Approved ADP 2-9-90
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 January 23, 1990 in room 526-S of the Capitol.

All members were present except:
Representative Gomez - 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 Anderson - Director, Division of Workers Compensation

The meeting was called to order at 9:05 a.m. by the Chairman, Representative Arthur Douville.

Director Anderson addressed the committee regarding progress and problems in the Division of Workers Compensation, attachment #1, and distributed handouts, attachments 2-44. (List attached.)

1. State Of The Division Update: As of today there is no backlog except in administrative services that do not involve an injured workers' attempt to get compensation. Since last year K.A.R. 51-24-4 and 51-24-5 have been passed which gives the Division more ties to vendors and requires them to be more qualified. The Workers Compensation Act is working. More injured workers are back at work than at any time prior. Employers now realize that if a worker is brought back they will get credit for that and there will not be a large work disability.

2. & 3. Update On The Joint Advisory Committee And Rehabilitation Advisory Committee: Each committee member has previously been provided a copy of the News and Views magazine which covers information on these committees.

4. Update On Perc Show Cause Hearing: The court decision is supposed to be rendered on January 29, 1990. He will report to the committee after that time.

5. Feasibility Of Kansas Adopting A Medical Fee Schedule: 31 states currently have some sort of Medical Fee Schedule. He stated that a Medical Fee Schedule would save Kansas about $750,000.00 per year.

6. Recommendations For Minor Amendments:
   a. 44-525: Reimbursement/Credit. Currently you cannot get money back from an injured worker and he does not recommend that course of action. The problem for the employer is if the employer has paid out the compensation and the District Court reduces the award amount, then the employer cannot get a credit. The problem with reimbursement from the fund is the rising cost. If a worker is to get a certain sum he should receive no more or less. If it must be taken back from the worker, then take it off the end of the compensation due.

Representative Patrick asked if there was a breakdown of the costs of attorney fees for the fund. Director Anderson responded that is provided in the Expenditure Analysis handout, attachment #24. Representative Patrick asked why he thought it is unfair to go back to the worker to recover an overpayment. He responded that he would assume in the majority of cases the worker has already spent the money.

Representative Whiteman asked if there isn't a backlog in District Court decisions, attachment #4. Director Anderson responded that the current remedy is to write to the District Court and then the Supreme Court. He has only had 6 requests to write to the District Court in his 18 month tenure. Representative O'Neal stated that a lot of cases are settled before a District Court decision is rendered. Director Anderson concurred.

b. 44-512a: A $25.00 penalty on a $3,000.00 medical bill is not much of a deterrant.

c. 44-510e: The use of AMA guides will provide standardization, reduce costs and be more fair to the injured worker.

d. 44-510: Director Anderson has already discussed the use of a Medical Fee Schedule.

e. 44-510g: There needs to be language similar to 44-706h stating if you are receiving unemployment compensation you cannot recieve temporary total.

7. Workers Compensation Fund: Director Anderson has already discussed the need for reimbursement in cases of overpayment.

8. Commissioner Bell's Task Force: Director Anderson stressed that this group is not designed to study benefits but to study the reasons for rising insurance premiums.

9. Public Information Request: He outlined the magnitude of a recent request and stressed his willingness to cooperate but felt that unreasonable requests are a strain on budget and personnel limitations.

Referring to the handouts he asked committee members to look at the Halsig v. W.W. Grinder case, attachment #39.

Representative Patrick asked why there are no members from small business on the Workers Compensation Study Group. Director Anderson stated that Commissioner Bell formed the group, but it is his understanding that people who wanted to serve were to request it in writing and no small business representative made such a request.

Director Anderson clarified allegations made in newspaper articles, attachments #40-44. He also clarified a typographical error on attachment #6: the Total Return To Work should be 37% and not the 137% listed.

Representative O'Neal questioned the figures used on Vendor Performance, attachment #7. Richard Thomas, Rehabilitation Administrator, responded that the figures cover overlapping fiscal years.

Representative Hensley made a motion to introduce a committee bill that would amend the Public Employer - Employee Relations law to provide for the repeal of the provision commonly referred to as the local option. (The specific language is incorporated in HB 2156.) Representative Roper seconded the motion. The motion carried.

The meeting adjourned at 9:55 a.m. The next meeting of the committee is scheduled for Wednesday, January 24, 1990 at 9:00 a.m. in room 526-S.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,

room 526-S, Statehouse, at 9:05 a.m./~~p.m.~~ on January 23, 1990.

List of attachments:

#1. Letter from Director Anderson to Chairman Douville
#2. List of Executive Summaries
#3. State of Division Report
#4. Administrative Support Section
#5. Claims Advisory Section
#6. Rehabilitation Statistics
#7. Vendor Performance, FY-90
#8. Vendor Performance, FY-89
#9. Rehabilitation Case Management, 7/1/89 - 1/28/90
#10. Rehabilitation Case Management, 7/01/87 - 1/28/90
#11. New K.A.R. 51-24-4
#12. New K.A.R. 51-24-5
#13. Status of Administrative Law Judges' Awards
#14. Regional Map
#15. Status of Directors Reviews
#16. Workers Compensation Joint Advisory Committee Members
#17. Medical Benefits and Fee Schedules
#18. Report of Task Force to Evaluate Medical Cost Containment and Fee Schedules for Workers Compensation in Kansas
#19. Johnson v. Tony's Pizza Service
#20. AMA Guides to the Evaluation of Permanent Impairment
#21. K.S.A. 44-706h
#22. Workers Compensation Insurance Experience
#23. Kansas Workers Compensation Fund
#24. Expenditure Analysis
#25. Workers Compensation Study Group
#26. List of Handouts
#27. Table of Maximum Benefits Card
#28. We've Moved
#29. Forms Furnished at No Cost
#30. E-1
#31. E-2
#32. E-3
#33. Form 88
#34. Kansas Workers Compensation Workbook for Computing Workers Compensation Benefits
#35. Creating a Safe Workplace
#36. Vocational Rehabilitation Reporting Guidelines
#37. List of Qualified Rehabilitation Vendors
#38. Procedures Regarding Vocational Rehabilitation Services with Flow Chart
#39. Halsig v. W.W. Grinder
#40. Letter to Editors
#41. Michael Simpson's Letter
#42. Reply Letter (1 page)
#43. Reply Letter (5 pages)
#44. Letter to Michael Simpson

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY DATE: January 23, 1990

NAME	ADDRESS	COMPANY/ORGANIZATION
Jim DeHoff	Topeka	KS AFL-CIO
Wayn Maukes	"	" "
Rob Hodges	"	KTA
Tom Slattery	"	AGC of KS
Chris Cowger	"	Joint Advisory Comite
Mary Vincent	"	AGC of KS
Norman Reynolds	"	ICAS B
ALAN COBB	WICHITA	Anderson, Conlee
J. Tadlock Davidson	Topeka	Ks. W.C. Fund
Sara Sanders	"	KTLA
Tom Gress	"	KS Hosp Assn.
Floyd V. Palmer	Independence	Dir. of Work. Comp.
Richards & Thomas	Topeka	DHR/Work Comp
G.D. Stuhlsatz	Topeka	DHR
LARRY MAGILL	"	Indep. Ins. Agents of KS.

KANSAS DEPARTMENT OF HUMAN RESOURCES

DIVISION OF WORKERS COMPENSATION
600 Merchants Bank Tower, 800 SW Jackson
Topeka, Kansas 66612-1227
(General Information: 913-296-3441)

Mike Hayden, Governor

Ray D. Siehndel, Secretary

296-4000 Director's Office
296-2050 Rehabilitation
296-2996 Claims Advisory
296-3606 Self Insurance
296-7012 Law Judges

January 23, 1990

The Honorable Arthur Douville
Chairman, House Labor & Industry Committee
Room 115-S, Statehouse
Topeka, Kansas 66612

Dear Chairman Douville:

Thank you for asking me to appear before your committee today. I realize the level of expertise or understanding of the Kansas Workers Compensation Act may vary among committee members. I have provided several "handouts" that I will not discuss unless a committee member has a question today or at some later time.

As a guide to you and committee members, I would like to proceed as follows:

1. STATE OF THE DIVISION UPDATE

   a. List of executive summaries attached.

2. UPDATE ON SECRETARY SIEHNDEL'S JOINT ADVISORY COMMITTEE

3. UPDATE ON DIVISION'S REHABILITATION ADVISORY COMMITTEE

4. UPDATE ON PERC SHOW CAUSE HEARING

5. BRIEF DISCUSSION ON THE FEASIBILITY OF KANSAS ADOPTING A MEDICAL FEE SCHEDULE AND UTILIZATION REVIEW

6. RECOMMENDATIONS TO THE COMMITTEE FOR MINOR AMENDMENTS TO THE ACT TO ELIMINATE PROBLEMS

   a. 44-525 (reimbursement/credit)
   b. 44-512a (medical bills/penalty amount)
   c. 44-510e (use of AMA guides)
   d. 44-510 (medical fee schedule/utilization review)
   e. 44-510g (to coincide with K.S.A. 44-706(h))

7. DISCUSSION ON WORKERS' COMPENSATION FUND

House Labor & Industry
Attachment #1
01-23-90

a. Employers are entitled to experience modification on transfer of liability to the Workers' Compensation Fund

8. UPDATE ON INSURANCE COMMISSIONER FLETCHER BELL'S TASK FORCE

a. **Not** designed to study benefits
b. Study reasons for rising insurance premiums
c. Decision to deny 22.6% rate increase justified

9. PUBLIC INFORMATION REQUEST - KTLA

a. All Director's decisions since July 1, 1987, with attending Administrative Law Judges' awards to date
b. All Applications for Director's Reviews and Docketing Statements since July 1, 1988

10. BRIEF DISCUSSION OF HANDOUTS - PACKETS

a. List of handouts attached

11. INTRODUCTION OF NEWEST ADMINISTRATIVE LAW JUDGE - FLOYD V. PALMER

12. QUESTIONS AND ANSWERS, IF ANY

Once again, thank you for asking me to appear before your committee today.

Yours truly,

Robert A. Anderson
Workers Compensation Director

RAA:lre

Attachments

cc: Ray D. Siehndel
Secretary of Human Resources

LIST OF EXECUTIVE SUMMARIES

1. STATE OF DIVISION REPORT
2. ADMINISTRATIVE SUPPORT SECTION, PAGE 11
3. CLAIMS ADVISORY SECTION, PAGE 4
4. REHABILITATION STATISTICS
5. VENDOR PERFORMANCE, FY-90 (6 MO.)
6. VENDOR PERFORMANCE, FY-89
7. REHABILITATION CASE MANAGEMENT, 7/1/89 - 1/28/90
8. REHABILITATION CASE MANAGEMENT, 7/10-87 - 1/28/90
9. NEW K.A.R. 51-24-4
10. NEW K.A.R. 51-24-5
11. STATUS OF ADMINISTRATIVE LAW JUDGES' AWARDS
12. REGIONAL MAP TO GO WITH #1
13. STATUS OF DIRECTOR'S REVIEWS
14. WORKERS COMPENSATION JOINT ADVISORY COMMITTEE MEMBERS
15. MEDICAL BENEFITS AND FEE SCHEDULES
16. REPORT OF TASK FORCE TO EVALUATE MEDICAL COST CONTAINMENT AND FEE SCHEDULES FOR WORKERS COMPENSATION IN KANSAS (8/89)
17. JOHNSON V. TONY'S PIZZA SERVICE, 232 kAN. 848 (1983)
18. AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT (1988)
19. K.S.A. 44-706(h)
20. WORKERS COMPENSATION INSURANCE EXPERIENCE
21. KANSAS WORKERS' COMPENSATION FUND
22. EXPENDITURE ANALYSIS
23. WORKERS COMPENSATION STUDY GROUP (COMMISSIONER BELL'S)

House Labor & Industry
Attachment #2
01-23-90

STATE OF THE DIVISION REPORT - to the 1990
HOUSE LABOR & INDUSTRY COMMITTEE - JANUARY 23, 1990.

by ROBERT A. ANDERSON, DIRECTOR OF WORKERS COMPENSATION

Department of Human Resources -
Division of Workers Compensation Services

PROGRAM OPERATIONS

This program administers the Workers Compensation Act. It is divided into four sections: Administration, Claims Advisory, Rehabilitation and Judicial. Funds are derived from fees assessed to insurance carriers and self-insured employers. Workers' compensation benefits are paid by the employer's insurance company or through a self-insured program.

The Administrative section processes all incoming documents and provides information on programs or individual cases. Information is recorded on injured workers, employers, insurance carriers, self-insureds and attorneys. The section handles all accident reports and publishes an annual statistical report and a quarterly newsletter.

The Claims Advisory section monitors insurance carriers for timely and proper administration of workers' compensation claims, provides information and assistance to injured workers, insurance carriers, employers and attorneys regarding workers' compensation liabilities.

The Rehabilitation section directs and audits the vocational and physical rehabilitation needs of injured workers with insurance carriers, self-insureds, private vocational rehabilitation vendors, and the Department of Social and Rehabilitation Services to monitor workers return to employment through appropriate vocational rehabilitation services.

The Judicial section is funded for nine administrative law judge positions. Judges are located in Topeka (2), Salina, Kansas City, Overland Park (2), Wichita (2) and Liberal. These judges hear cases on request by an injured worker, employer or insurance company. A hearing may be requested whenever there is a disagreement regarding the right to compensation or benefits due the injured worker. Awards by the judges can be appealed to the program's director or to the District Court for a de novo review on the record.

PROGRAM OBJECTIVES

To process accident reports within three days of receipt and applications for hearing within two days of receipt.

To answer telephone inquiries regarding claims and questions on the workers compensation law within one day of receipt.

To hold preliminary hearing within two weeks of receipt of the request and issue preliminary orders within five days of the hearing.

To hold regular hearings within 30 days of receipt of the request and issue a written award containing full findings of fact and conclusions of law within 30 days after submission to the administrative law judge.

To review all vocational rehabilitation plan proposals within 20 days of receipt from vendor.

To review and process applications for new and renewed self-insureds within 30 days of receipt.

To assure that eligibility for self-insurance guarantees that only solvent employers qualify.

To transfer permanent record data and word processing routines to electronic medium.

To inform employers, insurance carriers and attorneys of any procedural changes in the workers compensation law through employers' institutes and at an annual workers' compensation seminar.

STATUTORY HISTORY

Authority for the program is found in K.S.A. 44-501 through 44-592. The Act was originally passed in 1911 and extensively revised in 1974. In 1976, the Legislature merged the agency into the Department of Human Resources (K.S.A. 75-5708). Extensive reforms were enacted in 1987. Minor amendments to clarify the language of the new act were passed in 1988.

House Labor & Industry
Attachment #3
01-23-90

ADMINISTRATIVE SECTION (16 employees)

1. APPLICATIONS FOR HEARINGS

A. Regular Hearings - K.S.A. 44-534 (Form E-1)

i. All are current within 3 days of receipt.
ii. Eliminated "backlog" for first time in 6 or 7 years on September 1, 1989 (previous backlog of over 300)
iii. Average daily receipt is 21/ 248 days per year.
iv. December, 1989 Office move created temporary backlog.

B. Preliminary Hearings - K.S.A. 44-534a (Form E-3)

i. All are current within same day of receipt in mail; some are hand-delivered, processed next-day
ii. Eliminated "backlog" for first time in 6 or 7 years on September 1, 1989 (backlog of over 300)
iii. Ran 3-4 weeks behind on P.H. prior to 1990 Legislature's authorization of three additional staff (FTE) - one of which was assigned to Hearing/applications.
iv. Average 11 per day/ 248 days a year.

2. DATA ENTRY

A. Accident Reports (Form A) are current to within 3 days of receipt.

i. 72,674 accidents filed in FY-89
ii. 3 employees each average 98 accident reports each day, 248 days a year (293 a day).

B. Form 88 (Notice of Handicap, Disability or Physical Impairment)

i. Backlogged from December 1, 1989
ii. Date stamped day received - employer protected.
iii. 109,872 filed FY-89
iv. Average 443 a day
v. Currently working on electronic transfer of Form 88, see page 10 Jan. issue News & Views; page 19 Aug. News & Views.
vi. Example: Boeing Military Aircraft Co., Wichita, Ks, 25,000 employees, 9,000 "handicapped" for purpose of W/C Act, 30,000 form 88's on file; Division often receives 500 at a time. Electronic transfer will be efficient and time-saving.

3. MAIL & RESEARCH

A. MAIL

i. Often receive over 1000 pieces of mail each day
ii. It takes 4 employees 2 hours each, every day to open & sort.

B. RESEARCH

i. Backlogged from December 18, 1989
ii. Currently working on limited access/ research of Division Records (Accident Reports & Form 88's) by personal computers; a yes/ no inquiry; Ex: Red Tiger Drilling sends in 115 names and request for research, if they could access our records and got 10 "hits" our employees would only have to look up 10 and not 115.
iii. Have started using computer print of docket screen to send to person requesting research with explanatory note; has and will continue to save valuable time.

C. PENDING DOCKETS

i. 4-5 weeks backlogged (Petition for Judicial review; Orders of Judges; Orders to Reinstate: District Court Decisions, Court of Appeals; Misc. Orders; District Court Numbers entered; SSAN research.
ii. Should be current within 1 week by 3/1/90.

D. SETTLEMENTS & FORM D's

i. Form D (Settlement Agreement, Final Receipt and Release of Liability) are current.

ii. Settlements 4-5 weeks backlogged (entry into records, not payment of money); position was vacant for awhile FY-89.

E. ANNUAL SEMINARS

i. Over 1,300 total attendance
ii. Educational not social function.
iii. May coordiante with K.U. or Washburn to save time.

F. NEWS & VIEWS FORM WORKERS COMPENSATION

i. July 1988, "UPDATE" Tri-annual 2 or 3 page informational (AWW; benefit amounts, circulation 1,600.
ii. Quarterly Newsletter with circulation of 5,200 mailed, to all 50 states and Canada. Proactive.
iii. Another 2,000 passed out at seminars and speeches.
iv. Daily requests to be put on mailing list
v. Has helped administrative functions and judicial problems.

SUMMARY: The administrative section is "current" on matters that directly effect injured workers -- and is in the best shape that it has ever been in the last 6 or 7 years, which is directly attributable to the 1989 Legislature's wisdom of funding 3 new FTE for the Division, the first non-judicial FTE authorized for the Division in over 10 years.

**** CLAIMS ADVISIORY SECTION (See handout p. 4) (4 employees)

**** REHABILITATION SECTION (7 employees) (see handouts, charts)

**** JUDICIAL SECTION (23 employees) (See handouts & charts)

SELF INSURED PROGRAM (2 ½ employees)

A. Kansas is recognized as one of the top two self - insured programs in the United States. We have approximately 118 self insureds, and each year receive new applicants and have to drop others.

i. Dick Smelser, Business Manager and Self Insured Program Coordinator was interviewed this week by a National Magizine Business Insurance about our program. Our program has been recognized as sound, and administratively efficient for years.

ADMINISTRATIVE SUPPORT SECTION
(Work Processed Through Agency During Fiscal Year 1989)

Classification	FY 89	FY 88	FY 87	FY 86
ACCIDENT REPORTS filed during fiscal year	72,674	69,933	67,386	66,767
ELECTIONS				
Form 50 (Employee Not to Come Under the Act 10% or more shareholder)	2,236	2,126	2,070	2,250
Form 50a (Cancellation of Form 50)	164	117	113	114
Form 51 (Employer to Come Under the Act, Gross Payroll $10,000 or less, Agricultural Pursuits)	164	246	287	38[illegible]
Form 51a (Cancellation of Form 51)	7	13	25	22
Form 113 (Individual, Partner or Self-Employed)	1,218	1,454	1,219	1,400
Form 114 (Cancellation of Form 113)	104	93	102	96
Form 123 (Employer to Provide Coverage for Volunteer Workers)	125	86	66	58
Form 124 (Cancellation of Form 123)	1	3	4	0
Fireman's Election Out of Act	0	3	17	0
Form 135 (Cover Community Service)	4	N/A	N/A	N/A
Form 136 (Cancellation of Form 135)	0	N/A	N/A	N/A
HANDICAPPED EMPLOYEES Form 88 filed during fiscal year	109,872	112,782	98,496	93,987
SELF-INSURED				
Employer's Self-Insured Application	5	5	12	8
Cancelled Self-Insurer Permits	3	12	13	1[illegible]
Employers Qualified as Self-Insureds	123	121	127	13[illegible]
Groups	4	N/A	N/A	N/A

House Labor & Industry
Attachment #4
01-23-90

ACCIDENTS REPORTED FOR FISCAL YEARS 1984-1989

	FY 89	FY 88	FY 87	FY 86	FY 85	FY 84
Total Accidents	72,674	69,933	67,386	66,767	62,769	57,156
Occupational Disease	1,199	923	1,016	762	640	623
Fatals	67	70	69	96	88	99

JUDICIAL SECTION
(Work Processed Through Agency During Fiscal Year 1989)

Classification	FY 89	FY 88	FY 87	FY 86
Active Cases - Beginning of Fiscal Year	7,559	5,669	5,270	4,567
Applications for Regular Hearings	5,218	4,106	4,282	4,156
Orders Reinstating Cases to Active Status	137	36	70	39
Application for Review & Modification of Existing Awards	33	N/A	N/A	N/A
Awards on Contested Cases	894	946	874	738
Awards on Joint Petition & Stipulation (Docketed)	91	54	47	4
Settlements on Cases Set for Hearing	2,752	3,264	2,514	2,256
Orders Removing Case to Inactive Status	1,481	N/A	N/A	N/A
Orders of Dismissal	77	388	697	366
*Adjustment - Case Totaling vs. Accident Totaling	752	N/A	N/A	N/A
Active cases - End of Fiscal Year	6,900	7,559	5,669	5,270
Applications for Director's Review	788	594	604	N/A
Director's Orders with Review	332	454	378	442
Director's Orders Without Review	444	509	506	363
Awards Appealed to District Court	413	370	294	397
Decisions Rendered by District Court	232	129	180	227
Decisions Rendered by Court of Appeals or Supreme Court	45	47	34	31
Awards on Joint Petition & Stipulation (Undocketed)	181	109	94	83
Settlements on Cases Not Set for Hearing	3,480	2,368	2,126	2,012
Awards Modified by the Director	20	36	70	11
Miscellaneous Orders	1,943	1,205	2,078	1,552
APPLICATIONS FOR PRELIMINARY HEARINGS FOR FISCAL YEARS				
Applications for Preliminary Hearings	2,677	1,764	1,232	1,194
Preliminary Awards of Compensation	836	649	719	676
Preliminary Awards Denied	166	195	162	205

*New computer program tracks multiple dates of accident as one case rather than multiple cases.

4-2

CLAIMS ADVISORY SECTION

The Claims Advisory Section is under the direction of the Claims Advisor Administrator, Jack Sippel. He is assisted by Claims Advisors, Faith Judd and Dave Walker; and an Office Assistant III, Sandra McCormick in the Topeka office, and coordinates questions and complaints received by the regional offices.

The Claims Advisory Section works exclusively in an advisory capacity with injured workers, insurance carriers, self-insureds, and others interested in resolving issues prior to litigation. Claimants and interested parties are advised of their entitlements, obligations, and proper procedures regarding claims. Administrative procedures are enforced to bring non-qualified self-insured employers into compliance with the workers compensation law. This section also monitors the insurance carriers and third party administrators for timely and proper administration of claims.

FISCAL YEAR ENDING JUNE 30, 1989

*Month	Topeka	Kansas City	Wichita	Overland Park	Liberal	Salina	Total	**Slow
July	1,246	41	18	17	18		1,340	1
Aug.	1,450	42	16	20	9		1,537	5
Sept.	1,442	43	22	23	13		1,543	1
Oct.	1,234	30	17	15	15		1,311	1
Nov.	1,041	47	11	36	7		1,142	2
Dec.	998	0	8	49	9	1	1,065	2
Jan.	1,336	0	40	71	14	0	1,461	0
Feb.	1,130	45	15	48	9	0	1,247	1
March	1,279	19	9	37	13	2	1,359	3
April	1,279	60	8	55	13	1	1,416	0
May	1,368	74	11	40	8	1	1,502	1
June	1,453	88	16	51	14	4	1,626	1
FY 89	**15,256**	**489**	**191**	**462**	**142**	**9**	**16,549**	**18**
FY 88	14,200	422	412	353	75		15,462	31
FY 87	11,457	547	867	533	40		13,444	55
FY 86	11,737	724	896	118	74		13,549	89

* Numbers in first six columns represent initial contacts from interested parties relating to workers compensation claims.

** Number of cases where the Advisory Section judged that slow processing was involved by carriers.

DIVISION OF WORKERS COMPENSATION

REHABILITATION STATISTICS

PLANS AND ASSESSMENTS

REHABILITATION CATEGORY	FY 89 7/1/88 - 6/30/89	FY 90 (6 months) 7/1/89 - 12/31/89	FY 90 PROJECTION	PROJECTED % INCREASE
PLANS RECEIVED	583	482	964	65%
PLANS APPROVED	364	366	732	101%
PLAN AMENDMENTS RECEIVED	104	177	354	240%
AMENDMENTS APPROVED	64	129	258	303%
ASSESSMENTS RECEIVED	892	776	1552	74%
MEDIATIONS	75	90	180	140%
ORDERS/VOC EVALUATIONS	*	173	346	*

* ALL OF FY 89 NOT RECORDED

CLOSURE REPORTS

MEDICAL MANAGEMENT RETURN TO WORK	238	157	314	32%
VOCATIONAL REHABILITATION RETURN TO WORK (PRIVATE)	59	80	160	171%
VOCATIONAL REHABILITATION RETURN TO WORK (PUBLIC)	63	10	20	-32%
TOTAL RETURN TO WORK	360	247	494	137%
CASE CLOSED SETTLEMENT	642	329	658	2%
CASE SETTLED AFTER PLAN APPROVED	**	60	120	**

** STAT NOT KEPT IN FY 89.

House Labor & Industry
Attachment #6
01-23-90

VENDOR PERFORMANCE FY 90 (6 MONTH REPORT)

VENDOR	I	II	III	IV	V	VI	VII	VIII
American International Health	7	8	8	2	2	2	0	8
Anderson Voc. Rehab. Services	9	7	6	6	4	0	0	3
Assoc. Rehab. Consultants	43	31	27	20	18	2	7	31
Centennial Rehab. Assoc. Inc.	43	20	12	3	2	9	2	67
Cerebral Palsy Research	9	2	2	1	2	0	2	4
Conservco	105	65	53	18	15	56	6	193
Crawford Health & Rehabilitation	43	19	16	11	5	4	5	39
Eischen Rehab. Services	8	3	3	0	0	0	0	2
Fortis Corporation	28	30	26	1	0	16	4	82
GRS Rehabilitation Services	11	4	4	0	0	0	0	6
Intracorp/IRA	85	74	65	24	17	23	7	135
Kansas Comprehensive Rehab	9	7	4	5	3	0	2	7
Ks Rehab & Clinical Consultants	110	71	58	24	20	6	20	108
Kansas Rehabilitation Services	0	0	2	1	4	0	10	16
Lange & Associates	2	1	1	3	2	5	0	20
McClellan & Associates	3	1	1	0	0	0	0	1
Menninger Return to Work Ctr-Topeka	26	10	7	2	1	1	2	9
Menninger Return to Work - KC	0	1	1	0	0	0	0	1
Midwest Pain Management Center	1	2	0	1	1	0	1	1
Resource Management, Inc.	54	29	22	14	6	15	4	105
Professional Rehab Management	124	64	50	6	14	10	4	111
Rehabilitation Management	19	13	14	11	10	2	5	28
Upjohn Health Programs	8	10	8	5	4	1	0	5
Wesley Medical Center	12	7	9	3	3	0	2	6
TOTALS	**759**	**479**	**390**	**175**	**130**	**152**	**83**	987

I = Assessment Received; II = Vocational Plan Received; III = Plan Approved; IV = Amendment Received; V = Amendment Approved; VI = Medical Management Return to Work; VII = Rehabilitation Return to Work; VIII = Total Closures

House Labor & Industry
Attachment #7
01-23-90

VENDOR PERFORMANCE FY 89

VENDOR	I	II	III	IV	V	VI	VII	VIII
American International Health	5	3	0	0	0	1	0	5
Anderson Voc. Rehab. Services	4	2	0	0	0	0	0	0
Assoc. Rehab. Consultants	38	34	30	5	3	1	6	21
Centennial Rehab. Assoc. Inc.	34	14	15	2	1	12	2	63
Cerebral Palsy Research	7	8	1	0	1	0	0	0
Conservco	113	71	47	9	3	77	8	386
Crawford Health & Rehabilitation	56	29	19	4	1	5	1	56
Fortis Corporation	35	16	3	2	0	3	1	24
GRS Rehabilitation Services	0	0	0	0	0	0	0	1
Intracorp/IRA	126	78	56	7	3	44	9	344
Jewish Vocational Service	9	15	10	3	1	1	1	15
Kansas Comprehensive Rehab	2	2	2	0	0	0	0	3
Ks Rehab & Clinical Consultants	126	91	64	27	14	8	10	36
Kansas Rehabilitation Services	3	7	4	3	4	0	63	317
Lange & Associates	4	7	2	0	0	0	0	0
McClellan & Associates	1	3	1	1	1	0	0	0
Menninger Return to Work Ctr.	14	10	5	4	3	0	1	11
Midwest Pain Management Center	1	1	1	3	3	0	0	5
Prof Rehab Consultants Inc.	73	51	25	5	2	52	5	196
Professional Rehab Management	143	63	46	6	5	13	4	120
Progressive Evaluation & Rehab	19	11	3	2	1	8	2	37
Rehabilitation Institute	7	7	5	0	0	0	1	4
Rehabilitation Management	26	30	20	13	10	8	4	47
The Principal Financial Group	0	2	2	0	0	0	0	5
Upjohn Health Programs	14	7	1	0	0	0	0	3
Wesley Medical Center	11	12	9	2	1	1	1	10
Wx Work Capacities, Inc.	1	0	0	0	0	0	0	5
TOTALS	872	574	371	98	57	234	119	1,397

I = Assessment Received; II = Vocational Plan Received; III = Plan Approved; IV = Amendment Received; V = Amendment Approved; VI = Medical Management Return to Work; VII = Rehabilitation Return to Work; VIII = Total Closures

House Labor & Industry
Attachment #8
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REHABILITATION CASE MANAGEMENT
FOR THE PERIOD FROM 07/01/89 TO 01/28/90

	TOTAL		OLD LAW		NEW LAW	
	ACTIVE	INACTIVE	ACTIVE	INACTIVE	ACTIVE	INACTIVE
ADMINISTRATOR 1						
MEDICAL MANAGEMENT	0	0	0	0	0	0
INSURANCE CARRIER STATUS	0	0	0	0	0	0
REHABILITATION CASES	10	0	0	0	10	0
TOTAL CASES	10	0	0	0	10	0
ADMINISTRATOR 2						
MEDICAL MANAGEMENT	136	36	0	0	136	36
INSURANCE CARRIER STATUS	3	0	0	0	3	0
REHABILITATION CASES	143	30	5	1	138	29
TOTAL CASES	282	66	5	1	277	65
ADMINISTRATOR 3						
MEDICAL MANAGEMENT	152	39	1	0	151	39
INSURANCE CARRIER STATUS	2	0	0	0	2	0
REHABILITATION CASES	125	33	2	2	123	31
TOTAL CASES	279	72	3	2	276	70
ADMINISTRATOR 4						
MEDICAL MANAGEMENT	93	28	1	0	92	28
INSURANCE CARRIER STATUS	0	1	0	0	0	1
REHABILITATION CASES	150	23	13	0	137	23
TOTAL CASES	243	52	14	0	229	52
ADMINISTRATOR 5						
MEDICAL MANAGEMENT	135	21	0	1	135	20
INSURANCE CARRIER STATUS	1	0	0	0	1	0
REHABILITATION CASES	171	15	6	0	165	15
TOTAL CASES	307	36	6	1	301	35
ADMINISTRATOR 999						
MEDICAL MANAGEMENT	0	0	0	0	0	0
INSURANCE CARRIER STATUS	0	263	0	5	0	258
REHABILITATION CASES	0	0	0	0	0	0
TOTAL CASES	0	263	0	5	0	258
TOTALS						
MEDICAL MANAGEMENT	516	124	2	1	514	123
INSURANCE CARRIER STATUS	6	264	0	5	6	259
REHABILITATION CASES	599	101	26	3	573	98
TOTAL CASES	1,121	489	28	9	1,093	480

House Labor & Industry
Attachment #9
01-23-90

REHABILITATION CASE MANAGEMENT
FOR THE PERIOD FROM 07/01/87 TO 01/28/90

	TOTAL		OLD LAW		NEW LAW	
	ACTIVE	INACTIVE	ACTIVE	INACTIVE	ACTIVE	INACTIVE
ADMINISTRATOR 1						
MEDICAL MANAGEMENT	2	48	0	5	2	43
INSURANCE CARRIER STATUS	0	59	0	20	0	39
REHABILITATION CASES	111	231	66	139	45	92
TOTAL CASES	113	338	66	164	47	174
ADMINISTRATOR 2						
MEDICAL MANAGEMENT	211	287	0	19	211	268
INSURANCE CARRIER STATUS	7	122	1	13	6	109
REHABILITATION CASES	271	566	43	287	228	279
TOTAL CASES	489	975	44	319	445	656
ADMINISTRATOR 3						
MEDICAL MANAGEMENT	249	383	2	21	247	362
INSURANCE CARRIER STATUS	6	265	0	37	6	228
REHABILITATION CASES	313	693	36	301	277	392
TOTAL CASES	568	1,341	38	359	530	982
ADMINISTRATOR 4						
MEDICAL MANAGEMENT	230	309	5	18	225	291
INSURANCE CARRIER STATUS	10	140	1	7	9	133
REHABILITATION CASES	492	547	108	206	384	341
TOTAL CASES	732	996	114	231	618	765
ADMINISTRATOR 5						
MEDICAL MANAGEMENT	210	130	0	5	210	125
INSURANCE CARRIER STATUS	1	10	0	2	1	8
REHABILITATION CASES	339	221	19	25	320	196
TOTAL CASES	550	361	19	32	531	329
ADMINISTRATOR 999						
MEDICAL MANAGEMENT	0	0	0	0	0	0
INSURANCE CARRIER STATUS	0	1,510	0	26	0	1,484
REHABILITATION CASES	0	2	0	1	0	1
TOTAL CASES	0	1,512	0	27	0	1,485
TOTALS						
MEDICAL MANAGEMENT	902	1,157	7	68	895	1,089
INSURANCE CARRIER STATUS	24	2,106	2	105	22	2,001
REHABILITATION CASES	1,526	2,260	272	959	1,254	1,301
TOTAL CASES	2,452	5,523	281	1,132	2,171	4,391

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Attachment #10
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51-24-4. **Qualifications and duties of a vendor.** Each 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~~ regarding 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 one or more persons qualified to perform work as a 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~~ service delivery 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, in a form prescribed by the director, 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~~ the evaluation and plan on each occasion changes occur which affect ~~the--status--of~~ the evaluation or plan. ~~The-report~~ These reports shall be in a form prescribed by the director.

