opinion that under the new act, once a workers' compensation claimant seeking benefits for permanent partial disability proved that, as a result of a compensable accident or injury, he could no longer work at his former job where he sustained injury or accident and resultant disability, the burden shifts to the employer, to prove that other work, in the open market, was available to claimant in which he could earn comparable wages to those he would have received from his former job.

2. Employer will have to rely on wage surveys; vocational rehabilitation other expert testimony.

a. If wage surveys are used, they need to address overtime policies and pay.

b. There should be evidence in the case of the claimant's post-disability occupation that the claimant could in fact obtain either overtime or fringe benefits.

3. Open labor market must be reasonably assessable.

a. Legislature did not intend for workers to move unreasonable distances.

b. Vocational Rehabilitation transferrable to contiguous states (i.e., states must have common border with Kansas).

H. Success or failure of the vocational rehabilitation "plan" will have effect on final percentage of work disability awarded.

REHABILITATION NOTES

Advisory Committee

An advisory committee will be established by the Division of Workers Compensation to study vocational rehabilitation issues. This committee will serve to establish input from the various agencies and organizations interested in returning injured workers to the competitive labor market; and to establish quality and ethical guidelines for vendors.

If anyone has an interest in serving on the committee, please contact Richard Thomas, Rehabilitation Administrator at (913) 296-3441 or send your request in writing to Mr. Thomas at the Division of Workers Compensation, 900 SW Jackson, Room 651-S, Topeka, KS 66612-1276.

Insurance Carrier Status Report (R87-1)

It is the responsibility of the insurance carrier or self-insured employer to complete the R87-1 form.

Some companies are under the wrong impression that if they refer a case to a rehabilitation vendor that there is no need to complete the R87-1 since the vendor will

submit a vendor referral report (R87-2).

The R87-1 is documentation that the referral has been made and notifies the Rehabilitation Section whether it is a medical management or vocational referral. (See Form Helper page _____ for other reporting requirements).

Reminder to Insurance Companies and Self-Insured Employers

Telling a vendor to place a vocational referral on hold because they are attempting to negotiate a settlement is not acceptable. Vendors are instructed to complete the assessment and/or plan development process unless there has been a settlement agreement or the claimant has put in writing that he/she no longer wishes to pursue vocational rehabilitation benefits.

Vendor Selection Policy Change

If a referral for vocational evaluation is the result of a hearing before an Administrative Law Judge, the Director's office will appoint a vendor.

If the injured worker has to have a hearing to require the insurance

company/employer to make a referral, then the referral is not "voluntarily furnished to the employee by the employer" as stated in K.S.A. 44-510g(e)(1). This is a change from allowing the insurance company/employer 10 calendar days to select a vendor and notify the Rehabilitation Administrator.

Division Referral on "Apparent" Cases

The Rehabilitation Section receives numerous requests from injured workers and claimant attorneys to refer an injured worker for vocational rehabilitation evaluation.

The Rehabilitation Administrator under the authority delegated by the director under K.S.A. 44-510g(e)(i) can refer an "apparent" case.

In order for the Rehabilitation Administrator to invoke the apparenacy rule there must be medical documentation of permanent restrictions and that the claimant is medically stable enough to benefit from the vocational evaluation. This documentation should accompany the request for referral. Otherwise, the referral must either be volunta-

rily made by the insurance company/employer or through a formal motion before an administrative law judge, pursuant to K.S.A. 44-534a.

Reports Generated by Vendors

All vocational reports generated by a vocational rehabilitation vendor shall be distributed by the vendor to all parties involved with the claim. It is the direct responsibility of the vendor to see that the parties receive copies of these reports.

The information contained in these vocational reports is not privileged and failure to provide copies will result in the vendor jeopardizing their status as an approved vendor.

The Division does not require medical management reports to be distributed to both sides. Parties should voluntarily exchange non-privileged medical management reports so all sides are equally informed about the status of the injured worker.

The vendor will follow the reporting guidelines established by the Division when reporting to the Rehabilitation Section.

New Assistant Rehabilitation Administrator

Alan R. Stanton was hired as an Assistant Rehabilitation Administrator for the Division of Workers Compensation effective December, 1989.

Mr. Stanton received a master of vocational rehabilitation from the University of Wisconsin-Stout. Prior to joining the Division of Workers Compensation, he worked in the private insurance rehabilitation sector as a case manager for International Rehabilitation Associates in Colorado and Kansas. He moved to Kansas in 1986 to work as a training director with a federally grant-funded research and training center studying worker disability at The Menninger Foundation in Topeka, Kansas.

