

Approved: 2-19-93
Date

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Chairman David Heinemann at 9:06 a.m. on February 16, 1993, in Room 526-S of the Capitol.

All members were present except: Representative Carmody (excused)
Representative Cornfield (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Carole Stuart, Lawrence
Terry Leatherman, Kansas Chamber of Commerce and Industry

Others attending: See attached list

Carole Stuart, Lawrence, appeared before the committee to relate her experience with the workers compensation system. She had been a legal secretary for 20 years, the last 13 with the Douglas County District Attorney's office, when she injured her left arm on a door at work on March 23, 1990. She expressed her frustration with the many doctors she was referred to and their conflicting diagnoses. She is in constant pain. Her problems were compounded when Douglas County stopped paying her workers compensation, saying she was an employee of the state and the state should pay her workers compensation. As the county and state disagree about who should pay her compensation, the case is in the courts.

Six issues in workers compensation, Ms. Stuart would like the committee to discuss are: 1) Worker choosing own physician, 2) No disruption of pay, 3) Attorneys working for the State workers compensation system cannot represent clients of their own against the State, 4) Rules against discrimination at workplace, 5) Neither the Personnel Director nor anyone else can consult physician about worker's injury without permission from worker or be able to tell physician how to treat injured worker, and 6) After an injured worker reaches maximum improvement, time should be limited for attorneys to settle the case. (Attachments 1 and 1a)

Terry Leatherman, Executive Director, Kansas Chamber of Commerce and Industry, addressed the committee on two issues KCCI feels are the most critical in workers compensation reform--work disability compensation and compensation for pre-existing conditions. Mr. Leatherman compared these two issues in current law and three major workers compensation reform proposals. In regard to work disability, KCCI feels HB 2354 is superior. All three proposals recognize that current law does not go far enough in reducing compensation involving pre-existing conditions; however, KCCI again supports the approach taken in HB 2354. (Attachment 2)

The meeting adjourned at 9:50 a.m. The next meeting is scheduled for February 17, 1993.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY

DATE: 2-16-93

NAME	ADDRESS	COMPANY/ORGANIZATION
Bill Hunter	Topeka	Fleming Co.
Bill Morrissey	"	DHR/Work Comp
Terry Leatherman	Topeka	KCCI
Tim Louderback	Topeka	BARBE and Assoc.
RAY RATHERT	TOPEKA	KS. Ins. Dept
Marshall Miller	EMPORIA	EMPORIA Chamber of Commerce
Joe Wood	"	" "
Floyd McCracken	"	" "
Lisa Unruh	Topeka	DOR
Judie Wright	Topeka	Wichita Eagle
William	"	KIDA
Bob Swout	"	AIA
Nekie Sweeney	Overland Park	OP Chamber
RICHARD L THOMAS	TOPEKA	DITA/WORK COMP
Joe Lieber	Topeka	KS Co-op Council
Art Brown	- -	KS. Labor Dealers
Pam Wells	Topeka	KS. Co-op Council
Harriet Long	Topeka	KS. Area Broadcast
Joe Turjanic	Topeka	KCA
Leah McKee	"	KS. Lutheran Assoc
Bill Curtis	Topeka	KS Assoc. of School Bldg
Jim Allen	"	PRM Inc.
Vernon McKinzie	Emporia	Emporia Chamber of Comm

Personae Data

1.

(My name is Carole Stuart). I would like to thank Don Smith and David Keinneman for letting me testify today.

First, I want to tell you a little about myself, the job I had, about my injury and what has happened to me during the last three years with the State Worker's Compensation System.

I've worked as a legal secretary for 20 years, the last 13 being in the Douglas County District Attorney's office. I prepared and typed all felony complaints and affidavits; motions; orders; kept the Court docket; prepared and typed extraditions and had many other duties too numerous to mention. I was voted Douglas County Legal Secretary of the Year in 1980-81 by the District Court Judges.