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

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

(Authorized by K.S.A. 1988 Supp. 44-573; implementing K.S.A. 1988 Supp. 44-510g, as amended by 1989 SB 354, Sec. 1; ~~as amended by 1987 HB 2573, Sec. 1;~~ effective, T-88-20, July 1, 1987; effective May 1, 1988; Amended P-_____.)

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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)(i) a masters degree based on a curriculum and coursework 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 nine 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 nine of the following graduate courses:

(i) Medical aspects of disability;

(ii) counseling theories;

(iii) individual and group appraisal;

(iv) career information service;

(v) evaluation techniques in rehabilitation;

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(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;

(2) furnish the director with the addresses and telephone numbers of that ~~persons~~ 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; and

(4) acknowledge that the person's qualification may be suspended or revoked if the person repeatedly fails to file reports with the director in a timely manner 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, or work adjustment, ~~counseling and guidance, psychology or counselor education~~ and one year of

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experience as as 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 any related field which includes at least nine graduate hours in testing, evaluation and assessment and one year of experience as a vocational evaluator; or

(C) one year of experience as a vocational evaluator and 32 graduate hours from an accredited rehabilitation counseling program, including coursework from at least nine of the following graduate 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 in disability;

(viii) case management in rehabilitation;

(ix) utilization of community resources;

(x) survey of rehabilitation; and

(xi) supervised practicum in rehabilitation; or

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(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;

(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; and

(4) acknowledge that the person's qualification may be suspended or revoked if the person repeatedly fails to file reports with the director in a timely manner 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~~

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~~individuals;~~ and

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

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

(D) qualified as a vocational rehabilitation counselor under K.A.R. 51-24-5;

(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; and

(4) acknowledge that the person's qualification may be suspended or revoked if the person fails to file reports with the director in a timely manner 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 of rehabilitation services or other state or federal vocational rehabilitation agency shall be considered

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qualified in that person's discipline while working for that agency. (Authorized by K.S.A. 1988 Supp. 44-573; implementing K.S.A. 1988 Supp. 44-510g, as amended by 1989 SB 354, Sec. 1; ~~as amended by 1987 HB 2573, Sec. 1;~~ effective T-88-20, July 1, 1987; effective May 1, 1988; Amended P-_____.)

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STATUS OF ADMINISTRATIVE LAW JUDGE AWARDS

	JULY 1, 1988			JANUARY 1989			JANUARY 1990			(PROJECTED) MARCH 1, 1990
	# Pending	# over 30	Oldest/	# Pending	# over 30	Oldest /	# Pending	# over 30	Oldest/	
DISTRICT 1:	31	23	365 days	8	1	90 days	4	0	CURRENT	CURRENT
DISTRICT 2:	30	12	90 days	22	11	90 days	7	0	CURRENT	CURRENT
DISTRICT 3:	26	5	90 days	25	2	60 days	9	0	CURRENT	CURRENT
DISTRICT 4: HOWARD	5	CURRENT		6	CURRENT		1	0	CURRENT	CURRENT
DISTRICT 5:	13	7	60 days	12	6	60 days	11	6	60 days	CURRENT
DISTRICT 6:	58	50	180 days	21	17	90 days	12	10	30 days	CURRENT
DISTRICT 7:	NEW AREA	EFF. 10/88		4	CURRENT		3	0	CURRENT	CURRENT
DISTRICT 8:	NEW AREA	EFF. 10/89					1	0	CURRENT	CURRENT
DISTRICT 9:	13	4	120 days	20	12	180 days*	14	12	240 days*	CURRENT
TOTAL	176	101		118	49		62	28		
% of cases backlogged		58%			42%			45%		
% of ALJ's backlogged		86%			75%			33%		0%

* - This case that is now 240 days overdue is between the respondent and the workers compensation fund, the claimant has settled and the other parties are litigating liability. It WILL be done by March 1, 1990.

House Labor & Industry
Attachment #13
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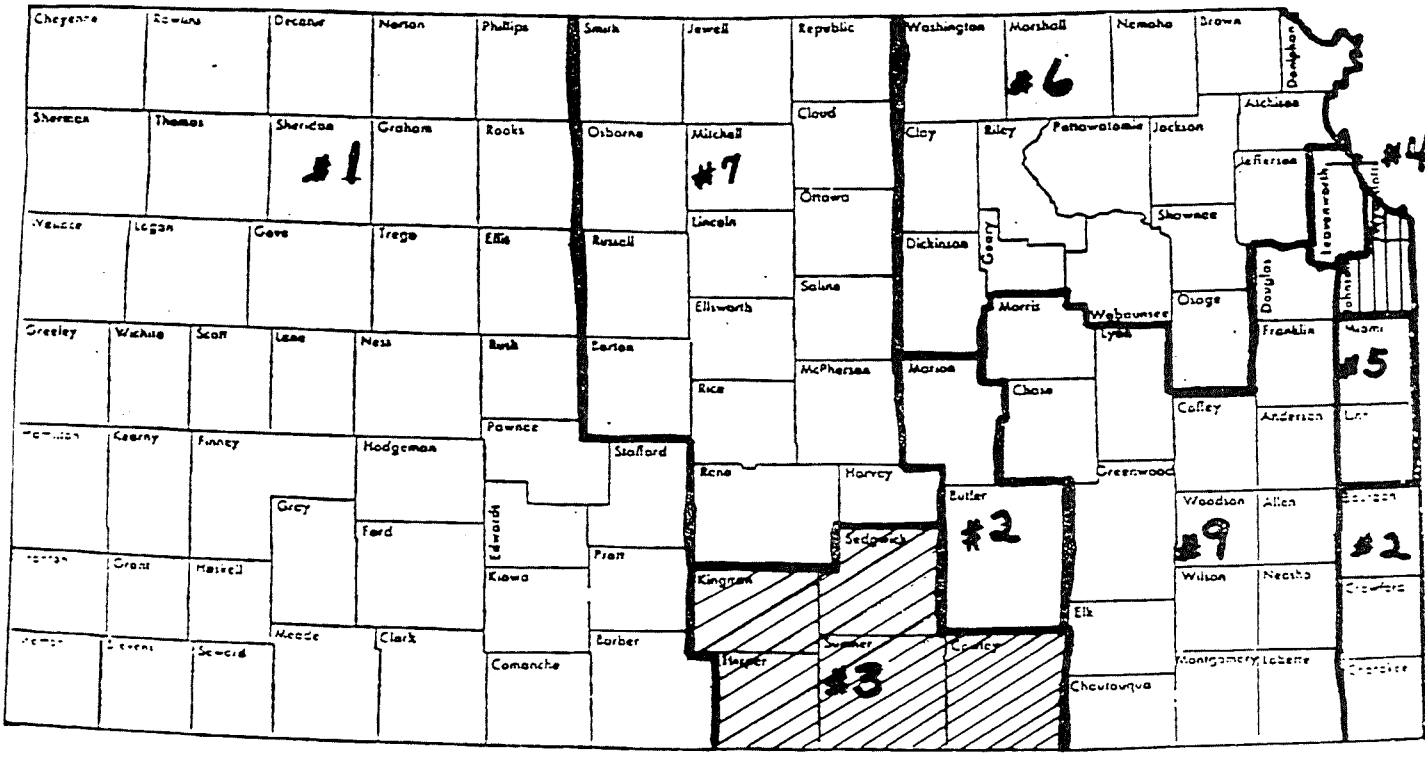
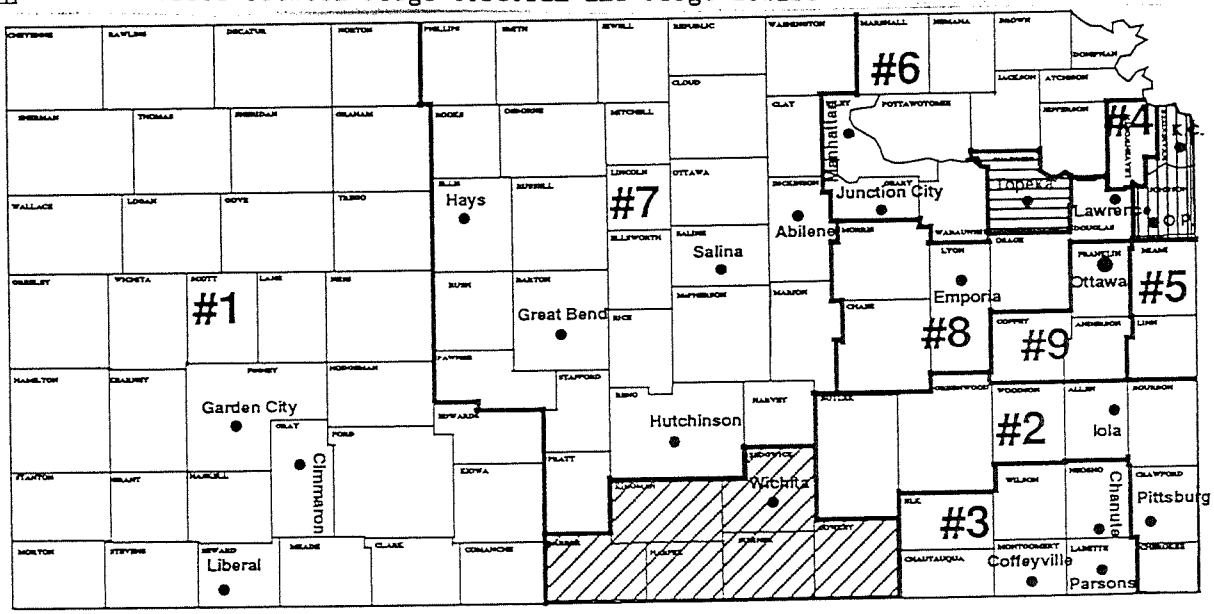
In September, 1988, an eighth Administrative Law Judge will be appointed to serve a new district in north central Kansas. This district is carved out of three existing territories and will eliminate some existing and future case loads of three Administrative Judges. The district will include Reno, Harvey and McPherson Counties now served by Administrative Law Judge David Jackson; Saline County, now served by Administrative Law Judge James Ward; and the following counties now served by Administrative Law Judge Thomas Richardson: Rice, Barton, Ellsworth, Russell, Lincoln, Osborne, Mitchell, Smith, Jewell, Republic, Cloud and Ottawa. The new Administrative Law Judge will be located in either Hutchinson, Great Bend or Salina, Kansas, in a Department of Human Resources office building.



#1 - Judge Tom Richardson, (316) 624-6200
#2 - Judge John Clark, (316) 651-5203
#3 - Judge David Jackson, (316) 651-5203
#4 - Judge Steve Howard, (913) 831-4611
#5 - Judge George Corcoran, (913) 342-4500
#6 - Judge James Ward, (913) 296-7012
#7 - Unassigned New District
#9 - Judge Alvin Witwer, (913) 831-4887

Cases divided between Judge Clark and Judge Jackson

Cases divided between Judge Corcoran and Judge Howard



- Cities in which regular and preliminary hearings are routinely conducted.

Cases divided between Judge Jackson and Judge Clark

Cases divided between Judge Howard, Judge Witwer and Judge Foerschler

Cases divided between Judge Ward and Judge Palmer

House Labor & Industry
Attachment #14
01-23-90

*** Note Since late November we have had a backlog of dictated orders but untyped. We are current at the present time there are a few dictated but untyped orders in the office as of this date but we have had additional typist working on this backlog.

STATUS OF DIRECTORS REVIEWS

JULY 1988	JANUARY 1989	JAMUARY 1990	FEBUARY 1990
BACKLOG OF 78 REVIEWS: 28 left undecided by former Director, many over 13 months old.	Over 1,100 Director's Orders entered by new Director, only two (2) were older than 1 year, and neither were 13 months old	Only 12 Reviews are over 30 days or older and none are older than 60 days. (Schufelt) WILL BE CURRENT 2/26/90.	
Attorneys perceived that scores of Reviews received in May and June were rubber-stamped affirmations (usually one page, often over 1 year old)	Meaningful Appellate Review on all orders - "whole record"	Morrisey is Current and has and is deciding appeals argued in Jan. 1990	
DIVISION received 788 Applications for director's review in FY-89/ only 594 applications filed in FY-88 (Explanation - new Director and New Assistant Director, New Act - testing waters).	New Director wrote Orders on 18 issues of first impression old and new act.	Director is Current and has and is deciding appeals argued in Jan. 1990	
FY-89 Averaged 65 App/rev per mo,	Claimants allowed to request to have their case pulled out of order and expidated.		
FY-88 Averaged 49 App/rev per mo.	Issues of Fund Liability, apportionment of attorney's fees passed over in favor of injured workers cases.		
FY-89 Traveled to Western Kansas and SE Kansas to hear Director Reviews after about 1 year discontinuance.			
Average of 52 days afer award written before set for review or heard.	Average of 38 days after award written before set for review or heard.	Average 37 days after award written before set for review or heard	

On June 15, 1989 Director Anderson made it a formal part of the performance expectations for Assistant Directors Morrisey and Schufelt that by January 1, 1990 that ALL director's reviews will be decided before 90 days; that 25% will be decided within 30 days; 50 % within 60 days and no more than 25% within 90 days! We have meet this goal and for the first time since March 1985 the Director's Office is CURRENT on appellate review and will remain current during the remainded of my tenure. This was accomplished without any "rubber-stamping" on reviews, parties were given meaningful reviews!!

House Labor & Industry
Attachment #15
01-23-90

WORKERS COMPENSATION JOINT ADVISORY COMMITTEE MEMBERS

October, 1989

	Name/Address	Organization/Occupation	Representing
1.	Wayne Maichel P.O. Box 1455 Topeka, Kansas 66601 (913) 357-0396	Kansas AFL/CIO	Labor
2.	John Ostrowski P.O. Box 1453 Topeka, Kansas 66601 (913) 233-2323	Attorney/Lobbyist	Labor
3.	Terry Leatherman 500 Bank IV Tower One Townsite Plaza Topeka, Kansas 66603-3460 (913) 357-6321	KCCI	Industry
4.	Rob Hodges 700 S.W. Jackson, Suite 704 Topeka, Kansas 66603 (913) 234-0307	Ks. Telecommunications Asso.	Industry
5.	Ken Jones P.O. Box 1739 Wichita, Kansas 67201 (316) 685-5471	Employers Mutual Ins.	Insurance
6.	Jack Stewart P.O. Box 2954 Overland Park, Kansas 66201 (913) 451-1570	St. Paul Ins. Cos.	Insurance
7.	J. Richard Amend P.O. Box 206 Wichita, Kansas 67201 (316) 263-3211	Dulaney, Johnston & Priest	At-Large
8.	Chris Allen P.O. Box 7600 Overland Park, Kansas 66207 (913) 345-1776	Royal Insurance Co.	At-Large
9.	Norman Cooley 608 North Broadway Wichita, Kansas 67214 (316) 265-2978	Attorney	Claimant's Atty.

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10. Randall Palmer P.O. Box 1101 Pittsburg, Kansas 66762 (316) 231-9890	Attorney	Respondent's Atty.
11. Chris Cowger 420 S.W. 9th Street Topeka, Kansas 66612 (913) 296-2188	Ks. Insurance Department	Fund Attorney
12. Bruce Smith 7070 W. 107th Street, Ste. 160 Overland Park, Kansas 66212 (913) 381-0081	Prof. Rehab. Consul.	Rehab. Vendor
13. S. M. Kiegerl P.O. Box 847 Olathe, Kansas 66061 (913) 782-6697	Prof. Rehab. Management	Rehab. Vendor
14. Terry Bernatis 900 S.W. Jackson, Rm. 951-S Topeka, Kansas 66612 (913) 296-4278	Bnfts. Analysis Manager (State Self-Ins. Fund)	Self-Insureds
15. Mike Cavell 220 East 6th Street, Rm. 515 Topeka, Kansas 66603 (913) 276-8413	Southwestern Bell	Self-Insureds
16. Charles White, M.D. 818 North Emporia, Ste. 107 Wichita, Kansas 67214-3725 (316) 291-7246	Mid-West Pain Mgemt. Ctr.	Physician
17. Richard Thomas 900 S.W. Jackson, Rm. 651-S Topeka, Kansas 66612 (913) 296-3441	Rehab. Administrator (Div. of Workers Comp.)	Ex Officio
18. Robert Anderson 900 S.W. Jackson, Rm. 651-S Topeka, Kansas 66612 (913) 296-3441	Director (Div. of Workers Comp.)	Ex Officio

WORKERS COMPENSATION REHABILITATION
ADVISORY COMMITTEE
JUNE 1989

NAME/ADDRESS	ORGANIZATION
Richard L. Thomas 900 SW Jackson, Room 651-S Landon State Office Building Topeka, Kansas 66612 (913) 296-3441	Rehabilitation Administrator Workers Compensation
Ken Ogren 700 Jackson, 9th Floor Topeka, Kansas 66603 (913) 233-2051	Menninger Foundation
Cyrilla Petracek 201 East Santa Fe Olathe, Kansas 66061 (913) 782-6697	Professional Rehab Mgmt.
Susan Matich-Pederson 3406 Broadway Kansas City, Missouri 64111 (816) 753-2863	Crawford Health & Rehabilitation
Bud Langston 2909 Plass Court Topeka, Kansas 66611 (913) 266-0210	Kansas Rehabilitation and Clinical Consultants
Judy Shorman 8400 W. 110th St. Suite 220 Overland Park, Kansas 66210 (913) 469-0712	Fortis Corporation
Ard Allison 6301 Waterford Blvd. PO Box 26647 Oklahoma City, OK 73126-0647 (405) 841-8072	Fleming Companies, Inc
Vaughn Burkholder 700 4th Financial Center Wichita, Kansas 67202 (316) 267-6371	Attorney Foulston, Siefkin, Powers & Everhardt

David Allegria
1507 Topeka Blvd.
Topeka, Kansas 66601
(913) 233-2323

Attorney
McCullough, Wareheim & LaBunker

Steve Howard
8417 Santa Fe, Room 206
Overland Park, KS 66212-2749
(913) 642-7650

Administrative Law Judge

William Morrissey
900 SW Jackson, Room 651-S
Landon State Office Building
Topeka, Kansas 66612
(913) 296-3441

Assistant Director
Workers Compensation

MEDICAL BENEFITS AND FEE SCHEDULES

Jurisdiction	Full Benefits In Law	Law Authorizes Extension Without Limit	Fee Schedules(1)	Jurisdiction	Full Benefits In Law	Law Authorizes Extension Without Limit	Fee Schedules(1)
Alabama	Yes			Nevada	Yes		rel. value
Alaska	No	Yes	authorized	New Hampshire	Yes		
Arizona	Yes		rel. value	New Jersey	Yes		DRG
Arkansas	No	Yes	authorized	New Mexico	Yes		
California	Yes		rel. value	New York	Yes		max. & DRG
Colorado (2)	No	Yes	rel. value	North Carolina	Yes		rel. value & max.
Connecticut	Yes		DRG	North Dakota	Yes		
Delaware	Yes			Ohio (3)	Yes		
Dist. of Columbia	Yes			Oklahoma	Yes		authorized
Florida	Yes		max.	Oregon (3)	Yes		max. percentile
Georgia	No	Yes		Pennsylvania	Yes		
Hawaii	Yes		max.	Rhode Island	Yes		medicare
Idaho	Yes			South Carolina	Yes		max.
Illinois	Yes			South Dakota	Yes		
Indiana	Yes			Tennessee	Yes		
Iowa	Yes			Texas	Yes		rel. value
Kansas	Yes			Utah	Yes		rel. value
Kentucky	Yes		authorized	Vermont	Yes		
Louisiana	Yes		authorized	Virginia	Yes		
Maine	Yes		authorized	Washington	Yes		rel. value
Maryland	Yes		rel. value	West Virginia	Yes		authorized
Massachusetts	Yes		medicaid	Wisconsin	Yes		
Michigan	Yes		max.	Wyoming	Yes		rel. value
Minnesota	Yes		max. percentile	Longshoremen	Yes		
Mississippi	Yes		authorized				
Missouri	Yes						
Montana	Yes		rel. value				
Nebraska	Yes		rel. value				

(1) States which have legislatively authorized. Some may not have adopted as yet.

(2) Colorado: There is a $20,000 maximum on both W.C. and O.D. medical benefits; however, there is a Major Medical Insurance Fund Act which defrays all medical, hospital, surgical, nursing, and drug expenses in excess of the $20,000 limit.

(3) The Ohio and Oregon laws set no initial amount or period; all medical benefits authorized by the administrative agency. In Ohio, in silicosis cases, no medical benefits payable except in cases of total disability or a change of occupation.

House Labor & Industry
Attachment #17
01-23-90

Report of:

Task Force to Evaluate Medical Cost Containment and Fee Schedules for Workers' Compensation in Kansas

August, 1989

House Labor + Industry
Attachment # 18
01-23-90

Throughout this decade, public attention has focused on the subject of escalating costs of medical care in Kansas. Only recently, however, has much attention focused on the segment attributable to workers' compensation.

Having had some instances of success in restraining costs of group health insurance — and fearful that unrestrained workers' compensation medical costs were soaring out of control — several groups urged the Kansas Department of Human Resources to explore medical cost containment for workers' compensation in Kansas.

In the fall of 1988, the Workers' Compensation Division of KDHR responded by inviting various parties to form the nucleus of a task force to evaluate medical cost containment in general and fee schedules in particular. Jim Schwartz, consulting director of the broad-based Kansas Employer Coalition on Health, agreed to serve as chairman. The following people eventually participated in the task force:

NAME	COMPANY
James P. Schwartz Jr., Chairman	KS Employer Coalition on Health, Topeka, KS
Robert A. Anderson	KS Dept. of Human Resources, Work Comp Div.
Gary Caruthers	Kansas Medical Society, Topeka, KS
Margaret J. Griffith, R.N.	HealthCare CostControl, Inc., Olathe, KS
Frederick L. Haag	Foulston, Siefkin, Powers & Eberhardt, Wichita, KS
Wayne Kitchen	KPL Gas Service, Topeka, KS
Neal A. Shank, D.O.	Consultant, Kansas City, MO
Judy Shorman	Fortis, Inc., Shawnee Mission, KS
John J. Bryan	Bryan, Lykins, Hejtmanek & Wulz, P.A.
John P. Hawkins, CPCU	Commercial Insurors, Inc.
Michael E. Russell, MS, CRC	Intracorp
George Welch	State of Kansas Employees
Pam Kincaid, R.N.	St. Paul Property & Casualty Co., Overland Park, KS
J. Patrick Kapsch	Liberty Mutual Insurance Co., Overland Park, KS
Gordon H. Preller	Schroer, Rice, P.A.
Michael Repp, D.C.	Chiropractor
Don Kosmicki	Deffenbaugh Industries, Inc., Shawnee, KS
Michael R. O'Neal	State Representative, Hutchinson, KS
Philip Godwin, M.D.	Physician
Chris Miller	Attorney, Lawrence, KS
Kevin Flattery	Work Capacities, Lenexa, KS
Tim McHugh	Intracorps
Bob Ream	Boeing Military Airplane Co.
John Wertzberger, MD	Physician
William T. Knickerbocker	Fred S. James & Co.
Rob Hodges	Kansas Chamber of Commerce & Industry, Topeka, KS
Susan J. Mattich-Pedersen	Crawford Risk Management Services, Kansas City, MO

The task force met four times in Topeka between November, 1988 and May, 1989.

From the start, most of the discussion centered on whether and how the State of Kansas should implement a schedule of fees for Kansas doctors and hospitals providing care to patients insured by workers' compensation. Division of Workers' Compensation Director Robert Anderson made clear that the Department has statutory authority to establish such a list of maximum fees for various medical procedures. A primary purpose

of the task force was to illuminate reasons for proceeding with such a schedule or for refraining from doing so, perhaps in favor of other remedies.

The task force never achieved a consensus on the question of whether or not to recommend implementation of a fee schedule. Clearly there were many viewpoints present, with varying economic consequences of such a choice.

Notwithstanding differences on the fee schedule issue, task force members appeared united in the opinion that improved control of health care utilization is a desirable and heretofore overlooked element of managing workers' compensation costs. In other words, health care costs are believed to be a function of the frequency and intensity of their use, and therefore a professional program of peer review should be helpful in reducing unnecessary hospital days and treatment modalities. No recommendations were made by the whole committee on methodology, but it seems clear to the chairman that sources of utilization review are widely available to all purchasers of W.C. insurance and can be applied to most any such product. Education must be considered a key factor in overcoming the inertia of the purchasing community in this regard.

Besides utilization, a key factor influencing cost of health care is price. Price is currently not controlled for workers' compensation in Kansas to any significant degree or in any systematic manner. Because the provision of workers' compensation treatment is highly regulated, competitive influences on prices have been perceived as minimal. Proponents of fee schedules generally argue that the regulatory model should be more complete, as it is in 24 other states, by including a ceiling on fees. Opponents of fee schedules argue that competitive relief is available to W.C. insurers and employers (particularly through their authority to assign a treating physician) and that such relief is simply underutilized.

Of interest to some students of these issues is the widespread failure of competitive forces to restrain medical costs for health care generally. The question for these students is whether fee schedules for workers' compensation might generate an experiment to suggest whether a more highly regulated model of health care provision might be warranted for wider application.

Because the task force could not reach agreement on whether or not to recommend a fee schedule, the chairman appointed two sub-committees to write reports: one favoring a fee schedule* and one opposing. Those reports follow and conclude the work of this committee, barring a decision to reopen these issues.

Task Force members are to be commended for taking time from their schedules to help shed light on this important public policy issue. The Department of Human Resources, whatever decision it ultimately makes, will enjoy benefit of having had many facets of the issue exposed to debate and of having input from a broad spectrum of observers.

Report by Sub-committee
Opposing
Implementation of Fee Schedules for Workers' Compensation in Kansas

by John Wertzberger, M.D.
Phillip Godwin, M.D.
Mark Saylor, M.D.
Gary Caruthers

18-4

The Case for Not Implementing A Workers Compensation Fee Schedule in Kansas

For the past several months, a task force has been studying the issues surrounding the implementation of a workers compensation fee schedule in Kansas. Concerns have been raised about the costs of workers compensation and the seemingly larger increases in medical costs compared to increases in other components of the worker's compensation system. Proponents of a fee schedule have pointed to other states' experiences and have concluded that implementation of a fee schedule will reduce workers compensation costs from 15-40%. We believe that it is premature to consider implementation of a fee schedule in Kansas. Advocates for a fee schedule have been looking at one large lump sum figure for medical expenses without specifically identifying the detailed components of the total. The amount of increase attributable to utilization must be isolated and then the discounted rate of increase should be compared to other meaningful trends such as the rate of increase in cost for medical provider liability insurance. Data from fee schedule states is inconclusive. We need more data on the differences in administrative procedures and coverages provided in fee schedule states. The differences may influence the estimated impacts identified with fee schedule states.

Implementation of a fee schedule may result in unwanted outcomes. Potential adverse outcomes include: increased administrative expenses, increased utilization of medical services, increased litigation, decreased availability of participating physicians resulting in decreased quality of care, upcoding or reporting of more severe injuries and increased costs for the program because low charging physicians raise their fees to the fee schedule amounts. The medical component of workers compensation accounts for approximately 40% of the total payout of the program. It is important to look at factors affecting the other 60% of the payout costs as well as the medical component. Cost issues must be addressed without affecting the quality of care provided to recipients. A fee schedule might lead to a medicaid type of program with decreased access to quality care. This has happened in the Medicaid program in Topeka where Pediatricians have decided not to accept new Medicaid patients because the program simply does not pay enough to cover the costs associated with providing the care.

One argument in favor of implementing a fee schedule is that it will simplify the payor's job of determining what should be paid for a certain service. We don't believe that this is sufficient reason to make major changes in the system.

We recommend that several other measures be addressed before considering the implementation of a workers compensation fee schedule in Kansas. They are listed below for your consideration.

1. Direct the Worker's Compensation Division to conduct an indepth study of procedures, diagnoses and fees paid. Identify aberrant practices and develop programs to modify any abuses. Target the most frequent procedures or diagnosis and the most expensive charges and develop programs to insure appropriateness.

2a. Contact the Kansas Foundation for Medical Care to discuss the possibility of developing a utilization review program and a preadmission/preprocedure certification program.

2b. Develop a participating physician program. Exclude physicians when practices fall outside a certain range.

3. Contact Blue Cross and Blue Shield to discuss possible administration of a Workers Compensation program, case management of potentially expensive cases and possible utilization of their fee schedule.

4. Encourage the development of managed care programs where feasible. Introduce competition into the system.

5. Focus on prevention and educational programs. Develop accident prevention and risk management programs, provide adequate staffing and training.

6. Develop specific physical standards for employment and hire accordingly.

7. Develop return to work and light duty programs.

8. Encourage claims payment review to insure appropriateness.

9. Study structured settlements through the purchasing of annuities, providing regular payments to claimants. There is the potential for reducing ultimate costs and eliminating administrative expenses associated with claims handling.

10. Study the development of dispute resolution process to reduce the costs of litigation.

11. Study the impact of low wages and lack of adequate health insurance in shifting costs to workers compensation.

12. Determine what impact the implementation of a Medicare Resource Based Relative Value Scale will have on other payment programs.

13. Consider reduction of minimum weekly benefits to encourage workers to return to work more quickly.

Comments have been made that providers charge more for workers compensation cases than for other cases. If this is true, is there any justification for it? Are there increased costs associated with workers compensation cases, such as increased administrative and paper work requirements and increased legal requirements including depositions or court appearances? This should be studied to insure that administration of the workers compensation program is as efficient as possible.

In summary, we believe that implementation of a fee schedule in Kansas is not justified. There are many other factors with significant potential for cost containment that should be considered first.

John Wertzberger, M.D.
Phillip Godwin, M.D.
Mark Saylor, M.D.
Gary Caruthers

Report by Sub-committee
Favoring
Implementation of Fee Schedules for Workers' Compensation in Kansas

by Judy Shorman
Wayne Kitchen
Pam Kincaid
Margaret Griffith
Mike Russell

WORKERS COMP TASK FORCE: SUB-COMMITTEE REPORT ON MEDICAL COSTS

Under the Kansas Workers Compensation Statute employers are required to provide, for injured workers, medical care that is "fair, reasonable and necessary". Employers, insurors, and audit companies are therefore in a position where they must determine what is "fair, reasonable and necessary". Unfortunately, we cannot assume that all bills submitted by medical providers and hospitals are "fair, reasonable and necessary". So the employers, insurors, and audit companies use their own methods to evaluate fees. Then the administrative law judges and state Workers Compensation Director are put in the position of assessing the situation and determining if the fees in question are "fair, reasonable and necessary". This scenario creates several problems:

1. No consistent data is being utilized to determine medical fees. Each employer, insuror, or audit company creates their own data base, using whatever bills are available to them to establish "reasonableness".

2. No statistically valid data is available for the judges and director to base their determinations of "reasonable and necessity" upon.

3. Increased litigation results because the only way in our system to resolve medical fee disputes is through hearings.

4. Adversarial relationships develop when an employer or insuror questions a medical bill and the medical provider continues to bill the claimant and pursue collections.

5. No Pre-Approval of Medical Care Fees between the provider and payor is required. Fee Reviews now take place retrospectively - after the medical treatment has been rendered - when the provider is expecting to be paid.

6. No method exists for Agreement on Medical Fees between all parties.

To put this issue of medical costs into a broader perspective, the task force has spent several months researching and hearing information on the topic of medical fees. The following points take this topic from a national perspective down to specifically Kansas Workers Compensation medical costs:

Nationally, the Wage Earners CPI documents medical care costs are rising much faster than all consumer services. In fact, medical services are up 41% over a six year period compared to all other consumer services being up 12%.

Kansas is in the North Central Region of the CPI and this region shows comparable increases. Medical care services are up 32% to 35% over the same six year period compared to 15% for all consumer services. (The group being cited is "wage earners" because this would be blue collar and clerical workers only - not all consumers - the group most similar to the Workers Compensation population. (See attachments #1 and #2.)

Another piece of data comes from the National Foundation for Unemployment Compensation and Workers Compensation. (See graph attachment #3.) In this graph we see a leveling off of Workers Compensation weekly wages compared to rising CPI medical costs.

The task force received the most accurate data on medical costs and indemnity increases from the largest employer in Kansas - the State of Kansas. This data (attachment #4) is directly out of the claims department and Claims Manager George Welch reports the number of claims did not vary significantly during the time period covered by the table. These medical costs have increased by 97% over a five year period - compared to the CPI medical costs (above) 32% to 34% over a six year period.

The Kansas State data is also important because we can analyze the percentage of medical costs compared to total costs. This indicates Kansas paid almost as much in medical costs as in indemnity. Or, 45% to 49.7% of the Workers Compensation payments are made for medical care. The National Council on Compensation Insurance has advised us this range should actually be 30% to 40%.

In our research, we identified these other sources of data which should be noted are <u>not</u> available: First, medical cost and indemnity history is developed by the Kansas State Insurance Department annually. This data is from all insurors who write Workers Compensation insurance in the state. This data has been requested but not received, and would only be through 1985. Secondly, the research done by the task force also indicated Kansas does not publish a state CPI. And finally, the Division of Workers Compensation reports annually on trends in medical and indemnity costs. However, this data is not reported in a consistent manner by employers and insurors and it cannot be validated.