Mr. Stanton has nearly 14 years experience in the field of vocational rehabilitation in both private non-profit and proprietary sectors, including positions as vocational evaluator, job development/placement specialist, rehabilitation counselor, and facility administrator. He is a certified rehabilitation counselor and a certified vocational evaluator. He has conducted in-service staff training for employers, and co-authored several publications targeted to

the rehabilitation field, insurance industry and government.

Mr. Stanton is a member in the American Society of Training and Development (Kansas City Chapter), and is currently serving on the Program Committee for the Society's annual regional conference being held in Kansas City this fall.

National Rehabilitation Association

Robin O'Dell, Assistant Rehabilitation Administrator for the Division of Workers Compensation, Department of Human Resources, was elected to an office in the National Rehabilitation Association.

O'Dell, president of the Kansas Rehabilitation Association, was named representative of the Great Plains Regional Council of Chapter Presidents at the organization's meeting on November 19, 1988, in Reno, Nevada. She also is active in national and regional committees and boards.

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**SECRETARY SIEHNDEL TO SELECT WORKERS COMPENSATION
JOINT ADVISORY COMMITTEE**

Ray D. Siehndel, Acting Secretary, Department of Human Resources announced that he will select a Workers Compensation Joint Advisory Committee to study the "New Act" and to make recommendations for any amendments to the Kansas Legislature. The Advisory Committee, who will serve without compensation, will be composed of two members representing labor groups; two members representing business and industry groups; two at-large members from the general public; a claimant's attorney; a respondent's attorney; an attorney representing the Workers' Compensation Fund; a vendor as defined in K.A.R. 51-24-3(a); the Rehabilitation Administrator; and the Workers Compensation Director. The labor members will be selected from a list submitted by the Kansas State Federation of Labor. The industrial and business members will be selected from a list submitted by the Kansas State Chamber of Commerce. The at-large members, attorneys, and the vendor will be selected from recommendations and requests received for consideration.

Although there have been no meetings held during the last eight years, an advisory committee is not a new concept in Kansas. A joint advisory committee was first formed in 1964. A similar committee was formed on December 6, 1976, by then Secretary of Human Resources, Dr. James A. McCain, who appointed seven members from labor, management and the legal profession to serve on an advisory committee to the Division of Workers Compensation.

Secretary Siehndel stressed that he expects the new advisory committee to make viable recommendations to the Senate Labor, Industry & Small Business Committee; the House Labor & Industry Committee; and other legislators. He believes this advisory committee is very important to the state of Kansas, and that committee member involvement will be important in determining the future shape of our workers compensation laws.

If you are interested in serving on this advisory committee as an at-large member, attorney, or vendor or if you would like Secretary Siehndel to

consider someone for one of these at-large positions, please write to Director Robert A. Anderson, Division of Workers Compensation, Landon State Office Building, 900 SW Jackson, Room 651-S, Topeka, KS 66612-1276.

December, 1988

KANSAS DIVISION OF WORKERS COMPENSATION
QUALIFIED VOCATIONAL REHABILITATION VENDORS

**AMERICAN INTERNATIONAL HEALTH AND
REHABILITATION SERVICES**

10890 Benson Drive, Suite 250
Bldg. 24, Corporate Woods
P.O. Box 25096
Overland Park, Kansas 66210
913-661-8900

ASSOCIATED REHABILITATION CONSULTANTS

302 S. Clairborne, Suite A
Olathe, Kansas 66062
913-829-1649

BEECH AIRCRAFT CORPORATION

PO Box 85, Dept. 69
9709 East Central
Wichita, Kansas 67201-0085
316-681-7111

BETHANY HEALTH and REHABILITATION SERVICES

155 S. 18th Street, Suite 185
Kansas City, Kansas 66102
913-281-7719

JOHN T. BOPP, P.C.

616 East 63rd Street, Suite 201
Kansas City, Missouri 64110
816-333-0606

BONNIE RUTH AND ASSOCIATES

35 Corporate Woods
9101 W. 110th St., #210
Overland Park, Kansas 66210
913-451-1143

HCA WESLEY MEDICAL CENTER
Health Strategies
550 North Hillside
Wichita, Kansas 67214-2468
316-688-3040

IAM CARES
3830 South Meridian Street
Wichita, Kansas 67217
316-522-1591

INTRACORP/IRA
6701 West 64th Street, Suite 220
Shawnee Mission, Kansas 66202
913-722-2085

JEWISH VOCATIONAL SERVICE
Attn: Injured Workers Program
1608 Baltimore
Kansas City, Missouri 64108
816-471-2808

KANSAS REHABILITATION AND CLINICAL CONSULTANTS
2909 Plass Court
Topeka, Kansas 66611
913-266-0210

KANSAS REHABILITATION SERVICES
300 SW Oakley
2nd Floor, Biddle Building
Topeka, Kansas 66606
913-296-3911

LANGE & ASSOCIATES
PROFESSIONAL REHABILITATION
7407 East 79th Street
P.O. Box 37120
Kansas City, Missouri 64138
816-353-0351

REHABILITATION MANAGEMENT CONSULTANTS

949 S. Glendale, Room 117
Wichita, KS 67218
316-684-0950

UPJOHN HEALTHCARE SERVICES

101 E. Elm Street
Columbus, Kansas 66725
316-429-1177

WORK ASSESSMENT & REHABILITATION CENTER

3216 East Douglas
Wichita, Kansas 67208
316-685-9675

Wx WORK CAPACITIES, INC.