On March 23, 1990, I hit my humerus bone of my left arm on a door in the office while at work. I saw my personal physician a few days later because of constant pain. He said my elbow was broken and referred me to an orthopedic doctor the following day and advised me

to turn it in on W.C.

I returned to work the following morning and advised the office manager of my injury. Later in the day I saw Dr. Bailey, the Orthopedic Surgeon; he said my elbow wasn't broken and sent me to the pharmacy next door to his office to have a wrap put on it, his office didn't have one.

The following day at work, Pam Madl, Personnel Director of Douglas County called me at my office and asked why I went to my personal physician and I told her I didn't even think about W.C. She said she wanted me to see Ken Wertzberger, Douglas County's W.C. doctor. I said okay.

I saw Ken Wertzberger in April, 1990 my elbow was red, swollen, tender and sensitive. He sent me to therapy and gave me pain medication and told me to continue working; I did.

On approximately April 24, 1990, I went to his office and told him I couldn't stand the pain; it was constant. He gave me a "Cortizone" shot in the elbow and took me off

work for 4 or 5 days.

During the next 3 months I continued with complaints of pain, swelling, tenderness and that the pain was moving down my arm and up my arm. Ken Wertzberger's standard answer was, "just keep using it and we'll see what happens". I continued working and finally on June 12, 1990, I had to leave my office; I thought my arm was going to fall off.

One day after leaving the office Pam Madl called me at home and said she was putting me on disability; she didn't want me to do anything to damage my arm further. After 3 months it's done. I had repeatedly told Pam that I was getting worse.

I was sent to Lynn Ketchum of Overland Park in June, 1990. He said I had torn the tissues and fibers from the bone and told me to "baby" my arm and don't use it. He ordered therapy at Laurence Memorial Hospital which consists of injecting pain killers into my arm with electrodes. It was very painful and it wasn't supposed to be so the

Therapist stopped immediately.

I saw Ketchum for 4 months and once he had a splint put on my fore-arm. The therapist that put the splint on noticed the swelling under my arm and the left side of my breast. She asked me to "please" contact my personal physician when I returned to Lawrence and have a mammogram ordered. I had repeatedly told Ketchum about my underarm swelling and the breast and he ignored my complaints. He, like Wertzeberger, was like talking to a "brick wall". He finally ordered an "EMG" test which was given at the Humana Doctor's Bldg. by a Dr. Kelley. This test was extremely painful and consisted of electric shocks and sticking needles in my arm. Dr. Kelley made a remark to his female intern indicating that he couldn't tell if this test was as painful as some people thought because people on WC "yell" about everything. I reported Dr. Kelley's statement the next day.

I had a mammogram in August, 1990 and took the results, which were normal,

back to Ketchum; he said nothing. This indicated to me that the swelling was due to the injury.

In Sept, 1990, Ketchum told me he wanted me to see a "physiatrist". He couldn't even spell it but told me to locate one. He didn't even locate the doctor, let alone make an appointment for me.

Through S W Beel information, I picked at random Dr. Mark McQuain located at the Ks. Rehab. Hospital in Topeka. After a few weeks McQuain told me I had Reflex Sympathetic Dystrophy or RSD. Symptoms of RSD include severe burning pain; swelling; tenderness; waxy and pale skin; sensitivity to hot and cold temperatures; and contracted tissues and muscles. I have these symptoms from the middle of my left breast down to fingertips and on my shoulder blade. Dr. McQuain had a letter in his possession from Pam Madh telling him he only had authority to treat my "elbow" not my shoulder or any other arm complaint. McQuain told me, however, regardless of the letter, he was treating me as he

Thought best. After a few weeks McQuain offered to find a doctor to start "nerve blocks" but at this point I wanted a doctor of my choice and a second opinion.

