

**Management Labor Advisory Committee  
Vocational Rehabilitation Subcommittee  
Thursday, June 17, 2004  
Local 290, Tualatin, OR**

**Subcommittee Members Present**

Sheri Sundstrom, Hoffman Construction Company, Portland, OR  
Diane Janzen, NorPac Foods, Lake Oswego, OR  
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR  
John Kirkpatrick, IUPAT District Council, Tualatin, OR  
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR  
Ken Hector, CNF Service Company, Portland, OR

**Subcommittee Members Absent**

None

**Staff Present**

Lou Savage, Director's Office  
Myrna Curzon, Director's Office  
Nancy Bieber, WCD  
Mike Manley, IMD  
Curt Heikkinen, WCB  
Travis Wall, IWO  
Edith Hayden, IWO

**Review Minutes from May 26 Subcommittee Meeting**

A motion was made by Ken Hector to approve the minutes as submitted; the motion was seconded by Bob Shiprack. The minutes were accepted as submitted.

**Discussion on Voc Rehab Proposals**

*Nancy Bieber, Workers' Compensation Division*

Nancy Bieber reported to the committee on actions taken since the last full committee meeting. The items that were approved by the committee for drafting have been sent to Legislative Counsel. John Shilts met with WCB and determined that implementing #8 would probably not require legislative change. At the suggestion of Shirley Butcher of SAFECO, a group of interested parties got together with WCD representatives to discuss concepts 1-8 from the handout titled "Vocational Assistance Modifications", dated May 26, 2004. A copy of their report is submitted to the committee. The group consisted of two vocational counselors, three insurer representatives, Travis Wall and Edith Hayden from IWO, and Barb Smith and Nancy Bieber from WCD.

*Bob Malone, Liberty Northwest*

Bob Malone summarized the discussion of the stakeholder group that met to discuss the vocational assistance modifications being considered by the subcommittee. A summary titled, "Meeting at SAIF Service Center on June 9, 2004" was submitted to committee members. Additional discussions of the stakeholders that occurred after the June 9 meeting are also included in the summary presented.

Ideas on which there is conceptual agreement among stakeholders:

Use of EAIP funds for adult basic ed, skills improvement, or ESL, not possible now, is an appropriate change. These placements would be off-site, but would not conflict with the statutory limitation on off-site modified work because this alternative would be by mutual agreement. If the employer and employee

agree that part of the time should be spent in adult basic ed or ESL, the stakeholders generally agree that this would be a good utilization of EAIP funds.

Stakeholders support allowing the employer to use Preferred Worker Program (PWP) benefits for suitable modified work without affecting the benefits for the worker should the return to work with the employer at injury not work out. There is also support for making it easier to use the benefits early by not requiring definitive restrictions and capacities from the doctor before the worker can qualify for the preferred worker card.

There is general consensus among the stakeholders that it would be appropriate to provide vocational assistance even if there is an appeal. If the insurer prevails, the WBF would be used to reimburse the insurer costs incurred. Currently, when an insurer appeals an order granting a worker vocational benefits, the benefit may not be provided pending the outcome of the appeal. Services are provided up to but not including the plan. ( WCD reported that there are only an estimated 5-6 cases per year of workers who are have a stay of benefits while the eligibility is being litigated. There are few cases in which there is an appeal and the insurer prevails; average cost \$35,000 each, five or six would be a generous estimate, total \$200,000.)

Stakeholders support changes that would encourage the treating physician to declare that the worker will have permanent restrictions as early in the claim as feasible. This change would allow an eligibility evaluation to proceed based on estimated capacities and limitations.

Stakeholders who participated in the meeting are open to talking about tightening up the timelines. They support the idea of a consultation pre-dispute conference with the principles involved in developing a plan for the worker. The consultation would be used to identify the barriers and seek solutions so the case can move forward.

Stakeholders are in support of some kind of process for the worker getting information about vocational assistance. The specific mechanism would need to be discussed further.

Stakeholders support changes that would allow the worker to use the full 90 days on EAIP program if the worker starts in a light duty program and for whatever reason they are taken off and later put back on a light duty program.

*Travis Wall, Injured Worker Ombudsman*

Expressed agreement with most of the items on the list, but submitted the following ideas:

The timelines could be shortened even further than what is currently proposed. Time loss benefits could start when the worker is determined to be eligible. Currently a worker does not receive time loss until they actually enter an authorized training program. Mr. Wall submitted a chart to the committee titled "Current Process; Plan B" showing a revised timeline. He noted two corrections. The corrections are noted on the handout that has been made part of the record. Mr Wall discussed the proposed time line changes with the committee.

A pre-dispute conference arrangement could be put into place where the Rehabilitation Review Unit (RRU) would facilitate a discussion if there are roadblocks that delay the process. A variation would be making that process available throughout the claim process. If there is evidence that the roadblock is caused by the worker then RRU could extend the deadline, which might motivate the worker to change

Between approval of a plan and actual implementation of the plan, if time loss begins after approval of the plan, require workers to enroll in an adult basic ed or skills training program to prepare for the job search that they are going to begin. The worker who does not want to participate can wave the training, but in doing so they would also then wave time loss.

Mr. Wall asked the committee to continue to consider modifying substantial handicap criteria for lower wage earners.

The language that would require an informational conference before entering into a CDA needs to be carefully crafted to address concerns from the Oregon State Bar about maintaining the worker/attorney relationship.