8000 Reeder
Lenexa, Kansas 66214
913-894-9675

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51-24-5. Qualifications for counselor, evaluator, and job placement specialist. (a) Each person seeking to qualify as a vocational rehabilitation counselor for cases under the Kansas workers compensation act shall:

(1) furnish proof to the director that the person has:

(A) a masters degree from a nationally accredited program in rehabilitation counselor education; or

~~(B) a masters degree based on a curriculum and course work designed to fully prepare a person to practice vocational rehabilitation counseling; and~~

(B)(i) a masters degree in counseling, guidance and counseling, clinical psychology, counseling psychology, clinical social work or any related field which includes 9 hours of graduate course work in counseling, and

(ii) one year of experience as a vocational rehabilitation counselor or completion of a nationally accredited rehabilitation counselor internship program from a college or university; or

~~(C) a masters degree with at least 32 postgraduate hours including all of the following courses:~~

(C) 32 graduate hours from an accredited rehabilitation counseling program including coursework from at least 9 of the following courses:

- (i) medical aspects of disability
- (ii) counseling theories
- (iii) individual and group appraisal
- (iv) career information service
- (v) evaluation techniques in rehabilitation
- (vi) placement process in rehabilitation
- (vii) psychological aspects of disability
- (viii) case management in rehabilitation
- (ix) utilization of community resources
- (x) survey of rehabilitation
- (xi) supervised practicum in rehabilitation; or

(D) a bachelors degree in rehabilitation services and three years of experience as a vocational rehabilitation counselor; and

(2) furnish the director with the addresses and telephone numbers of that persons offices and the names of the vendors with whom that person is affiliated; and

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director.

(4) acknowledge that the persons qualifications may be suspended or revoked if there is a repeated failure to make timely filing of reports with the director or fails to comply with the regulations adopted by the director.

(b) each person seeking to qualify as a vocational rehabilitation evaluator shall:

(1) furnish proof to the director that the person has:

(A) a masters or doctoral degree in vocational evaluation, rehabilitation counseling, work adjustment, ~~counseling and guidance, psychology or counselor education~~ and one year of experience as a vocational evaluator; or

~~(B) a bachelors degree in vocational rehabilitation evaluation, psychology, special education or rehabilitation services and three years of experience as a vocational evaluator under the supervision of a masters degree vocational evaluator; and~~

(B) a masters degree in counseling, psychology, adult education or related field which includes at least nine graduate hours in testing, evaluation and assessment and one years experience as a vocational evaluator, or

(C) 32 graduate hours from an accredited rehabilitation counseling program including coursework from at least 9 of the following areas:

- (i) medical aspects of disability
- (ii) counseling theories
- (iii) individual and group appraisal
- (iv) career information service
- (v) evaluation techniques in rehabilitation
- (vi) placement process in rehabilitation
- (vii) psychological aspects in disability
- (viii) case management in rehabilitation
- (ix) utilization of community resources
- (x) survey of rehabilitation
- (xi) supervised practicum in rehabilitation and

1 years experience as a vocational evaluator.

(D) a bachelors degree in vocational rehabilitation evaluation, psychology, special education or rehabilitation services and three years of experience as a vocational evaluator under the supervision of a masters degree vocational evaluator; and

(2) furnish the director with the addresses and telephone numbers of that person's offices and the names of the vendors with whom that person is affiliated; and

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director.

(4) acknowledge that the persons qualifications may be suspended or revoked if there is a repeated failure to make timely filing of reports with the director or fails to comply with the regulations adopted by the director.

(c) Each person seeking to qualify as a vocational rehabilitation job placement specialist shall:

(1) furnish proof to the director that the person has:

(A) ~~a masters or bachelors degree in vocational rehabilitation counseling, vocational counseling, sociology, psychology, rehabilitation services, or job placement or social work and one year of experience as a job placement specialist of disabled individuals; or~~

(B) ~~at least two years of college level education and three years of experience as a job placement specialist of disabled individuals; and or~~

(B) a bachelors degree in counseling, sociology, psychology or related field and one years experience as a job placement specialist of disabled individuals

(C) at least two years of college level education and three years of experience as a job placement specialist of disabled individuals; and or

(D) qualified as a vocational rehabilitation counselor under 51-24-5

(2) furnished the director with the addresses and telephone numbers of the person's offices and the names of the vendors with whom that person is affiliated; and

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director.