Based on the above documentation of the medical costs problem, this sub-committee recommendation is to create a statistically valid and fair method for medical fees to be established and paid for under Workers Compensation. We believe there are four parties in Workers Compensation and all would benefit from this:

- <u>The injured worker</u> would not be harrassed by bill collectors while medical fees are disputed.

- <u>The Judges and Director</u> would not hear medical fee cases as frequently and they would have a consistent method for rulings.

- <u>Employers and Insurors</u> could decrease the time and money being spent on medical fee audits.

- <u>Medical Providers and Hospitals</u> could be paid more promptly as bill would not retrospectively be disputed.

Many other states (precisely 24) have already taken the initiative and created various types of Medical Fee and Utilization Guidelines. A leader in this has been the State of Washington, which reports medical cost savings for fiscal year 1988 exceed $9 million! (See attachment #5.) Other states, such as Michigan, have recently begun such programs (see attachment #6). Almost all states are struggling with managing increasing costs for Workers Compensation (see attachment #7). Our committee recommends we use some of the best methods created by other states as a basis to develop our own **Kansas Medical Services Management Program.**

We believe this **Medical Services and Fee Management Program** should include both utilization management and individual procedure fee guidelines. We recommend payors and providers be surveyed by the Division of Workers Compensation to assess what is currently being charged for and paid for under Workers Compensation. We also recommend Workers Compensation medical charges be compared to charges under other lines of insurance coverage, such as group health and managed care organizations. We can cite a number of reasons to proceed forward as quickly as possible with this project:

- All other insurance lines of business have implemented methods to control both medical utilization and individual fees. This means "cost shifting" could be taking place and Workers Compensation is paying the highest rates. Two actual examples gathered by the task force follow:

	Managed Care	Group Health	Champus	Workers Comp
Laminectomy	$1,625	$2,365	$2,714	$2,987
Ortho Office Visit	$ 20	$22 to $24	$ 25	$ 27

- Other lines of insurance create fee schedules based on the concept of "reasonable and customary" to determine payment of fees.

- Blue Cross Blue Shield recently cites the highest national increases in physicians fees were in greater Kansas City and they're taking aggressive steps to control further increases (see attachment #8).

- Specific fee guidlines would decrease time now spent on retrospective fee audits. This would expedite payment of medical bills. A new program could even require payment of bills within specific time frames.

- Fees submitted for payment should be in a standardized format, by procedure code. Medical bills should be itemized as they are required to be by group carriers, Champus, etc. One problem we encountered in studying this issue has been locating accurate data - because bills are not submitted by procedure code consistently, they cannot be totalled and analyzed.

- This is not a new and radical concept for Kansas. Kansas had a fee schedule which failed reportedly because there was not a method to update it. We need to update both new procedures and fees annually in a standardized program.

- Workers Compensation is a regulated system, and yet we don't have regulations to support the statuatory language regarding medical fees.

- Medical fees are not being disputed in a non-standardized method. Employers use whatever data they have and the Division of Workers Compensation mediates without any formal data.

- Medical providers are often angered by fee disputes, and they could decrease these disputes by participating in the creation of a **Medical Services Mangement Program.**

- Currently other lines of insurance pay 80% of reasonable and customary charges and the patient must pay the remaining 20%. If Workers Compensation fee guidelines are set at 100% payment by the employer, then providers should have an incentive to treat Workers Compensation claimants, not discouraged from it.

- We currently do not have a requirement for medical records to be submitted along with bills. This could also be corrected in a new program and would expedite resolution of claims and bills.

- Carriers now set reserves using whatever medical and indemnity data they have. A new medical services/fees program could make this process more accurate. This is important because medical fees are now half of all claims costs in Kansas, and there is no standardized method for estimating these costs. If the reserves aren't estimated accurately, then the financial stability of an insuror could be questioned.

- Adversarial relationships between all parties are created or worsened by medical fee disputes. Fee guidelines should decrease these.

- Retrospective audits of medical fees are now costly. Fee guidelines could be automated to decrease the cost of reviewing medical bills.

In conclusion, we believe a **Medical Services Management Program** could accomplish several goals. "Fair, reasonable and necessary," as applied to medical fees, could be defined by the Director, as Kansas statute states he may do. Consistency of fees could be achieved and efficiency of payments for fees could be enhanced. If medical costs are controlled then premium costs could be controlled and Kansas would be a better state to do business in. Abusers within the medical treatment system could be confronted in a standardized method. All parties should have improved relationships rather than adversarial relationships. And finally, Workers Compensation should not be "paying the tab" for other lines of insurance or the uninsured population.

FORTIS
Restoring Futures

Consumer Price Index

	CPI All Urban Consumers	CPI Urban Wage Carriers	CPI - North Central Urban Consumers City Size A	City Size B
1982	90.9	91.4	96.2	96.4
1983	96.5	96.9	100.1	100.0
1984	99.6	99.8	103.7	103.6
1985	103.9	103.3	107.2	106.4
1986	107.6	106.9	108.9	107.5
1987	109.6	108.6	112.7	111.6
1988	113.6	112.5	115.4	114.6

Notes

1982 to 1984 = 100 (base years)
Each year thereafter is the percent increase over the base years.

City Sizes:
A = More than 1,200,000
B = 360,000 to 1,200,000
C = 50,000 to 360,000
D = Less than 50,000

"Wage Earners" means blue collar and clerical workers

North Central Region is: Kansas, Missouri, Nebraska, Iowa, Illinois, Ohio, Idaho, Michigan, Minnesota, North Dakota, South Dakota

8400 W. 110th Street
Suite #220
Overland Park, KS 66210
(913) 469-0712
FAX 913-469-0750

CPI Medical Care

	North Central All Urban (Size A)	North Central Wage Earners (Size A)	North Central All Urban (Size B)	North Central Wage Earners (Size B)
1982	92.3	92.3	92.9	92.9
1983	100.4	100.4	100.6	100.6
1984	107.4	107.4	106.5	106.5
1985	113.2	113.0	113.4	113.2
1986	121.2	120.8	120.6	120.2
1987	128.9	128.6	126.6	126.3
1988	134.9	134.9	132.3	132.4

	(Size C)	(Size C)	(Size D)	(Size D)
1982	94.5	94.4	92.5	92.6
1983	100.6	100.5	100.7	100.8
1984	104.9	105.0	106.8	106.6
1985	109.8	110.1	112.3	111.9
1986	117.7	117.9	120.8	120.1
1987	125.2	125.6	127.4	127.0
1988	134.5	135.3	131.9	131.6

Attachment

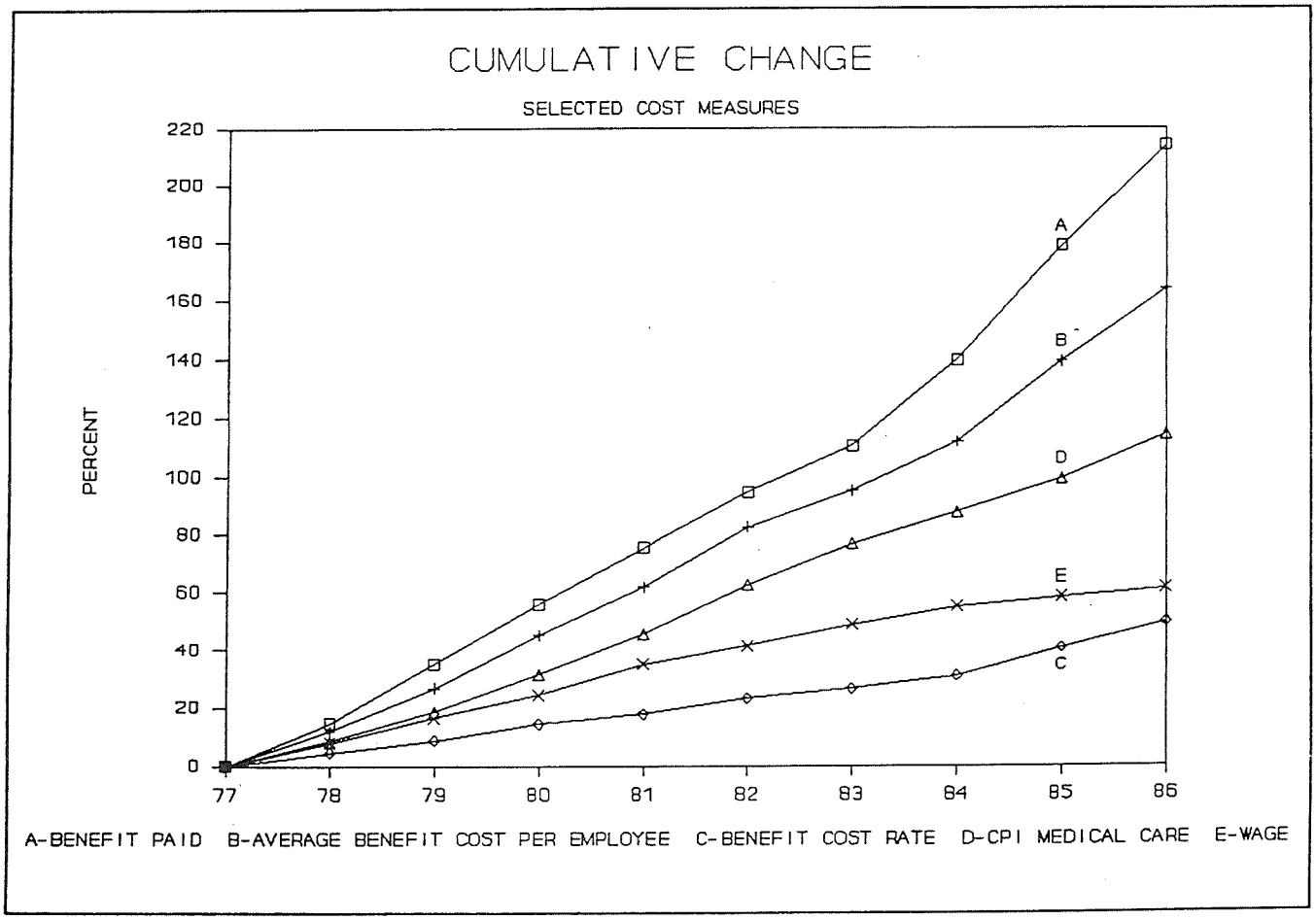
ISSN-088

Suite 603—600 Maryland Avenue, S.W., Washington, D.C. 20024 (202) 484-3346

May 5, 1989 '89 W.C.-1

Fiscal Data For State Workers' Compensation Systems 1977-1986

As the graph below indicates, cash indemnity and medical benefits paid increased 213.8%, from $7.1 billion to $22.3 billion over the 1977-1986 period. The average benefit cost per covered employee increased 163.7% or $167 during the ten year period. The benefit cost rate (benefits paid as a percent of payroll) increased 49.5%. In the graph, we have included comparable changes in medical care costs and average weekly wages. Wage changes level off in the last two years. However, this was more than offset by the changes in medical care costs.



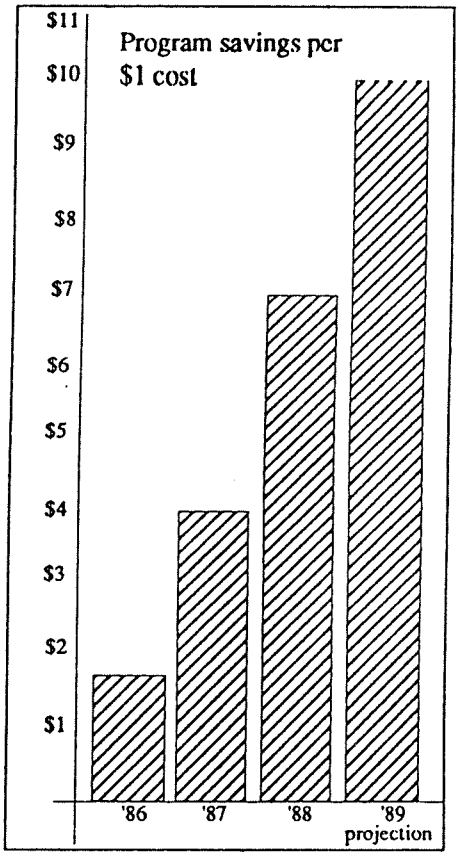
18-14

State Self-insured Fund
(State employees)

	1984	1985	1986	1987	1988
Disability	1,462,435	1,757,426	2,307,906	2,616,108	3,339,984
Medical	1,447,813	1,344,492	2,096,788	2,163,847	2,853,375
Total	2,910,248	3,101,918	4,404,694	4,779,955	6,193,359
Medical cost changes:		-7.6	155%	103%	131%
Medical as % of total	49.7	43.3	47.6	45.2	46.0

Summary

The Department of Labor and Industries' program to contain the costs of health care for injured workers and improve the quality of that care has produced major benefits for the workers and employers paying industrial insurance premiums. Savings in fiscal year 1988 were over $9 million, with a return of $7 saved for every $1 of program cost. For fiscal year 1989, estimated savings exceed $14 million, with a ratio of savings to cost of 10 to 1. Initiatives to improve the quality of care include the addition of a medical director for the department, and the establishment of guidelines for high quality care oriented toward returning injured workers to a productive life.



Background

In 1985, the Washington State Legislature directed the Department of Labor and Industries to design and implement programs to contain the rapidly growing costs of health care for injured workers. In a December 1, 1986, report to the Legislature, the department was able to report some initial success with fiscal year 1986 savings of $900,000, a return of $1.90 to $1 of program costs. The department's December 15, 1987, report described fiscal year 1987 savings of $5 million, with a ratio of $4 saved for every $1 of program cost. Savings for fiscal year 1988 exceed $9 million, with a return of 7 to 1. Total health care expenditures for injured workers in fiscal 1988 were $191.4 million.

When the cost containment program was initiated in 1985, substantial problems in the quality of care rendered to injured workers became apparent. A number of programs have been undertaken in this area, some of which are getting national attention for their contribution to improving services for injured workers.

Attachment #6

Michigan sets work comp health cost caps

By KARI BERMAN

LANSING, Mich. —New state regulations that cap payments for treatment of work-related illness and injury are expected to significantly reduce workers compensation costs in Michigan.

The new rules were accepted earlier this month by the Michigan Legislative Joint Committee on Administrative Rules, according to Larry Horwitz, executive vp of The Economic Alliance for Michigan, a non-profit organization representing business and labor that works for economic development in the state.

The rules, which take effect June 28, implement a 1981 law authorizing maximum fee schedules for health care services and introducing utilization review of health care claims for work-related injuries.

Although the Michigan Legislature approved the concept in 1981, various groups involved with workers compensation until recently were unable to agree on specifics of a new system.

The Michigan State Office of Health and Medical Affairs, which oversees workers compensation, last year asked the Economic Alliance to mediate discussions.

Representatives of health care providers, insurance companies, employers, unions and hospitals submitted their agreed-upon guidelines to the legislative committee for approval.

The compromise "represents a reasonable and balanced response to the sometimes conflicting concerns of recipients, providers, and purchasers of workers compensation health services," Mr. Horwitz stated in a news release.

Previously, Michigan required self-insured employers and insurance companies to pay for "reasonable and necessary" health service costs incurred by employees with work-related illnesses or injuries.

Workers compensation health care costs have been steadily increasing at an annual rate of 20%, leaping to $300 million in 1987, from $250 million in 1986, according to Mr. Horwitz. And 1988 expenditures are expected to reach $350 million, he added.

Mr. Horwitz conservatively estimates that the maximum fee schedule alone should save about 10% of payments for workers compensation health services in the first year of the new program.

"The caps on the fees should yield a savings of at least $35 million from July of 1989 to June of 1990 and that is without calculating the further savings that utilization control will bring," he said.

The newly adopted maximum fee schedule is based on a combination of data from other, existing price scales, according to Mr. Horwitz.

"We looked at fee schedules from other states, Blue Cross & Blue Shield PPO charges as well as commercial health insurance rates," Mr. Horwitz explained.

The utilization review program is designed to function on two levels:

- Technical review to determine the accuracy of a medical bill, making certain that it includes proper charges for the designated procedure.
- Professional health care review, required for claims either more than $5,000 or involving inpatient hospital care, will determine whether the treatment was medically appropriate.

However, any questionable claims can be submitted for additional professional utilization review, according to Mr. Horwitz.

The utilization review can either be conducted by the insurer or by a contracted certified health care agency. Professional review programs must be certified by the Michigan Department of Management and Budget and the Office of Health and Medical Affairs, Mr. Horwitz explained.

Roger Friez, vp of workers compensation claims at the Accident Fund of Michigan, the state's largest workers compensation insurer, covering 34,000 employers, supports the new reforms and believes that "they are a step in the right direction and will be effective measures for cost containment."

"Anything that reduces cost is something that we support. The maximum fee schedule will help because it will show exactly what is being charged at a set price," said John Leary, workers compensation rehabilitation claims administrator at Lansing-based Farm Bureau Mutual Insurance Co. of Michigan.

Also supporting a maximum fee schedule and utilization review program is Nancy Nowak, president of the Michigan Insurance Federation of Lansing, Mich., which represents 27 property/casualty insurance companies with offices in Michigan.

"The establishment of a maximum fee scale seemed like the most responsible thing to do for cost containment purposes. The scale is reasonable but I am sorry that it took so long for consensus," Ms. Nowak said.

"Employers are satisfied with the reforms because the set fees and utilization review will reduce the overcharging and bring a significant savings in the long run," said David Lewsley, manager of workers compensation at Chrysler Corp. of Highland Park, Mich., and chairman of the Michigan Self-Insured Assn. in Detroit.

Although often at odds with one another, organized labor representatives join employers in support of the workers compensation regulatory measures.

"We support the new rules but it was a long negotiating process. A lot of the issues were common sense things that with all of the different views took a while to resolve," said Tim Hughes, legislative director for the Lansing-based Michigan State AFL-CIO, representing 720,000 individuals and 68 labor unions.

While private health care providers and medical clinics have accepted the maximum fee schedule, a separate set of regulations providing for discounts will be applied to inpatient hospital services.

"The hospital sector was the last represented group to agree to the new reforms because they felt that their funds were already whittled away by government discounts and indigent care costs and a maximum fee schedule would not cover their expenses," Mr. Horwitz said.

Under the new rules, each hospital's inpatient charges will be subject to a mandatory discount, averaging 13% statewide. The discount will vary according to the individual hospital's cost, according to Mr. Horwitz.

"We were the last to accept the new regulations but it is a compromise package and we finally agreed to it," said a spokesman for the Michigan Hospital Assn. in Lansing, which represents an estimated 200 acute care hospitals in Michigan.

"It is difficult to predict how successful the new program will be but although we strongly opposed it initially, the hospitals basically accept the situation," the spokesman said.

States facing increasing costs for workers' compensation

By BRANT HOUSTON
L.A. Times-Washington Post Service

Never has working for the state looked so dangerous.

And never has it been so expensive for taxpayers.

From Maine to California, the cost of injuries at the state workplace is soaring, forcing taxpayers to spend nearly a billion dollars a year on medical bills and lost wages for injured employees.

At the same time, future payments to injured state workers who recover slowly — or might never recover — could total billions of dollars nationwide in coming years.

Most states passed workers' compensation laws in 1912 or soon after. The laws were meant to help workers who were injured on the job to collect money for medical bills and lost wages quickly without taking their employers to court.

The cost of injuries at the state workplace is soaring, forcing taxpayers to spend nearly a billion dollars a year on medical bills and lost wages for injured employees.

Although private employers have become increasingly concerned over rising workers' compensation costs since the late 1970s, many states have only begun to realize the financial effect of employee injuries.

In fact, when The Hartford Courant interviewed workers' compensation administrators in all 50 states, officials in 12 said that they did not know, or could not readily say, how much injuries to their workers are costing taxpayers each year.

But 31 states showed significant increases, sometimes at a much faster rate than in the private workplace. For example, Connecticut's costs have increased by more than 1,000 percent in the past 10 years, triple that of private employers in the state.

Only two states, Louisiana and Arizona, reported their costs to be dropping.

The federal government keeps annual injury statistics for most private employers, which showed an increase of 5 percent in 1987, the latest year checked. But there are no such national statistics kept for state employees.

Many state officials said that injury claims by their employees have gone up in recent years, but they also attributed the increases in costs to a wide range of other factors, some of which are difficult, if not impossible, for them to control.

Among the reasons cited:

- Medical costs are climbing.
- Salaries are being driven upward by inflation.
- Benefits for some state employees are more generous than those for private employees.
- There are more people employed by state governments than ever before.
- More of those employees are aware of the money available from workers' compensation.
- States have been slow to establish programs to prevent injuries and hold down costs.

"Workers' compensation is tied to economic conditions and medical costs," said Donald LeMond, Missouri's risk and insurance manager, who oversees the handling of injury claims. "With the rate of medical inflation, it's going to go higher."

Like LeMond, officials in other states said that they were especially concerned about the increased medical expenses, noting that many states do not strictly limit the amount hospitals and doctors can charge for compensation cases.

"Private insurers in health care have put in cost containment," said Randy Waterman, assistant risk manager in Nevada. "Cost containment has not really been implemented for workers' compensation."

At the same time, some states pay their employees such low wages that their employees cannot afford high medical costs or health insurance. As a result, they charge illnesses and off-the-job injuries to workers' compensation, LeMond said.

"Health costs are so high, some workers are using compensation as a basic health plan," he said.

State and union officials said that for years state governments have neglected to take action that might stem the tide.

Few state governments have created accident-prevention programs, and fewer have put programs into effect that would enable state employees to return to work faster.

"Adequate staffing and training is the No. 1 problem," said James August, a health and safety specialist in Washington for the American Federation of State, County and Municipal Employees. "When you haven't recognized the problem, you aren't going to begin throwing money at it. So you're batting with one foot in a hole."

Ken Swisher, risk manager for the state of Michigan, said, "We didn't have risk management until November 1987." His job is to find ways to reduce the dangers of the workplace, and there are not that many Ken Swishers around.

"Safety takes a last seat in many states," said Smith, who is the risk manager in Maine but has no control over the workers' compensation program.

That means workers' compensation and risk-management offices are generally understaffed. States are reluctant to pay for programs unless they clearly save money, and that is difficult to prove. Workers' compensation costs are rising so fast that often the best that can be hoped for is to slow them, Smith said.

"Sometimes you see a decrease but never a sharp decline," he said.

Also contributing to rising costs, Smith and others said, is the lack of return-to-work programs for recovering employees. Because of that, they said, workers tend to stay out longer and accumulate more payments for lost wages.

Many state officials surveyed said that a lot of workers' injuries occur in state hospitals for the mentally ill or mentally retarded where workers must lift disabled patients or fend off assaults from violent ones.

LeMond said that injuries often can be predicted the day a person is hired.

"If you hire an obese, middle-aged woman to lift people, you are going to get an injury," he said. "But the government is the employer of last resort. We have no physical qualifications. We just check them (new employees) to make sure they don't have communicable diseases."

Connecticut, for example, has no specific physical standards for its health-care workers and correction officers. State officials have been working to develop standards that will not discriminate against the disabled.

State governments also might be paying the price for an aging work force more susceptible to injuries, particularly at state institutions.

"With a lot of our employees, their bodies are just wearing out," said Jean Ricker, director of human resources for the Department of Institutions in Colorado.

Aggravating the pain of the costs are the legal rulings on what qualifies a worker for compensation. Because workers' compensation is the result of social legislation, state administrators said, those who hear disputes over claims — commissioners, hearing officers or judges — tend to favor the worker.

"If a person comes in with a heart attack, it doesn't seem to matter that they weigh 350 pounds and have smoked for 40 years," said Judy Stewart, social insurance coordinator for 85,000 state employees in Pennsylvania.

Increased awareness of workers' compensation by employees and lawyers also is driving up state's legal costs. States have a difficult time measuring the cost because they generally use staff members from the offices of their attorneys general to fight rulings and questionable cases.

But Alaska's situation shows the kind of effect litigation can have. Donald Hitchcock, director of risk management there, said as much as $700,000 of the $5.2 million spent in fiscal year 1988 was for legal costs.

Some state officials, usually managers, also question whether the costs are a reflection of a change in attitude in America's work force. Those officials said that the workers believe they are owed jobs and benefits. They also said that there is a shirking of responsibility in the work force.

"It's not just workers' compensation. It's a national attitude about anything," Smith said. "If anyone gets hurts, it's someone else's fault."

Those kinds of attitude, sometimes coupled with poor morale within state bureaucracies, can only exacerbate the problem, officials said.

"We are dealing with a perception of workers' compensation as a benefit," said Kate Wood, the safety consultant for Oregon.

Wood said that even a mild scratch can turn into a claim of an injury. Or, she said, an employee might file a stress claim if they are criticized about their job performance.

But August and other union officials said it might be less an attitude change than workers' finally making legitimate claims.

"To a great extent people didn't file claims because they weren't aware of their rights," August said. "It's a classic case. Once people realized it was there, the floodgates opened."

Comparison shows two states have decrease in program costs

L.A. Times-Washington Post Service

This state-by-state comparison shows how costs for workers' compensation programs for state employees are generally rising. Only two states, Louisiana and Arizona, have been able to decrease costs. States are listed in the order of the amount they pay in workers' compensation claims.

Information for 12 states — Alabama, Colorado, Indiana, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Vermont, Washington and Wyoming — was unavailable.

States have different record-keeping and accounting procedures, so figures are not always available for the same timespan. Listings are for calendar year, unless otherwise noted.

California: 190,000 employees. Costs: from from $82 million in 1983 to $142.2 million in 1987.

Ohio: 56,000 employees. Costs: from $86.8 million in 1986 to $93.5 million in 1987.

New York: 215,000 employees. Costs: from $50.1 million to $90.8 million in the last two years.

Connecticut: 52,000 employees. Costs: from $16.9 million in fiscal year 1984 to $44 million in fiscal year 1989.

Massachusetts: 75,000 employees. Costs: from $13 million to $30.1 million in last three years.

Pennsylvania: 85,000 employees. Costs: from $6 million to $28.7 million in last four years.

Illinois: 116,000 employees. Costs: from $23.7 million to $27.5 million in the last four years even though the Illinois Department of Mental Health was removed from budget last year.

Texas: 136,400 employees. Costs: from $9.8 million in 1983 to $22.5 million in 1987.

Oregon: 44,000 employees. Costs: from $7.4 million to $21.4 million in last five years.

Florida: 115,000 employees. Costs: from $11.6 million to $20.3 million in last four years.

Michigan: 65,000 employees. Costs: from $13.6 million to $18.2 million in last five years.

Louisiana: 83,000 employees. Costs: down from $24.8 million to $17.5 million in the last four years.

Rhode Island: 21,000 employees. Costs: from $7.3 million to $16.2 million in last five years.

Minnesota: 69,000 employees. Costs: from $10.8 million to $16 million in last three years.

Maryland: 72,725 employees. Costs: from $8 million in 1983 to $14.2 million in 1987.

New Jersey: 70,000 employees. Costs: from $12 million in fiscal year 1987 to $13 million in fiscal year 1988.

Georgia: 102,000 employees, including some county workers. Costs: from $7 million to $12.5 million in last four years.

Hawaii: 32,000 employees. Costs: from $5.6 million in fiscal year 1983 to $11.3 million in fiscal year 1987.

Maine: 15,221 employees. Costs: from $3.2 million to $8.3 million in last five years.

West Virginia: 37,839 employees. Costs: from $3.8 million in 1983 to $8.1 million in 1988.

Delaware: 30,000 employees. Costs: from $4.3 million to $7.8 million in the last five years.

North Carolina: 203,837 employees, including public schools. Costs: from $3.7 million to $7.4 million in last five years.

Missouri: 91,000 employees. Costs: from $4.4 million in fiscal year 1984 to $7.3 million in fiscal year 1989.

Arizona: 47,000 employees. Costs: down from $7 million to $6.9 million in last two years.

South Carolina: 59,000 employees. Costs: from $2.8 million in fiscal year 1982 to $6.6 million in fiscal year 1987.

Kansas: 73,000 employees. Costs: from $2.9 million to $6.4 million in last five years.

Arkansas: About 50,000 employees. Costs: from $3 million to $6.3 million in the last five years.

Wisconsin: 67,500 employees. Costs: from $2.7 million to $6.2 million in last five years.

Tennessee: 60,000 employees. Costs: from $4.1 million to $5.5 million in last three years.

Alaska: 13,000 employees. Costs: from $4.1 million in fiscal year 1987 to $5.2 million in fiscal year 1988.

Iowa: 40,000 employees. Costs: from $2.4 million to $4.5 million in last five years.

Virginia: 110,000 employees. Costs: from $1.9 million in 1983 to $4 million in 1987.

Kentucky: 64,316, including some volunteer fire and ambulance employees. Costs: from $2.8 million in 1984 to $3 million in 1987.

Idaho: 10,000 employees. Costs: from $2.1 million to $2.9 million in the last four years.

New Hampshire: 13,000 employees. Costs: from $1.6 million to $2.7 million in last five years.

Nebraska: 27,000 employees. Costs: from $1.7 million to $2.3 million in last three years.

Utah: 10,500 employees. Costs: from $700,000 in 1983 to $1.4 million 1987.

South Dakota: 13,800 employees. Costs: from $538,000 in 1983 to $956,031 in 1988.

Attachment #8

Kans Business Journal

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VOLUME 7, NUMBER 18 PUBLISHED EVERY WEEK WEEK OF JANUARY 16, 1989

Blue Cross holds fee increase; evalutes jump in doctor fees

BY BRENT SCHONDELMEYER

Blue Cross and Blue Shield of Kansas City will "hold" any increases in fees for nearly 3,000 participating doctors until it can determine why 1988 fees rose faster than any place in the country.

Physician fees paid by the area's largest health insurer — Blue Cross and Blue Shield has nearly 400,000 subscribers in 32 counties — increased by 10 percent per physician compared to a 6.5 percent fee adjustment approved Jan. 1, 1988.

The sharper-than-expected increase in physician fees billed to Blue Cross and Blue Shield of Kansas City helped contribute to the overall $25 million loss the plan expects for 1988. No exact dollar amount could be placed on the impact of the higher physician fees.

The 10 percent increase in fees charged to Blue Cross and Blue Shield of Kansas City by physicians is significantly higher than the 6 to 7 percent average increases experienced by other Blue Cross/Blue Shield plans nationwide, according to Richard Krecker, president and chief executive officer of Blue Cross and Blue Shield of Kansas City.

"There's no evidence in morbidity or mortality that people in Kansas City are that much sicker to account for a three percent (difference)," he said.

The rate of increase also is higher than medical economic trends for the area and the nation.

Physicians	1984	1985	1986	1987	1988 (*)
Costs Per Patient	$271	$313	$348	$416	$451
Difference	N/A	$42	$35	$68	$35
Annual % Change	N/A	15.5%	11.2%	19.5%	8.4%

Hospitals	1984	1985	1986	1987	1988
Charge Per Stay	$3,530	$3,828	$4,308	$4,774	$5,082
Difference	N/A	$298	$480	$466	$308
Annual % Change	N/A	8.4%	12.5%	10.8%	6.5%

(*) First Six Months Source: Blue Cross and Blue Shield of KC

The cost of medical care services — physicians, dental and eye care — increased 4.9 percent in the Kansas City area from 1987 to 1988, according to the U.S. Bureau of Labor Statistics.

The average increase for physician services in all U.S. cities was 7.3 percent for the 12-month period ending November 1988.

But Blue Cross and Blue Shield is far from alone in seeing an increase in doctors' fees. Dr. Jeffrey Ackerman with CIGNA Healthplan of Kansas City said

Please turn to page 26

Insurer hopes analysis explains higher costs

Continued from page 1

that plan also had seen an increase of about 10 percent in physicians' fees.

Physicians will continue to be paid based on the 1988 fee schedule until Blue Cross and Blue Shield of Kansas City adopts a new schedule, which could come within a few months.

"We're obliged to review (physician fees) annually, but we're not obliged to act immediately," said Krecker. Physician fees typically have been adjusted about every 14 months and have averaged 5 to 7 percent, he said.

The hold does not affect physicians in Blue Cross and Blue Shield's two health maintenance organizations — Total Health Care and Blue-Care — because they are paid a fixed amount for patients under their care.

The average Blue Cross and Blue Shield physician payout in 1987 was $10,964, but increased to $12,109 for 1988, according to officials.

"The statistics clearly show that physician fees and incomes have gone up higher, but the people who quote these should know that expenses have gone up higher," said Dr. Carl Strauss, chairman of the Peer Review Oversight Committee for the Metropolitan Medical Society of Greater Kansas City.

While a few physicians are making a bundle in the current marketplace, Strauss said primary-care physicians are not.

The Blue Cross analysis will consider, among other things, whether to adjust the weighting factors used to set specialty fees.

Krecker said the 6.5 percent 1988 adjustment was intended as a "reasonable inflation-based fee schedule." He said the additional amounts paid to physicians would not be recouped by paybacks or offset in 1989 rate adjustments.

Physicians	1984	1985	1986	1987
Premiums Earned	$78,559	$84,863	$98,940	$110,927
Claims Incurred	$62,129	$69,138	$82,585	$98,404
% of Premium	79.1%	81.5%	83.5%	88.7%
Expenses Incurred	$11,335	$13,665	$14,444	$17,783
% of Premium	14.4%	16.1%	14.6%	16.0%
Underwriting Gain	$5,093	$2,059	$1,910	($5,260)
% of Premium	93.5%	97.6%	98.1%	104.7%

Hospitals	1984	1985	1986	1987
Premiums Earned	$137,078	$138,674	$151,041	$160,607
Claims Incurred	$122,116	$124,860	$137,765	$152,088
% of Premium	89.1%	90.0%	91.2%	94.7%
Expenses Incurred	$7,347	$10,012	$10,855	$12,935
% of Premium	5.4%	7.2%	7.2%	8.1%
Underwriting Gain	$7,614	$3,802	$2,420	($4,416)
% of Premium	94.5%	97.2%	98.4%	102.8%

(000s) omitted — Source: Kansas Insurance Department

Physician fees account for 38 percent of total benefits paid by Blue Cross and Blue Shield of Kansas City. Hospitals account for 53 percent of the total benefits, with drugs and other costs absorbing the other 9 percent.

"We don't know the economic factors that drive" the increases in physician fees, said Krecker. He added: "The incidence of medical conditions is not that much higher in 1988 compared to 1987."

