

**Rehabilitation Review Panel
Jan. 22, 2015
Meeting minutes**

RRP members present

Duane Butorac
Carl Crimmins
Dr. Russell Gelfman
Steve Hollander
Laura Jerde
Meg Kasting
Carol Norris
Alissa O'Hara
Dr. Joseph Sweere
Lisa Weed
Mary Wells (telephone)

Voting members excused

Bobbi Pearson
May Vang

Visitors and DLI staff members present

Chris Leifeld, deputy commissioner
Sonya Herr, executive secretary
Mike Hill, business liaison
Sandy Barnes
Todd Bosch
Chad Henriksen
Mark McCrea

Nonvoting members excused

William Martin

Call to order

Chairman Dr. Joseph Sweere called the meeting to order at 1:08 p.m. Introductions were made. A quorum was met.

Approval of minutes

Duane Butorac moved to approve the April 3, 2014, meeting minutes as presented; Carl Crimmins seconded. All voted in favor and the motion carried.

Approval of agenda

A unanimous decision was made by the panel to approve the agenda as presented.

Commissioner Peterson

Commissioner Ken Peterson acknowledged Dr. Joseph Sweere's retirement from the Rehabilitation Review Panel and thanked him for his many years of service. Dr. Joseph Sweere was appointed to the panel in 1980 and has served as the chairman for the past 27 years.

Assistant commissioner's update

Chris Leifeld has been appointed assistant commissioner for the Workers' Compensation Division at the Department of Labor and Industry.

- The mileage reimbursement rate has increased to 57.5 cents, up from 56 cents in 2014.
- The International Association of Industrial Accident Boards and Commissions (IAIABC) is currently conducting its own jurisdictional independent medical examination (IME) study. The department will wait until the IAIABC study results are available to determine the future direction of an IME study in Minnesota.
- The Workers' Compensation Summit, which will have 16 breakout sessions, is scheduled for June 17 and 18, 2015. The summit will be at Cragun's Conference Center in Brainerd, Minnesota. One of the keynote speakers at the conference will be Dick Beardsley, a marathon runner and inspirational speaker.
- **Update:** The workers' compensation bill affecting 1) how the Special Compensation Fund's assessments are accounted for on Department of Commerce annual statements being filed, 2) how post-traumatic stress disorder (PTSD) claims, as an occupational disease, are handled for

reinsurance and 3) the department's rulemaking authority to make its rules consistent with ICD-10, when it becomes effective, passed the 2014 Legislature.

Rehabilitation related

Workers' compensation computer system modernization planning process

Todd Bosch, project manager, MN.IT Services, informed the panel of DLI's project to modernize the workers' compensation computer system. The project is currently in the discovery and planning phase. A final report that will include costs, feasibility and recommendations is expected by late spring 2015. A consultant team is on site, conducting meetings with various groups to ensure they understand all stakeholders' goals.

2015 meeting dates

The panel voted unanimously to change the July 2 meeting to July 23, 2015.

Injured worker question and answer form; information on DLI website

Chris Leifeld reported an information sheet was developed by DLI to aid injured workers about the workers' compensation litigation process. The document seeks to answer frequently asked questions about the litigation process and to help injured workers understand their options. This document is sent to injured workers and their attorney, if they have one, after a Claim Petition form is filed. This document may be produced in languages other than English, in the future, and may be revised incorporating the plain-language initiative.

There is also a video about how to get workers' compensation medical bills paid. Feedback from the panel indicated an interest in having DLI develop additional videos that mirror the content in the information sheets and in creating videos in languages other than English. The panel also expressed interest in knowing how many times the video has been viewed.

Summary of retraining plan outcomes

In response to panel inquiry, Mike Hill presented an in-depth summary of retraining plan outcomes from 2010 through 2013. The materials, distributed to the panel, included data from 2010 to 2012 and are attached to these minutes. The panel would like to be able to track retraining plan outcomes in the future as a way to determine the successfulness of the plans. It was felt that much time and expense is put into developing and implementing retraining plans without a system in place to track outcomes.

Professional conduct complaint outcomes

Mike Hill discussed the source of conduct complaints that get filed against a rehabilitation provider and the outcomes of the investigations. He provided a handout with data compiled from 2008 to 2014, with a table showing the number and source of complaints and another table showing professional conduct and accountability outcomes. In 2014, 21 of the 24 complaints were generated by the department due to rehabilitation providers not attending mandatory training. Ninety-nine complaints were investigated and closed in 2014.

Chairman and vice chairman elections

The panel voted in favor of Duane Butorac as chairman and Dr. Russell Gelfman as the vice chairman for 2015.