(4) acknowledge that the persons qualifications may be suspended or revoked if there is a repeated failure to make timely filing of reports with the director or fails to comply with the regulations adopted by the director.

(d) Each person employed by or working under contract as a counselor, evaluator or job placement specialist for the Kansas department or rehabilitation services shall be considered qualified in that person's discipline while working for that agency. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective T-88-20, July 1, 1987.)

**KANSAS
WORKERS COMPENSATION
LAW & RULES**

JULY 1, 1987



**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**

01760 COMPLIMENTARY

immediately in order to gain the rehabilitation administrator's aid in the coordination of essential services. Priority shall be given to the determination of the specialized facility for the injured employee and, in this consideration, a determination shall be made as to which specialized facility would best provide the medical treatment and physical rehabilitation for the injured worker. Medical and other follow-up reports on the condition of severely injured workers shall be furnished to the rehabilitation administrator immediately. Such follow-up reports shall include reports of progress in any physical therapy, speech therapy, occupational therapy, psychotherapy, and prosthesis fitting and training, as well as the medical reports from the attending physicians. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510, 44-510g; effective May 1, 1976; amended Feb. 15, 1977; amended May 1, 1983.)

51-24-3. Definitions. As used in K.A.R. 51-24-1, *et seq.*:

(a) "Vendor" means a vocational rehabilitation facility, institution, agency or employer program provided for by K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1.

(b) "Vocational rehabilitation counselor" or "counselor" means a person who has provided the director with the necessary proof of eligibility for qualification under K.A.R. 51-24-5(a) and who has received a certification of qualification from the director.

(c) "Vocational rehabilitation evaluator" or "evaluator" means a person who has provided the director with the necessary proof of eligibility for qualification under K.A.R. 51-24-5(b) and who has received a certification of qualification from the director.

(d) "Job placement specialist" means a person who has provided the director with the necessary proof of eligibility for qualification under K.A.R. 51-24-5(c) and who has received a certification of qualification from the director.

(e) "Training facility" means a private agency, facility or employer rehabilitation service program which has filed with the director the necessary evidence for the director to deem that agency, facility or employer rehabilitation service program qualified to perform rehabilitation education or training.

(f) "Director" means the director of the Kansas division of workers' compensation. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective, T-88-20, July 1, 1987.)

51-24-4. Qualifications and duties of vendor. Any person, firm, or corporation proposing to qualify as a vendor in vocational rehabilitation cases under the Kansas workers compensation act, shall file an application with the director. The application shall be updated as changes occur which may affect the standing of the applicant to become or remain qualified and shall include:

(a) a statement that the person, firm or corporation will maintain an office in the state of Kansas or in the metropolitan Kansas

City area, staffed with personnel capable of responding to written or telephone inquiries relating to cases referred to that vendor;

(b) the addresses and telephone numbers of the offices within and without the state of Kansas from which vocational rehabilitation services will be performed for cases under the Kansas workers compensation act;

(c) a listing of each person employed to perform services as a medical manager, counselor, evaluator or job placement specialist for cases referred to that vendor and an indication of each person's discipline;

(d) a statement that the person, firm or corporation will employ or contract with persons qualified to perform work as medical manager, counselor, evaluator or job placement specialist as necessary to carry out the purpose of the referral;

(e) a statement that the person, firm or corporation will be responsible for the appropriateness and timeliness of the delivery of service by each medical manager, counselor, evaluator and job placement specialist employed or under contract to carry out the purpose of the referral;

(f) a statement indicating whether the person, firm or corporation wants to be included in the list of vendors qualified and requesting to receive referrals from employers or the director;

(g) a statement that the person, firm or corporation will report to the vocational rehabilitation administrator each referral received from an employer or insurance carrier and the date of the referral;

(h) a statement that the person, firm or corporation will report the status of each evaluation 30 days after the referral and will report the status of each evaluation and plan on each occasion changes occur which affect the status of the evaluation or plan. The report shall be in a form prescribed by the director. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective, T-88-20, July 1, 1987.)