The preliminary Blue Cross and Blue Shield analysis indicates fee increases were attributable to billing practices which include upcoding, fee fragmentation and overuse of services.

Medical procedures are assigned a computer code which determines how much the third-party payor reimburses the provider for the submitted claim.

Upcoding involves billing a medical service under a procedure category which pays more. Fee fragmentation involves taking a single procedure and billing it as a multiple procedure, such as a followup visit after surgery. Overuse involves medically unnecessary procedures which then are billed to the insurer.

Blue Cross and Blue Shield is not sure what accounts for the discrepancies in the billing practices and hopes its analysis will help it determine the cause. That analysis will look at overall trends and not focus on individual physicians.

"I see isolated cases where they're confused what the code is," said Philip Beard, a manager with Baird Kurtz & Dobson who works with many Kansas City-area physician practices. "I don't know anybody doing it, knowing what the risk is."

Medicare, another major third-party payor, routinely screens physician claims for upcoding or fee fragmentation. Incorrect billing can result in significant financial penalties for the physician.

However, Strauss says that physicians increasingly have been "unbundling" services and charging for procedures which previously had been done at no charge and billed as one service.

"Patients in the past were used to extra things being thrown in," said Strauss. "Now (the physician) watches every penny and every minute of time."

He added: "It's now beginning to pick

Continued on next page

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Continued from preceding page

up speed, so that it has everybody's attention."

The sharp increase in physician fees underscores a larger problem for the financially-pressed insurance plan: Controlling hospital charges has proven easier than fees charged by physicians.

During recent years, the annual percentage change for physician costs per member has easily outstripped the increases in charges per hospital stay (See chart and illustration, page 1).

Up until 1982, there were separate plans for each. Blue Cross of Kansas City covered hospitals while Blue Shield of Kansas City paid physician claims. The merger resulted in both boards combining, sharing assets and operational expenses.

The underwriting of the physician portion of the plan has worsened in recent years. Annual statements, filed with the Kansas Insurance Department, show that physician claims incurred, as a percent of premiums earned, have increased steadily. In 1984, physician claims incurred were 79.1 percent of premiums earned but had climbed to 88.7 percent by 1987 (See table, page 26).

Once administrative expenses were added in, Blue Cross and Blue Shield lost $5.2 million on physician underwriting during 1987. The books for 1988 have not been closed yet.

Among ways to improve the underwriting ratios: increase premiums, reduce claims and expenses or a combination of those.

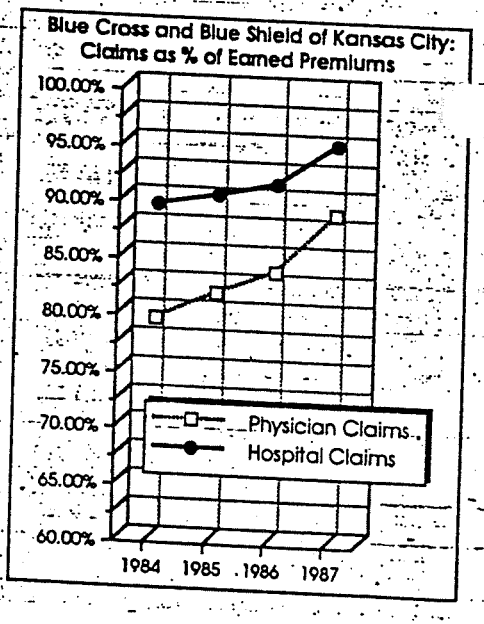
Blue Cross and Blue Shield recently hired Dr. William Bradshaw as vice-president of medical affairs. The former dean of the School of Medicine at the University of Missouri-Columbia was, until recently, president of the Missouri Patient Care Review Foundation, which is a peer review organization that determines whether Medicare claims submitted by providers should be paid.

Blue Cross and Blue Shield, in a letter to participating physicians explaining the fee hold, said "sound medical judgment and quality patient care is totally consonant with fair and equitable business procedures."

The answers, to Beard's mind, are not simple: "I certainly, in their position, wouldn't go ahead and update until I knew what had happened last year and what I wanted to happen this year."

Strauss believes that patients, ultimately, bear some responsibility for rising physician fees and must be willing to pay for the care they expect.

"The solution is not only the doctor," he said. "The solution is going to be partly the patient who doesn't run to the doctor every time he has a sore throat or a hurt toe."



No. 54,815
and
No. 54,816
(Consolidated)

MERL EDWARD JOHNSTON, *Claimant-Appellee,* and DONNA PRUYN, *Claimant-Appellee,* v. TONY'S PIZZA SERVICE, d/b/a SCHWAN'S SALES OF MARSHALL, INC., *Respondent-Appellee,* and LIBERTY MUTUAL INSURANCE COMPANY, *Insurance Carrier-Appellee,* and KANSAS WORKMEN'S COMPENSATION FUND, *Appellant.*

(658 P.2d 1047)

SYLLABUS BY THE COURT

WORKERS' COMPENSATION—*Reimbursement for Excess Payment of Compensation.* Where a workers' compensation award is reduced or totally disallowed by a district or appellate court, K.S.A. 1982 Supp. 44-556(*d*) provides the sole means by which the employer and its insurance carrier may be reimbursed for any excess payment of compensation. Said statute provides that such reimbursement shall be from the Workers' Compensation Fund upon certification of the amount by the Director of Workers' Compensation and is not limited in application to reimbursement of overpayment which exceeds the balance due claimant on the award as modified.

Appeal from Saline district court; DAVID S. KNUDSON, judge. Opinion filed February 19, 1983. Affirmed.

John M. Ostrowski, of McCullough, Wareheim & LaBunker, of Topeka, argued the cause and was on the brief for claimant-appellees.

C. Stanley Nelson, of Hampton, Royce, Engleman & Nelson, of Salina, argued the cause and was on the brief for appellant.

Aubrey G. Linville, of Clark, Mize & Linville, Chartered, of Salina, was on the brief for respondent-appellee and insurance carrier-appellee.

The opinion of the court was delivered by

McFARLAND, J.: The sole issue in these consolidated workers' compensation appeals is whether the reimbursement provision of K.S.A. 1982 Supp. 44-556(*d*) applies when the balance due the claimant after judicial reduction of the award exceeds the amount of the overpayment.

K.S.A. 1982 Supp. 44-556(*d*) provides:

"(*d*) If compensation has been paid to the worker by the employer or the employer's insurance carrier during the pendency of an appeal to the district court or to the appellate courts and the amount of compensation awarded by the director or the district court is reduced or totally disallowed by the decision on the appeal, the employer and the employer's insurance carrier, except as otherwise provided in this section, shall be reimbursed from the workers' compensation fund established in K.S.A. 44-566a and amendments thereto for all amounts of compensation so paid which are in excess of the amount of compensation that the worker is entitled to as determined by the final decision on appeal. The

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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."

It should be noted that K.S.A. 44-556(*d*) was amended by the 1982 Legislature effective after the date of certification herein. However, these amendments relate wholly to form rather than substance. Accordingly, this opinion will refer only to the statute as amended.

The issue in both appeals is as previously noted, identical. Each claimant is in a factually similar situation as far as the issue is concerned. The stipulated facts from the Johnston appeal are summarized as follows:

On February 1, 1982 the Workers' Compensation Director found claimant had a 50% permanent partial disability to the body as a whole and fixed compensation at $77.88 per week for 400.71 weeks. Respondent and the insurance carrier appealed this award to the district court. The court found claimant had only a 30% permanent partial disability to the body as a whole. Accordingly, the award was reduced to $46.72 per week for 400.71 weeks of which $15,381.62 would be due and owing in the future.

For the ten-week period prior to the Director's decision and for the period said award was on appeal to the district court, respondent and its insurance carrier, pursuant to K.S.A. 1982 Supp. 44-556, paid a total of 20.71 weeks of compensation at the 50% disability rate of $77.88. Deducting the 30% disability rate of $46.72 therefrom results in a $31.16 per week overpayment for 20.71 weeks for a total of $645.32.

Respondent and its insurance carrier then made request to the Director, pursuant to K.S.A. 1982 Supp. 44-556(*d*) to certify said $645.32 overpayment to the Commissioner of Insurance for reimbursement by the Kansas Workers' Compensation Fund. The Director issued said order of certification, and the Fund appealed therefrom to the district court. The order of certification was affirmed by the district court and the Fund appeals from said judgment.

Obviously, resolution of the issue herein involves statutory construction and the general applicable rules need to be stated.

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The first rule of statutory construction is to ascertain, if possible, the intent of the legislature. *Nordstrom v. City of Topeka,* 228 Kan. 336, 340, 613 P.2d 1371 (1980), *Brinkmeyer v. City of Wichita,* 223 Kan. 393, Syl. ¶ 2, 573 P.2d 1044 (1978). Consistent with the first rule, it is fundamental the purpose and intent of the legislature governs when that intent can be ascertained from the statute. *Kansas State Board of Healing Arts v. Dickerson,* 229 Kan. 627, 630, 629 P.2d 187 (1981). Finally, where a statute is plain and unambiguous, Kansas courts must give effect to the intention of the legislature as expressed rather than determine what the law should or should not be. *Johnson v. McArthur,* 226 Kan. 128, 596 P.2d 148 (1979); *Brinkmeyer v. City of Wichita,* 223 Kan. at 397. All parties to this action agree K.S.A. 1982 Supp. 44-556(*d*) is unambiguous.

The crux of the issue is the import of the following emphasized portion of K.S.A. 1982 Supp. 44-556(*d*):

"[T]he employer and the employer's insurance carrier . . . shall be reimbursed from the workers' compensation fund . . . for all amounts of compensation so paid *which are in excess of the amount of compensation that the worker is entitled to as determined by the final decision on appeal.*" (Emphasis supplied.)

The Fund contends that the emphasized language limits reimbursement from the Fund to those situations where the total amount of overpayments exceeds the total amount of compensation remaining to be paid. Future payments to claimant Johnston totalled $15,381.62, while the overpayments totalled only $645.32. The Fund then concludes that the statute does not impose liability on the Fund for the reimbursements herein and that the remedy of the employer and its insurance carrier is to make themselves whole by withholding funds from future payments to claimant.

The fallacy of this argument is pointed out by the claimant. There is no procedure or authorization which permits deducting the overpayment from future payments due the claimant. If all payments were withheld by the insurance carrier until it had reimbursed itself for its overpayment to claimant Johnston, the injured worker would go 12 consecutive weeks without any workers' compensation being received. Claimant Donna Pruyn's award of $77.28 a week was reduced by the district court to $12.88 per week for 387.13 weeks with the total overpayment

being $1,159.20. Therefore, 81 weeks would have to elapse before Ms. Pruyn could receive another check if this method of reimbursement were utilized. Did the Legislature intend to leave it to the employer and insurance carrier to decide whether to repay themselves immediately, at the end of the payment period, or by deduction of a percentage each week? Such an intent would be highly unlikely and out of keeping with the philosophy of workers' compensation.

The Fund has not shown us any instance in the history of the Kansas Workmen's Compensation Act, K.S.A. 44-501 *et seq.*, where the Legislature has required an injured worker to repay an employer or its insurance carrier when an award has been reduced on judicial appeal. In fact, our case law has indicated the opposite legislative intent. See *Casebeer v. Alliance Mutual Casualty Co.*, 203 Kan. 425, 454 P.2d 511 (1969); and *Tompkins v. Rinner Construction Co.*, 196 Kan. 244, 409 P.2d 1001 (1966).

The Fund cites *Streff v. Goodyear Tire & Rubber Co.*, 211 Kan. 898, 508 P.2d 495 (1973), in support of its argument that the insurance carrier can set off the overpayments against future payments due claimant. This reliance is misplaced. *Streff* involved a $1,100 lump-sum payment by the insurance carrier in a nonstatutorily authorized attempt at settlement of the claim. The settlement did not occur and the claim went through to hearing and award. On appeal before this court, the question was raised as to whether credit should be allowed for this irregular voluntary predecision payment. The court held:

> "To disallow the respondent and its insurance carrier a credit for the subject payment would work an obvious inequity. It must be conceded the Kansas Workmen's Compensation Laws are to be liberally construed so as to allow payment of compensation whenever reasonably possible. This is not to say, however, that an injured workman should be allowed to receive what would amount to double payment in a situation such as here.
>
> ". . . The allowance of a credit or set-off for the $1,100 payment would in no way affect the claimant's statutory rights. To disallow the credit would be contrary to the principles of equity." 211 Kan. at 903-04.

The *Streff* "situation such as here" is obviously wholly dissimilar to the situation before us involving overpayments pursuant to awards which were later judicially reduced. Additionally, *Streff* was decided prior to the enactment of 44-556(*d*) and was decided on general equity principles.

Much of the Fund's brief herein is devoted to the policy

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argument that the claimant should not receive a windfall to which he or she is not entitled except when he or she would have to dig into his or her own pocket to repay the overpayment. The policy argument loses considerable impact when applied to the facts before us—that is, it would be an unfair burden if Ms. Pruyn had to pay the $1,159.20 overpayment from her pocket, but only right and fair if she has 81 consecutive weeks of compensation totally withheld to repay the insurance carrier. In any event, as pointed out by the claimant, the policy argument would be better addressed to the Legislature as its implementation would entail substantial statutory modification.

We conclude that where a workers' compensation award is reduced or totally disallowed by a district or appellate court, K.S.A. 1982 Supp. 44-556(*d*) provides the sole means by which the employer and its insurance carrier may be reimbursed for any excess payment of compensation. Said statute provides that such reimbursement shall be from the Workers' Compensation Fund upon certification of the amount by the Director of Workers' Compensation and is not limited in application to reimbursement of overpayment which exceeds the balance due claimant on the award as modified.

This result is consistent with the comments of the five Kansas law journal authors who discussed the effect of 44-556(*d*) shortly after its enactment—including an article written by Bryce B. Moore, Workers' Compensation Director. Moore, *Workmen's Compensation—An Introduction to Changes in the Kansas Statute*, 24 Kan. L. Rev. 603, 608 (1976); Herrington, *Workmen's Compensation—Major Changes in Employments Covered, Benefits, Defenses, Offsets, and Other Changes*, 24 Kan. L. Rev. 611, 616 (1976); Ross, *Workmen's Compensation—The Preliminary Hearing, The Workmen's Compensation Fund, and Civil Penalties for Failure to Pay Compensation When Due*, 24 Kan. L. Rev. 623, 625 (1976); Wright & Rankin, *Potential Federalization of State Workmen's Compensation Laws—The Kansas Response*, 15 Washburn L.J. 244, 258, n. 73 (1976).

We further conclude, on the rationale hereinbefore expressed, that the trial court did not err in affirming, in both cases herein, the Workers' Compensation Director's orders of certification to the Commissioner of Insurance for payment from the Workers' Compensation Fund.

The judgment in each of the consolidated cases is affirmed.

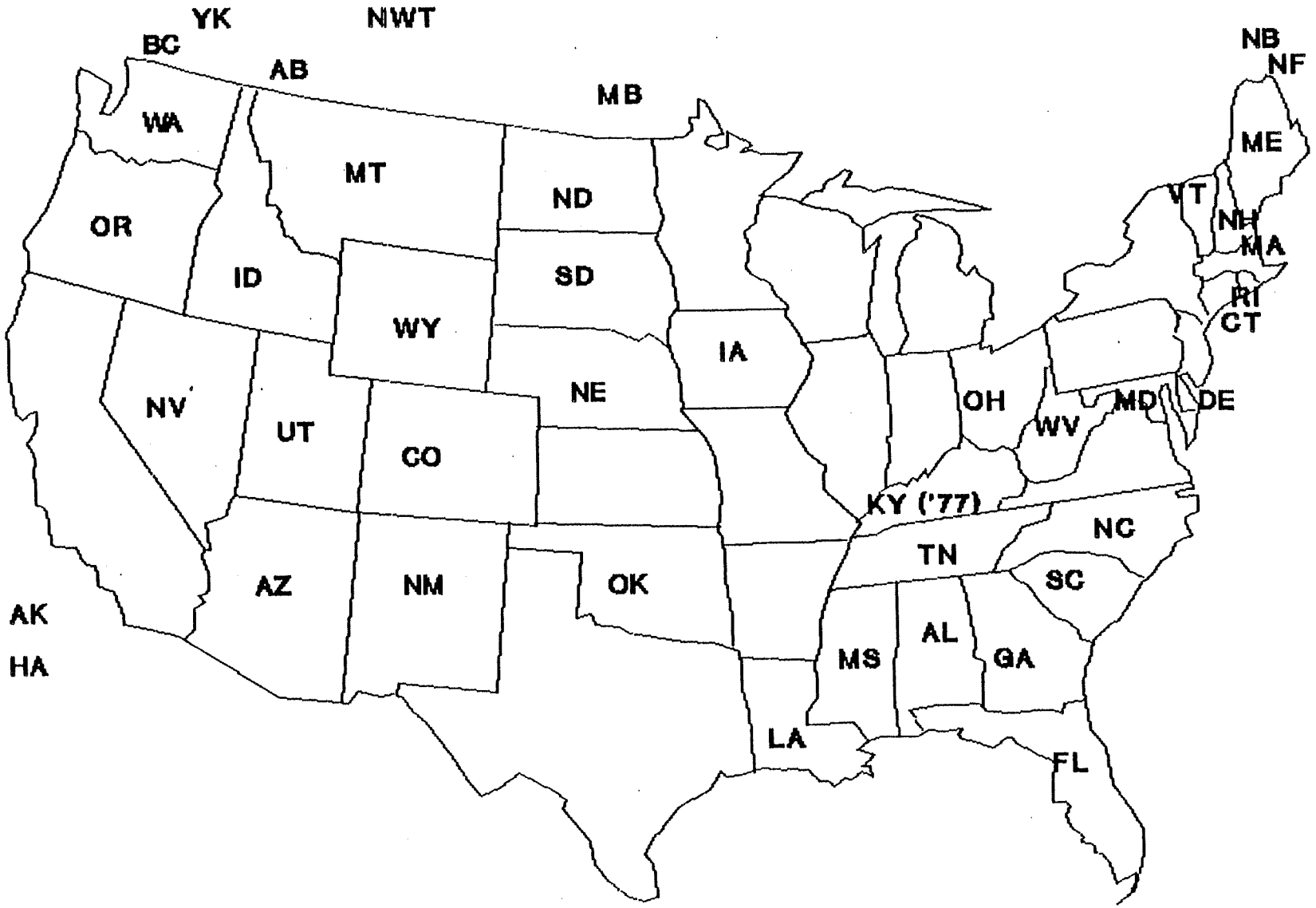
19-5

American Medical Association

Guides to the Evaluation of Permanent Impairment

Edition 3 1988

States & Prov. That Use the Guides in Workers Compensation



20-2

Impairment

The loss of, the loss of use of, or the derangement of any body part, system or function

Permanent Impairment

Impairment that has become static or well stabilized with or without medical treatment, or that is not likely to remit despite medical treatment of the impairing condition

20-5

Disability

The limiting loss or the absence of capacity of an individual to meet personal, social or occupational demands, or to meet statutory or regulatory requirements

Permanent Disability

Occurs when the degree of capacity becomes static or well stabilized and is not likely to increase in spite of continuing medical or rehabilitative measures

20-7

Activities of Daily Living

Self Care and Personal Hygiene
Communication
Normal Living Postures
Ambulation
Travel
Nonspecific Hand Ativities
Sexual Ffunction
Sleep
Social and Recreational Activities

Four Steps in Evaluating Impairment

✓ Medical Evaluation

✓ Analysis of Findings

✓ Comparison of Results to Criteria in the Guides

✓ Rating of Whole Person Impairment

20-00

Medical Evaluation

- ✓ Narrative history, with reference to onset and course, previous exam findings, treatments and responses to treatments
- ✓ Results of most recent clinical evaluation
- ✓ Assessment of current clinical status, and statement of plans for future treatment, rehabilitation and re-evaluation
- ✓ Diagnosis and clinical impressions
- ✓ Estimate of expected date of full or partial recovery

Analysis of Findings

✓ Impact of medical condition on life's activities

✓ Medical basis for conclusion that condition has or has not become static or well-stabilized

✓ Medical basis that individual is or is not likely to suffer sudden or subtle incapacitation as a result of the medical condition

✓ Medical basis that individual is or is not likely to suffer injury or further impairment while trying to meet personal, social or occupational demands

✓ Conclusions that accommodations or restrictions are or are not warranted

Comparison of Results to Criteria in the Guides

- ✓ Specific clinical findings related to each impairment, and how the findings relate to Guides criteria; and reference to absent, important data
- ✓ Explanation of each impairment rating, with direct reference to applicable criteria (Protocols)
- ✓ Summary list of all impairments

Differences Between 2nd and 3rd Editions

2nd Edition	3rd Edition
Preface	Chapters 1 and 2
	•Greater emphasis on use of medical records
	•Form for integrating, preparing and submitting report

Differences between 2nd and 3rd Editions

2nd Edition

Chapter 1

- Upper Extremity

3rd Edition

Chapter 3

- Upper Extremity
  - ROM: method of Int Fed Hand Surgeons ("A=E+F")
  - Evaluation of specific joint abnormalities (arthroplasties, etc)
  - Integration of peripheral nerve and vascular evaluations

Differences between 2nd and 3rd Editions

2nd Edition

- Lower Extremity

3rd Edition

- Lower Extremity
  - Clarification of knee and hip diagnosis-based impairments
  - Integration of peripheral nerve and vascular evaluations

20-15

Differences between 2nd and 3rd Editions

2nd Edition

- Spine
  - ROM by goniometer*
  - "Table 53"

3rd Edition

- Spine
  - ROM by inclinometer
  - Clarification and integration of diagnosis-based evaluation with ROM
  - Forms for integration and presentation of data

*Addendum Through First Year of Publication

Differences between 2nd and 3rd Editions

2nd Edition

Chapter 3

- Respiratory System

3rd Edition

Chapter 5

- Respiratory System
  - Dyspnea removed as criterion of impairment
  - Better definitions of asthma and lung cancer impairments

Differences between 2nd and 3rd Editions

2nd Edition	3rd Edition
Other Chapters	
•Visual System	•Esterman binocular grid for visual field evaluation
•Digestive System	•Evaluation of chronic abdominal wall hernias
•Skin	•Evaluation of nail impairment

Mental and Behavioral Disorders
Assessing Impairment Severity

- Activities of daily living
- Social functioning
- Concentration, persistence and pace
- Adaptation to stressful circumstances

Based on SSA "Listing of Mental Impairments"

Mental and Behavioral Impairments
Method of Evaluating Impairment

No, Mild, Moderate, Marked, and Severe Impairment in each of four assessment areas*:

- Activities of daily living
- Social functioning
- Concentration, persistence and pace
- Adaptation to stressful situations

Ordinal Scale

Mental and Behavioral Disorders
Principles of Assessing Mental Impairment

- Diagnosis a factor, but not sole criterion
- Motivation for improvement a key factor
- Longitudinal history of impairment, treatment and rehabilitation must be evaluated

20-20

20-21

Pain

and

Impairment

Pain and Impairment
Two Major Studies

- Commission on the Evaluation of Pain, Social Security Administration, 1987

- Committee on Pain, Disability and Chronic Illness Behavior, Institute of Medicine, 1987

20-22

Pain and Impairment
Findings of SSA Commission

- ✓ There must first be a medically determinable impairment that could reasonably be expected to produce pain.
- ✓ Assessment of pain requires a multi-dimensional approach for correlation of functional limitations with reports of pain.
- ✓ At this time the Commission does not recommend SSA listings for chronic pain.

Pain and Impairment
Finding of IOM Committee

✓ Neither "chronic pain syndrome" nor "illness behavior" should be added to the regulatory listing of impairments.

20-24

20-25

Pain and Impairment
Categories of Pain

- Acute
- Acute recurrent
- Chronic

Pain and Impairment
Six "Ds" of Chronic Pain

- Duration
- Dramatization
- Drugs
- Despair
- Disuse
- Dysfunction

20-27

Pain and Impairment

- Psychogenic Pain: A mental disorder defined in DSM III.

- Malingering: Consensus among pain medicine specialists that this is detectable by appropriate tests, and is infrequent.

Pain and Impairment
Pain--Impairment/Disability Relationships

- Acute pain: impairment/disability partial and temporary
- Acute recurrent pain: impairment/disability may be partial and temporary, or total and permanent
- Chronic pain: impairment -- since underlying pathology is minimal, *little or no impairment* exists in chronic pain or chronic pain syndome

  disability -- since nonmedical matters intervene, *disability* may be very great

line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.

(g) For the period of one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of human resources.

(h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States.

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection (j) and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection (j).

(k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

House Labor & Industry
Attachment #21
01-23-90

WORKERS COMPENSATION INSURANCE EXPERIENCE
Prepared by Kansas Insurance Department

Year	Direct Premiums Written	Direct Premiums Earned	Direct Losses Paid	Direct Losses Incurred	Premium Written to Losses Paid	Premium Earned to Losses Incurred
1968	28,908,220	28,221,489	14,831,568	16,625,404	51.3	58.9
1969	28,451,385	30,627,729	15,539,762	16,435,978	54.6	53.6
1970	32,103,022	31,002,826	16,779,241	18,337,520	52.2	59.1
1971	30,278,679	30,097,337	17,947,366	19,327,951	59.2	64.2
1972	34,622,948	33,203,461	19,125,394	21,376,326	55.2	64.4
1973	37,024,905	35,456,396	21,194,243	23,915,584	57.2	67.4
1974	48,829,189	45,391,621	24,936,749	30,801,921	51.1	67.9
1975	60,931,943	58,384,479	30,919,290	39,391,122	50.7	67.5
1976	74,905,244	69,745,184	36,281,750	46,947,995	48.4	67.3
1977	95,030,094	91,946,121	41,987,153	52,384,640	44.2	57.0
1978	111,624,578	110,678,942	50,153,935	72,202,238	44.9	65.2
1979	118,240,623	113,676,699	60,281,756	82,086,752	51.0	72.2
1980	141,189,216	138,145,343	72,697,056	102,896,246	51.5	74.5
1981	156,207,756	149,261,425	80,425,265	101,691,667	51.5	68.1
1982	154,944,245	152,315,135	88,345,714	107,979,341	57.0	70.9
1983	147,137,981	148,669,330	96,289,968	115,282,150	65.4	77.5
1984	141,097,000	140,223,000	106,701,000	125,520,000	75.6	89.5
1985	172,985,620	170,955,138	120,755,675	147,438,366	69.8	86.2
1986	208,167,277	202,033,619	134,554,116	170,153,475	64.6	84.2
1987	233,674,161	222,846,661	147,885,631	195,885,084	66.1	87.9
1988	257,039,527	259,548,305	164,553,813	208,332,654	64.0	80.3

House Labor & Industry
Attachment #22
01-23-90

KANSAS WORKERS' COMPENSATION FUND
Prepared by the Kansas Insurance Department

Case Load Scheduled	FY 89	FY 88	FY 87
Total Number of Impleadings	1,933	1,862	1,603
Total Number of Closed Cases	1,472	1,455	1,170

Receipts Analysis	FY 89	% of Total	FY 88	% of Total	FY 87	% of Total
Assessment Receipts	$22,595,122	(84.14)	$17,983,751	(80.89)	$ 6,542,599	(55.75)
General Fund Entitlement	4,000,000	(14.90)	4,000,000	(17.99)	4,000,000	(34.07)
Non-Dependent Death Receipts	92,500	(.35)	136,131	(.62)	153,000	(1.30)
Misc. Reimbursements	147,188	(.55)	92,052	(.42)	127,846	(1.08)
Total Receipts	**$26,834,810**		**$22,211,934**		**$10,823,445**	
Previous Year Carryover Balance	9,125	(.03)	16,553	(.07)	908,156	(7.73)
Cancelled Checks	8,916	(.03)	3,242	(.01)	9,486	(.07)
TOTAL FUNDS AVAILABLE	**$26,852,851**	**(100)**	**$22,231,729**	**(100)**	**$11,741,087**	**(100)**

Note: Figures rounded off to the nearest dollar amount.

House Labor & Industry
Attachment #23
01-23-90

EXPENDITURE ANALYSIS

	FY 89	% of Total	FY 88	% of Total	FY 87	% of Total
Disability Compensation	$16,606,747	(71.94)	$15,945,464	(71.75)	$ 8,167,171	(69.66)
Work Assessment	7,045	(.03)	N/A		N/A	
Medical						
Doctor	178,962	(.77)	152,173	(.68)	97,933	(.84)
Hospital	227,381	(.99)	246,717	(1.11)	163,296	(1.39)
Drugs	21,319	(.09)	15,413	(.07)	6,509	(.06)
Misc. (Braces, etc.)	25,337	(.11)	12,736	(.06)	11,957	(.10)
Other Services (Mileage, etc.)	31,874	(.14)	12,995	(.06)	7,763	(.07)
Reimbursement to Ins. Co. (K.S.A. 44-569(a) & K.S.A. 44-569)	3,242,189	(14.04)	3,118,950	(14.04)	1,054,831	(9.00)
Attorney Fees	2,356,858	(10.21)	2,330,799	(10.49)	1,953,605	(16.66)
Court Costs & Depositions, Medical Reports, etc.	210,661	(.91)	233,153	(1.05)	125,989	(1.07)
Refunds (Non-Dependent Death Cases	9,587	(.04)	50	(.00)	7,493	(.06)
Other Operating Expenses	167,811	(.73)	154,153	(.69)	127,988	(1.09)
TOTAL EXPENDITURES	**$23,085,771**	**(100)**	**$22,222,603**	**(100)**	**$11,724,535**	**(100)**

House Labor & Industry
Attachment #24
01-23-90

Workers Compensation Study Group

Fletcher Bell, Commissioner of Insurance
Kansas Insurance Department
420 S.W. 9th, Topeka, Kansas 66612
(913) 296-7801

William C. Cohen, Jr., CPCU
Independent Insurance Agents of Kansas
IMA Plaza, 250 N. Water, Wichita, Kansas 67202
(316) ~~276~~ 269-9221

Robert A. Anderson, Director
Division of Workers Compensation
Landon State Office Building, 900 S.W. Jackson, Room 651-S
Topeka, Kansas 66612-1276
(913) 296-~~1276~~ 4000

Thomas E. Slattery, Executive Vice President
Associated General Contractors of Kansas, Inc.
200 West 33rd, Topeka, Kansas 66611
(913) 266-4015

Wayne Maichel
Kansas AFL-CIO
110 W. 6th, P. O. Box 1455, Topeka, Kansas 66601
(913) 357-0396

Dr. John J. Wertzberger
American Academy of Disability Evaluating Physicians, Inc.
1112 West Sixth Street, P. O. Box 127, Lawrence, Kansas 66044
(913) 843-9125

Terry Leatherman
Kansas Chamber of Commerce and Industry
500 Bank IV Tower, One Townsite Plaza, Topeka, Kansas 66603-3460
(913) 357-6321

Ex Officio:

National Council on Compensation Insurance
Everett Brookhart
30501 Agoura Road, Suite 205, Agoura Hills, California 91301
(818) 707-8360

Kenneth L. Robinson
12700 Southfork Road, P. O. Box 8530, St. Louis, Missouri 63126-0530
(314) 843-4001

Staff:
Kansas Insurance Department
Dick Brock
Ray Rathert
Bill Wempe

House Labor & Industry
Attachment #25
01-23-90

LIST OF HANDOUTS

1. TABLE OF MAXIMUM BENEFITS CARD, JULY 1, 1989
2. WE'VE MOVED
3. FORMS FURNISHED AT NO COST, K-WC-134
4. E-1
5. E-2
6. E-3
7. FORM 88
8. KANSAS WORKERS COMPENSATION WORKBOOK FOR COMPUTING WORKERS COMPENSATION BENEFITS
9. CREATING A SAFE WORKPLACE
10. VOCATIONAL REHABILITATION REPORTING GUIDELINES
11. LIST OF QUALIFIED REHABILITATION VENDORS
12. PROCEDURES REGARDING VOCATIONAL REHABILITATION SERVICES WITH FLOW CHART
13. HALSIG V. W.W. GRINDER, DOCKET NO. 128,578
14. **NEWS AND VIEWS FROM WORKERS COMPENSATION** (LEGISLATORS ALREADY Delivered
15. LETTER TO EDITORS, SUN NEWSPAPER, 12/13/89; KANSAS CITY STAR 12/10/89
16. MICHAEL SIMPSON'S LETTER
17. REPLY LETTER (ONE PAGE)
18. REPLY LETTER (5 PAGES)
19. LETTER TO MICHAEL SIMPSON

House Labor + Industry
Attachment #26
01-23-90

Effective July 1, 1989

TABLE OF MAXIMUM BENEFITS

Kans[illegible] Compensation Law

Medical and hos[illegible]s		No limit
Death benefit to [illegible] spouse		$200,000
Burial allowance		$3,200
Permanent total disability		$125,000
Temporary total disability		$100,000
Partial disability		$100,000
Maximum weekly benefits	(7-1-83 to 6-30-84)	$218
	(7-1-84 to 6-30-85)	$227
	(7-1-85 to 6-30-86)	$239
	(7-1-86 to 6-30-87)	$247
	(7-1-87 to 6-30-88)	$256
	(7-1-88 to 6-30-89)	$263
	(7-1-89 to 6-30-90)	$271

	Maximum Weeks	Compensation at $271 week
Arm	210	$56,910
Forearm	200	$54,200
Hand	150	$40,650
Leg	200	$54,200
Lower leg	190	$51,490
Foot	125	$33,875
Eye	120	$32,520
Hearing, both ears	110	$29,810
Hearing, one ear	30	$8,130
Thumb	60	$16,260
Finger 1st (index)	37	$10,027
Finger 2nd (middle)	30	$8,130
Finger 3rd (ring)	20	$5,420
Finger 4th (little)	15	$4,065
Great toe	30	$8,130
Great toe, end joint	15	$4,065
Each other toe	10	$2,710
Each other toe, end joint only	5	$1,355

Amputation through joint considered loss to next higher schedule.
Partial loss of a member is compensable on a pro-rata basis.
Allowance of 10% and not over 15 weeks for healing period.