I saw John Payell, Orthopedic Surgeon in Lenepa from Nov., 1990 to January, 1992. His diagnosis was RSD. Payell advised me to never let anyone give me a "nerve block" or do surgery. He said with RSD it would make the pain even worse and my hand would be like a claw. There are also side effects to these blocks that include drooping of the eyelid and mouth called "Horner's Syndrome", and there is no guarantee they will even help. One would have to take a series of them for years and they are given in the neck.

John Wertzberger evaluated me in Dec. of 1992, for the State. He said I have "RSD". I told him I didn't want the nerve blocks, they're too dangerous.

For 13 years it was my understanding, like everyone else in the

D.A.'s Office that I was a County employee. However, in Feb., 1991, a Judge ruled that I was a "State" employee. So, in August, 1991, the County stopped paying me. In Dec., 1991, at a hearing the Judge ordered the State to pay me and I received some back money plus 2 more months which took me to January, 1992. I haven't received WC pay since that time. As I speak, Douglas County and the State of Ks. are still in dispute as to my employer.

This disease has changed my whole life. Not only have I had to deal with RSD but I had to vacate my apartment in November, 1991, put all of my furniture in storage, and file Chapter 13 Bankruptcy. I had no money and no one cared. I've been discriminated against and humiliated. I've had to go to SRS for cash assistance (which I paid back with disability checks) and for food stamps. My co-workers at the D.A.'s office were instructed not to have any contact with me because they might have to testify in Court. I was

cut off completely.

In June, 1992, I was put on Social Security Disability. I've thanked God for that. Now, I'm living in a motel room with a bed, dresser and T.V. I haven't had a home for my 4 sons to come to for two Thanksgivings and two Christmases. You can imagine what they think of this system. I'm living in a rather dangerous area of Lawrence. If I should meet with with an accident in the future, my family will hold the State of Ks. responsible. The State put me there. No one should have to go through what I've been through for the past 3 years. I haven't even touched upon the way one is treated by the opposing attorney.

If I could help just one person by talking to you; that will give me some comfort.

These are the issues I would like to see this committee discuss:

1. To be able to choose your own physician.
A "WC" doctor's job is to keep you at

work.

2. No disruption of pay.
3. Attorney's working for the State WC System cannot represent clients of their own against the State.
4. Rules against discrimination at work place.
5. Personnel Director nor anyone can consult physician about workers injury without permission from worker or be able to tell physician how to treat injured worker.
6. After an injured worker reaches maximum improvement; time should be limited for attorney's to settle the case. It's a game that's played out in which they try to starve you or better yet; hope you'll die.

Thank you very much for listening.

off photo by Ben Bigler)
 juggling Extremists
 — is a new cam-
 notes juggling.

Issues

clubs is the best thing
 g," Moore said. "You
 t it's fun to work with
 as you trust them not
 your head."

R's novices also are
 stick, using two hand
 nter stick back and
 goes, every time you
 ave to learn it. It's a
 " said Stephens, who
 o handle torches.
 er with torches is the
 he said.

s "blasting off" at

place, Samuel said. ... taking
 Results of a New York
 Tim CBS News poll support
 Samuel's claim. The poll results
 were published today.
 Four out of 10 women say they
 have encountered some form of
 sexual harassment at work, the

and most of the reported in-
 cidents occur in the workplace.
 Super visors and company
 managers are considered
 ultimately responsible for
 harassment charges, she said.
 Investigators collect evidence

See Sexual, page 9A

Laurance Journal World 10-11-91

Dispute cuts off aid to DA worker

State, county debate responsibility

By STEVE BUCKNER
 J-W Staff Writer

In March 1990, Carole Stuart, a
 trial assistant and legal
 secretary in the Douglas County
 district attorney's office, hit and
 injured her elbow on a wooden
 door in the DA's office.

Three months later, she found
 that she could no longer work at
 her job of almost 13 years
 because of the injury.

"I couldn't stand the pain
 anymore," said Stuart, who
 hasn't worked since.