51-24-5. Qualifications for counselor, evaluator, and job placement specialist. (a) Each person seeking to qualify as a vocational rehabilitation counselor for cases under the Kansas workers compensation act shall:

(1) furnish proof to the director that the person has:

(A) a masters degree from a nationally accredited program in rehabilitation counselor education; or

(B) (i) a masters degree based on a curriculum and coursework designed to fully prepare a person to practice vocational rehabilitation counseling; and

(ii) one year of experience as a vocational rehabilitation counselor or completion of a nationally accredited rehabilitation counselor internship program from a college or university; or

(C) a masters degree with at least 32 postgraduate hours including all of the following courses:

- (i) medical aspects of disability
- (ii) counseling theories
- (iii) individual and group appraisal
- (iv) career information service
- (v) evaluation techniques in rehabilitation
- (vi) placement process in rehabilitation
- (vii) psychological aspects of disability
- (viii) case management in rehabilitation
- (ix) utilization of community resources
- (x) survey of rehabilitation
- (xi) supervised practicum in rehabilitation; or

(D) a bachelors degree in rehabilitation services and three years of experience as a vocational rehabilitation counselor; and

(2) furnish the director with the addresses and telephone numbers of that persons offices and the names of the vendors with whom that person is affiliated; and

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director.

(b) Each person seeking to qualify as a vocational rehabilitation evaluator shall:

(1) furnish proof to the director that the person has:

(A) a masters or doctoral degree in vocational evaluation, rehabilitation counseling, work adjustment, counseling and guidance, psychology or counselor education and one year of experience as a vocational evaluator; or

(B) a bachelors degree in vocational rehabilitation evaluation, psychology, special education or rehabilitation services and three years of experience as a vocational evaluator under the supervision of a masters degree vocational evaluator; and

(2) furnish the director with the addresses and telephone numbers of that person's offices and the names of the vendors with whom that person is affiliated; and

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director.

(c) Each person seeking to qualify as a vocational rehabilitation job placement specialist shall:

(1) furnish proof to the director that the person has:

(A) a bachelors degree in vocational rehabilitation, vocational counseling, sociology, psychology, rehabilitation services or social work, and one year of experience as a job placement specialist of disabled individuals; or

(B) at least two years of college level education and three years of experience as a job placement specialist of disabled individuals; and

(2) furnish the director with the addresses and telephone numbers of the person's offices and the names of the vendors with whom that person is affiliated; and

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director.

(d) Each person employed by or working under contract as a counselor, evaluator or job placement specialist for the Kansas department of rehabilitation services shall be considered qualified in that person's discipline while working for that agency. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective, T-88-20, July 1, 1987.)

51-24-6. Qualification of private training facility. Before a private training facility begins providing vocational rehabilitation training or education to persons under the Kansas workers compensation act, the vendor formulating the training plan shall file with the vocational rehabilitation administrator a sufficient description of the course work and qualifications of the individuals performing the training or education to satisfy the vocational rehabilitation administrator that the training is adequate and appropriate to fulfill the goal of the plan. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective, T-88-20, July 1, 1987.)

51-24-7. Qualification of medical or physical rehabilitation services. Each facility, institution, agency or employer program seeking to qualify to provide medical or physical rehabilitation to persons under the Kansas workers compensation act shall be supervised by a physician with a speciality or sub-specialty in the area of medicine which deals with the type of injury or disability it intends to treat. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective, T-88-20, July 1, 1987.)

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51-21-1. Qualifications and duties of vendor. Any person, firm, or corporation proposing to qualify as a vendor in vocational rehabilitation cases under the Kansas workers compensation act, shall file an application with the director. The application shall be updated as changes occur which may affect the standing of the applicant to become or remain qualified and shall include:

(a) a statement that the person, firm or corporation will maintain an office in the state of Kansas or in the metropolitan Kansas City area, staffed with personnel capable of responding to written or telephone inquiries relating to cases referred to that vendor;

(b) the addresses and telephone numbers of the offices within and without the state of Kansas from which vocational rehabilitation services will be performed for cases under the Kansas workers compensation act;

(c) a listing of each person employed to perform services as a medical manager, counselor, evaluator or job placement specialist for cases referred to that vendor and an indication of each person's discipline;

(d) a statement that the person, firm or corporation will employ or contract with persons qualified to perform work as medical manager, counselor, evaluator or job placement specialist as necessary to carry out the purpose of the referral;

(e) a statement that the person, firm or corporation will be responsible for the appropriateness and timeliness of the delivery of service by each medical manager, counselor, evaluator and job placement specialist employed or under contract to carry out the purpose of the referral;

(f) a statement indicating whether the person, firm or corporation wants to be included in the list of vendors qualified and requesting to receive referrals from employers or the director;

(g) a statement that the person, firm or corporation will report to the vocational rehabilitation administrator each referral received from an employer or insurance carrier and the date of the referral;

(h) a statement that the person, firm or corporation will report the status of each evaluation 30 days after the referral and will report the status of each evaluation and plan on each occasion changes occur which affect the status of the evaluation or plan. The report shall be in a form prescribed by the director. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective, T-88-20, July 1, 1987.)

(i) a statement that the person, firm or corporation will provide copies of all vocational reports (assessments, plans and progress) to all parties involved including attorneys for claimant and respondent if it is a litigated case.