WCD should aggressively audit and insure the evaluation is done timely based on current law.

WCD Response: WCD has a study currently underway. Insurers are being contacted to verify the data. About 1/3 of the insurers have responded. Of those received, the highest percent are not eligible for services. However, the worker is still entitled to the evaluation. If there is not an appealable decision this creates a situation where there is no opportunity for the worker to challenge the assumption that they are not eligible.

#### COMMITTEE DISCUSSION:

Enforcing current timelines: Lack of cooperation may be a reason for the eligibility evaluation not being done. Clarification was made that lack of cooperation is a reason to find the worker not eligible. In the cases being looked at by WCD no decision or no notification was made.

Informational conference before CDA: Care should be taken not to interfere with the attorney/client relationship for represented workers. The conference should be information providing only without moving into an advocacy role. When a worker is represented, the attorney is the advocate. Often there are others who are impacting the decision-making process of the worker, ie a spouse, parent or other person close to the worker.

Early eligibility determination: People who get injured or diseased and it is obvious they are not going back to the employer at injury often have eligibility determined well before claim closure. With an indication from the doctor of general limitations, that is going to happen more often.

Shortening timelines: WCD submitted "Vocational Assistance current Process" Bob Malone, LNW submitted "Current process-Current rules" as well as ""Proposed Process-New Rules or Statutes." Both management and labor members expressed concern for the worker where there is no income because of an injury. If time loss benefits are paid earlier there must be an easy way to trigger termination of those benefits for lack of cooperation. Coming to the department to request a suspension was not supported. Reimbursing insurers for costs by using the Worker Benefit Fund was not supported. A suggestion was made that if the doctor does not give a declaration of permanent restrictions, but if the employer, the insurer, and the worker are in agreement then it would be appropriate to proceed with voc services. Committee members expressed a desire to see interested parties work out shortened timelines that all could support.

Stakeholder comments: Insurers work to get the worker into a plan as soon as possible. Once a worker is eligible there is nothing to be gained for the insurer by delaying the plan. Compensating the worker for their disability is important. However, in states where the worker is compensated until they return to work, the result is that some workers have no motivation to return to work. It was for that reason that medically stationary was put into law. The employer should not be responsible for starting time loss if there is an obvious fact the case would have progressed if there had been cooperation from the worker. There is a need for some kind of mechanism to move forward without substantially changing how time loss is awarded. If the physical capacity changes and the worker will be able to do a lot more than previously projected then the having rules that make it easier to end eligibility when there is new information that would reverse that decision would be important. The assistance could then be terminated.

Injurer Worker Ombudsman Comments: Use the conferencing mechanism to suspend the time loss benefit or extend the timelines. The ombudsman is not supportive of not awarding time loss until the worker goes into training. He would recommend beginning time loss on the date eligibility is determined and identify a reasonable process for termination of benefits if the worker is not cooperating.

*Randy Elmer, OTLA; Kryger, Alexander, Egan, & Elmer*

Mr. Elmer agreed that ideas presented about voc rehab problems have been accurately identified. He added that often the worker has a competing long-term interest with the employer at injury, ie retirement, that they do not want to give up. He expressed agreement with comments regarding maintaining the attorney client relationship. If there is a simple solution that does not interfere with the attorney/client relationship then OTLA would be able to support. A three way conference with the worker and attorney and IWO could be used. Mr Elmer added a suggestion of adding a page to the CDA which is a checklist, ie 1. You know that you are giving up....., where the worker acknowledges that they were informed and they are aware of what they are giving up. Current checks and balances should be looked at, i.e. professional liability fund, rather than increasing the duties and therefore the budget of DCBS. Mr. Elmer described some of the things a worker can be giving up when signing a CDA, i.e. occasionally future attorney fees, and often a global settlement where there is a resignation and release with the employer. Although the global release is sometimes sought by the employer, there are times when the employer does not know it is included in the CDA.

Committee Discussion:

Employers try to obtain the global release uniformly when the worker is not coming back. Some states do not allow a global release to be attached. When they are coming back to work for the employer at injury there is not reason to seek that kind of settlement.

*Dr. Joe Eusterman, Physician, Occupational Medicine*

Dr. Eusterman does medical arbiter exams out of his home. He also does work for law firms to review records. He expressed support for changes that would compress the whole process of getting the injured worker back to work. The thrust would be the from the time the worker is injured to the time he is declared medically stationary. Dr. Eusterman suggested that there is a need for a good definition of objective findings. He feels that the current definition is a legal definition, and feels that what is needed is a medical definition. He has tried for three years to work with the Workers' Compensation Medical Advisory Committee without success, and he will be bringing the issue to the full MLAC.

*Sheri Sundstrom, Chair*

Proposals with general agreement that require statute change are at Legislative Counsel. Rule change items will be refined more and then presented to MLAC. The last item for the subcommittee would be compressing the timelines of the overall voc process.

- Asked Nancy Bieber to modify list of items with agreement and then identify issues talked about today. Identify with stakeholders more specifics on agreements.
- Made a general request to all stakeholders with any ideas on #8 regarding the informational meeting before a CDA, to get comments to Lou Savage.
- Asked Randy Elmer to bring a sample checklist that could be attached to a CDA.

Meeting adjourned at 11:15 a.m.

Next Meeting

July 1 10:00 a.m. at Local 290