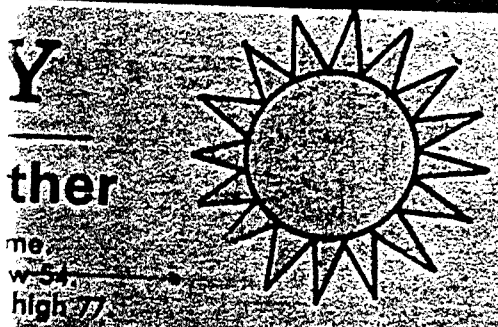
Three months ago, her prob-
 lems were compounded when
 Douglas County stopped paying
 her worker's compensation.
 Citing a February ruling by a
 Kansas administrative law
 judge who said DA employees

work for the state, the county
 decided the state should pay
 Stuart her worker's compensa-
 tion. The state disagrees with
 that ruling.

Meanwhile, Stuart isn't receiv-
 ing worker's compensation from
 either the county or the state.
 She said she is in danger of losing
 her car and must move because
 of a lack of money. Stuart also is
 confused by the complicated
 laws governing her case, and she
 is bothered by the lengthy pro-
 cess to determine which govern-
 mental body should pay her.

"MY MAIN complaint is that
 I've been a loyal employee there,
 and I don't think it's right what
 they're doing to me," Stuart

See County-state, page 9A



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President vetoes unemployment bill

WASHINGTON (AP) — President Bush today
 vetoed a \$6.4 billion bill that would have provided
 10 to 20 additional weeks of unemployment
 benefits, calling it a "poorly designed and
 necessarily expensive program."

He said in a letter to the Senate that the bill
 "violates essential elements" of the budget agree-
 ment that lawmakers and the White House signed
 to last year because it does not include "any
 cutbacks to make up for the \$6.4 billion program."
 "I would gladly sign any law responsible for
 a budget that does not threaten the economic recovery
 and its associated job creation."

House Labor and Industry - Attachment 1a 2-16-93

and determines there is sufficient support the allega-

sometimes seek revenge against perpetrators or blame the victim or the crime, White said.

Employers aren't admitting guilt by signing the agreement

to do their work," Samuel said.

County-state dispute cuts employee's compensation

2

(Continued from page 1A) said. "Somebody should be paying me."

Stuart's case is before the state worker's compensation board. In the meantime, it also is unclear whether the county or state would pay worker's compensation should any of the approximately 230 other DA employees statewide, including 23 in Douglas County, suffer a work-related injury.

Neither Jeff Cooper, a private Topeka attorney representing the state, nor Bob Fairchild, Douglas County counsel, knew of a similar case involving a DA employee.

"(It's) never been raised before at all . . . as to whose employee they really were," Fairchild said.

PAM MADL, county personnel and risk management director, said the county pursued a ruling because it thought DA employees were state employees. Fairchild said the county based its argument on a 1987 attorney general's opinion that said DAs are elected as state, rather than county, officers.

What complicates the issue is how the DA's office is set up. Madl explained that the office was created by state statutes. The DA, not the county, is responsible for personnel policy, salary structure and hiring and firing, she said.

But the county commission does set the DA's office budget, and DA's employees' paychecks are issued by the county. Stuart said the paperwork she received as a DA employee — such as paychecks, longevity pay and KPERS retirement participation records — has the county's name on it.

MADL SAID she assumed the county pays DA employees "because that's the way it was set up a long time ago." She added that it is the DA who decides a worker's longevity pay and that both county and state employees must participate in KPERS.

So why has the county, doubting it had to assist Stuart after her injury, paid her \$29,237.73 in worker's compensation and medical benefits?

"Our approach from worker's comp was that it was a fairness issue," Madl said. "We wanted to make sure she had coverage and proper medical care from the beginning."

Fairchild said he had advised Stuart's ~~three different~~ attorneys that the county was pursuing a legal decision and might stop payment before the payments were actually stopped.

MARGARET Pemberton, Stuart's current attorney and a former member of the Douglas



Carole Stuart

aren't very many other employers that would do that."