House L+I Att. #27 01-23-90

Department of Human Resources
DIVISION OF WORKERS COMPENSATION
600 Merchants Bank Tower
800 SW Jackson
Topeka, Kansas 66612-1227

General Information	913-296-3441
Director's Office	913-296-4000
Rehabilitation	913-296-2050
Claims Advisory	913-296-2996
Self Insurance	913-296-3606
Law Judges	913-296-7012

House Labor & Industry
Attachment #28
01-23-90

KANSAS DEPARTMENT OF HUMAN RESOURCES

DIVISION OF WORKERS COMPENSATION
600 Merchants Bank Tower, 800 S.W. Jackson
Topeka, Kansas 66612-1227
(913) 296-3441

Mike Hayden, Governor

Ray D. Siehndel, Secretary

FORMS FURNISHED AT NO COST

HEARINGS

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

SETTLEMENTS

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

INFORMATIONALS

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

ELECTIONS

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

MISCELLANEOUS FORMS

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

House Labor + Industry
Attachment #29
01-23-90

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

FORMS NOT FURNISHED BY THIS OFFICE

Accident Reports (1101a)
***Final Release (Form D)**
Physician's Report Blank (Form G)
may be obtained from:

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

Paragon Graphics, Inc.
8131 West 10th Street
Indianapolis, IN 46214
(317) 271-7310
1-800-876-4578 (all states)
FAX # (317) 271-7405

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

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

OSHA Forms 100 & 200 may be obtained from:

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

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

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

NAME, ADDRESS AND TELEPHONE NUMBER INFORMATIONAL

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

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

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

3. Workers' Compensation Fund

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

4. State Self-Insurance Fund
   State of Kansas Employees

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

5. OSHA Representative - Topeka

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

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

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

   Mailing Address:

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

7. Workers Compensation Classification of Risk &
   Experience Modification Checks

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

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

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

   Department of Human Resources
   Division of Workers Compensation
   600 Merchants Bank Tower
   800 S.W. Jackson
   Topeka, Kansas 66612-1227
   (913) 296-3441
   Toll free number for claimants use
   1-800-332-0353 (intra state only)

State of Kansas
Department of Human Resources
DIVISION OF WORKERS COMPENSATION
600 Merchants Bank Tower
800 S.W. Jackson, Room 651-S, Topeka, Kansas 66612-1227

APPLICATION FOR HEARING

Employee _____

Social Security Number _____

Street _____

City _____ State _____ Zip _____

Employer _____

Street _____

City _____ State _____ Zip _____

Insurance Carrier _____

ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE

Date of Accident or Disease _____ , 19____

Briefly state what employee was doing when accident occurred _____

_____

Briefly state nature and extent of injuries claimed _____

_____

In what county did the accident or disease occur? _____ At or near _____

If accident did not happen within Kansas, county where hearing could be most conveniently held? _____

_____ _____
Applicant's Signature Date

DO NOT WRITE IN THIS SPACE

Attorney for Applicant: _____

Address: _____

_____

_____

Kansas Supreme Court Number: _____

K-WC E-1 (Rev. 12-89)

House Labor + Industry
Attachment #30
01-23-90

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

Full Name of
Deceased Employee _____

Social Security Number _____

Address _____

City _____ State _____ Zip _____

Name of Employer _____

Address _____

City _____ State _____ Zip _____

Insurance Carrier _____

SURVIVING SPOUSE OR DEPENDENT APPLICATION FOR HEARING

ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE

Date of Accident or disease _____, 19___ Hour _____ ___M. Date of death _____, 19___.

In what county did accident occur? _____ at or near _____ _____
(City) (State)

How did accident occur? _____

_____

SURVIVING SPOUSE AND DEPENDENTS

Name	Address	Age	Relationship

If accident did not happen within State of Kansas, county where hearing could be most conveniently held? _____

DO NOT WRITE IN THIS SPACE

Applicant's Signature _____

Attorney for Applicant _____

Address _____

_____

_____

Kansas Supreme Court Number _____

House Labor + Industry
Attachment #31
01-23-90

K-WC E-2 (Rev. 9-89)

State of Kansas
Department of Human Resources
DIVISION OF WORKERS COMPENSATION
600 Merchants Bank Tower
800 S.W. Jackson, Topeka, Kansas 66612-1227

Docket Number (if known): _____

Employee: _____

Social Security Number: _____

Employer: _____

Insurance Carrier: _____

APPLICATION FOR PRELIMINARY HEARING

Employee applies for preliminary hearing with regard to accident or occupational disease of _____
Date

Employee intends to address the following issues:

- ☐ Temporary total compensation
- ☐ Medical treatment
- ☐ Vocational Rehabilitation

1. This form must be accompanied by a completed Application for Hearing, Form E-1, unless Form E-1 previously filed for this accident.
2. This form must be accompanied by a copy of a notice letter required by K.S.A. 44-534 a(a).

_____
Applicant's Signature

Signed this _____ day of _____, 19____

DO NOT WRITE IN THIS SPACE

Attorney for Applicant: _____

Address: _____

House Labor & Industry
Attachment # 32
01-23-90

K-WC E-3 (Rev. 12-89)

Kansas Supreme Court Number: _____

Department of Human Resources
DIVISION OF WORKERS COMPENSATION
600 Merchants Bank Tower, 800 SW Jackson
Topeka, Kansas 66612-1227

NOTICE OF HANDICAP, DISABILITY OR PHYSICAL IMPAIRMENT

Employer: _____

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

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

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

_____
(Employer or Agent)

_____
(Date)

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

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

KANSAS
WORKERS COMPENSATION WORKBOOK

Workbook for use in computing Workers Compensation benefits.

Prepared by

Statistical Services Unit

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

House Labor & Industry
Attachment #34
01-23-90

TABLE OF CONTENTS

DEFINITIONS

GENERAL BODY INJURY - an injury that affects the trunk of the body, the head or multiple **major** scheduled injuries.

TEMPORARY TOTAL - the period of time that the injured worker has been rendered completely but temporarily incapable of engaging in any type of substantial and gainful employment.

PERMANENT PARTIAL - general disability exists when a worker is disabled in a manner which is partial in character and permanent in quality, and which is **not covered by the schedule.**

PERMANENT TOTAL - disability exists when the employee, because of an injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment.

TEMPORARY PARTIAL - general disability exists when a worker is disabled in a manner which is partial in character and temporary in quality, and which is **not covered by the schedule.**

SCHEDULED INJURY - an injury that affects the extremities of the body such as the arms, legs, hands or fingers.

HEALING PERIOD - in proper cases a healing period may be allowed according to K.S.A. 51-7-8. The healing period allows additional compensation in certain cases in the following manner, (1) 10% of allowed schedule, (2) no longer than 15 weeks, (3) ends when worker returns to work.

TEMPORARY TOTAL

Temporary Total disability exists when the injured worker has been rendered completely but temporarily incapable of engaging in any type of substantial and gainful employment.

This condition usually exists on both scheduled and general body injuries.

FORMULA

Average Weekly Wage multiplied by .6667 = Temporary total benefit (not more than maximum for date of accident)

Example: Date of accident 7-23-84 WAGE: $350.00

$350.00
x.6667
$233.34

The statutory maximum for the date of accident is $227.00. Two-thirds is more than the maximum therefore you would use $227.00.

Example: Date of accident 7-23-84 WAGE: $275.00

$275.00
x.6667
$183.34

This amount does not exceed the statutory maximum for the date of accident so the $183.35 would be used for this computation.

FORMULA FOR COMPUTING TEMPORARY TOTAL BENEFITS

AVERAGE WEEKLY WAGE TIMES .6667

Check the date of the accident so that you will not exceed the statutory maximum.

1. Date of accident - 7-24-86
   Average weekly wage - $225.31

2. Date of accident - 8-19-85
   Average weekly wage - $240.00

3. Date of accident - 10-23-87
   Average weekly wage - $350.00

4. Date of accident - 3-20-89
   Average weekly wage - $275.00

5. Date of accident - 4-28-85
   Average weekly wage - $315.00

6. Date of accident - 3-5-84
   Average weekly wage - $385.05

7. Date of accident - 11-22-87
   Average weekly wage - $400.00

8. Date of accident - 7-12-89
   Average weekly wage - $396.00

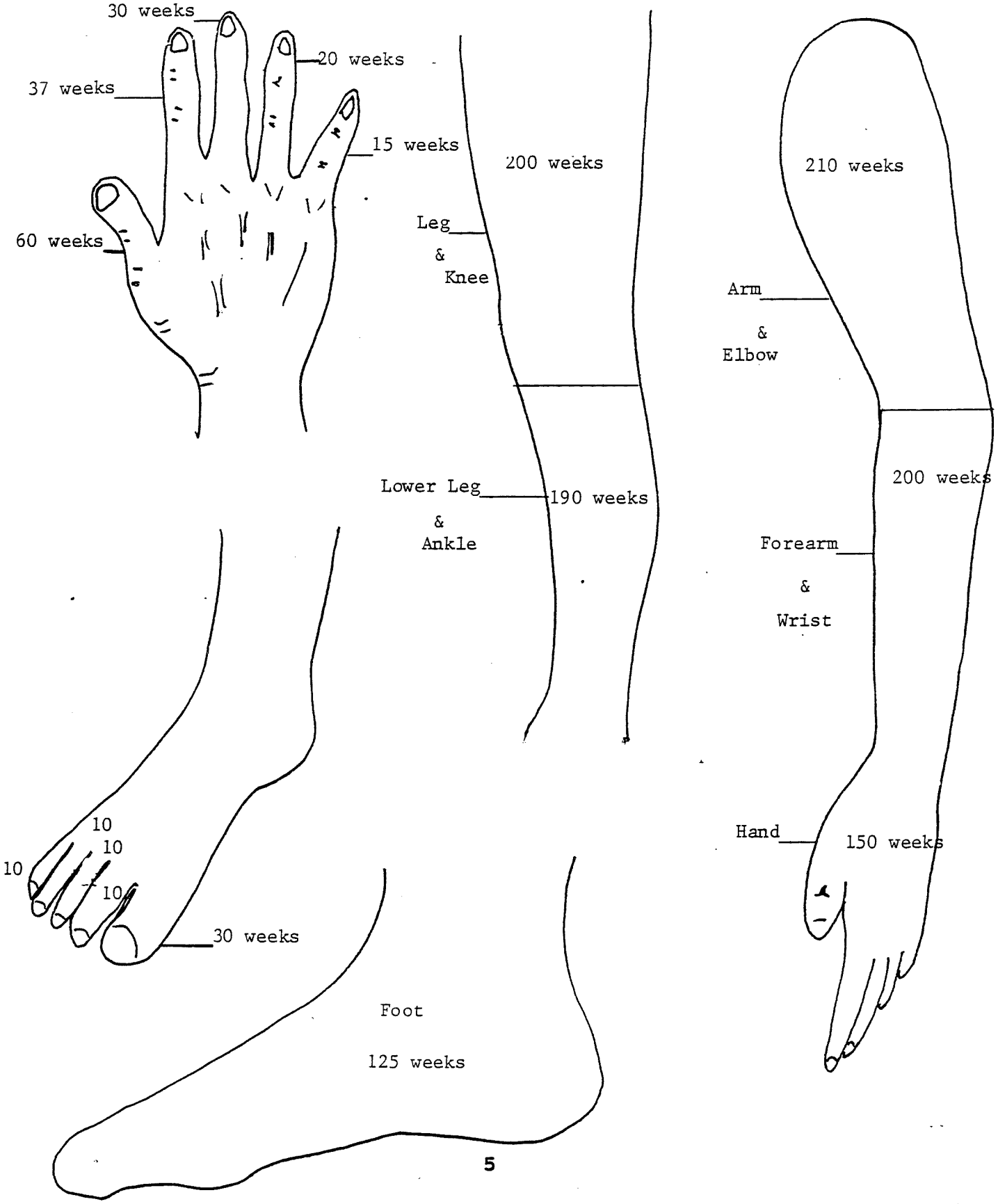
SCHEDULED INJURIES

Scheduled injuries are the injuries that a worker has sustained that affect the extremities of the body such as the arms, legs, hands or fingers, etc.

Each extremity has a scheduled amount of weeks that pertain to that particular part of the body.

SCHEDULE	WEEKS
Arm	210
Forearm	200
Hand	150
Leg	200
Lower Leg	190
Foot	125
Eye	120
Hearing both ears	110
Hearing one ear	30
Thumb	60
1/2 Loss	30
First Finger (index)	37
2/3 loss	24.67
1/2 loss	18.50
Second Finger (middle)	30
2/3 loss	20
1/2 loss	15
Third Finger (ring)	20
2/3 loss	13.33
1/2 loss	10
Fourth Finger (little)	15
2/3 loss	10
1/2 loss	7.5
Great Toe	30
Great Toe (end joint)	15
Each Other Toe	10
Each Other Toe (end joint)	5

SCHEDULED INJURIES



SCHEDULE INJURY COMPUTATION

PROBLEM

Date of accident 7-23-83
Leg injury
30% loss of use
10 weeks lost time (temporary total)
$375.00 average weekly wage

1. Find the weekly compensation rate.
Average weekly wage times .6667 = Weekly compensation rate

Example:		
	$375.00	Wage
	x.6667	Statutory percentage
	$250.01	Weekly compensation rate (cannot exceed maximum for date of

2. 200 weeks on schedule for a leg injury.

3. Subtract the weeks of temporary total from the schedule.

Example:		
	200	Weeks on schedule
	-10	Weeks of temporary total
	190	Weeks remaining

4. Multiply the remaining weeks times the percent of disability to determine the number of weeks of permanent partial disability compensation.

Example:		
	190	Remaining weeks
	x 30%	Percent of disability
	57	Weeks of permanent partial disability

5. Multiply the weeks of permanent partial disability by the compensation rate found in step one.

Example:		
	$218	Weekly compensation rate
	57	Weeks of permanent partial disability
	$12,426	Total permanent partial compensation

6. Total compensation for temporary total and permanent partial disability.

$2,180.00 temp total for 10 weeks
$12,426.00 perm partial for 57 weeks
$14,606.00

SCHEDULE INJURY COMPUTATION

PROBLEM

Date of accident 4-02-87
Leg injury
40% loss of use
7 weeks lost time (temporary total)
$416.00 average weekly wage

1. **Find the weekly compensation rate.**
   Average weekly wage times .6667 = Weekly compensation rate

2. **200 weeks on schedule for a leg injury.**

3. **Subtract the weeks of temporary total from the schedule.**

4. **Multiply the remaining weeks times the percent of disability to determine the number of weeks of permanent partial disability compensation.**

5. **Multiply the weeks of permanent partial disability by the compensation rate found in step one.**

6. **Total compensation for temporary total and permanent partial disability.**

SCHEDULE INJURY COMPUTATION

PROBLEM

Date of accident 8-14-86
Forearm injury
18% loss of use
42.29 weeks lost time (temporary total)
$335.30 average weekly wage

1. Find the weekly compensation rate.
Average weekly wage times .6667 = Weekly compensation rate

2. 200 weeks on schedule for a forearm injury.

3. Subtract the weeks of temporary total from the schedule.

4. Multiply the remaining weeks times the percent of disability to determine the number of weeks of permanent partial disability compensation.

5. Multiply the weeks of permanent partial disability by the compensation rate found in step one.

6. Total compensation for temporary total and permanent partial disability.

DISCOUNTS ON LUMP SUM SETTLEMENTS - SCHEDULED

A DISCOUNT OF UP TO 8% IS ALLOWED ON FUTURE COMPENSATION PAID IN A LUMP SUM

Lump sum settlement means that the parties have agreed to have all past and future compensation paid at one time rather than making weekly payments as each becomes due. When the parties have agreed to the lump sum payment the employer is entitled to a discount of up to eight percent on future compensation only.

FORMULA
Add the weeks of temporary total compensation and the weeks of permanent partial compensation together and subtract the number of weeks from the date of accident to the date of settlement. The difference multiplied by the weekly rate of compensation and that result multiplied by eight percent equals the discount.

EXAMPLE
Leg injury (200 week schedule)
20% loss of use
Date of accident 7-23-80
10 weeks of lost time
26 weeks from date of accident to date of settlement

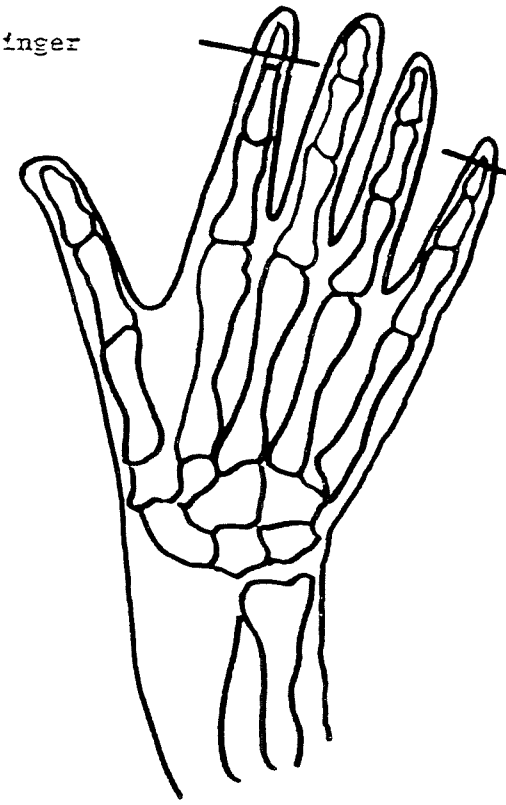
1.
```
   200  weeks on schedule for leg
 - 10   weeks of temporary total
  190   weeks
 x 20%  loss of use
    38  weeks
 x$170  comp rate
$6,460
+1,700  temp total
 8,160  total compensation
```

2.
```
    10  weeks of temp total
 + 38   weeks
    48  weeks
 - 26   weeks from date of accident to settlement date
    22  future weeks
 x $170 compensation rate
$3,740
 x  8%  discount
$299.20 amount of discount
```

3. Worker would actually receive $7,860.80 for this injury.

AMPUTATIONS

50% loss of finger



If any part of bone removed, compute as amputation

2/3 loss of finger

100% loss of finger

50% loss of Thumb

100% loss of Thumb

34-12

HEALING PERIOD

In proper cases a healing period may be allowed according to K.S.A. 51-7-12, in the following manner:

1. **Not more than 10% of allowed schedule.**

2. **Not longer than 15 weeks.**

3. **Not longer than actual time lost.**

EXAMPLE

Foot injury
9 Weeks of Temporary Total

1. 125 weeks on the schedule for a foot injury.
   10% of the schedule would be 12.5 weeks.

   The Healing period would be all of the 9 weeks of lost time since it is less than 10% of the schedule and less than the 15 week maximum.

EXAMPLE

Forearm Injury
23 Weeks of Temporary Total

2. 200 weeks on the schedule for a forearm injury.
   10% of the schedule would be 20 weeks.

   The Healing period would be 15 weeks since 10% of the schedule and the actual lost time both exceed the 15 week maximum.

EXAMPLE

Thumb injury
5 Weeks of Temporary Total

3. 60 weeks on the schedule for a thumb injury.
   10% of the schedule would be 6 weeks.

   The Healing period would be 5 weeks since the actual lost time was less than 10% of the schedule and less than the 15 week maximum.

AMPUTATION

PROBLEM

Date of accident 6-30-87
Thumb
Amputation TO joint (not including)
10 weeks lost time
$350.00 Average weekly wage

1. Find the weekly compensation rate.
Average weekly wage times .6667 = Weekly compensation rate

$350 X .6667 = $233.34 (Maximum $247, Use $233.34)

2. 60 weeks on schedule for LOSS OF thumb. (Check pg.4)

3. Add the additional compensation healing period weeks allowed. (Check the guidelines for a healing period pg.11)
60 + 6 = 66 compensable weeks

4. Subtract the Temporary Total weeks.
66
- 10 TT weeks
56 weeks

5. Multiply the allowed weeks times the weekly compensation rate.
56 weeks X $233.34 = $13,067.04

6. Total Compensation for this injury =

Temporary Total Weeks	**$2,333.40**
Permanent Partial Wks	**$13,067.04**
	$15,400.44

AMPUTATION

PROBLEM

Date of accident 7-1-84
Little finger
50% loss
no lost time (temporary total)
$350.00 Average weekly wage

1. Find the weekly compensation rate.
Average weekly wage times .6667 = Weekly compensation rate

2. ____ weeks on schedule for LOSS OF 50% little finger. (Check pg.4)

3. Add the additional compensation healing period weeks allowed. (Check the guidelines for a healing period on pg.11)

4. Subtract the Temporary Total Weeks.

5. Multiply the allowed weeks times the weekly compensation rate.

6. Total Compensation for this injury.

AMPUTATION

PROBLEM

Date of accident 6-3-86
Middle finger
66 2/3 % loss
6 weeks temporary total
$425.00 Average weekly wage

1. Find the weekly compensation rate.
Average weekly wage times .6667 = Weekly compensation rate

2. ____ weeks on schedule for LOSS OF 66 2/3 of middle finger.
(Check pg.4)

3. Add the additional compensation healing period weeks allowed. (Check the guidelines for a healing period on pg. 11)

4. Subtract temporary total weeks.

5. Multiply the remaining weeks times the weekly compensation rate.

6. Total compensation for this injury.

34-16

REPETITIVE USE CONDITIONS IN OPPOSITE UPPER EXTREMITIES

Prior to July 1, 1987, a repetitive use condition such as bilateral carpal tunnel syndrome was considered a general body disability and computed as a general body injury.

After July 1, 1987, computation of compensation for bilateral carpal tunnel syndrome caused by repetitive use is not like other computation methods. Compensation is computed in a manner similar to two scheduled injuries with one additional step combining the two computations and increasing the total by 20%

BILATERAL CARPAL TUNNEL SYNDROME CAUSED BY SINGLE ACCIDENT IS STILL COMPUTED AS GENERAL BODILY INJURY.

PROBLEM

Date of accident 7-1-87
Average weekly wage $242.62
Disability: 10% loss of use of the right forearm
30% loss of use of the left forearm
After July 1,1987, the compensation is computed as follows:

RIGHT FOREARM

1. Find the temp total rate.

$242.62	Wage
x.6667	Statutory %
$161.75	temp total rate

200	Forearm schedule
-15	Weeks of lost time
185	Remaining weeks
10%	Loss of use
18.5	Weeks PP comp

LEFT FOREARM

2. Find the temp total rate.

$242.62	Wage
x.6667	Statutory %
$161.75	temp total rate

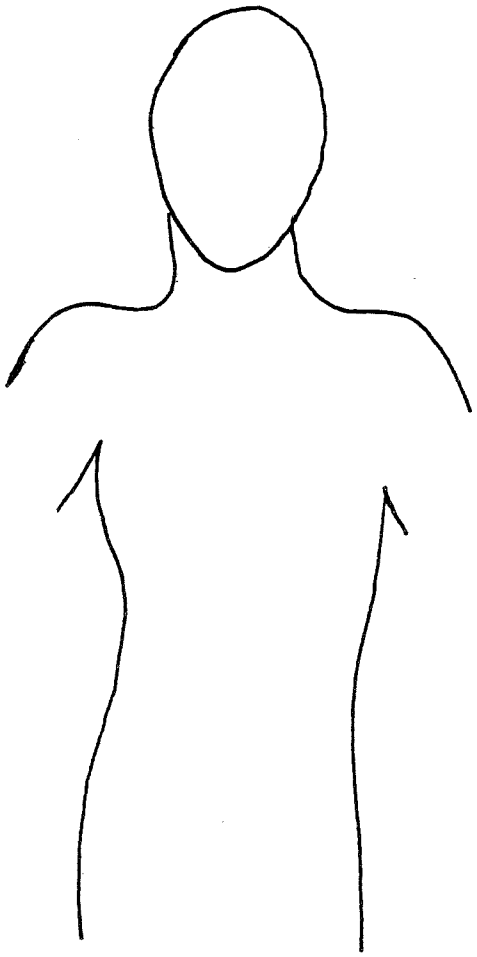
200	Forearm schedule
-4	Weeks of lost time
196	Remaining weeks
30%	Loss of use
58.8	Weeks PP comp

3. Combine the allowed weeks of compensation for the right and left forearms, multiply the sum by 20% and add **that** result to the sum of the combined weeks.

18.5	Weeks of compensation for R forearm
+58.8	Weeks of compensation for L forearm
77.3	Combined weeks Permanent Partial Compensation.
x 20%	Statutory allowance
15.46	Additional weeks

77.30	Combined weeks
+ 15.46	Additional weeks
92.76	Total weeks for bilateral injury
x161.75	Comp rate
$15,003.93	Total comp for bilateral injury

GENERAL BODY INJURIES



415 WEEKS IS THE MAXIMUM NUMBER OF WEEKS ALLOWED FOR A GENERAL BODY INJURY OR THE MAXIMUM TOTAL DOLLARS. (A COMBINATION OF MAJOR SCHEDULED INJURIES ALSO CONSTITUTES A GENERAL BODY INJURY).

GENERAL BODY INJURY

There is both a maximum week limit and a maximum dollar limit on general body injuries. 415 weeks is the maximum number of weeks allowed for a general body injury. The dollar limit depends on the date of accident.

When computing the compensation benefits for a general body injury, it is necessary to find **two rates**, the **temporary total rate** and the **permanent partial rate.**

FORMULA FOR TEMPORARY TOTAL RATE:
Wage times .6667 = Temporary total rate

FORMULA FOR PERMANENT PARTIAL RATE:
Wage X % of disability X .6667 = Permanent partial rate
(Not more than statutory maximum for the date of accident)

PROBLEM

Date of accident 3-10-89
Average weekly wage $560.00
Disability 35% (back injury)
Off work 10 weeks

STEP I - Always find weekly compensation rate.
$560.00 Average weekly wage
x .6667
$373.35 Over statutory maximum for date of accident - use maximum of $263.00

STEP II -Count number of temporary total weeks.
10 weeks unable to work

STEP III - Subtract temporary total weeks from 415 weeks to find number of weeks of permanent partial.
405 week to receive permanent partial compensation

STEP IV - Figure the permanent partial rate:
(Average weekly wage X percent of disability X .6667 = Permanent Partial Rate)
$560.00 Average weekly wage
x 35% Disability
196.00
x .6667
$130.67 Permanent Partial Rate

STEP V - Take the permanent partial rate times the remaining weeks in Step III.
$130.67
x 405 Weeks
$52,921.35

TOTAL AWARD OF COMPENSATION $55,551.35

PERMANENT PARTIAL WEEKLY RATE

Formula: Average weekly wage times percent of disability times .6667 equals permanent partial rate.

1. 2/28/84 - Date of Accident
   $324.48 - Average Weekly Wage
   15% - Disability

2. 5/26/85 - Date of Accident
   $205.97 - Average Weekly Wage
   40% - Disability

3. 9/23/86 - Date of Accident
   $335 - Average Weekly Wage
   25% - Disability

4. 7/8/87 - Date of Accident
   $275.80 - Average Weekly Wage
   20% - Disability

5. 2/2/88 - Date of Accident
   $324 - Average Weekly Wage
   50% - Disability

6. 10/22/89 - Date of Accident
   $397 - Average Weekly Wage
   30% - Disability

FIVE STEPS FOR COMPUTING GENERAL BODY INJURIES

1. DETERMINE THE TEMPORARY TOTAL RATE.
Average weekly wage X .6667 =

2. Count the number of temporary total weeks to be paid at the rate found in #1.

3. Subtract temporary total weeks from 415 to find number of weeks of permanent partial.

4. Figure the permanent partial rate.
Average weekly wage X percent of disability X .6667 =

5. Take the permanent partial rate times the remaining weeks in Step 3.

Example Problem:

Date of accident 2-28-88
Average weekly wage $425.48
Disability 55%
10 weeks of temporary total

1) $425.48
x .6667
$283.66 (Over Statutory Maximum
Use $256.00)

2) 10 weeks of temporary total

3) 415
- 10
405 weeks to receive permanent partial compensation.

4) $425.48
x 55%
$234.01
.6667
$156.01 Permanent Partial Rate

5) 405 weeks
x156.01
$63,184.05 Permanent Partial Compensation

Total Compensation

10 weeks at $256.00	**=**	**$2,560.00**
405 weeks at $156.01	**=**	**$63,184.05**
		$65,744.05

FIVE STEPS FOR COMPUTING GENERAL BODY INJURIES

1. DETERMINE THE TEMPORARY TOTAL RATE.
Average weekly wage X .6667 =

2. Count the number of temporary total weeks to be paid at the rate found in #1.

3. Subtract temporary total weeks from 415 to find number of weeks of permanent partial.

4. Figure the permanent partial rate.
Average weekly wage X percent of disability X .6667 =

5. Take the permanent partial rate times the remaining weeks in Step 3.

Problem:

Date of accident 12-8-86
Average weekly wage $184.83
Disability 50%
14 weeks of temporary total

FIVE STEPS FOR COMPUTING GENERAL BODY INJURIES

1. DETERMINE THE TEMPORARY TOTAL RATE.
Average weekly wage X .6667 =

2. Count the number of temporary total weeks.

3. Subtract temporary total weeks from 415 to find number of weeks of permanent partial.

4. Figure the permanent partial rate.
Average weekly wage X percent of disability X .6667 =

5. Take the permanent partial rate times the remaining weeks in Step 3.

Problem:

Date of accident 3-10-89
Average weekly wage $560.00
Disability 35%
10 weeks of temporary total

TEMPORARY PARTIAL

44-510e.....Weekly compensation for **temporary partial** general disability **shall be 66 2/3 of the difference between the average gross weekly wage** that the employee **was earning prior** to such injury as provided in the workers compensation act **and the amount the employee is actually earning** after such injury in any type of employment,...

Example Problem:

Date of accident: 5-30-87
Average Weekly Wage: $300.00
200.00 temporary partial
Disability: 10%

8 weeks of temporary total
2 weeks of temporary partial

1. Determine the rate for temporary total, temporary partial and permanent partial.

a) Temporary Total - Average weekly wage X .6667 = $200.01
b) Temporary Partial - Average weekly wage $300
Partial Wage -$200
$100 X .6667 = $66.68

c) Permanent Partial - Average weekly wage $300 X (percent of disability) 10% X .6667 = $20.00

2. Determine number of weeks for temporary total, permanent partial and temporary partial.

415 weeks for general body injury
- 8 weeks for temporary total
407
- 2 weeks for temporary partial
405 weeks for permanent partial

3. Total Award

8 weeks at	$200.01 =	$1,600.08
2 weeks at	$ 66.68 =	133.36
405 weeks at	$ 20.00	8,100.00
		$9,833.44

DISCOUNTS ON LUMP SUM SETTLEMENTS - GENERAL BODY

A DISCOUNT OF UP TO EIGHT PERCENT IS ALLOWED ON FUTURE COMPENSATION PAID IN A LUMP SUM

Lump sum settlement means that the parties have agreed to have all past and future compensation paid at one time rather than making weekly payments as each becomes due. When the parties have agreed to the lump sum payment the employer is entitled to a discount of up to eight percent on FUTURE COMPENSATION only.

FORMULA
Subtract the weeks from the date of the accident to the date of the settlement from 415 weeks and multiply the difference times the permanent partial rate and that result times the eight percent equals the discount.

EXAMPLE
General body injury (415)
20% disability
Date of accident 5-5-86
10 weeks of lost time
Average weekly wage $350.00
Date of settlement 10-12-87
TT COMP RATE - $233.34

1.	415	Weeks of general disability
	-10	Weeks of temporary total
	405	Remaining weeks
2.	$350.00	Average weekly wage
	x.6667	Statutory percentage
	$233.35	Temporary total rate
3.	$350.00	Average weekly wage
	x20%	General disability
	$70.00	
	x.6667	Statutory percentage
	$46.67	Permanent partial rate

4. Number of weeks from the date of accident to date of the settlement is 75 weeks. Subtract this amount from the 415 to determine the weeks of FUTURE COMPENSATION.

5.	340	Weeks of future compensation
	$46.67	Permanent partial rate
	$15,867.80	8% discount may be taken on this amount
6.	$15,867.80	Future compensation
	x8%	
	$1,269.42	Discount

ANSWERS

PROBLEMS PG.3

1. Statutory Max $247 Use $150.21
2. Statutory Max $239 Use $160.00
3. Statutory Max $256 Use $233.34
4. Statutory Max $263 Use $183.34
5. Statutory Max $227 Use $210.01
6. Statutory Max $218 Use Maximum ($256.71 over maximum)
7. Statutory Max $256 Use Maximum ($266.68 over maximum)
8. Statutory Max $271 Use $264.01

PROBLEM PG.7

Date of accident 4-02-87
Leg injury
40% loss of use
7 weeks lost time (temporary total)
$416.00 average weekly wage

1. $247.00 (maximum)
2. 200 weeks on schedule for a leg injury.
3. 193 weeks
4. 77.20 compensable weeks
5. 77.20 weeks permanent partial = $19,068.40
6. Total compensation for temporary total and permanent partial disability.

7 weeks temporary total at $247.00 = $1,729.00
77.20 weeks of permanent partial at $247.00 = $19,068.40
Total compensation $20,797.40

PROBLEM PG.8

Date of accident 8-14-86
R forearm
18%
42.29 weeks lost time (temporary)
$335.30

1. $223.54
2. 200 weeks on schedule for forearm injury
3. 157.71 weeks
4. 28.39 compensible weeks
5. 43.29 X $223.54 = $6,346.30
6. Total Compensation
   42.29 weeks temporary total at $223.54 per week = $9,453.51
   28.39 weeks permanent partial at $223.54 per week = $6,346.30
   Total $15,799.81

ANSWERS

PROBLEM PG.13

Date of accident 7-1-84
Little finger
50% **Loss**
no lost time
$350.00 Average weekly wage

1. $227.00 (Maximum)
2. 7.5 weeks
3. No healing period
4. No lost time
5.
6. $1,702.50

PROBLEM PG.14

Date of accident 6-3-86
Middle finger
66 2/3 **Loss**
6 weeks temporary total
$425.00 Average weekly wage

1. $239 (Maximum)
2. 20 weeks
3. 20 weeks plus 2 weeks healing = 22 weeks
4. 16 weeks
5. $3,824.00
6. Total compensation

Temporary Total	$1,434.00
Permanent Partial	$3,824.00
	$5,258.00

PROBLEMS PG.18

1. $32.44
2. $54.92
3. $55.83
4. $36.77
5. $108.00
6. $79.40

ANSWERS

PROBLEM PG.20

Date of accident 12-8-86
Average weekly wage $184.83
Disability 50%
14 weeks of temporary total

1. $123.23
2. 14 weeks TT
3. 401 weeks
4. $61.62
5. $24,434.84
6. Total Compensation

14 weeks tt at $123.23 =		$1,725.22
401 weeks pp at $ 61.62 =		$24,709.62
		$26,434.84

PROBLEM PG.21

Date of accident 3-10-89
Average weekly wage $560.00
Disability 35%
10 weeks of temporary total

1. $263.00
2. 10 weeks
3. 405
4. $130.67
5. $52,921.35
6. Total Compensation

10 weeks tt at $263.00 =		$2,630.00
405 weeks pp at $130.67 =		$52,921.35
		$55,551.35

Kansas Department of Human Resources
Division of Industrial Safety and Health
512 S.W. Sixth
Topeka, Kansas 66603-3150

Place Stamp Here

Kansas On-site Safety and Health Consultation Program

On-site Consultants Will .....

