

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on February 12, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Kevin Yoder- excused
Representative Rob Boyer- excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Norm Furse, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Carol Cast, Division of Workers Compensation
Tom Caby, Stormont Vail Hospital
Terri Roberts, Kansas Coalition for Workplace Safety
Jeff Cooper, Kansas Coalition for Workplace Safety

Others attending:

See Attached List.

The Chairman stated the Floor was open to see if anyone was interested in working **HB 2359 - Requiring continuing education for certain contractors licensed by cities and counties.**

Representative Novascone moved and Representative Ruff seconded to move **HB 2359** out favorably.

After discussion Representative Sharp moved and Representative Novascone seconded a Substitute Motion to amend on Page 1, line 25 and on Page 2, line 18, to add "not less than" between "obtain" and "six". The motion carried.

Representative Novascone moved and Representative Ruff seconded a Substitute Motion to move **HB 2359** out as amended. The motion carried.

The Chairman asked if the Committee wished to take action on **HB 2479 - Employment of illegal aliens, penalties?**

Representative Pauls moved and Representative Ruff seconded to move **HB 2479** out favorably.

After discussion Representative Pauls withdrew her motion and Representative Ruff withdrew her second to move **HB 2479** out favorably.

The Chairman announced Workplace Disability would be the topic for discussion today.

Carol Cast, Coordinator, Employer Services, Division of Workers Compensation, gave a summary of how the process works for workplace disability under workers compensation (Attachment 1)

Workers Compensation Information for Kansas Employers & Employees brochure is filed in the Chairman's office.

Tom Caby, Stormont Vail Hospital, gave an example of an employee being injured and claiming work disability. Once the money ran out, the employee applied and got a job where her salary was \$2.00 per hour more than the previous job. Most workers eventually return to work doing same/similar work. There is a timing issue as the future is not considered. Going back 15 years is subjective, it may or may not be pertinent. A nurse could be injured and possibly 15 years earlier had worked at a minimum wage job. Work disability should be similar to unemployment and should be capped. Economic conditions should not be grounds for work disability (Attachment 2).

Jeff Cooper, Kansas Coalition for Workplace Safety, practicing attorney, and Adjunct Professor of Law at

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Washburn University School of Law, has been teaching workers compensation for approximately 12 years reviewed workplace disability under workers compensation. Mr. Cooper is also a Pro Tem Appeals Board Judge, filling in when one of the Board Members has a conflict or is unavailable. The Legislature changed the law in 1993 to set up a two-prong test, and for the past 10 years, we have been looking at wage loss and task loss as the two prongs for the test. Under the current law, these two prongs are averaged together.

Under the current law the wage loss prong is looking at actual wage loss. The statute, as written in 1993, states wages are to be compared with what the employee was earning at the time of the injury with the wages the employee is earning after the injury. As written, theoretically, the employee, if not brought back to work and paid 90%, could sit at home, make no efforts to find a job, and would have a 100% wage loss. The "liberal" Judges, the Appeals Board, and the Court of Appeals have judicially imposed a "good faith" test.

The task loss prong is the second prong of the equation. Under current law, the "tasks" are looked at that were performed by the employee in jobs they have worked for the 15 years before the injury (Attachment 3).

Terri Roberts, R.N., chairperson, Kansas Coalition for Workplace Safety, stated under current law injured workers in Kansas receive workers compensation benefits according to the severity and type of disability sustained on the job. Work disability cases are those in which an employee sustains severe, permanent injuries on the job that are not covered by the schedule of injuries in the Kansas statute, such as injuries to the back, hip or the neck. These are career-ending injuries; injuries that rob employees of their ability to perform the tasks they used to perform to earn their paycheck. A laborer who used to make a good wage on the strength of his back and through an injury can no longer lift more than 25 pounds; that injury could be career ending. A grocery store checker who used to stand behind a cash register all day who can no longer work on her feet after her hip was shattered; that injury could be career ending. These are real people with real bills to pay and real mouths to feed who must now compete in the real world for a real job. Under current law, the amount of disability an injured worker receives is based, in part, on how much the worker actually earned both before and after the injury. However, under the proposed amendment, disability benefits would no longer be based on what the injured worker actually earned post-injury but instead on what a vocational expert thinks an injured worker has the "capacity to earn" after the injury (Attachment 4).

The Chairman stated that yesterday time expired on the topic of Pre-Existing Condition and so testimony on that topic will be completed at this time.

Terri Roberts, R.N., chairperson, Kansas Coalition for Workplace Safety, stated she wanted to call attention to some of the word games being played by those who advocate changing the definition of "pre-existing condition." As with most areas of law, workers compensation has many parts, and it is difficult to reform singular sections of the law without affecting the statute as a whole. Be assured that changing the language used to define "pre-existing condition" is much more than a "surgical strike." If the Legislature adopts the definition of "pre-existing condition" being proposed, it would ultimately affect every worker in Kansas who sustains a permanent injury on the job. The new definition of "preexisting condition being proposed is so broad that virtually any worker over a certain age who sustains a permanent injury on the job would have a preexisting condition. In this new proposal, "preexisting condition" could mean any condition that has never been symptomatic, has never been diagnosed or has never interfered with the ability to work or carry out daily activities of living (Attachment 5).

Jeff Cooper, Attorney at Law and Adjunct Professor of Law at Washburn University School of Law gave information on what is work disability. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the 15 year period preceding the accident averaged together with the difference between the average weekly wage the worker was earning at the time of the injury, and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross

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weekly wage that the employee was earning at the time of the injury.

The law was changed in 1993 to set up a two-prong test, and for the last 10 years, have been looking at wage loss and task loss as the two prongs for the test. Under the current law, these two prongs are averaged together.

The following testimony was distributed by Dennis L. Horner on preexisting impairments (Attachment 6).

The meeting adjourned at 11:00 a.m. The next meeting will be February 13, 2004.