THE COUNTY and state disagree on several points about who should pay Stuart. Cooper said counties have some control over DA personnel, citing a statute that reads "the county commissioners shall determine and allow such reasonable sum from the funds of the county."

Cooper also asserts that the attorney general's opinion used by the county is in a "totally different area" because it dealt with the tort claims act that allows people to sue the government under certain circumstances. He says the ruling does not apply to worker's compensation.

Fairchild contends that the state isn't paying because it never charged the DA's office a "premium" for the worker's compensation self-insurance fund.

Housing groups may reorganize

(Continued from page 1A) cluding 209 children, he said. The report estimates were lower.

Bob Mikešic, a residential services specialist for Independence Inc., said he would like the report to address the needs of physically disabled residents who need housing adapted to their abilities.

Independence Inc. is a local advocacy group for the physically disabled.

ED DUTTON, who described himself as a social activist and "agitator" at the meeting, said the report also needed to address low wages and other economic factors that make housing unaffordable for many people.

Hilda Enoch, a representative

"Nobody ever thought about it," he said. "The statute specifically sets out certain departments are supposed to (be) charged, and their (state's) position was, 'Because we didn't charge them, we don't have to pay.' Well, I'm sorry they didn't charge them, but they are a state employee and they do have to pay."

COOPER AGREED that the state had not charged the DA's offices for worker's compensation.

"The problem with Miss Stuart is that if she is a state employee, nobody has ever assessed any part of the county (district) attorney's budget to go into the fund," he said. "If the Legislature wants the state self-insurance fund to do that, we can do it, but that's going to be part of the counties' budgets."

Cooper said the state is paying for new treatment for Stuart that will determine whether she has reached "maximum medical improvement," meaning her condition will not get better. The next hearing will depend on what the doctor says. If more treatment is necessary, the state will pay for it, Cooper said.

Cooper thinks the case may go to the Kansas Court of Appeals or the Supreme Court. He paused when asked what could be done for Stuart while the case was being heard.

"We've done everything that we're required to do by the judge," Cooper said. "I don't know what else can be done. I guess I don't have a good answer for you there."

"The way the system is designed, it's not always perfect. Few programs like this work perfectly."

Thomas, Hill plead cases

of the Older Women's League, responded to a sense of despair growing in the city hall conference room as the groups' representatives explained their housing needs but couldn't provide solutions.

Enoch spoke sharply about the need for a central body to coordinate the activities of the many housing and advocacy groups in Lawrence.

"We are always reacting and never on top of the issues," Enoch said. "We need to ask ourselves how we can act, instead of waiting for federal money to float down."

"Everything we talk and dream about would be possible if we developed a body to address these issues."

On the record

Law enforcement report

Burglaries and thefts reported

— About 200 paint brushes valued at \$2,055 were taken between Sept. 30 and Thursday from So Fro Fabrics, 711 W. 23rd. The store manager said the brushes had been part of a display and were small enough to be easily concealed in clothing or handbags. No arrests have been made.

— Two neighboring west Lawrence businesses were burglarized between 5 p.m. Thursday and about 6 a.m. today. Undisclosed amounts of money were taken from Jane Bateman-The Interiors Store and Paint Supply Inc., both of 2101 W. 28th Ter.

Condition reports

— James M. Coozenoy, 35, Eudora, remains in fair condition today at the Kansas University Medical Center, Kansas City, Kan., where he was taken early Saturday morning after an accident about four miles south of Lawrence.

— Timothy Rush, 29, Lawrence, was released this morning at Lawrence Memorial Hospital, a hospital official said. Rush was taken to the hospital Saturday after he was involved in a one-car accident that killed another person about two miles northeast of Lawrence.

— Nathan Collins, 37, 711 N. Fourth, was discharged Thursday from the Kansas University Medical Center, Kansas City, Kan., a medical center spokeswoman said. Collins was taken to the medical center after a car-motorcycle collision Wednesday afternoon about seven miles southeast of Lawrence that resulted in the death of the motorcyclist, Kenneth Cranshaw, 29, rural Eudora.