* Help employers recognize hazards in the workplace.
* Suggest general approaches or options for solving a safety or health problem.
* Identify kinds of help available to the employer if further assistance is required.
* Provide the employer with a written report summarizing findings.

On-site Consultants Will Not .....

* Issue citations or propose penalties for violations of OSHA standards.
* Report possible violations to OSHA enforcement staff.
* Guarantee that any workplace will "pass" an OSHA inspection.
* Prescribe specific engineering designs or identify specific firms to solve problems.

K-ISH 100 (2-88)

FREE

Safety and Health Consultation Services

Creating a Safe Workplace

House Labor + Industry
Attachment #35
01-23-90

KANSAS KDHR DEPARTMENT OF HUMAN RESOURCES

No Citations
No Penalties

Section 5(a)(1) of the Occupational Safety and Health Act sets forth an employer's obligation to provide, so far as possible, every working man and woman in the nation a safe and healthful workplace. The consultation service is partially funded by the federal government and is provided to assist employers in meeting this obligation by the recognition, evaluation, and control of hazards in the workplace on a voluntary basis -- **without citations or penalties.**

The consultant will walk through the facility, or facilities, explain any violations of rules and regulations, and point out hazards present. The hazards will be classified as serious or non-serious, depending on the severity of the potential injury that may occur as a result of the hazard. The employer must agree to abate any serious hazards present within a reasonable time. Technical assistance may be offered by the consultant to assist the employer in abatement of the hazard.

Other benefits from the consultation visit are:

(1) The potential for reduction in workers compensation claims;
(2) Reduction of lost time as a result of injuries;
(3) Less reduction in the flow of goods due to down time;
(4) Increased employee morale and productivity;
(5) Less obvious, but equally important, are the costs of injuries and illnesses which are not covered by insurance.

The intangible costs of industrial accidents and disease - although difficult to measure - are just as real as insurance premiums.

Consultations may be provided on a request basis at **no cost** to the employer. Requests for this service may be made by phone or by mail. If additional information is needed, please contact our office and one of our experienced state consultants will contact you to set up an appointment for a personal visit to more fully explain the program.

Kansas Department of Human Resources
Division of Industrial Safety and Health
512 S.W. Sixth
Topeka, Kansas 66603-3150
(913) 296-4386

Free On-site
Consultation Services

An on-site consultation can assist you as an employer to learn which OSHA standards are pertinent to your work environment. The consultant can offer advice and technical assistance to help you as an employer to achieve compliance with OSHA safety and health regulations.

The consultation may include the entire facility, or facilities, or be limited to any part of the facility or process. Follow-up service also is provided.

Within a reasonable time following the consultation, a written report, referenced to applicable OSHA regulations, will be provided covering the information discussed by the consultant during the consultation. All reports and other information on the consultation will be kept **CONFIDENTIAL.**

☐ Yes, I would like to take advantage of the Kansas Department of Human Resources' *Free Consultation Assistance Program*

☐ Safety ☐ Health Date of Request _____ Number of Employees _____

☐ I would like to have a consultant phone and provide more information.

Company _____ Type of Business _____

Address _____ City _____ Zip Code _____ Telephone _____

Name of Person to Contact _____ Title _____

Requested by (authorized representative's signature) _____ Title _____ Date _____

35-2

R87-6
5-89

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

VOCATIONAL REHABILITATION REPORTING GUIDELINES

THE PARTY RESPONSIBLE FOR COMPLETING THESE REPORTS MUST PROVIDE A COPY TO ALL PARTIES INVOLVED, INCLUDING ATTORNEYS IF CLAIMANT IS REPRESENTED.

R87-1 INSURANCE CARRIER STATUS REPORT

Required from carriers/employers to report the following:

a. Workers who have lost 90 days of work due to a work related injury
b. Workers who have been previously reported to the Division and an update on the condition is requested or needed due to a change in status
c. Workers referred to a vendor or agency for medical management
d. Workers who have been referred to a vendor for vocational evaluation or services. This includes new referrals and referrals previously referred for medical management.

R87-2 VENDOR REFERRAL REPORT

Required from vendors to report the following:

a. Receipt of all referrals for medical management
b. Receipt of all referrals for vocational assessment

R87-3a VOCATIONAL ASSESSMENT/EVALUATION

Required from qualified rehabilitation counselors to report on all referrals.

a. Determination of the need for vocational rehabilitation services to return the injured worker to the open labor market at comparable wages.
b. Results of a formal evaluation performed by a qualified vocational evaluator.

R87-3b VOCATIONAL REHABILITATION PLAN

Required from qualified rehabilitation counselors to report the following:

House Labor + Industry
Attachment #36
01-23-90

Documentation of the services needed to return the injured worker to the open labor market at a comparable wage. The plan must be developed with the input of the claimant. Services and responsibilities must be clearly identified. Unless an R87-3a and medical documentation have been previously filed with the Division, they must accompany the plan when submitted to the Division. The plan should be signed by the counselor and claimant. The claimant views regarding the plan must be stated. The Rehabilitation Section will attempt to mediate any disagreements.

R87-3c PLAN AMENDMENT

Required from qualified rehabilitation counselors to report the following:

An amendment to an approved rehabilitation plan. Changes in the plan must be justified and discussed with the claimant. Both parties should sign the proposed amendment. The claimants views regarding the amendment must be stated. The Rehabilitation Section will attempt to mediate any disagreements.

R87-3d ASSESSMENT/ PLAN REVIEW FORM

Required from the Rehabilitation Section of the Division to report the following:

a. Approval/disapproval of an assessment for the need for vocational rehabilitation services.
b. Approval/disapproval of a rehabilitation plan or plan amendment.
c. Results of mediation
d. Comments or recommendations on an assessment or proposed plan or plan amendment

R87-4a REHABILITATION VENDOR PROGRESS REPORT

Required from medical managers to report on the following cases

(1) where the Division has requested a progress report
(2) when the claimant has reached maximum medical improvement

Required from qualified rehabilitation counselors to report the following:

Case progress and identification of issues that need to be resolved before the assessment or plan can be completed; to be submitted within 30 days after a referral for vocational assessment and at 30 day intervals until the assessment is completed and/or the plan developed. Progress reports should continue to be submitted on claimants who are referred for vocational and during the process are temporarily placed in medical management.

NOTE: Vendor reports to the insurance carrier may be submitted in place of the R87-4a if the report clearly addresses the issues specified above.

R87-4b VOCATIONAL PLAN PROGRESS REPORT

Required from qualified rehabilitation professionals to report the following:

Progress toward achieving the approved plan and problems that are interfering with plan completion; reports due at 30 day intervals after the plan has been approved and implemented.

NOTE: Vendor reports to the insurance carrier may be submitted in place of the R87-4b if the report clearly addresses the issues specified above.

R87-5 CLOSURE REPORT

Required from vendors to report the following:

Closure status on vocational rehabilitation cases. This information will be used to report the effectiveness of rehabilitation on returning injured workers to competitive employment. Cost for vocational rehabilitation only should be reported.

R87-7 MEDICAL MANAGEMENT CLOSURE REPORT

Required from medical managers to report the following:

All medical management case closures. A copy of this report is required to be sent to all parties, including attorneys if the claimant is represented.

If claimant has returned to a modified or accomodated job there must be documentation of specific modifications and/or modifications and an opinion on whether the position is within the claimant's permanent restrictions.

R87-1,04-88

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

INSURANCE CARRIER STATUS REPORT

TO: Division of Workers Compensation
Rehabilitation Administrator
Landon State Office Bldg, 651-S
900 SW Jackson Street
Topeka, Kansas 66612

From (Insurance Carrier):_____
Address:_____
City, State:_____ZIP:_____
Ins Ca File No_____
Adjustor:_____ Phone(____) ____-_____

Re: Claimant:_____SSN:_____
Street:_____
City, State :_____ZIP_____
Phone: (____)_____ -_____Date of Birth_____
Employer:_____
Job description:_____
_____
Accident date:_____

Claimant has lost_____days as of_____ _____ 198__.
(DATE FORM COMPLETED)

==========

We have referred claimant on _____ _____ 198__ to_____
_____(vendor) for medical management to assist claimant in obtaining maximum medical improvement.

We have referred claimant on ____ _____ 198___to_____
_____(vendor) to determine whether vocational rehabilitation services are needed.

==========

We have not made a referral because:

_____Claimant returned to work on _____ _____ 198___.

_____The claim is being denied as not compensable.

_____Claimant's medical condition has not stabilized.
Prognosis as to when condition will stabilize _____ _____ 198___
_____Temporary total compensation (is) (is not) being paid. **(Circle one)**

_____Claimant will return to work for the same employer when released by attending physician. Estimated return to work date_____.
_____Other_____

36-4

R87-2,05-89

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

VENDOR REFERRAL REPORT

Use this form to report referrals for assessment of vocational rehabilitation services. Referrals for medical management must be reported on this form if the claimant has remained off work for 90 days.

DATE REFERRAL RECEIVED FOR MEDICAL MANAGEMENT_____
DATE REFERRAL RECEIVED FOR VOCATIONAL ASSESSMENT_____
REFERRED BY_____

VENDOR:_____Vendor No._____
Address:_____
_____
City, State ZIP:_____
V R Counselor/Medical Manager:_____
QRP No. :_____**Phone**(_____)_____-_____

INSURANCE CARRIER:_____
Address:_____
_____
City, State ZIP:_____
Adjuster:_____
Ins Ca File No:_____
Phone:(_____) _____-_____

CLAIMANT:_____
Address:_____
City, State ZIP:_____
SSN:_____ Date of Birth_____
Phone:(_____) _____-_____
Date of Accident:_____

EMPLOYER:_____PHONE:(___)____-_____
Address:_____
_____

ATTORNEY:_____

NATURE OF INJURY OR DISABILITY:_____
_____
_____

ATTACH A COPY OF THE ACCIDENT REPORT IF AVAILABLE. IF R87-1 IS ATTACHED AN IF INFORMATION UNDER HEADINGS INSURANCE CARRIER, CLAIMANT AND EMPLOYER ARE THE SAME THERE IS NO NEED TO COMPLETE THOSE SECTIONS.

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_____

SUMMARY

THIS SECTION SHOULD DOCUMENT AND PROVIDE RATIONAL FOR THE CLAIMANT NEEDING OR NOT NEEDING REHABILITATION SERVICES. IDENTIFY THE SPECIFIC PROBLEMS OR OBSTACLES THE CLAIMANT WILL HAVE IN RETURNING TO WORK IN THE OPEN LABOR MARKET AND EARNING COMPARABLE WAGES.

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:

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

VOCATIONAL REHABILITATION PLAN

THIS PLAN MUST ADDRESS THE SPECIFIC PROBLEMS IDENTIFIED IN THE ASSESSMENT.

CLAIMANT_____ SSN_____

WEEKLY EARNINGS AT D/A_____
ESTIMATED WEEKLY EARNINGS AT PLAN COMPLETION_____

IDENTIFY PLAN PRIORITY:
_____SAME WORK - SAME EMPLOYER
_____SAME WORK WITH ACCOMODATION - SAME EMPLOYER
_____OTHER WORK WITH OR WITHOUT ACCOMODATION -SAME EMPLOYER
_____SAME WORK - ANOTHER EMPLOYER
_____OTHER WORK - ANOTHER EMPLOYER
_____RE-EDUCATION AND TRAINING

ALTERNATE PRIORITIES CONSIDERED: REASONS PRECEEDING PRIORITIES REJECTED:

VOCATIONAL GOAL: DOT CODE_____

JOB DESCRIPTION:

CLAIMANT'S NAME_____

PLAN RATIONALE

DOCUMENTATION OF CLAIMANT'S ABILITIES TO PERFORM SELECTED VOCATIONAL OBJECTIVE (MUST BE IN ACCORDANCE WITH VOCATIONAL ASSESSMENT/EVALUATION; ADDRESS VOCATIONAL SKILLS, EDUCATION, EXPERIENCE AND PHYSICAL CAPACITY:

AVAILABILITY OF SELECTED EMPLOYMENT AND PROJECTED WAGE:
(ATTACH COPY OF LABOR MARKET SURVEY IF COMPLETED)

SERVICES:	PROVIDED BY	BEGINNING	ENDING
1.			
2.			
3.			
4.			

TOTAL NUMBER OF WEEKS FOR PLAN COMPLETION_____

RESPONSIBILITIES FOR COMPLETING PLAN/ASSESSING PROGRESS

Claimant:

Counselor/or other individual:

CLAIMANT VIEWS(REQUIRED):

CLAIMANT SIGNATURE_____ DATE_____

COUNSELOR SIGNATURE_____ DATE_____

THIS FORM MUST BE ACCOMPANIED BY AN R87-3A
VOCATIONAL ASSESSMENT/EVALUATION

cc:

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

PLAN AMENDMENT

AMENDMENT #_____
ORIGINAL PLAN START DATE_____

CLAIMANT_____ SS#_____
VENDOR NAME_____ VENDOR ID #_____
VR COUNSELOR_____ QRP #_____
ESTIMATED WEEKLY EARNINGS AT PLAN COMPLETION_____

REASON FOR PLAN AMENDMENT:

IDENTIFY ADDITIONAL,DELETED, OR EXTENDED SERVICES:

SERVICES	BEGINNING	ENDING
1._____	_____	_____
2._____	_____	_____
3._____	_____	_____

CLAIMANT VIEWS (REQUIRED):

COUNSELOR RESPONSIBILITIES:

CLAIMANT RESPONSIBILITIES:

SIGNATURES:
CLAIMANT_____ DATE_____

COUNSELOR_____ DATE_____

cc:

R87-3d, 05-89

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

ASSESSMENT/PLAN REVIEW

(to be completed by the Division)

CLAIMANT:_____ SSN_____
DOCKET #_____

_____COMMENTS:
_____RECOMMENDATION:
_____MEDIATION:
_____APPROVED:
_____DISAPPROVED:

Signature of Reviewer_____ Date_____

Copies to:

R87-4A
05-89

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

REHABILITATION VENDOR PROGRESS REPORT

CLAIMANT_____SSN_____

VENDOR_____VENDOR #_____

DATE OF ACCIDENT_____DATE REFERRAL RECEIVED_____

Does client indicate interest in vocational rehabilitation?
YES_____NO_____Date client last seen_____
Will employer take client back? YES_____NO_____UNKNOWN_____
If yes, which priority? 1, 2, 3 (Circle one)

___MEDICAL MANAGEMENT: Report due when the claimant has reached maximum medical improvement or on cases where the Division has requested progress reports.

___VOCATIONAL ASSESSMENT: Report due 30 days from receipt of referral and each additional 30 days until assessment completed and/or plan developed. Describe progress and discuss issues to be resolved before the assessment and plan (if indicated) can be completed.

Signature_____QRP#_____ Date_____
or
Signature_____Med. Mgr. Date_____

(ATTACH ADDITIONAL SHEETS AS NEEDED)

cc:

36-14

R87-4B
05-89

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

VOCATIONAL PLAN PROGRESS REPORT

(Report due each 30 days after plan approval)

Claimant_____SSN_____D/A_____

Vendor_____Vendor #_____

QRP Name_____QRP #_____

Date claimant last seen_____
Date of next appointment_____
Does claimant continue to indicate interest in the approved rehabilitation plan?_____

Progress toward achieving the approved plan.

Problem interfering with plan completion.

Signature_____Date_____

cc:

R87-5, 05-89

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

CLOSURE REPORT

DATE OF CLOSURE_____
VENDOR NAME_____
CLAIMANT_____SSN_____
ADDRESS_____

TOTAL COST FOR VOCATIONAL REHABILITATION SERVICES EXCLUSIVE OF WEEKLY COMPENSATION, MEDICAL COSTS, AND MEDICAL MANAGEMENT COSTS: $_____

REASON FOR CASE CLOSURE

_____1. CLAIMANT HAS BEEN EMPLOYED SUCCESSFULLY FOR 60 DAYS

JOB TITLE_____DOT CODE_____

Employer_____Phone_____

Address_____

Date returned to work:_____Current average weekly wage_____
Average weekly earnings at date of accident_____

Job description:

_____2. PLAN TERMINATED PRIOR TO COMPLETION OF PLAN OR ASSESSMENT

REASON FOR TERMINATION:

COUNSELOR SIGNATURE_____QRP#_____DATE_____

cc:

36-16

K-W-C-R 87-7
R87-7, 5-89

KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF WORKERS COMPENSATION

MEDICAL MANAGEMENT
CLOSURE REPORT

DATE OF CLOSURE_____
VENDOR NAME_____
CLAIMANT_____SSN_____
ADDRESS_____
TOTAL COST FOR MEDICAL MANAGEMENT SERVICES $_____

REASON FOR CASE CLOSURE

_____1. CLAIMANT HAS RETURNED TO WORK:

JOB TITLE_____
EMPLOYER_____PHONE_____
ADDRESS_____
DATE RETURNED TO WORK:_____CURRENT AVERAGE WEEKLY WAGE_____
AVERAGE WEEKLY WAGE AT DATE OF ACCIDENT_____

COMPLETE BELOW IF ACCOMMODATED OR MODIFIED JOB
MODIFICATION/CHANGE MADE BY EMPLOYER TO ACCOMODATE THE PHYSICAL LIMITATION IMPOSED BY THE INJURY/OCCUPATIONAL DISEASE.

DOCUMENTATION OF CLAIMANT'S ABILITIES TO PERFORM SELECTED VOCATIONAL OBJECTIVE:

I AGREE TO RETURN TO WORK FOR EMPLOYER WITH CHANGES STATED IN THIS REPORT.

CLAIMANT'S SIGNATURE_____DATE_____

IT IS MY PROFESSIONAL OPINION THAT THE POSITION DESCRIBED IN THIS PLAN IS WITHIN THE MEDICAL RESTRICTIONS OF THIS CLAIMANT.

MEDICAL MANAGERS SIGNATURE_____DATE_____

_____2. CLAIMANT RELEASED TO RETURN TO SAME JOB, SAME EMPLOYER (WITHOUT RESTRICTION) DID NOT RETURN TO WORK

_____3. CLAIMANT RELEASED TO RETURN TO SAME JOB, SAME EMPLOYER (WITH RESTRICTIONS)DID NOT RETURN TO WORK

_____4. INSURANCE COMPANY REQUESTED CLOSURE. EXPLAIN BELOW.

_____5. REFERRED FOR VOCATIONAL ASSESSMENT

_____6. OTHER (EXPLAIN)

MEDICAL MANAGERS SIGNATURE_____DATE_____

COPY OF CLOSURE REPORT IS REQUIRED TO BE SENT TO CLAIMANT AND ATTORNEY IF THERE IS ONE.
TOLL FREE # 1-800-332-0353 (CLAIMANTS ONLY) TO BE USED ONLY IF THERE IS A DISAGREEMENT AND CLAIMANT WANTS TO DISCUSS WITH WORKERS COMPENSATION REHABILITATION SECTION.

cc:

JANUARY, 1990

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

ANDERSON REHABILITATION SERVICES, INC.
1133 S. Rock Road
Suite 7
Wichita, Kansas 67207
316-684-1112

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

House Labor + Industry
Attachment #37
01-23-90

CENTENNIAL REHABILITATION ASSOCIATES, INC.
10628 West 87th
Overland Park, Kansas 66214
913-492-0808

CEREBRAL PALSY RESEARCH
2021 N. Old Manor
P.O. Box 8217
Wichita, Kansas 67208
316-688-1888

CONSERVCO
9800 Metcalf, Suite 455
P.O. Box 29162
Overland Park, Kansas 66212
913-967-4409

CRAWFORD
HEALTH AND REHABILITATION SERVICES
9229 Ward Parkway, Suite 380
Kansas City, Missouri 64114
816-444-8889
800-444-9906

EISCHEN REHABILITATION SERVICES
Westport Executives Suites
1503 Westport Road
Kansas City, Missouri 64111
816-753-2833

FORTIS CORPORATION
8400 W. 110TH St.
Suite 220
Overland Park, Kansas 66210
913-469-0712

GOODWILL INDUSTRIES
1817 Campbell Street
Kansas City, Missouri 64108
816-842-7425

GRS REHABILITATION SERVICES
9200 Indian Creek Parkway
Suite 550
Overland Park, Kansas 66210
913-469-8601

HCA WESLEY MEDICAL CENTER
Health Strategies
550 North Hillside
Wichita, Kansas 67214-2468
316-651-8040

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
800-525-1031

KANSAS COMPREHENSIVE REHABILITATION
707 North Waco
Suite 101
Wichita, Kansas 67203
316-262-8211

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

MCCLELLAN & ASSOCIATES
8600 West 95th, Suite 104
Valley View Medical Bldg.
Overland Park, Kansas 66212
913-341-6208

MENNINGER RETURN TO WORK/KC
8340 Mission Road
Suite 205
Prairie Village, Kansas 66206
913-648-2897

MENNINGER RETURN TO WORK CENTER/TOPEKA
700 Jackson, 9th Floor
Topeka, Kansas 66603
913-233-2051

MIDWEST PAIN MANAGEMENT CENTER, P.A.
818 N. Emporia, Suite 107
Wichita, Kansas 67214
316-291-7246

PERC, INC.
6901 West 63rd Street
Building 2, Suite 406
Shawnee Mission, Kansas 66202
913-236-5300

PRINCIPAL FINANCIAL GROUP
Rehabilitation Services
10985 Cody, Suite 200
Overland Park, Kansas 66210
913-341-8550

PROFESSIONAL REHABILITATION MANAGEMENT, INC.
1310 E. Park
Olathe, Kansas 66061
913-782-6033

REHABILITATION INSTITUTE
3011 Baltimore
Kansas City, Missouri 64108
816-756-2250

REHABILITATION MANAGEMENT CONSULTANTS
949 S. Glendale, Room 117
Wichita, Kansas 67218
316-684-0950

RESOURCE MANAGEMENT, INC.
400 N. Woodlawn
Suite 18
Wichita, Kansas 67208
316-687-6229

SWIERCINSKY & ASSOCIATES
3101 Broadway
Suite 390
Kansas City, Missouri 64111
816-931-1015

UPJOHN HEALTHCARE SERVICES
503 N. Walnut
PO Box 296
Pittsburg, Kansas 66762-0296
316-231-9224

Wx WORK CAPACITIES, INC.
8000 Reeder
Lenexa, Kansas 66214
913-894-9675

PROCEDURES REGARDING VOCATIONAL REHABILITATION SERVICES UNDER THE KANSAS WORKERS COMPENSATION ACT

DEFINITIONS

"EVALUATION" as used in K.S.A. 44-510g(e)(1) or **"ASSESSMENT"** as used by rehabilitation professionals, when used in reference to vocational rehabilitation can be used interchangeably and mean the process of appointing a vocational rehabilitation vendor to evaluate, among other things, information on an injured worker's medical restrictions, the worker's education, experience and training, the worker's aptitudes and abilities and the job the worker was doing at the time of the injury, to determine whether the worker is in need of any type of vocational rehabilitation service to return to the worker the ability to perform comparable wage work in the open labor market.

"APPARENT TO THE DIRECTOR" as used in K.S.A. 44-510g(e)(1) refers, generally, to those claims in which the worker has not been off work for 90 days and can only qualify for a referral for vocational rehabilitation by reference to a description of the job the worker was performing at the time of the injury, the worker's education, experience, training, aptitudes or abilities and reference to medical information. A claim will be considered "apparent" if the worker has not been off work 90 days but the description of the worker's job and medical information show, at least prima facie, that an evaluation needs to be made.

"REPORT" as used in K.S.A. 44-510g(e)(1) and (2) means a written response by a vendor, with supporting medical and vocational documentation, following a referral for evaluation, which details the results of the evaluation, explaining whether the worker needs rehabilitation services and if so what services are needed. If the assessment finds that rehabilitation services are needed, the report includes the proposed rehabilitation plan detailing the services needed, responsibilities of the parties in execution of the plan and the reasons for choosing or eliminating each of the six priority alternatives set out in K.S.A. 44-510g(e)(1).

"DOCKETED" or **"IN LITIGATION"** or **"IN THE HEARING PROCESS"** refers to the status of a claim in which one party filed an application for hearing with the Director. Such claims are assigned to the **"DOCKET"** of an administrative law judge to conduct the several types of hearings and until the final award such claims are considered **"IN LITIGATION"** or **"IN THE HEARING PROCESS."**

"MEDIATION" or **"CONFER"** are terms used to describe a process established by K.S.A. 44-510g(e)(2) wherein the statute requires that ". . . If all parties do not agree with the report, the rehabilitation administrator shall **confer** with . . ." the vendor and the parties. The mediation conference is an informal

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proceeding wherein the parties state their objections to an evaluation or plan report and exchange ideas aimed at resolving those differences. No record is made of the comments; however, any agreement by the parties, if appropriate, is made a part of the administrator's recommendations. The prime purpose and objective of the mediation is to effect appropriate rehabilitation without the necessity of litigation. Mediation conferences are held in person or by telephone conference call.

THE PROCEDURE

To determine whether an injured employee is, in general, entitled to vocational rehabilitation services, there is a threshold test found in K.S.A. 44-510g(d). The test has two alternative criteria for entitlement. Either, an injured employee must be ". . . unable to perform work for the same employer with or without accommodation . . ." or be unable to perform work ". . . for which such employee has previous training, education, qualifications or experience . . .". The 1989 legislature amended 44-510g(d) to add the requirement that, for injuries occurring after July 1, 1989, the ability to perform work must be at comparable wages. For injuries occurring before July 1, 1989, the Director ruled in DeBerry v. Foxmeyer, Docket No. 125,475 (August 1989), that these quoted phrases must be read to include the qualifying phrase "and to earn comparable wages." Stated differently, to be entitled to vocational rehabilitation services, an injured employee must show that he (1) does not have the ability to perform work for the same employer with or without accommodation at comparable wages, and (2) does not have previous training, education, qualifications or experience to enable the employee to earn comparable wages at other employment.

To determine whether an injured employee should be referred for an evaluation of the need for vocational rehabilitation services, there is a second threshold test found in K.S.A. 44-510g(e)(1). This test also has two alternative ways of qualifying. The first is "If the employee has remained off work for 90 days . . ." the employee may be referred. The second is ". . . if it is apparent to the Director . . ." the employee may be referred. If one of these criteria are met the employee is entitled to be referred to a vocational rehabilitation vendor, qualified by the Director, for such evaluation.

The statutory phrase "If the employee has remained off work for 90 days . . ." must be read as a part of the overall scheme of the Act. The legislative intent is, clearly, to refer persons for an evaluation if there is doubt as to whether the person will be able to earn comparable wages without some vocational rehabilitation. It does not fit the legislative scheme to make a referral if the facts make it clear that the threshold requirements are not met. It does fit the legislative scheme that there be at

least prima facie evidence that the threshold requirements are met.

The vocational rehabilitation process, for cases that are non-litigated, begins with a referral to a vendor for an evaluation of the need for rehabilitation services. The referral may be voluntarily made by the employer or insurance carrier, may be in response to a request by a party or may be on the Director's own motion. [K.S.A. 44-510g(e)(1)] Generally, the Director will not make a referral on his own motion if there are unusual circumstances.

The method for effecting referral differs depending on whether or not the claim is "in litigation". If the claim is **not** in litigation and the injured worker believes that he is entitled to an evaluation he should first contact the insurance adjuster handling the claim to determine whether a referral will be made voluntarily. If no referral is made following that request, a request for referral would then be made to the vocational rehabilitation administrator. On receipt of a request for referral from an injured employee, the rehabilitation administrator will contact the employer, if self-insured, or the insurance carrier for the employer, to convey the employee's request and determine if the referral will be made voluntarily to a vendor of the employer's or carrier's choice. On making a referral an employer or insurance carrier files a form R87-1 (Insurance Carrier Status Report) notifying the rehabilitation administrator of the vendor's appointment.

If the referral will not be made voluntarily, the rehabilitation administrator, after obtaining and screening information furnished by the employee and/or employer or carrier, will make a determination as to whether the employee qualifies for a referral, and if so, will appoint a vendor selected on a rotational basis.

The Director, in Perez v. IBP, Docket No. 128,221 (January 27, 1989) and Stafford v. IBP, Docket No. 124,346 (January 26, 1989), ruled that if the employer or carrier do not agree that the employee is entitled to a referral, they have the right to a hearing on the issue. The rulings in Perez and Stafford have been modified by the Director's order in Demint v. Central Fiber Corp. Docket No. 132,623 (October 5, 1989) which holds that in litigated cases either party must request a preliminary hearing to question whether a referral should be made. Perez and Stafford are still the rule with respect to cases not in litigation at the time the referral is made by the rehabilitation administrator. An additional difference from Perez and Stafford is that an assessment will **not** be held in abeyance by a vendor pending the outcome of a hearing on the referral issue. Demint also reversed one statement made in the 1988 "Rehabilitation Issues" paper published by the Division. The paper stated that there was no entitlement to a hearing on the question of referral for vocational evaluation.

The employer, in order to exercise that right, must file an application for hearing within 10 days of the referral otherwise the appointment of a vendor is final. If the employer does request a hearing, the claim will take on a "litigated" status and will be scheduled with the administrative law judge for the area in which the claim arises. The hearing held in response to the employer's application will be held under the authority of K.S.A. 44-534a and will be treated as a preliminary hearing.

If the employee objects to the referral, the employee must file an application for hearing (Form E-1), application for preliminary hearing (Form E-3), along with a copy of the notice of intent to request preliminary hearing which is required by K.S.A. 44-534a. The notice should specify the requested relief especially if it is different from the rehabilitation administrator's referral. At the same time, claimant should indicate, in the notice letter and in the space provided in the revised preliminary application form, any other preliminary matters to be heard at the same hearing.

If the claim is already in litigation, the request for referral must be filed with the Director by filing an application for preliminary hearing (Form E-3) and a copy of the seven-day notice of intent to file for preliminary hearing.

Any hearing, before the regular hearing, whether invoked by claimant's or respondent's application, falls within the preliminary hearing powers of the administrative law judge and will therefore be considered a preliminary hearing. Any order issued as a result of that hearing will be a preliminary order, not subject to Director's review pursuant to K.S.A. 44-551 nor judicial review pursuant to K.S.A. 44-556.

Until the hearing is held and an order is issued, the referral will **not** be held in abeyance. Vendors will proceed with the assessment process. Compensation is payable even if entitlement thereto is ". . . solely because of involvement in the rehabilitation evaluation process. . ." [See K.S.A. 44-510g(e)(2)(B)].

After the hearing, the administrative law judge may find that a referral is or is not appropriate. If the administrative law judge finds that a referral is not needed, any vocational rehabilitation expense paid by the employer will be reimbursed by the Workers' Compensation Fund. (See K.S.A. 1989 Supp. 44-534a) The administrative law judge may also, in the same hearing, without further application, make any preliminary order with respect to, among other things, weekly compensation, medical treatment, designated treating physician, medical expenses and any vocational rehabilitation issue including designation of a different vendor, again to be selected on a rotational basis.

If no hearing is requested by either party, and assuming the claimant is not employed, temporary total compensation is to be paid automatically, without the necessity of an order, from the date of the referral until the assessment is complete and the report filed by the administrator. K.S.A. 44-510g(e)(2)(B) provides that compensation will be paid for 70 days during the evaluation and plan formulation process and extended an additional 30 days if the evaluation and/or plan is not completed, provided the failure of completion is outside the control of the employee.

Unless there is evidence that the delay in completion of the evaluation and/or plan is due to the employee, the extension of up to 30 days will be automatic without any action on the part of the Director's office unless the assessment is being conducted pursuant to order of an administrative law judge and that order specifically provides that otherwise.

The timetable for the evaluation process, as set out in K.S.A. 44-510g(e)(2), is for the vendor to conduct an assessment of the practicability of, need for, and kind of service, treatment, training or rehabilitation which is or may be necessary and appropriate to render such employee able to perform work in the open labor market and earn comparable wages. The report on the assessment is to be submitted to the rehabilitation administrator and all other parties by the vendor within 50 days of the referral. The 50 day time limit applies only if temporary total compensation is being paid ". . . solely because of involvement in the rehabilitation evaluation process. . ." [See K.S.A. 44-510g(e)(2)(B)].

Within 20 days after receipt and initial review of the report, the rehabilitation administrator will issue his report and recommendation based on his determination of whether the counselor has documented and provided adequate rationale to determine if the injured worker is in need of services to return to them the ability to work in the open labor market and to earn comparable wages. The evaluation must include a review of current physical restrictions, a review of transferable skills if necessary and must identify specific problems or obstacles the claimant will have in returning to work in the open labor market at a comparable wage.

If it is the counselor's conclusion that rehabilitation is not needed, any party may request that the parties, counselor and rehabilitation administrator confer (mediation conference) to attempt to reconcile the parties' differences. If it is the counselor's conclusion that a vocational plan is needed, the counselor must submit a proposed rehabilitation plan that addresses the specific problems or obstacles identified in the assessment, including steps to overcome those problems and obstacles, identify the priority of the plan and why other priorities have been ruled out, and document the claimant's abilities to perform the selected

vocational objectives, the availability of selected employment, the projected wage and the responsibilities of the parties involved.

After review of the report, whether or not any party has made objection to the report and/or plan, the administrator will issue his review wherein he will make requirements for further explanation or documentation or will approve or disapprove the report and/or plan. If a party has lodged an objection to the report and/or plan, the administrator will confer with the parties (mediation conference) and attempt to resolve their differences.