(j) a statement that the person, firm or corporation will provide objective and impartial assessment of the injured workers need for rehabilitation services.

I.

BEFORE THE DIVISION OF WORKERS COMPENSATION
FOR THE STATE OF KANSAS

Bryan G. Howard,	Claimant,)	
)	
vs.)	
)	
Airwick/Airkem Professional Products,	Respondent,)	
)	Docket No. 126,562
and)	
)	
Self-Insured,	Insurance)	
	Carrier.)	

ORDER

Decision rendered this 23rd day of November, 1988.

Appearances

J. Greg Kite, Wichita, Kansas, appeared on behalf of the Claimant. Aubrey G. Linville, Salina, Kansas, and Charles W. Hess, Wichita, Kansas, appeared on behalf of the Respondent and Insurance Carrier.

Record

The record in this matter consists of the transcript of motion hearing, dated May 18, 1988; the deposition of Robert L. Eyster, M.D., dated May 18, 1988; the transcript of motion hearing, dated July 29, 1988; the deposition of Sharilyn K. Young, dated August 31, 1988; the deposition of Sharilyn Young, dated October 17, 1988; the transcript of motion hearing, dated November 2, 1988; the transcript of motion hearing, dated November 3, 1988; and the correspondence and pleadings of the Court file.

Issue

1. The Claimant is requesting temporary total disability benefits under K.S.A. 44-510g(e) between June 23, 1988, and July 29, 1988. The Claimant is alleging that Respondent, having agreed to an additional vocational rehabilitation evaluation and the payment of temporary total disability benefits, then improperly terminated temporary total disability benefits.

Findings of Fact

K.S.A. 44-510g(e)(1) provides that a vocational rehabilitation evaluation produces a vocational rehabilitation report.

K.S.A. 44-510g(e)(2) provides that, once a vocational rehabilitation report is sent to the Division of Workers Compensation, copies are furnished to each party. If either party disagrees with the report, the Vocational Rehabilitation Administrator shall confer with the vocational rehabilitation counselor, the Claimant, and the Respondent.

Director Rule 51-24-1 does indicate that the Rehabilitation Administrator shall be the coordinator between the parties seeking vocational rehabilitation and the private rehabilitation vendor. The same rule sets forth that the Rehabilitation Administrator shall keep all interested parties advised as to the progress of an evaluation report in a timely manner.

At issue is the particular actions of this particular Respondent attorney firm in directly meeting with Jeanette Scher, operating as the vocational rehabilitation vendor PERC, and PERC's rehabilitation counselor, Sharilyn Young, and the Respondent attorneys intentionally using financial and psychological pressure to change counselor Young's vocational rehabilitation findings.

In accordance with the Division of Workers Compensation's guidelines, Sharilyn Young had promulgated a vocational rehabilitation evaluation and a vocational rehabilitation plan, (Young deposition Exhibits 5 and 6). Sharilyn Young had done prior vocational rehabilitation consultations, in March, 1988, with the Claimant, and her vocational rehabilitation findings in the vocational rehabilitation evaluation and plan are corroborated by her prior consultations, and the independent consultant reports prepared by PERC's job placement specialist.

In particular, these documents identify that the Claimant has certain medical restrictions regarding his ability to work: the Claimant is restricted from lifting between 20 and 25 pounds on a single basis, repetitive lifting over 15 pounds, and is restricted from prolonged sitting. Regarding the availability of jobs, these reports indicate that the Claimant was in the need of a job development process. The vocational rehabilitation plan, Exhibit 6, indicates that, because of the Claimant's medical restrictions, the Claimant is prevented from returning to his same job, and that prolonged traveling was not compatible with the Claimant's medical restrictions. The vocational rehabilitation plan called for 26 weeks of job placement services. Further, the documents indicate that the Claimant was interested in participating in the vocational rehabilitation process. In a letter by Counselor Young on May 6, 1988 (Young deposition Exhibit 11), the Claimant is described as being energetic, and actively looking for work.

On May 19, 1988, a meeting was held between the vocational rehabilitation provider, Jeanette Scher, PERC, Sharilyn Young, the vocational rehabilitation counselor, and the Respondent attorneys, at the Respondent attorney's law offices. The meeting was called by Respondent attorney, Gary Winfrey, who had supervisory authority over the two other Respondent attorneys, attorney Martens, and attorney Hess. Attending that meeting were Gary Winfrey, attorney Martens, attorney Hess, the vocational rehabilitation vendor, Jeanette Scher, operating as PERC, and PERC's rehabilitation counselor, Sharilyn Young.

Sharilyn Young testified that, prior to going into the meeting, her supervisor and the owner of PERC, Jeanette Scher, reminded Sharilyn Young that this Respondent attorney firm was one of PERC's main clients. The Administrative Law Judge finds that Sharilyn Young's testimony in this regard is credible.