Fire calls

Lawrence firefighters: — Responded to a false alarm at 8:24 a.m. Thursday at United Child Development Center, 946 VI.

— Responded to the report of an arcing electrical wire at 1:54 p.m. Thursday in a vacant store at 745 N.H. Firefighters reported that employees from a commercial cleaning company were working in the building and had sprayed some water into the light fixture. Firefighters turned off the electricity to the store.

— Extinguished a grass fire at 3:35 p.m. Thursday near U.S. Highway 24-69, about a half-mile west of Midland. The three-acre grass fire started near a barn and spread along Union Pacific Railroad tracks.

— Responded to the report of a false alarm at 7:45 p.m. Thursday at the Lawrence Riverfront Plaza, Sixth and New Hampshire.

— Responded to a fire alarm at 8:31 p.m. Thursday at Alpha Chi Omega sorority house, 1500 Sigma Nu Place. Firefighters said smoke coming from burned popcorn had set off the house's fire alarm.

— Responded to the report of a person trapped in an elevator at 10:11 p.m. Thursday at Jayhawk Towers, 1603 W. 15th. Firefighters worked with the Kansas University Police Department to pry open the elevator doors on the third floor of the complex's Tower D. It took about 10 minutes to get the person out of the elevator. No one was injured.

District court

Marriage licenses issued

— Miles P. Mikešic, 24, Lawrence, and Elisabeth J. Nelson, 23, Lawrence.

1a-2

former attorney

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Fairchild said he had advised Stuart's three different attorneys that the county was pursuing a legal decision and might stop payment before the payments were actually stopped.

(To here)
MARGARET Pemberton, Stuart's current attorney and a former member of the Douglas County district attorney's staff, declined to comment about the case because it is ongoing.

After the administrative judge issued the ruling and the state refused to pay, Fairchild said he implored Stuart's former attorney to take action against the state, to no avail. He said if Stuart's attorney had acted in March, the matter could have been solved by now.

"The only leverage I had was to stop paying, and so we finally did," Fairchild said. "Most employers wouldn't have paid in the first place."

Fairchild said the county has been fair with Stuart.

"Pam adjusted her sick leave and adjusted her vacation days and did everything she could to make sure she (Stuart) got exactly the same amount she'd gotten all along," he said. "There

aren't very many other employers that would do that."

THE COUNTY and state disagree on several points about who should pay Stuart. Cooper said counties have some control over DA personnel, citing a statute that reads "the county commissioners shall determine and allow such reasonable sum from the funds of the county."

Cooper also asserts that the attorney general's opinion used by the county is in a "totally different area" because it dealt with the tort claims act that allows people to sue the government under certain circumstances. He says the ruling does not apply to worker's compensation.

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(Continued from page 1A)
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Hilda Enoch, a representative

Thomas, Hill plead cases

(Continued from page 1A)

mistaken for sexual harassment." Yet, Thomas said that if she construed any of his comments in that way, "I am so very sorry and I wish I had known. If I had, I would have stopped immediately."

Under questioning, Hill expressed regret about not speaking up at the time about improper conduct by a man charged with enforcing equal opportunity laws. "I may have shirked a duty, a responsibility that I had," she testified.

"To that extent," Hill said, "I confess that I am very sorry that I did not do something, say something. Maybe it was a poor judgment but it was not a dishonest and not a particularly unreasonable judgment."

THE JUDICIARY Committee,

wants the state self-insurance fund to do that, we can do it, but that's going to be part of the counties' budgets."

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"Everything we talk and dream about would be possible if we developed a body to address these issues."

Itself, had a high stake in today's hearing. The panel has been accused of mishandling Hill's charges and treating her accusations too lightly. Chairman Joseph Biden, D-Del., expressed regret that his committee was being faulted and said "we emphatically do" take charges of sexual harassment seriously.