Following the mediation conference, whether the parties agree with the report and plan or whether they do not, the administrator will issue his recommendation with respect to both or either the evaluation or plan. Any party may request a hearing within 10 days after receipt of the administrator's recommendation on any matter therein.

CHANGE OF VENDOR

A vendor will provide "... objective and impartial assessments of the injured worker's need for rehabilitation services." [K.A.R. 51-24-4(j)]

Because the idea of private vocational rehabilitation vendors is new to the Kansas Act, some claimants, attorneys, employers, insurance adjustors and vendors are unsure of the intended relationship of the private vendor with the parties, the motives of the private vendor or the role of the private vendor in the system. Employers are incurring substantial costs in paying for the vendor's work. Claimants are dependent on the vendor's work for both basic compensation income while unable to work and for the prospect of regaining the ability to earn a wage comparable to the wage earned before injury. Because the timeliness of the vendor's work is the single most important factor in meeting strict statutory time limits and the thoroughness of the vendor's work is the key to the overall effectiveness of the system, constant scrutiny is given the quality and speed of the delivery of service.

When a vendor's reports are not timely, its communications neglected, it uses non-qualified personnel, its objectiveness is justifiably brought into question or it fails to follow Division procedures, it may be appropriate to have the vendor replaced. A vendor should be replaced when appropriate, but only when appropriate. The sole fact that an assessment is not timely does not, in itself, indicate a lack of professionalism on the part of the vendor. Some failures by a vendor to make timely reports, have been due to the inability of the vendor to obtain medical information; particularly medical restrictions on the claimant's physical activities. Without the doctor's opinion as to the physical activity in which a claimant may be engaged, the person making the assessment usually has insufficient information with

which they can make a valid assessment. Conversely, completing an assessment simply by finding that a person has transferable skills and therefore does not need rehabilitation does not, in itself, show professionalism on the part of the vendor. Some vendors display an attitude that they are an agent of or owe some allegiance to the employer or insurance carrier that appointed them. Activity that embodies this attitude may be cause for replacing a vendor. The costs to both the employer and the employee in money and time for the duplication of vendor effort requires the taking of care in deciding to replace a vendor. When a vendor is to be replaced, the Division will follow certain procedures.

Only the Director, an administrative law judge or the Rehabilitation Administrator may effect the replacement of a vendor. This includes vendors voluntarily appointed by the employer or insurance carrier.

If a claim is in a non-litigated status, a replacement of a vendor will be accomplished by the rehabilitation administrator. A request for replacement of a vendor must be made to the administrator, in writing, setting forth the reasons that the change is requested. If replacement of a vendor has been requested or is being considered by the administrator on the administrator's own volition, the currently appointed vendor and the parties will be notified that replacement is being considered and the reasons giving rise to the consideration. The vendor will be given 10 days to respond to the reasons given. At the end of the 10 days, or earlier if the current vendor acquiesces, the administrator will either continue the appointment of the current vendor or notify the current vendor, the new vendor and all parties of the appointment of the new vendor. If a party objects to the change of vendors, redress will be by applying for preliminary hearing following the procedure outlined above for requesting a hearing to lodge objection to a referral. The vendor of record will continue services until an order is entered appointing a new vendor.

If a claim is in a litigated status, the consideration will be similar as in a non-litigated claim but will be accomplished by the administrative law judge. If on the judge's own motion, the judge will notify the vendor and parties of his intent to order a change of vendors and give the parties 10 days to request a hearing. If a party wishes a hearing, the preliminary hearing application procedure must be followed. If the change is requested by a party it must be requested following the preliminary application procedure and the change ordered or not ordered following the preliminary hearing.

The following are examples of situations which might give rise to replacement of a vendor:

1). Claimant has met maximum medical improvement but the vendor has not completed the assessment within the statutory time and there is reliable information that the vendor has not exercised due diligence in attempting to obtain the information necessary to complete the assessment or the vendor has the information but has not completed the report.

2). Vendor fails to respond to a written request from the administrator to clarify or complete the assessment and/or the plan.

3). Vendor employs or contracts with a non-qualified person to provide counseling, evaluation or job placement services to a person referred under the Act.

4). Vendor fails or refuses to provide copies of information, medical reports or vocational reports to all parties.

5). Vendor shows lack of impartiality by its action of carrying on claims adjusting activity such as conveying settlement offers or advising settlement, attempting to obtain a disability rating from a physician or stopping activity on a file pending settlement negotiations at the request of a party or its attorney.

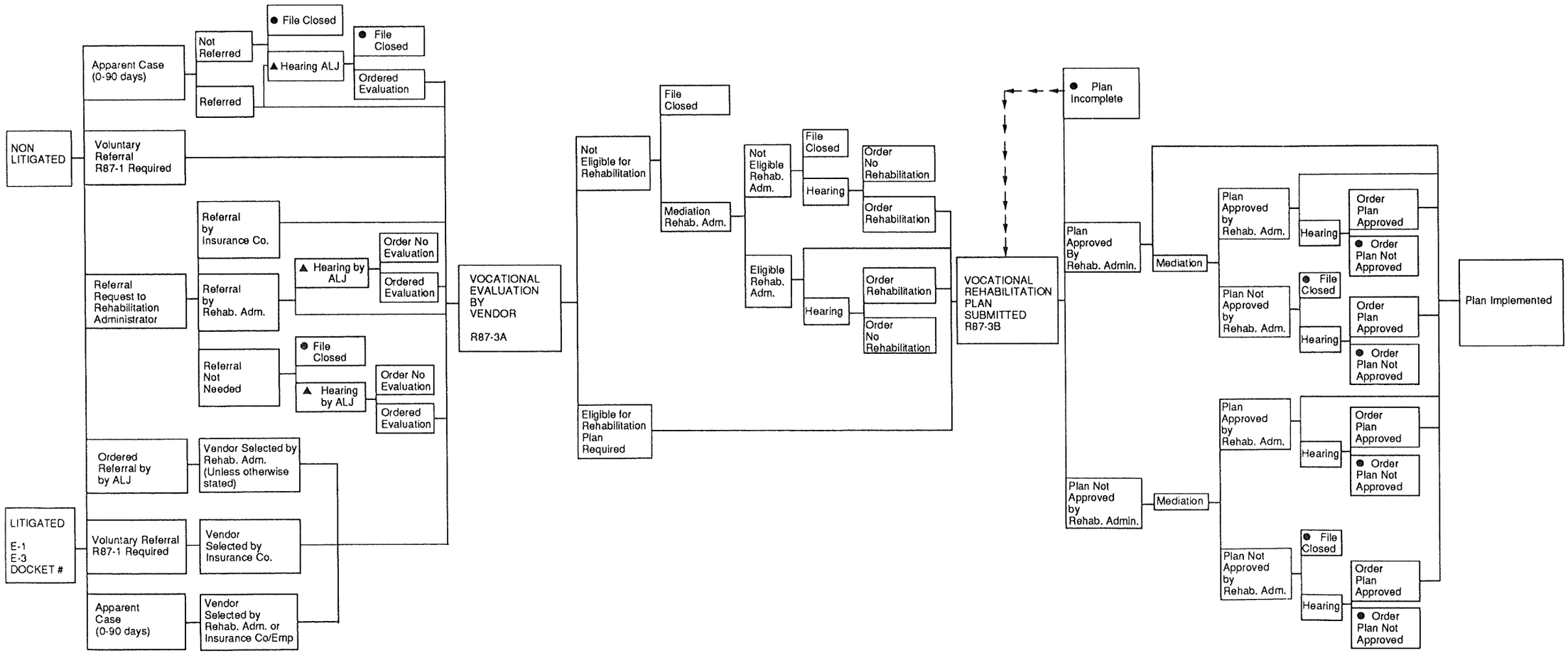
6). Vendor changes recommendations at a party's request without justification based on evidence and sound rehabilitation principles.

7). Vendor requests that they be replaced on a case.

A current list of Qualified Vocational Rehabilitation Vendors is available from the Director's office.

KANSAS WORKERS COMPENSATION REHABILITATION PROCESS

DHR/WC 1989



▲ Case Litigated at this point

● Case may return to a previous level

BEFORE THE DIVISION OF WORKERS COMPENSATION
STATE OF KANSAS

CASSANDRA M. HALSIG S.S. #511-68-8222 Claimant	)	
VS.	)	
W. W. GRINDER COMPANY Respondent	)	Docket No. 128,578
AND	)	
COMMERCIAL INSURANCE COMPANY Insurance Carrier	)	

O R D E R

Now on the 12th day of May, 1989, the application of the respondent for a Director's Review of an award entered herein by Administrative Law Judge John D. Clark on March 13, 1989, comes on before Director Robert A. Anderson at Wichita, Kansas.

Claimant appeared by her attorney, Vincent L. Bogart of Wichita, Kansas; respondent and insurance carrier appeared by their attorney, Edward D. Heath, Jr., of Wichita, Kansas.

The respondent present the following issue for review: (1) whether claimant suffers a 75% work disability as found by the Administrative Law Judge as a result of a permanent partial general bodily disability under K.S.A. 44-510e(a).

The Director, having heard the statements of counsel and having reviewed the entire administrative file including the evidentiary record and the correspondence and pleadings of the parties, finds:

1. Although the existence, nature and extent of the disability of an injured worker is a question of fact, under the "new act" the functional impairment suffered by an injured worker (i.e. the percentage of loss of a portion of the total physiological capacity of the human body), must be established by competent, medical evidence.

2. Where an injured worker seeks benefits for permanent partial general disability and proves that, as a result of a compensable accident or injury occurring on or after July 1, 1987, he/she can no longer perform the same work for the same employer, the burden then shifts to the employer to prove that the employee can perform the same work with accommodations for the same employer and that such work has been offered to the employee, but refused; that the employee can do other work with or without accommodations for the same employer and that such work has been offered to the employee, but refused; or that other work in the open labor market is available to the worker in which he/she could earn comparable wages to those received from the former job.

3. The correct standard under K.S.A. 44-510e(a) for determining the "loss of earning capacity" or "diminution of earning capacity" for an injured worker's permanent partial general disability (i.e. work disability) resulting from an accident occurring on or after July 1, 1987, is the extent, expressed as a percentage, to which the injured worker's ability based on a consideration of the worker's education, training, experience and capacity for rehabilitation, has been impaired to perform work (i.e. services that the worker has performed or reasonably would have performed prior to the injury) and to earn comparable wages in the open labor market (i.e. the economically integrated geographical area where there is a market for the type of work or services which a worker offers from which employers operating in that area draw their work forces and within which a significant number of workers may change jobs in response to changing economical conditions without having to change their place of residence).

4. An "open labor market" as used in K.S.A. 44-510e(a) and 44-510g, for an injured worker exists where there is a market for the type of services which he/she offers in the geographic area in which he/she offers them, and, "labor market" in this sense, does not mean that job vacancies must exist since the purpose of the Workers Compensation Act is to compensate for a loss of earning capacity (i.e. a loss of the ability to perform work in the open labor market and earn comparable wages); rather "open labor market" means only that type of work or services the worker is offering is generally performed in the geographical area in which the worker is offering them. The "open labor market" must be reasonably accessible. The legislature did not intend for workers to move their residence or travel unreasonable distances.

5. As found in the Workers Compensation Act under K.S.A. 44-510e(a) and 44-510g(a), the termination of an employee's "ability" must take into consideration the physical and mental capacities as well as the "need for rehabilitation services," plus the availability of comparable employment in the open labor market.

6. The language, as used in K.S.A. 44-510e(a), [". . . to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced . . . "] allows the Administrative Law Judge to determine from the entire evidentiary record the injured worker's permanent partial general disability under one of two theories: (1) a loss in earning capacity or diminution of earning capacity theory where the injured employee has no post-injury employment; or, (2) a wage loss theory where the employee has post-injury earnings.

7. To justify a reduction of a workers' compensation award based on a refusal to accept "other work with or without accommodations, for the same employer," there must be substantial, competent evidence to prove the refusal was unreasonable. A claimant cannot be said to have refused

to accept "other work with or without accommodations, for the same employer" until there is a definite request by the employer for claimant to work for the employer or an affirmative effort to accommodate the injured worker with another job that can be handled within the medical restrictions imposed on the injured worker. There must be a job created and offered to the claimant which is definitely refused.

8. The March 13, 1989, decision of Administrative Law Judge John D. Clark awarding a 5% functional disability for a permanent partial general bodily disability under K.S.A. 44-510e is modified to find claimant suffers a 10% functional disability based on the opinion rendered by Dr. Ernest Schlachter.

9. The March 13, 1989, decision of Administrative Law Judge John D. Clark awarding the claimant a 75% permanent partial general bodily disability (work disability) under K.S.A. 44-510e(a) is reversed based on the finding that claimant has unreasonably refused to accept "other work with or without accommodations for the same employer" that was offered and provided to the claimant upon her release with restrictions from her treating physician, Dr. Eyster. The claimant is limited to her permanent partial general bodily disability under K.S.A. 44-510e, the award of 10% functional disability.

The respondent argues the issue of nature and extent of disability and suggests the claimant has the ability to perform work in the open labor market and to earn comparable wages, and that the Administrative Law Judge erred in using a straight wage difference in awarding the claimant a 75% work disability.

The issue of the correct standards under K.S.A. 44-510e(a) for determining the "loss of earning capacity" or "diminution of earning capacity" for an injured worker's permanent partial general disability (i.e. work disability) resulting from an accident occurring on or after July 1, 1987, was recently addressed by the Director in DeBerry v. Foxmeyer Pharmaceuticals, Docket No. 125,475. There are no reported Kansas Appellate cases addressing the issue or construing the July 1, 1987, statute.

Before this issue can be addressed, a brief summary of the pertinent evidence is needed. The claimant, Cassandra M. Halsig, began her employment with respondent in September, 1987. Her only prior working experience was as a waitress at King's X and Wendy's. Her job with respondent was to build sprayers, clean up on inventory for the sprayer line and build magnets.

Claimant was injured January 29, 1988, while building 12-12 sprayers which are 12 gallon sprayers. She was lifting them on to pallets and injured her back during the process. The claimant was initially treated by a chiropractor and when she returned to work with the chiropractor's restrictions, she was told by the respondent that they had no work

available to her within those restrictions. The claimant was then seen by Dr. Robert Eyster who became the authorized treating physician, and in March, 1988, he released claimant to return to work on March 25, 1988, with restrictions of no lifting over 30 pounds and no repetitive lifting over 30 pounds.

The claimant returned to work with these restrictions and was placed in other work with or without accommodations by her employer that were within the restrictions established by Dr. Eyster. She was put in a job keeping track of inventory and did not do the magnets when she returned to work.

The claimant continued to work for approximately two weeks until April 7, 1988, when she left that job without telling anyone she was leaving because of the physical requirements of the job. The claimant candidly testified at the preliminary hearing that she did not specifically tell anyone at W. W. Grinder Company that she was quitting because of the physical requirements of the job, and that this was because other people who said they were going to quit would be talked out of quitting more or less by the employer who promised to make it better for them. The claimant testified she did not want to hear this, she just wanted to leave. Transcript of preliminary hearing, Page 33, Lines 16 through 25.

The claimant candidly admitted that from her past experience and in visiting with people, she was aware of situations in which W.W. Grinder Company had attempted to work with employees and keep them despite injuries. Transcript of preliminary hearing, Page 34, Lines 1 through 7.

After leaving W. W. Grinder Company, the claimant worked for several other employers, to include a car auto body paint shop and a restaurant.

The claimant's final restrictions by Dr. Eyster were that she should not be doing any repetitive pulling, pushing, or lifting in excess of 20 pounds, and recommended that these restrictions be permanent. Dr. Eyster could not render a definite opinion as to whether or not the claimant had a permanent impairment of function.

Claimant was seen by Dr. Schlachter whose opinion was that the claimant had a 10% permanent partial impairment of function to the body as a whole and restricted her from heavy lifting and repetitive bending, and recommended that those restrictions be permanent.

In a workers' compensation case, the claimant has the burden of proof as set forth in K.S.A. 44-508(a) indicating he/she must persuade the trier of fact by a preponderance of the credible evidence that his/her position on an issue is more probably true than not true. This burden is upon the claimant to establish his/her right to an award of compensation by proving all the various conditions on which her right to a recovery depends. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d

871 (1984); Knelson v. Meadowlanders, Inc., 11 Kan. App.2d 696, 699 732 P.2d 808 (1987).

K.S.A. 44-508(g), which defines "burden of proof," was amended in 1987. It now defines "burden of proof" as "the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." K.S.A. 44-501(a) was also amended at the same time by adding, "In determining whether the claimant has satisfied his burden of proof, the trier of fact shall consider the whole record." Id.

The Administrative Law Judge was bound by K.S.A. 44-501(a) in deciding the instant case and the Director, as the trier of fact in reviewing a decision of an Administrative Law Judge upon written application of any interested party pursuant to K.S.A. 44-551, must also comply with K.S.A. 44-510(a) and consider the whole record.

We are asked in this Director's Review to interpret the intent of the legislature in enacting K.S.A. 44-510e(a) and to determine the correct standard under K.S.A. 44-510e(a) for determining the "loss in earning capacity" or "diminution of earning capacity" of an injured worker's permanent partial general disability resulting from an accident occurring on or after July 1, 1987. The controlling statute is K.S.A. 44-510e(a) which became effective July 1, 1987.

The fundamental rule of statutory construction to which all others are subordinate is that the purpose and intent of the legislature governs when the intent can be ascertained from the statute. State v. Adee, 241 Kan. 825, 829, 740 P.2d 611 (1987). Legislative intent is to be determined by a general consideration of the entire act. To this end, it is the duty of the court, so far as practical, to reconcile the different provisions so as to make them consistent, harmonious and sensible. Where a statute is plain and unambiguous, the Supreme Court must give effect to the intention of the legislature as expressed, rather than to determine what the law should or should not be. Nordstrom v. Topeka, 228 Kan. 336, 613 P.2d 1371 (1980). When a workers' compensation statute is subject to more than one interpretation, it must be construed in favor of the worker when such construction is compatible with legislative intent. Huston v. Kansas Highway Patrol, 238 Kan. 192, 195, 708 P.2d 533 (1985). This rules does not apply, however, when the applicable language is clear and unambiguous and not capable of two interpretations.

In determining legislative intent, courts are not limited to a mere consideration of the language employed, but may properly look into historical background of enactment, circumstances attending its passage, purposes to be accomplished and the effect the statute may have under various constructions suggested. State v. Freeman, 236 Kan. 274, 689 P.2d 855 (1984). The historical background, legislative proceedings and

changes made in a statute during the course of enactment may be considered by a court in determining legislative intent. Hulme v. Wolfslagel, 208 Kan. 385, 493 P.2d 541 (1972).

In order to construe the legislative intent of K.S.A. 44-510e(a), as enacted on July 1, 1987, a comparison of the previous operative statutory language as enacted in the Laws of 1974, Chapter 203, Section 14, is needed.

That statute provided in part:

> ". . . the extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the workman to engage in work of the same type and character that he was performing at the time of the injury has been reduced. . . "

In addition to comparing the former statute with the operative statute, the Director has carefully considered the entire legislative history as recorded in the Legislative Research Department, Room 541-N, Statehouse, Topeka, Kansas. The Director has read and reviewed Volume 2, Chapter 10, Section 57, of Larson's Workers' Compensation (Desk Edition 1989) and reported case law from sister states and their corresponding statutes. However, Kansas' statute appears to be unique in that unlike other states' disability statutes where post-injury earnings that do not reflect the ability to compete with others for wages are measures of earning capacity and where, if work proffered to an injured workers does not actually reflect the worker's ability to compete with others for wages, it cannot be considered evidence of earning capacity [i.e. People v. Cone Mills Corp., 342 SE 2d 798 (N.C. 1986), construing GS Section 97-2 (9) which defines disability as incapacity because of injury to earning the wages which the employee was receiving at the time of injury in the same or other employment], the Kansas statute clearly allows and encourages employers to return the employee to the same work with accommodations for the same employer or to return the employee to other work, with or without accommodations, for the same employer at a comparable wage level even where other employers would not hire the worker with the medical limitations. Unlike other states who limit a party's ability to seek review and modification of an existing award to one year, review and modification under K.S.A. 44-528 can be applied for at any time until final payment of the award.

I. Functional impairment.

Under K.S.A. 44-510e(a), the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capacities of the human body as established by competent medical evidence.

Prior to July 1, 1987, functional disability was the loss of a part of the total physiological capacities of the human body, while work disability was that portion of the job requirements a worker was unable to perform by reason of the injury. Work disability generally carried a higher percentage of disability than functional disability. Prior to July 1, 1987, in a workers' compensation claim, based on a non-scheduled injury, a claimant could recover an award equal to the percentage of his functional disability even though there was no evidence introduced relating functional disability to the work being performed by the claimant in his employment at the time of injury. Crabtree v. Beech Aircraft Co., 229 Kan. 440, 625 P.2d 453 (1981). An award could be based on functional disability where the percentage of work disability was not proved, was less or was none. Desbien v. Key Milling Co., 3 Kan.App.2d 43, 588 p.2d 42 (1979). Prior to July 1, 1987, in establishing the existence, nature and extent of disability, the testimony of the claimant could be considered as well as medical evidence. Chinn v. Gay & Taylor, 219 Kan. 196, 547 P.2d 751 (1976). Examining physicians were not required to determine the extent of permanent partial general disability, nor to express the mathematical formula by which they arrived at such a figure. Johnson v. Kansas Neurological Institute, 240 Kan. 123 (1986). The existence, nature and extent of the disability of an injured worker was a question of fact, and medical testimony was not essential to the establishment of these facts. It was not necessary that a worker's disability be given a medical name or label. A fact finder was free to consider all the evidence and decide for itself the percentage of disability a claimant suffered. The number or percentage a doctor supplied was not controlling in establishing a percentage of disability. Carter v. Koch, 12 Kan.App.2d 74 (1987). Prior to July 1, 1987, it was not necessary to establish the percentage of functional impairment or the loss of a portion of the total physiological capacities of the human body by competent medical evidence.

After July 1, 1987, the Administrative Law Judges must based their determination of functional impairment on "competent medical evidence." It is clear that the legislature intended, by inserting the language "as established by competent medical evidence" for the Administrative Law Judges to give deference to the medical evidence when determining functional impairment. Similar language ("based upon competent medical evidence") was formerly used in K.S.A. 44-567(a)(B) which dealt with the apportionment of liability between an employer and the Workers' Compensation Fund. The Kansas Supreme Court, in Razo v. Erman, 228 Kan. 491, 618 P.2d 1161 (1980), interpreted the language "based upon competent medical evidence" to mean that the fact finding could not be subject to interpretation or conjecture. In Razo the court concluded that medical evidence of specific percentages of disability were not necessary for apportionment and noted that the requirement of medical evidence does not preclude consideration of such evidence presented in general or non-specific manner or other relevant evidence bearing on the issue. Id. at 496.

It is clear that the legislature, by inserting the additional language "based upon competent medical evidence," intended to legislatively change the effect of the Kansas Court of Appeals determination in Carter v. Koch, Supra., (holding that a fact finder is free to consider all the evidence and decide for itself the percentage of disability a claimant suffers and the number or percentage a doctor supplies is not controlling in establishing a percentage of disability). In Carter and other cases, such as Chinn v. Gay & Taylor, Supra., it was held that medical testimony is not essential to the establishment of the existence, nature and extent of the disability of an injured worker. In Carter, the only doctor who stated an opinion about the claimant's disability said he suffered a 65% impairment of function of the forearm. and the District Court found the claimant had an 80% loss of use of the right forearm. The Court of Appeals affirmed.

Although the existence, nature and extent of the disability of an injured worker is a question of fact under the "new act," the functional impairment suffered by an injured worker (i.e. percentage of the loss of the total physiological capacities of the human body) must be established by competent medical evidence.

In the instant case where the Administrative Law Judge had two medical opinions concerning functional impairment, the Judge was free to adopt one or the other functional impairment ratings. Uncontradicted evidence that is not improbable or unreasonable cannot be disregarded and should be regarded as conçlusive. Demars v. Rickel Mfg., 222 Kan. 374, 573 P.2d 1036 (1978). Where the only medical evidence presented in a workers' compensation case establishes that the injury has resulted in a percentage of disability and that evidence is not improbable or unreasonable, it cannot be disregarded and should be regarded as conclusive. The custom of some fact finders in the past of "splitting the difference" between contradicted functional impairment ratings by medical doctors will no longer be appropriate under the new statutory mandates of K.S.A. 44-510e(a). However, where functional impairment ratings by a treating physician and a physician hired for the sole purpose of establishing a disability rating are varied in percentage, the apportionment of an independent medical examination by a neutral physician would be a proper exercise of judicial discretion by an Administrative Law Judge under K.S.A. 44-516.

Although the findings of a non-treating physician based upon limited contact and examination may be of suspect reliability in determining claimant's disability [see e.g. Frey v. Bowen, 816 Fed.2nd 508, Syl.8 (10th Circuit 1987)], in cases such as the instant one where the medical opinion concerning claimant's functional impairment by the treating physician is inconclusive and the medical opinion of the rating physician is reasonable, an Administrative Law Judge must weigh the evidence and adopt one or the other of the medical opinions if they are not otherwise unreasonable or improbable.

Although certain conditions and injuries resulting in permanent impairment may not be covered by the AMA Guides to the Evaluation of Permanent Impairment (3rd Edition), where the guidelines do address a particular injury, a physician's opinion concerning permanent impairment should be, whenever possible, referred to the AMA guidelines. If the guidelines do not address a particular injury, a physician's opinion concerning permanent impairment does not have to be referenced to those guidelines, provided that it is supported by qualified, expert testimony based on training, experience and expertise of the witness and other generally accepted medical standards, including the doctor's prior experience in treating and rating similar injuries.

In the instant case, the Administrative Law Judge found the claimant had a permanent impairment of function to the body as a whole of 5% based on an apparent splitting of the difference between Dr. Eyster's and Dr. Schlachter's opinions.

After a careful review of the depositional testimony of both Dr. Eyster and Dr. Schlachter, the Director finds the claimant has a functional impairment (i.e. loss of a portion of the total physiological capacity of the human body) of 10% as established by the medical opinion of Dr. Schlachter.

II. Permanent partial general disability (i.e. work disability).

Having found the claimant suffers a 10% functional impairment, it now must be determined what, if any, work disability the claimant suffers. The extent of permanent partial general disability shall not be less than the percentage of functional impairment. K.S.A. 44-510e(a).

In the past, a court's determination as to work disability was made from a cold record and was always speculative. The court had to make a determination of work disability using whatever information was available. Davis v. Winchester, 204 Kan. 215, 460 P.2d 617 (1969).

A review of the statutory history of K.S.A. 44-51-e(a) and the similar predecessor statutes (i.e. Law 1911, Chapter 218, Section 12 through Law 1974, Chapter 203, Section 14) finds that the Kansas Legislature initially adopted legislation that compensated injured workers for their loss of earning power resulting from compensable injuries under a theory that is referred to as the "earning capacity theory." The Kansas Supreme Court, in Puckett v. Minter Drilling Co., 196 Kan. 196, 201-203, 410 P.2d 414 (1966), described in detail the historical background of work disability in Kansas. See also Comment, "Permanent, total and partial disability under the Kansas Workers Compensation Act, Volume 29, Kansas Law Review, 121-128, (1980); Volume 2, Chapter 10, Larson's Workers' Compensation Desk Edition, (1989) (for a detailed general historical background of the earning capacity theory)."

In 1974, the Kansas Legislature abandoned the "earning capacity theory" and adopted the "whole man theory" which is more readily recognized as the "physical impairment theory." The Kansas Supreme Court in Ploutz v. Ell-Kan Co., 234 Kan. 953, 676 P.2d 753 (1984), judicially interpreted K.S.A. 44-510e(a) and the new work disability test after the July 1, 1974, amendment. See also Bigger v. Kansas Department of Revenue, 11 Kan.App.2d 108 (1985); Comment, "Workers' Compensation - Major Changes in Employment Covered, Benefits, Defenses, Offsets and Other Changes," 24 Kansas Law Review, 611, 612, 614 (1976); Comment, "Workers' Compensation - Permanent Partial Disability Benefits - the Dilemma," 24 Kansas Law Review, 627, 628, 629, 635 (1976); Comment, "Permanent, Total and Partial Disability Under the Kansas Workers Compensation Act," 29 Kansas Law Review, 121, 128-134 (1980); Volume 2, Chapter 10, Larson's Workers' Compensation Desk Edition (1989) (for a detailed general history of the "whole man theory" or the "physical impairment theory").

Since the Laws of 1970, Chapter 190, Section 5 [1970], Kansas Session Laws 662, and later amended Kansas Statutes Annotated 44-510e(a) (Supp. 1975), benefits for temporary partial general disability can be awarded to an injured worker for 60% (1970) and 66 2/3% (1975 and current) of the difference between the worker's average weekly wage before the injury and the amount he is actually earning after the injury in any type of employment based on an "actual wage loss theory." Loss of wage earning capacity and actual wage loss are distinct, different concepts. Crabtree v. Beech Aircraft Corp., 229 Kan. 440, 445, 625 P.2d 453 (1981). "Compensation payable for each [permanent total, temporary total, and permanent partial disability] of these disabilities is for the loss of wage earning capacity." Id. at 445. "Compensation payable for temporary partial disability is for actual wage loss." Id. "Temporary partial disability compensation is not payable unless there are actual post-injury earnings." Id.

The Kansas Legislature, by enacting the July 1, 1987, "new act," created a new dual theory of determining work disability by combining elements of the "earning capacity theory" and the "actual wage loss theory" where they abandoned the mathematical formula of figuring work disability under the "whole man theory" or the "physical impairment theory," and inserted a statutory presumption of no work disability where the injured worker has comparable post-injury earnings from any work notwithstanding the need to consider the employee's education, training, experience and capacity for rehabilitation under the "earning capacity theory." Under the present law, an injured worker's disability can be figured under either the earning capacity theory or the actual wage loss theory, but not both.

In any case such as the instant case where an injured worker seeks benefits for permanent partial general disability and proves that as a result of a compensable accident or injury he/she can no longer work at his/her former job doing the same work for the same employer he/she was

doing at the time of injury, the burden then shifts to the employer to either return the employee to the same work with accommodations for the same employer, or return the employee to other work with or without accommodations for the same employer, or to prove that other work in the open labor market is available to the work in which he/she could earn comparable wages to those he/she would have received from his/her former job. It is therefore incumbent upon the employer to return the employee to the same work, with accommodations, or return the employee to other work with or without accommodations for the same employer, or through either direct testimony during a regular hearing or through a vocational rehabilitation evaluation determine an injured worker's previous work history, education, training, capacity to work after the accident, the sorts of work he/she was doing when injured, if the injured worker could be returned to his/her former employer with or without accommodations at a comparable wage, the nature and degree of the injury and the injury's effect on the employee's activities, and the employee's earnings past and present.

Since after an injured worker who seeks benefits for permanent partial general disability proves that, as a result of the compensable accident or injury, he/she can no longer return to the same work for the same employer, the burden shifts to the respondent/insurance carrier and they must prove as more probably true than not true through substantial, competent evidence, that other work with or without accommodations for the same employer was offered or provided to the injured worker; or that other work is available to the worker in the open labor market which the injured worker has the ability to obtain at a comparable wage based on a consideration of the employee's education, training, experience and capacity for rehabilitation, the respondent has the option of choosing which theory of work disabilities to defend their case under. However, where there is actual post-injury earnings, it is evidence of the injured employee's actual ability to obtain employment in the open labor market and the percentage of work disability may be figured by a comparison of the current wages with the pre-injury wages using the actual wage loss theory. If the employee loses his/her job, he/she can seek and increase in work disability through review and modification pursuant to K.S.A. 44-528. The fact or allegation that the employee lost his/her job for other non-injury related reasons will not be conclusive evidence of the employee's continued ability to obtain employment in the open labor market; rather it will be mere evidence to consider along with the entire record on application for review and modification under K.S.A. 44-528 prior to a decision by an Administrative Law Judge. The Kansas Legislature, in enacting the July 1, 1987, "new act," has legislatively overruled the judicial interpretation of K.S.A. 44-528(b) as found in Assay v. American Drywall, 11 Kan.App.2d 122, 715 P.2d 421 (1986) (holding cancellation under K.S.A. 44-528(b) for earning same or higher wages justified only if the ability to engage in the same type and character of work regained).

It is clear in reviewing the legislative history of the July 1, 1987, enactment that the legislature intentionally abandoned the work

disability test as judicially interpreted in Ploutz, Supra., and Bigger, Supra., and, while returning to an earning capacity test, intentionally avoided returning to the narrow work disability test for determining loss of earning capacity as found in Puckett, Supra., by inserting the language "taking into consideration the employee's education, training, experience and capacity for rehabilitation," and the presumption of no work disability.

Where the legislature specifically used the language "the extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation," the legislature intended to establish a standard under K.S.A. 44-510e(a) for determining the "loss in earning capacity" or "diminution of earning capacity" of an injured worker through a consideration of the physical and mental capacities of the injured worker, as well as the "need for rehabilitation services," plus the availability of comparable wage employment in the open labor market.

After a careful consideration of the language of K.S.A. 44-501e(a) and the legislative history surrounding its enactment, the Director finds the correct standard under K.S.A. 44-510e(a) for determining the "loss of earning capacity" or "diminution of earning capacity" for an injured worker's permanent partial general disability (i.e. work disability) resulting from an accident occurring on or after July 1, 1987, is the extent, expressed as a percentage, to which the injured worker's ability, based on a consideration of the worker's education, training, experience and capacity for rehabilitation, has been impaired to perform work (i.e. services that the worker has performed or reasonably would have performed prior to the injury) and to earn comparable wages in the open labor market (i.e. the economically integrated geographic area where there is a market for the type of work or services which a worker offers from which employers operating in that area draw their work forces and within which a significant number of workers may change jobs in response to changing economic conditions without having to change their places of residence). (For the purpose of K.S.A. 44-510e and 44-510g as amended by the 1987 Legislature, "open labor market" means that group of jobs: [1] in which employment opportunities routinely occur; [2] which are offered by several employers in an economic area; and, [3] are the type of jobs for which a worker seeking employment with the claimant's education, training, experience and physical limitations would logically offer his services.)