The meeting began with certain statements from attorney Gary Winfrey, telling Sharilyn Young, in Jeanette Scher's presence, that the Respondent firm was dissatisfied with the vocational rehabilitation findings and reports, and that, in essence, unless the reports were better prepared, PERC may lose this firm's future vocational rehabilitation business. This constitutes an intentional financial pressure upon the vocational rehabilitation counselor by all three of these Respondent attorneys, and this was done with the silent acquiescence and approval of Jeanette Scher, owner, and operating as PERC.

The facts show that there were areas of legitimate concern by Respondent attorneys: late receipts of reports, certain clerical mistakes regarding the average weekly wage, and other such matters.

However, as attorney Hess himself testified, one of the Respondent's main contentions and objectives was to have so-called Respondent input into the vocational rehabilitation process. The facts show that all three Respondent attorneys, in turn, directly questioned the vocational rehabilitation counselor, Sharilyn Young, on her rehabilitation findings regarding at least three Workers Compensation Claimants.

At that meeting, attorney Hess, in the presence of Gary Winfrey and Jeanette Scher, made direct and specific suggestions regarding the vocational rehabilitation findings on the vocational rehabilitation plan and rationale, (Young deposition Exhibit 5, and Young deposition Exhibit 13). A finding favorable to the Claimant, saying that the Claimant's medical restriction for light work was complimentary to radio sales, was deleted. Regarding job availability, chemical sales were eliminated from the portion dealing with availability of work. The vocational rehabilitation plan itself was shortened. While Sharilyn Young testified that some of the deletions and corrections were mere clarifications, the Administrative Law Judge disagrees. Such matters as eliminating statements regarding the Claimant's medical restrictions, eliminating categories of jobs, such as chemical sales, and shortening the plan, work in a manner severely disadvantageous to the Claimant; and directly involve complex factual and legal issues of which the vocational rehabilitation counselor may be unaware. These changes were not for the injured worker's benefit, nor were they based upon the receipt of any additional information: the changes were for litigation purposes, and were adverse to the injured worker's interest. The changes were made under the influence of attorney Winfrey and attorney Hess.

Following this meeting, Sharilyn Young prepared proposed vocational rehabilitation findings regarding this Claimant which, in their final form, are contrary and contradictory to her previous findings and opinions that were embodied in her promulgated vocational rehabilitation evaluation and report, (Young deposition, Exhibit 5 and 6). The final form, (Young deposition, Exhibit 15), was the product of Sharilyn Young's proposed findings that were changed by attorney Hess, (Hess Exhibit No. 1).

For example, in the final vocational rehabilitation progress report, (Young deposition Exhibit 15), the Claimant is listed as showing no interest in vocational rehabilitation. The subsequent findings are negative in content, and negative in overall tone. The progress report is critical of the Claimant. The progress report reaches the conclusion that the Claimant's injury has not negatively impacted upon the availability of work for the Claimant.

The facts show that these findings are not the result of any action or inaction by the Claimant.

Sharilyn Young testified that as a result of the meeting with Respondent's attorneys, and comments by Jeanette Scher, she believed that she was obligated by Jeanette Scher and Gary Winfrey to allow attorney Hess to make direct suggestions regarding her proposed rehabilitation findings. Attorneys Hess and Winfrey believed they had the authority to directly tell her how and what her findings should be. Sharilyn Young's testimony is credible, and is corroborated by the testimony of attorney Hess, and by Hess deposition Exhibit 1, to wit:

Hess deposition Exhibit 1 is Sharilyn Young's proposed rehabilitation findings, and attorney Hess' own handwriting showing additions, deletions, and amendments. Some of the changes were grammatical, but accordingly changed the emphasis of the findings, and the overall tone of the progress report.

One particular change, a deletion of a medical restriction, was more than grammatical, and shows that attorney Hess was, in fact, revising and amending proposed rehabilitation findings of the vocational rehabilitation counselor.

Further, the testimony of attorney Hess corroborates the testimony of Sharilyn Young that upon Gary Winfrey calling the meeting and making statements regarding financial incentive to PERC, that all three Respondent attorneys directly questioned Sharilyn Young in that meeting about her specific rehabilitation findings on several cases. This questioning occurred with the silent acquiesce and approval of Jeanette Scher.

Therefore, it appears that there was an intentional effort to change the rehabilitation counselor's findings, using direct psychological and financial pressure: The financial pressure was exerted through Gary Winfrey's opening statements, as corroborated by Jeanette Scher telling Sharilyn Young that this Respondent attorney firm was one of PERC's clients; the psychological pressure existed as all three attorneys, in turn, directly questioned Sharilyn Young on specific, factual issues, in a setting where she did not have the protection of the Rehabilitation Administrator's independent authority.