The full Senate delayed a vote on Thomas' nomination last Tuesday to allow a hearing of the charges. A vote now is scheduled Tuesday.

Thomas portrayed himself as a victim of unfounded charges, much as Hill has portrayed herself as a victim of sexual harassment.

"As excruciatingly difficult as the last two weeks have been, I welcome the opportunity to clear my name today," Thomas told the committee.

Lawrence Memorial Hospital official said that after he involved in a car accident, killed another person about 10 miles northeast of Lawrence.

Nathan Collins, 37, 711 Fourth, was discharged Thursday from the Kansas University Medical Center, Kansas City, Kan., a medical center spokeswoman said. Collins was taken to the medical center after a car-motorcycle collision Wednesday afternoon about seven miles southeast of Lawrence that resulted in the death of the motorcyclist, Kenneth Crawshaw, 20, rural Eudora.

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District court

Marriage licenses issued

— Miles P. Mikesic, 24, Lawrence, and Elisabeth J. Nelson, 23, Lawrence.

— Homer L. Howell, 23, Lawrence, and Brenda L. Rothwell, 23, Lawrence.

— John L. Underwood, 25, Atchison, and Teresa A. McElfresh, 23, Atchison.

— Charles L. Hancock III, 24, Jackson, Tenn., and Rie M. Moller, 24, Lungby, Denmark.

— Barry A. Frank, 33, Lawrence, and Tammy S. Johnson, 24, Lawrence.

— John H. Hope, 66, Topeka, and Mary C. Hermann, 66, Lawrence.

— Ronald D. Webb Jr., 20, Lawrence, and Charlotte A. Leibold, 19, Lawrence.

— Monti D. Copp, 37, Lawrence, and Rosalie Sutton, 36, Lawrence.

— Matthew E. Lomshek, 24, Lawrence, and Susan D. Thomas, 26, Lawrence.

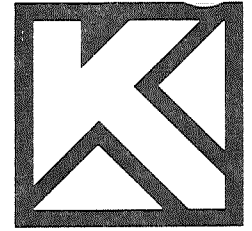
— Daron L. Beers, 20, Lawrence, and Jennifer-Norwood, 18, Big Springs, Kan.

— Chad D. Gray, 19, Lawrence, and Mary E. White, 21, Lawrence.

— William A. Manger, 42, Lawrence and Linda S. Troutfetter, 40, Lawrence.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

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KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Labor and Industry

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain where KCCI stands on two of the most critical issues in the development of a comprehensive package of reform to the Kansas workers' compensation system.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

During appearances before this Committee, KCCI has made a point to promote "comprehensive" reform of workers' compensation in Kansas. From the Kansas Chamber's

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perspective, "comprehensive" reform means addressing problems in five areas of the workers' compensation system. They are: 1) encouraging work place safety; 2) reducing litigation and streamlining administration of the process; 3) establishing medical cost containment and vocational rehabilitation reform; 4) insurance reform to promote the advantages of self-insurance in the insured community; and, 5) making employers responsible for only compensating injuries which should fall in the parameters of the workers' compensation act.

While some disagreements exist, there is a great deal of agreement in areas one through four. However, the two issues for discussion today, work disability compensation and compensation for pre-existing conditions, fall into the fifth area of reform, and are undoubtedly the most contentious issues in today's workers' compensation reform debate. They are at the heart of changes that the promoters of comprehensive reform are attempting to "reduce the cost of workers' compensation on the backs of injured workers." In making its case for change today, KCCI will promote reform in these two areas which would lower costs. However, the Kansas Chamber is equally convinced the proposed changes retains a system which fairly compensates workers who are injured on the job.

1. **WORK DISABILITY**

In workers' compensation cases involving permanent, but partial, general injury to the body, work disability compensation is considered. There are two key questions which must be answered in applying work disability compensation. They are: A) what cases should be allowed to qualify for work disability; and, B) what objective standard should you use to determine the degree of work disability, in cases which qualify. Current law and the proposed changes are shown below.