An "open labor market" as used in K.S.A. 44-510e(a) and 44-510g for an injured worker exists where there is a market for the type of services which he offers in the geographic area in which he offers them and labor market in this instance does not mean that job vacancies must exist since the purpose of the Workers Compensation Act is to compensate for a loss of earning capacity (i.e. the loss of the ability to perform

work in the open labor market and earn comparable wages); rather, open labor market means only that type of work or services a worker is offering is generally performed in the geographic area in which the worker is offering them. The open labor market must be reasonably accessible. The legislature did not intend for workers to move their residence or travel unreasonable distances.

As found in the Workers Compensation Act, under K.S.A. 44-510e(a) and 44-510g(a), the determination of an employee's "ability" must take into consideration the physical and mental capacities, as well as the "need for rehabilitation services," plus the availability of comparable wage employment in the open labor market. (National Rehabilitation Concept.)

The language, as used in K.S.A. 44-510e(a) [". . . to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced . . .], allows the Administrative Law Judges to determine from the entire evidentiary record the injured worker's permanent partial general disability under one of two theories: (1) a loss in earning capacity or diminution of earning capacity theory where the injured employee has no post-injury employment, or, (2) a wage loss theory where the employee has post-injury earnings. The fact that a claimant has some post-injury earnings does not preclude an Administrative Law Judge or the Director from finding the injured worker's permanent partial general disability under a loss in earning capacity or diminution of earning capacity theory. To rule otherwise would encourage employee's to take jobs at minimum wage or part-time jobs with limited hours despite their actual ability to perform work in the open labor market and to earn comparable wages until such time that their workers' compensation litigation is concluded as a subliminal economic incentive.

First, in those cases where the injured worker is unable to return to the former job at the same or comparable wages due to the injury and resulting disability, with or without accommodations, and the injured worker has not engaged in any work after the disability, a determination of the injured worker's permanent partial general disability (i.e. work disability) must be based on a determination of the worker's loss of earning capacity or diminution of earning capacity based on the competent evidence in the whole record. However, in the absence of other evidence of loss in earning capacity or diminution of earning capacity where the worker's ability to perform work in the open labor market and to earn comparable wages is introduced into the record through evidence of the worker's actual engagement in any work for wages, the Administrative Law Judge would not err in using the claimant's actual wage in computing the post-disability capacity based on a wage loss theory.

In cases where a claimant has a work history following an injury and actually performs work in the open labor market at any wage in any occupation notwithstanding the worker's education, training, experience

and capacity for rehabilitation, the opinion of a vocational expert or the claimant that the claimant has experienced a greater permanent partial general disability (i.e. work disability) than a comparison of the claimant's actual current wage with former wage, would not satisfy the requirements of determining the percentage of loss of earning capacity or diminution of earning capacity when in fact there is competent evidence of an injured worker's actual ability to earn wages in the open labor market. A theoretical or opinion reduction in earning capacity cannot, in general, stand in the face of actual ability to exceed that reduction or loss in earning capacity.

Although the word "and" in the phrase "the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced" is conjunctive, the word "and" can and should be interpreted in certain circumstances to mean "or" when it is necessary to carry out the legislative intent. McMecham v. Everly Roofing, Heating & Air Conditioning, Inc., 8 Kan.App.2d 349, 351, 656 P.2d 797 (1983).

The legislative intent under K.S.A. 44-510e(a) is to compensate the injured worker for the loss of earning capacity as a result of the injury. If an injured worker cannot return to his former job with or without accommodations and has no ability to perform work in the open labor market at a comparable wage considering the worker's education, training, experience and capacity for rehabilitation, the worker is rightfully entitled to an award of 100% permanent partial general disability. A smaller percentage of work disability would result from the evidence introduced by the respondent in order to meet his burden of proof (which shifts from the claimant to the respondent once the claimant introduces uncontradicted, competent evidence that he/she is unable to return to the former employer and do the same job) that the injured worker has had the ability to perform work in the open labor market at comparable wages, taking into consideration the worker's education, training, experience and capacity for rehabilitation. The operative word is "ability," it is not determinative whether the claimant has an actual post-injury job.

However, if the same injured worker as described above engages in any work, his award of compensation should not be for 100% permanent general disability, but rather expressed as a reduction in actual wages based on a comparison of the actual wage currently earned with the claimant's pre-injury wages.

The legislature intended for an injured worker to be compensated for a loss in earning capacity in most instances, but in those instances where the claimant is actually working after an injury, to compensate him/her for actual wage loss if any. This legislative intent of income replacement is clearly expressed by the specific inclusion of the presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury.

If the legislature did not intend for permanent partial general disability to be determined under certain circumstances on an actual wage loss computation, they would not have included the specific presumption language of no work disability where the employee engages in any work for wages comparable to those earned at the time of the injury. The legislature used the words "any work" and did not use the words "taking into consideration the employee's education, training, experience and capacity for rehabilitation." Legislative intent is expressed by omission as well as by inclusion, and inclusion by specific mention excludes what is not mentioned.

Although it may be argued that if the percentage of work disability can be reduced from 100% permanent partial general disability by subtracting the claimant's post-disability wages on a job the claimant has obtained by any means despite his lack of education, training, experience or capacity for rehabilitation, claimants would be discouraged from seeking other or any employment in the open labor market where they hypothetically could make the same amount of money whether they worked or not. Such an argument fails to recognize the importance of vocational rehabilitation under the "new act" and the legislative intent behind Workers Compensation Laws in general.

First, the extent of permanent partial general disability under K.S.A. 44-510e(a) prior to July 1, 1987, was the extent, expressed as a percentage, in which the ability of the workman to engage in work of the same type and character he/she was performing at the time of the injury has been reduced. Ploutz v. Ell-Kan Co., Supra. The impairment of work disability was measured by determining what portion of the employee's job requirements he/she was unable to perform because of work-related injury. In the process of determining the percentage of permanent partial general disability suffered by an employee, the fact that such employee was or was not retained in the specific job he/she occupied at the time of injury was not determinative. Id. After Ploutz, the Kansas Court of Appeals, in Bigger v. Department of Revenue, Supra., held that "work of the same type and character" refers to the job the claimant was performing at the time of injury, not to any job for which the claimant may be qualified.

Under the former work disability test, there was no incentive for an employer who could not return an injured worker to the exact job to retain the employee by accommodations or to retrain that employee through vocational rehabilitation to perform another job. Likewise, under the old test for work disability, an employee was still entitled to his full award of compensation even when he earned comparable higher post-disability wages for another employer.

Under the old work disability test, an employee who could theoretically do 90% of his former job and was disabled from doing 10% who was not retained in his employment, would only receive an award of 10% work

disability.

The legislature sought to correct both of those inequities and other inequities by enacting legislation that awarded compensation based on either an injured employee's loss in earning capacity or his actual wage loss, and, while at the same time, encourage employers to either retain or retrain employees.

Under the "new act" it is possible for an employer to reduce liability from a large work disability to the percentage of functional impairment where the employee cannot return to the same work for the same employer by returning the employee to the same work for the same employer at a comparable wage by accommodation or by returning the employee to other work with or without accommodations for the same employer at a comparable wage. This is a positive incentive for the employer and is designed to encourage employers to retain injured employees in their workplace through accommodations on their former jobs or transfer them to other jobs within the workplace.

For those employees who are not retained by the employer, with or without accommodations, at a comparable wage, the work disability is determined by consideration of the reduction in their ability to perform work in the open labor market and to earn comparable wages, taking into consideration the employee's education, training, experience and capacity for rehabilitation.

Where an employee cannot return to his former job duties, is not retained by his employer with accommodations in the same job or in another job, and where the employee does not have the ability to do the same work for another employer or to do other work for any employer at comparable wages, the worker is eligible for vocational rehabilitation, reeducation and training under K.S.A. 44-510g. A primary purpose of K.S.A. 44-510g is to restore to the injured employee the ability to perform work in the open labor market and earn comparable wages.

Employers under the new Workers Compensation Act can reduce liability of a large work disability through successful voluntary or court-ordered vocational rehabilitation, reeducation and training. It is clear that the legislature's intent behind the new vocational rehabilitation statutes was to overrule the adverse affect of the judicial ruling found in Antwi v. C-E Industrial Group, 5 Kan.App.2d 53, 612 P.2d 656 (1980) (holding an award of partial disability in a workers' compensation proceeding, made at the conclusion of a rehabilitation program under K.S.A. 1979 Supp. 44-510g, must reflect the extent, after successful rehabilitation, that the injured worker's ability to perform work of the same type and character he was performing at the time of the injury has been reduced, as provided in K.S.A. 1979 Supp. 44-510g). After the Antwi decision, there was absolutely no incentive for an employer to voluntarily refer injured workers to vocational rehabilitation unless it was known that, at the completion of the program the employee would

have the same ability to perform work of the same type and character he performed prior to the injury. The "new act" provides an incentive to employers and insurance carriers to voluntarily refer injured workers to vocational rehabilitation to help regain the ability to obtain work in the open labor market. If an employee fails to cooperate with the employer's rehabilitation efforts under K.S.A. 44-510g(i), the award of compensation can be reduced to an award of functional impairment only, which also arguable encourages injured workers' cooperation with the vocational rehabilitation process.

An employee's post-disability wages must be considered as an offset for a larger work disability under a wage los theory; otherwise, the claimant would receive a windfall of full disability compensation and full post-injury wages, a situation often found under the old work disability test and certainly not contemplated by the Kansas Legislature in passing the "new act." The Workers Compensation Law in Kansas has always intended and still intends even more so under the "new act," just compensation - no more, no less - and intends that neither side should be penalized where it can be avoided. Ratzlaff v. Friedeman Service Store, 200 Kan. 430, 436 P.2d 389 (1968).

In the instant case, the respondent met their burden of proving as more probably true than not true, through the cross examination and direct testimony of the claimant, that the claimant had the ability to return to her former employment with accommodations to do other work with or without accommodations for the same employer. In fact, the claimant did so for several weeks before voluntarily quitting. Accordingly, since the respondent took the initiative and attempted to return the injured worker to the same employment with or without accommodations at other work and provided job at comparable wages for the claimant that was within her medical restrictions, the respondent should not be penalized because the claimant quit that job on her own volition. The claimant, after leaving the job with respondent, sought and received employment at two separate employers after returning to her former employer and doing the job provided to her with accommodations. These jobs, according to the evidentiary record, did not provide for full time wages, however, the Administrative Law Judge awarded, and the claimant now seeks an affirmation of that award, compensation based upon an actual wage loss theory. Based on the entire evidentiary record, it is clear that the respondent would be penalized in the instant case by not recognizing their willingness and ability to accommodate their injured employee by providing another job at a comparable wage for the employee. Accordingly, the respondent has met its burden of proof that the claimant has the ability to perform work in the open labor market and earn comparable wages, i.e. work for her former employer at a different job with or without accommodations, and the award must be reduced to that of the claimant's functional disability. To justify reduction of a workers' compensation award based on a refusal to accept "other work with or without accommodations, for the same employer," there must be substantial, competent evidence to prove the refusal was

unreasonable. A claimant cannot be said to have refused to accept "other work with or without accommodations for the same employer" until there is a definite request by the employer for the claimant to work for the employer or an affirmative effort to accommodate the injured worker with another job that can be handled within the medical restrictions imposed. There must be a job created and offered to the claimant which is definitely refused. Here the employer not only created a job or provided a different job for the injured employer with or without accommodations at a comparable wage, but the claimant candidly admitted that the employer had a history of doing exactly that, that is accommodating their injured employees to bring them back to the workplace. The claimant, for whatever reasons, chose to leave work. The claimant proffered during the preliminary hearing and later more strenuously during the regular hearing that her leaving work was due to her medical condition. However, the job she was provided was within her medical restrictions imposed by the treating physician and keeping within the medical restrictions of the rating physician. There was no medical evidence of a re-injury of the claimant while performing the job with accommodations and no evidence that the claimant immediately sought medical treatment from her treating physician or any other physician after leaving the employment on or about April 8, 1988. The fact that the claimant saw Dr. Eyster on April 15, 1988, was in part because she had a pre-designated appointment established on the last date she saw the doctor when he released her with his restrictions on March 25, 1988.

If the employee's ability to return to work for the same employer is only possible because of accommodations by the employer, and the employer does not accommodate the employee, the employee is entitled to a referral for vocational rehabilitation and work disability unless the respondent presents competent evidence the injured worker's ability to perform work in the open labor market and earn comparable wages.

In the instant case, there was competent evidence presented by the claimant's own admission that she retained the ability to perform work in the open labor market and do one of the jobs she previously performed prior to her employment with the respondent. That is she testified she still had the ability, notwithstanding her injury and resulting disability, to perform the work she formerly performed at Wendy's. See Transcript of preliminary hearing, Page 29, Lines 15 through 18.

Although there was no evidence introduced by the respondent to establish that fringe benefits in other occupations that the claimant may be capable of obtaining exist, the claimant would be able to perform work in the open labor market at the state's minimum wage of $3.35 per hour at Wendy's based on the claimant's own testimony. Kansas Courts will not dispute the availability of fringe benefits in other occupations which a claimant may be capable of obtaining; however, there must be some evidence before an Administrative Law Judge as to the value of the fringe benefits obtainable in other occupations. Slack v. Thies Development Corp., 11 Kan.App.2d 204, 207, 718 P.2d 310 (1986), Petition

for Review den., 239 Kan. 628 (1986) [holding the average weekly wage concept is the formula which is applicable in nearly every incidents of computing compensation benefits].

If the respondent had not provided the claimant with a job with accommodations at a comparable wage as evidenced in this case, then the respondent would have proven that the claimant was capable of earning, at a minimum, $134.00 per week which would result in a work disability of 38% based on a reduction from the ability to earn $134.00 per week after the accident and the actual earnings of $215.00 per week prior to the injury.

Claimant argues that the Administrative Law Judge was correct in using the actual wages earned by the claimant in computing a wage loss work disability. Respondents may be concerned with using actual wages to arrive at earning capacity because a worker could seek no work at all or could seek low paying occupations to insure the greatest possible compensation rate. However, such fears are unfounded since, if a worker is truly capable of working in higher income occupations as demonstrated by the evidentiary record, then actual wages would only be a factor, as in the instant case, and not conclusive evidence.

K.S.A. 44-510g is intended to provide vocational rehabilitation services for employees who have had a compensable work-related injury and (1) have missed 90 days of work due to their injury; (2) it is apparent that the injured employee cannot return to his previous employment because of the limitations his doctor has documented; or, (3) because of permanent limitations, the injured employee has returned to work at a lower wage. Injured workers who meet the above criteria may be entitled to an assessment to determine what services they would need to return to work at a comparable wage. Qualified vocational rehabilitation counselors, as provided for in K.A.R. 51-24-4 and 51-24-5, are assigned to work with injured employees to define the services the workers need to determine a job goal and to assist them in developing a return to work plan.

K.S.A. 44-510g specifies that the plan to return an injured employee to work must consider the following levels of priority:

A. Return to same work with same employer.
B. Same work, with accommodations, with same employer.
C. Other work for another employer.
D. Same work for another employer.
E. Other work for another employer.
F. Provide vocational rehabilitation, reeducation or training.

Under K.S.A. 44-510g, the injured employee and his vocational counselor have to address each of the priority levels when developing a plan before moving to the next lowest priority level.

Here, there is no indication in the record, either introduced as evidence to the Administrative Law Judge, or by stipulation of the parties, that the vocational rehabilitation counselor contacted the respondent to make a determination whether the respondent was willing to take the employee back with accommodations or provide another job for the claimant with or without accommodations at comparable wages. But for the claimant's testimony that the respondent was willing to do so and did so, the respondent would not have met its burden of proof. Respondents must provide competent evidence in order to meet their burden of proof as established above and to rely on the claimant's testimony solely as was done in the instant case, is a risky proposition. Without the claimant's candor, the respondent would have failed to meet its burden of proof that the claimant had the ability to obtain work in the open labor market and earn comparable wages by returning to other work for the same employer with or without accommodations.

In the instant case, the Administrative Law Judge addressed the vocational rehabilitation plan which provides for the 5th priority of returning the employee to other work with another employer and a job search plan. The Director, having found that the claimant has the ability to return to other work with or without accommodations for the same employer, does not accept the Vocational Rehabilitation Administrator's plans to find other work for another employer under the 5th priority.

Having found that the claimant has the ability to obtain work in the open labor market by returning to her former employer and doing other work with or without accommodations at a comparable wage, the claimant would not be entitled to vocational rehabilitation, retraining, reeducation or other benefits, other than the initial evaluation and assessment.

The provisions of K.S.A. 44-528, the review and modification statute, are an integral part of the Workers Compensation Act under the "new" laws passed July 1, 1987. Both the claimant and the respondent/insurance carrier are able to raise or lower the percentage of permanent partial general disability (i.e. work disability) of the injured worker based upon additional or new evidence introduced on the issue of permanent partial general disability.

IT IS THEREFORE ORDERED, DECREED AND ADJUDGED that the award entered herein by Administrative Law Judge John D. Clark on March 13, 1989, should be and the same is hereby modified to find the claimant has suffered a 10% permanent partial general bodily functional disability, and her 75% work disability awarded by the Administrative Law Judge is reduced based on a refusal to accept "other work with or without accommodations for the same employer" of which there is substantial

competent evidence to prove that the claimant had the ability to perform that work in the open labor market and earn comparable wages but for her refusal to do so.

Based on an average weekly wage of $215.00 per week, the claimant is entitled to 7.57 weeks of temporary total disability compensation at $143.34 per week in the sum of $1,085.08 followed by 407.03 weeks at $14.34 per week for a 10% permanent partial general bodily disability, making a total award of $6,921.16. As of October 17, 1989, there is due and owing to claimant 7.57 weeks of temporary total in the amount of $1,086.08 and 82 weeks of permanent partial compensation at $14.34 per week in the sum of $1,175.88 for a total due and owing of $2,261.96 which is ordered paid in one lump sum less compensation heretofore paid. Thereafter the remaining balance in the amount of $4,659.20 is ordered paid at $14.34 per week for 325.43 weeks until fully paid or further order of the Director.

Filed in the Division of Workers Compensation on October 17, 1989.

Robert A. Anderson

ROBERT A. ANDERSON
WORKERS COMPENSATION DIRECTOR

Copies to:
Vincent L. Bogart, Attorney at Law, 301 North Main, Suite 1600, Wichita, Kansas 67202-4800
Edward D. Heath, Jr., Attorney at Law, 301 North Main, Suite 1870, Wichita, Kansas 67202
Richard L. Thomas, Rehabilitation Administrator, Division of Workers Compensation
Administrative Law Judge John D. Clark
Assistant Director William F. Morrissey
Assistant Director David A. Shufelt
All other Administrative Law Judges
Claims Advisory Section, J. B. Sippel

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five years of legal experience in order to serve as a workers compensation judge. Anderson supervises and reviews the judges. Anderson does not qualify as a judge.

Our legislative leaders must require that the director meet some qualifications and that reviews be handled in a timely fashion. We need a new director.

Michael W. Simpson
Overland Park

Editor's note: The *Sun called Anderson, who offered the following response:*

To the editor:

I read attorney Michael Simpson's letter of Dec. 4 with great interest and greater concern for its inaccuracies.

Mr. Simpson claims that an injured worker receives no benefits until an insurance company is forced to pay and that the Workers Compensation Division is too slow handling those cases.

The facts do not support Mr. Simpson. Over 62 percent of all employees seeking benefits received voluntary payments from the employer or their insurance carrier after they received notice from the division of the case having been filed. This is up from 48 percent in 1988 and 28 percent in 1987.

Nor are we slow. It has been true in the past that this office has had a backlog of cases. As of Jan. 1, 1990, I am pleased to report to Mr. Simpson that the backlog that has existed for several years will have been totally eliminated.

Although Mr. Simpson's letter identifies him as a lawyer, he has never appeared before me and has no cases pending on director's review. Mr. Simpson's reporting of secondhand information is regrettable.

I am proud of the Workers Compensation Division's record of services to the people of Kansas during the past 18 months of my tenure. When and if Mr. Simpson does have a case before the director's office, I am certain he will be pleased with our efficiency and effectiveness as well.

Robert A. Anderson
Workers Compensation Director

How to share

The *Sun welcomes letters to the editor on any subject. We do reserve the right to edit for length, clarity and libelous content.*

All letters must be signed. We ask that the writer include his or her city of resi-

House Labor & Industry
Attachment # 40
01-23-90

Letters to The Star

Causing costly delays

We had a wise old newspaper publisher as I grew up as a boy in central Oklahoma. He used to say that the Democrats should make policy and the Republicans should administer. Unfortunately, my belief in this maxim is shaken by the present administration of the Kansas Division of Workers Compensation by Director Robert Anderson, a Mike Hayden appointee.

After release from the doctor, an injured Kansas worker receives no assistance until the insurance company is forced to pay. In Kansas, this is likely not to occur until after an administrative law judge's decision, director review, district court review and appellate court review. The law does allow for payments after a director review. The law also provides that the director is to make a decision within 30 days. Anderson is so busy touring the state that he is regularly taking a year to review cases. This is a year in which the injured worker is left without benefits. This delay hurts local businesses and especially medical establishments. There is no justification for the delay.

We must ask ourselves how it is that Anderson is able to serve as director. The law requires five years of legal experience in order to serve as a workers compensation judge. Anderson supervises and reviews the judges. Anderson does not qualify as a judge.

Our legislative leaders must require that the director meet some qualifications and that reviews be handled timely. We need a new director.

Michael W. Simpson

Overland Park

MICHAEL W. SIMPSON
Attorney at Law

Format 3 letter S.R. - Simpson

6320 Riley
Overland Park, KS 66202

December 4, 1989

The Sun Newspapers
7373 W. 110th
Overland Park, KS

To the Editor:

We had a wise old newspaper publisher as I grew up as a boy in central Oklahoma. He used to say that the Democrats should make policy and the republicans should administer. Unfortunately, my belief in this maxim is shaken by the present administration of the Kansas Division of Workers Compensation by Director Anderson, a Mike Hayden appointment.

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We must ask ourselves how it is that Director Anderson is able to serve as director. The law requires five years of legal experience in order to serve as a workers compensation judge. Director Anderson supervises and reviews the judges. Director Anderson does not qualify as a judge.

Our legislative leaders must require that the director meet some qualifications and that reviews be handled timely. We need a new Director.

Sincerely,

Michael W. Simpson
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Overland Park

House Labor & Industry
Attachment #4
01-23-90 HB-3879

KANSAS 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

Mike Hayden, Governor

Ray D. Siehndel, Secretary

VIA FACSIMLILE

December 7, 1989

The Sun Newspapers
7373 W. 110th Street
Overland Park, KS 66212

To the Editor:

I read attorney Michael Simpson letter of December 4, 1989, with great interest and greater concern for its inaccuracies.

Mr. Simpson claims that an injured worker receives no benefits until an insurance company is forced to pay and that the Workers Compensation Division is too slow in handling those cases.

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I am proud of the Workers Compensation Division's record of services to the people of Kansas over the past 18 months of my tenure. When and if Mr. Simpson does have a case before the director's office, I am certain he will be pleased with our efficiency and effectiveness as well.

Sincerely,

Robert A. Anderson

Robert A. Anderson
Workers Compensation Director

mr

House Labor & Industry
Attachment #42
01-23-90

KANSAS 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

Mike Hayden, Governor

Ray D. Siehndel, Secretary

VIA FACSIMILE

December 7, 1989

Kevin Kelly
Sun Publications, Inc.
7373 West 107th Street
Overland Park, Kansas 66212

Re: Michael W. Simpson's "Letter to the Editor"

Dear Mr. Kelly:

This letter follows your telephone request that I respond to the letter to the editor dated December 4, 1989, from Attorney Michael Simpson that was, as you characterized it, "critical of me."

Thank you for faxing me a copy of the letter and for asking me to respond to Mr. Simpson's letter. I realize you requested my response be no longer than Mr. Simpson's letter, however, it is impossible to respond in less words than this letter contains and still reflect the truth. I understand you would take editorial license and edit this letter so I have enclosed an edited version.

It is unfortunate that Attorney Michael W. Simpson's comments in the letter dated December 4, 1989, are misleading to the general public. I would prefer not to discuss the administration of the Division of Workers Compensation, the previous administration, or my achievements by responding to a letter to the editor written by a sole practitioner whose opinions are not fully supported by facts, law or statistical data.

If I respond to Mr. Simpson's attack by countering his opinions with factual data, by discussing the previous administration or explaining the positive changes in the administration of the Division of Workers Compensation, and justify the need to "tour the state," it will appear as if I am conceited, arrogant and critical of my predecessor. If I fail to respond, it would appear that Mr. Simpson's opinions and accusations are accurate and that the state of Kansas needs a new Director. Faced with that dilemma, I choose

House Labor & Industry
Attachment #43
01-23-90

to respond.

Mr. Simpson's comment that an injured Kansas worker receives no assistance until the insurance company is forced to pay incorrectly implies that all industrial accidents in Kansas end up being litigated or that court orders are necessary for injured employees to receive workers' compensation benefits from employers and their insurance carriers, and that the appellate review backlog was created under the current administration.

Last year, the Division of Workers Compensation Claims Advisory Section handled 15,256 calls and personal inquiries from injured workers, employers, insurance companies and attorneys which may be "no assistance" in Mr. Simpson's eyes, but not in the eyes of the thousands that we helped.

Last year there were 1,224,708 people working for wages in Kansas. Of the 72,672 reported "accidents," only 25,594 involved lost time injuries. Only 5,218 Applications for regular hearing were filed and 6,232 cases either set or not set for hearing were settled. This was a 10.7% increase in settlements, which followed a 21.4% increase in settlements the year before.

Last year there were 2,677 Applications for Preliminary Hearing filed by employees seeking benefits. Only 1,002 cases required hearings because benefits were voluntarily provided in 62.5% of the cases once the employer or insurance carrier received notice. This compares to voluntary payment in 48% of the applications in fiscal year 1988, and 28.5% in fiscal year 1987.

Mr. Simpson's comments that the law also provides that the Director make a decision within 30 days is simply not true. There is no statutory guideline at present. I have, however, already proposed in a Workers' Compensation Joint Advisory Committee that the 1990 Legislature mandate that the Director's office be subject to judicial deadlines similar to those that the Administrative Law Judges and the District Court have to follow.

Although it will not be necessary during the remainder of my appointment, because after January 1, 1990, the current backlog (which has existed for several years) will finally be eliminated. However, a statute is necessary to protect those affected by untimely delays at the Director's level in the years to come, regardless of what administration is in power.

Mr. Simpson's comments that "Director Anderson is so busy touring the state that he is regularly taking a year to review cases," is grossly inaccurate.

In July, 1988, when I became Director, I inherited a Division where the judicial section was unconscionably backlogged with the exception of a few Administrative Law Judges. The Administrative Section that processes Applications for Hearing was backlogged and had been for over two years; and the public perceived that the Director's office was not giving meaningful appellate review of Administrative Law Judges' awards or timely written decisions. The decisions that were issued were often over one year old and were often perceived to be "rubber stamped" affirmations. In July, 1988, I was left with dozens of cases that my predecessor had not decided, some of which were older than 13 months.

Today, 17 months later, thanks to the hard work and dedication of all the Division employees, the Judicial Section does not have a backlog, six of the nine Administrative Law Judges are current and the other three Judges will be current by January 1, 1990. The Administrative Section has been current in processing Applications for Hearing for over five months, and the Director's Review backlog has all but been eliminated and will be eliminated by January 1, 1990.

Since July 1, 1988, I have reviewed and signed over 1,100 Director's orders as the Approving Authority and only two were over one year old. I have decided 18 cases involving issues of first impression, several of which required weeks of extensive research and writing.

The average Director's order, upon review that I have issued, has been 4.93 pages, a far cry from the one page affirmations that were often issued under the previous administration. No one can truthfully claim that the Workers Compensation Act has not been applied impartially to both employees and employers in cases arising thereunder since July 1, 1988; or that they have not received a meaningful appellate review of an Administrative Law Judge's decision at the Director's Review level.

Mr. Simpson's comments that "while Director Anderson tours the state" implies that I am not working to benefit injured workers.

Since July, 1988, I have made 55 speeches or presentations to over 6,500 employers, insurance companies, attorneys, union stewards, employees and to any one else requesting information on the Workers Compensation Act. Many of these speeches were in the evenings or on a weekend and I carried the same message to all those in attendance. I advised employers of their rights and responsibilities under the "new" Workers Compensation Act; encouraged employers to take safety precautions to prevent accidents; and encouraged employers and insurance carriers to help the disabled worker get back to work, either through accommodations or through

voluntary use of vocational rehabilitation in full compliance with the legislative intent behind the "new" Act.

The Division's proactive efforts to educate the public and provide a speaker's bureau will continue despite Mr. Simpson's, or others', criticism. The results are obviously beneficial to employees as well as employers. Today, there are more injured workers who have been returned to work, with accommodations, or through vocational rehabilitation than at any prior time; today, employers and insurance carriers understand the legislative intent behind the "new" act and are more willing to voluntarily provide benefits to injured workers without requiring litigation; and today, the cost of workers' compensation in Kansas has decreased so much under the "new" act, that Insurance Commissioner Fletcher Bell recently denied the NCCI's request for a 22.6% rate increase which not only saved Kansas employers an estimated $58 million, but also prevented small businesses from closing and/or laying off employees that would have occurred had the rate increase been approved.

Finally, Mr. Simpson suggests I am not qualified to be an Administrative Law Judge by state law and that we need a new Director. He obviously does not understand either the law or my qualifications. Today, I am qualified to be an Administrative Law Judge under the state statute, and in July, 1988, I was qualified to be appointed as Director.

If Mr. Simpson really believes the state of Kansas needs a new Director and is not echoing third party commentaries, I suggest he should talk to my supervisor, Secretary Ray D. Siehndel, at (913) 296-7474; or lobby the legislature.

I should note that I did not recognize Attorney Michael Simpson's name as an attorney that has ever appeared before me in a Director's Review. I double-checked my records and confirmed my suspicion, and followed that with a telephone call to Mr. Simpson. Mr. Simpson confirmed my suspicion that he had never appeared before me and that he does not have any cases currently pending and explained that his information came from other attorneys. It is indeed unfortunate that people are willing to take second-hand information and publicize it before they verify that information.

Since I am limited in my rebuttal, if you or anyone who read and believed Mr. Simpson's comments, want accurate information, I would welcome calls at (913) 296-3441.

Once again, thank you for allowing me to respond to Mr. Simpson's letter to the editor by means of this letter and my edited response.

Yours truly,

Robert A Anderson

Robert A. Anderson
Workers Compensation Director

RAA:lre

Enclosure: Letter to Editor

Copies to:
Ray D. Siehndel, Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603
Michael W. Simpson, Attorney at Law, 6320 Riley, Overland Park, Kansas 66202

KANSAS 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

Mike Hayden, Governor

Ray D. Siehndel, Secretary

December 7, 1989

Mr. Michael W. Simpson
Attorney at Law
6320 Riley
Overland Park, Kansas 66202

Re: Your Letter of December 4, 1989 to Editor of Sun Newspapers

Dear Mr. Simpson:

This letter follows our telephone conversation of Wednesday, December 6, 1989. Once again, thank you for explaining the comments in your letter of December 4, 1989, and informing of the source of your "information." Our conversation helped me tender my response after I realized that your second-hand information was from the grumblings of other attorneys.

Enclosed please find copies of two letters. The first is a five-page letter rebutting your comments to the Sun Newspaper. The second is a one-page edited response to your letter to the editor.

In my opinion, your December 4, 1989, letter to the editor of the Sun Newspaper, on your legal stationery, although you professed to me yesterday during our telephone conversation to be expressing your opinion as a private citizen, is written as a lawyer and is in direct violation of Rule 8.2(a) of the Rules Relating to Discipline of Attorneys adopted by the Supreme Court of the State of Kansas on March 1, 1988.

I have no intention to make a formal complaint to the Disciplinary Administrator because I am not concerned about your personal attack on me. However, when you mislead the public about the "new" workers Compensation Act (in my opinion) in an attempt to join others who plan to "fix" the Workers Compensation Law in the 1990 Legislative Session by soliciting others to notify their legislators about their feelings, by disseminating inaccurate information, you continue to foster the already negative public opinion that all lawyers face.

House Labor & Industry
Attachment #44
01-23-90

The irony of all this, Mr. Simpson, is that the time it took me to search my records, verify facts and respond to your letter to the editor and now in addressing additional concerns to you by means of this letter, could have been time better spent rendering timely services to injured workers, employers and insurance carriers who actually have Director's Reviews before me awaiting an appellate decision.

In all sincerity if you think you are more qualified to be the chief administrative officer of the Division of Workers Compensation and supervise 78 employees, to include nine Administrative Law Judges, two Assistant Directors and 25 Special Administrative Law Judges, as well as perform quasi-judicial duties as an appellate judge, then submit your application.

If Secretary Ray D. Siehndel finds, because of your education, legal experience, analytical skills, work history, general knowledge, and communications skills, that you either match my qualifications or surpass them, I will resign and allow you to assume those responsibilities.

Despite what you or others may believe, I am concerned about how injured workers are treated, but I have not, and will not, alter my firm commitment to apply the provisions of the "new" Workers Compensation Act impartially to both employers and employees in cases arising thereunder in full compliance with the legislative intent, while I am tasked with my current responsibilities, notwithstanding your criticism.

Finally, from one former very successful and experienced trial lawyer to a lawyer who calls himself a trial lawyer, I hope that you have the common sense to verify your facts before you make opening remarks to a jury, because if you use the same strategy in preparing for a jury trial as you apparently did in writing your letter to the editor, your clients may suffer the consequences.

I really don't mean to be cynical, Mr. Simpson, I just felt that based on the comment in your letter that you have cherished the advice for years that a wise old newspaper publisher once gave you that you may at least listen to this dumb old country boy and allow me to throw my two cents worth your way.

I trust that you will receive this letter in the spirit it is intended. Good luck to you in your legal career, and I hope that in the future when you feel obligated, as an attorney, to publish your opinion, that you make it your opinion based upon facts and not just a mere echoing of what others may have told you.

Yours truly,

Robert A Anderson

Robert A. Anderson
Workers Compensation Director

RAA:lre

Enclosures - Letter to editor; letter to Kevin Kelly