There can be no question that Sharilyn Young actually did deliver proposed vocational rehabilitation findings to this Respondent attorney firm, and that attorney Hess actually made substantive changes in the proposed rehabilitation findings.

Regarding Jeanette Scher's activities in this case, they were biased against the Claimant, in favor of the Respondent, and engineered for litigation purposes. They show intentional interference with the objective findings of the rehabilitation counselor.

As a medical manager, Jeanette Scher decided to send the Claimant for an independent medical evaluation by Dr. John Hered. The authorized and treating physician, Dr. Robert Eyster, had already reviewed the MRI study, diagnostically finding that the Claimant's bulging discs were symptomatic. Dr. Eyster was discussing disc surgery with the Claimant. It does not appear Dr. Eyster was requiring an independent reading of the MRI study.

Jeanette Scher eliminated remarks critical of Dr. Hered in Sharilyn Young vocational rehabilitation consultation report. This was interference, adverse to the Claimant's interests, and favorable to the Respondent's interest. (Young deposition Exhibit 3 and Exhibit 4).

In her subsequent actions, she required her vocational rehabilitation counselor to attend a meeting with the Respondent's attorneys; and allowed the Respondent attorneys to directly question her rehabilitation counselor regarding specific rehabilitation findings; and allowed the Respondent attorney, Hess, to make changes in proposed rehabilitation findings.

The testimony of both Sharilyn Young and attorney Hess to the effect that specific rehabilitation findings of two other Workers Compensation Claimants were also discussed at the meeting, and in Jeanette Scher's presence, raises the strong suspicion that PERC's attitude toward the vocational rehabilitation process is not confined to this particular case.

Regarding the Division policy of allowing Respondents to select the vocational rehabilitation vendor, Respondent attorneys were thereby able to exert financial pressure upon a vocational rehabilitation counselor, and thereby gain direct interference with the independence and integrity of the vocational rehabilitation counselor or the rehabilitation provider.

Claimant's Motion is therefore sustained.

IT IS SO ORDERED.

DATED this 23rd day of November, 1988.

David V. Jackson
Administrative Law Judge

copies: Robert A. Anderson, Director
J. Greg Kite
Aubrey G. Linville

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

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K.

44-523. Hearing procedure; time limitations on evidence and entry of award. (a) The director, administrative law judge or court shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, insure an employee an expeditious hearing and act reasonably without partiality.

(b) Whenever a party files an application for hearing pursuant to K.S.A. 44-534 and amendments thereto, the matter shall be assigned to an administrative law judge for hearing and the administrative law judge shall set a terminal date to require the claimant to submit all evidence in support of the claimant's claim no later than thirty (30) days after the first full hearing before the administrative law judge and to require the respondent to submit all evidence in support of the respondent's position no later than thirty (30) days thereafter. An extension of the foregoing time limits may be granted:

- (1) If all parties agree;
- (2) If the employee is being paid temporary or permanent total disability compensation;
- (3) For medical examination of the claimant if the party requesting the extension explains in writing to the administrative law judge facts showing that the party made a diligent effort but was unable to have a medical examination conducted prior to the submission of the case by the claimant but then only if the examination appointment was set and notice of the appointment sent prior to submission by the claimant; or

(4) On application to the director for good cause shown.

(c) When all parties have submitted the case to an administrative law judge for an award, the administrative law judge shall issue an award within thirty (30) days. When the award is not entered in thirty (30) days, any party to the action may notify the director that an award is not entered and the director shall assign the matter to an assistant director who shall enter an award forthwith based on the evidence in the record, or the director, on the director's own motion, may remove the case from the administrative law judge who has not entered an award within thirty (30) days following submission by the party and assign it to an assistant director for immediate decision based on the evidence in the record.

K.S.A. 44-523(c)

[or a Special Administrative Law Judge

(c) When all parties have submitted the case to an administrative law judge for an award, the administrative law judge shall issue an award within thirty (30) days. When the award is not entered in thirty (30) days, any party to the action may notify the director that an award is not entered and the director shall assign the matter to an assistant director who shall enter an award forthwith based on the evidence in the record, or the director, on the director's own motion, may remove the case from the administrative law judge who has not entered an award within thirty (30) days following submission by the party and assign it to an assistant director for immediate decision based on the evidence in the record.

[or a Special Administrative Law Judge]

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.

[or vocational rehabilitation benefits]

(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.

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 rehabilitation 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

K.S.A. 44-510g(d)

[at a comparable wage]

A. (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.

[to enter open labor market
and earn comparable wage]

Q

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 to <u>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 <u>to enter 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>

HOUSE LABOR AND INDUSTRY
 Attachment #19
 02-22-89