CURRENT LAW

A) There is a presumption that work disability does not exist when an employee engages in any work at comparable pre-injury wage.

B) Work disability is calculated by determining the employee's loss of access to the open labor market and the employee's lost ability to earn comparable pre-injury wages.

HB 2353

- A) Subject to the law's review and modification provision, there is no work disability if an employee engages in any work at comparable pre-injury wage.
- B) Work disability is calculated by determining the employee's lost ability to earn comparable pre-injury wages.

HB 2375

- A) There is a presumption that work disability does not exist if the employee is engaging in work at pre-injury wages. The presumption can only be overcome by an employer demonstrating the employee is engaged in suitable work.
- B) SAME AS CURRENT LAW

HB 2432

- A) There is no work disability while the employee is engaging in any work at comparable pre-injury wages for the same employer they were working for when they were injured.
- B) Work disability is calculated by determining the employee's lost ability to perform work tasks that the employee performed during a 15 year period before the accident averaged together with the difference between pre-injury wage and post-injury wages the employee is earning. In addition, the work disability percentage is reduced by a "pre-existing" factor.

In both of the areas regarding work disability, KCCI feels HB 2354 is superior.

In the first part of the test regarding what cases are not permitted work disability, HB 2354 eliminates the "presumption" language. This should make it clear to courts that employees who engage in comparable wage employment do not qualify for work disability. The review and modification provision provides a further protection for employees who are returned to employment in the guise of avoiding work disability compensation, and does not apply the extremely rigid "suitable work" standard in HB 2375. Finally, unlike HB 2432, a distinction is not drawn between what comparable wage employment the employee receives after an injury. This provision is key to a small employer who lacks the ability to return an injured worker to comparable wage employment. Under the HB 2354 rule, the small employer can accomplish the social good of promoting re-

employment by promoting job placement and vocational education, and eliminate their work disability exposure.

In the second part of the test, HB 2354 provides the only definition for calculation of work disability compensation that employs a one-prong test, making it the least complicated and most objective test. In addition, by basing the test on wage loss, you would empower Kansas employers to promote a social good. That would happen because the closer an employer could restore an employee's ability to earn the wages they did before an injury lowers the work disability award they will be required to pay. Wage loss is also the only test of those being considered that looks into the future, rather than revisiting the past. This is critical because there is nothing an employer can do to restore "loss of access to the open labor market" or "loss of task performing abilities," when those tests are performed by looking into the employee's past. However, an employer can support efforts to use the skills an employee does have after a work-related injury and return them to employment, leaving the employer to pay a work disability award based on the success of that effort.

Pre-existing condition proposals in the three major reform bills also differ widely. They are summarized below.

HB 2354

An employee is not entitled to compensation for any disability that is determined to be pre-existing, but is compensated to the extent a work-related injury aggravated a pre-existing condition.

HB 2375

Permanent partial disability is reduced by the percentage of functional impairment from pre-existing conditions. To be considered pre-existing, the condition must be traumatic in origin, medical treatment must have been sought, and the traumatic incident and treatment must have occurred prior to the employee getting a job with the employer involved in the workers' compensation case.

Permanent partial disability is reduced by the percentage of functional impairment from pre-existing accidents. Prior to employment, an accident includes any accident where medical treatment was sought. After employment, an accident must occur outside employment and receive treatment to be considered pre-existing.

All three proposals recognize that current law does not go far enough in reducing compensation involving pre-existing conditions. Of the three, KCCI again supports the approach taken in HB 2354. HB 2354 is clear and straight forward. An employer is responsible for injuries which occur at their work site. That is an objective standard which a workers' compensation system should strive to impose.

Mr. Chairman, thank you for this opportunity to explain KCCI's position regarding these two critical areas for developing comprehensive reform of the Kansas workers' compensation system. I would be happy to attempt to answer any questions.