Other business

Agenda items for the next meeting

Contact Chairman Duane Butorac and Business Liaison Mike Hill with agenda items for the next meeting.

Adjournment

A unanimous decision was made by the panel to adjourn.

The next tentative meeting dates are April 2, from 1 to 3 p.m., July 23 and Oct. 2, 2015.

Disputed retraining plan outcomes 2010 through 2013

The following summarizes the reasons 20 disputed retraining plans were not approved by the Minnesota Department of Labor and Industry's Alternative Dispute Resolution (ADR) or the Office of Administrative Hearings (OAH) from 2010 through 2013. A retraining plan is considered "disputed" when one of the parties to the claim does not agree to the proposed plan. To pursue a disputed retraining plan, the employee must file a Rehabilitation Request form with ADR, which holds a conference and issues a decision. A party who disagrees with the ADR decision may request a formal hearing at OAH. An OAH decision may be appealed to the Workers' Compensation Court of Appeals (WCCA) and the Minnesota Supreme Court.¹

When a dispute exists about whether a proposed retraining plan should be approved, the following four Poole factors are considered in determining the appropriateness of a plan:²

- the reasonableness of retraining as compared to returning to work with the employer or other job placement activities;
- the likelihood that the employee has the ability and interest to succeed in a formal course of study in a school;
- whether retraining is likely to result in reasonably attainable employment; and
- whether retraining is likely to produce an economic status as close as possible to that which the employee would have enjoyed without the disability.

The following is only a summary of reasons that retraining plans were not approved. The reasons depend on the specific facts, which vary from case to case.

- The employee had not participated in any job search and the employee's starting wage after retraining would be 20 to 35 percent less than the date of injury wage.
- The proposed job was not suitable because it was outside of the employee's restrictions and it was not likely the employee would find a job upon completion of the plan.
- Retraining would not likely lead to the employee finding a more suitable job that paid more than the employee's current position.
- Retraining was not likely to result in employment; the Labor Market Survey did not show jobs would be available within the employee's physical restrictions.
- Retraining was not likely to produce an economic status as close as possible to that which the employee would have enjoyed without the disability; few suitable jobs were available in the employee's labor market.
- The retraining plan did not include the physical requirements of the proposed job; no medical opinion was submitted stating the proposed field of work fell within all of the employee's restrictions from all injuries.

¹In several cases, the parties settled the disputed retraining plan during or after the litigation.

²**Based on the WCCA decision in *Poole v. Farmstead Foods, Inc.***, 42 W.C.D. 970, 978 (WCCA 1989). See also the requirements in Minnesota Rules 5220.0750.

- Insufficient evidence was provided that the employee would be able to get to school given the employee's driving restriction. The employee did not follow up on a prior judge's recommendation to look at programs closer to home.
- The retraining was not likely to result in reasonably attainable employment as job prospects were limited in the area of the state the employee planned to seek employment.
- No information was presented that the proposed educational institution qualified the employee to meet the Minnesota state board requirements for the proposed occupation. Employee did not show retraining was reasonable compared to other options, including on-the-job training. The physical demands of the job were not consistent with the employee's restrictions.
- The proposed retraining plan was not reasonable given that other public institutions located closer to the employee were not considered. The Labor Market Survey did not show there were reasonably attainable jobs in the employee's field upon completion of the plan.
- The proposed retraining plan was not reasonable given there had been no placement services provided to the employee. The proposed plan did not show the employee had the ability and interest to succeed in school because no vocational testing was provided. No medical report from the treating physician confirming the proposed job was within the employee's restrictions was provided.
- The proposed retraining plan did not show the plan was reasonable compared to other placement activities. The proposed plan did not show the employee had the ability and interest to succeed in school because no vocational testing had been conducted. The Labor Market Survey contained speculative information about future job availability.
- The employee had a job in the desired field and had to quit that job due to lack of ability and interest. Retraining would not produce an economic status as close as possible to that which the employee would have enjoyed without the disability.
- The employee did not show the employee would succeed in the proposed course of study because the employee had not met the college's basic admission requirements.
- The retraining was not reasonable compared to other options, such as job search activities. The employee's test scores did not show the ability or interest to succeed in a college-level course. The employee did not show the retraining would result in a job that would provide an economic status as close as possible to that which the employee enjoyed without disability because starting salaries were significantly less than what the employee was earning.
- There was no opinion by the qualified rehabilitation consultant or other vocational expert that retraining was reasonable compared to other job search activities. The proposed retraining plan did not show the employee was likely to be successful in a formal course of study because the plan did not contain an evaluation of the vocational testing. The Labor Market Survey did not show it was likely the employee would find reasonably attainable employment.
- The retraining plan did not show retraining was reasonable compared to other job placement activities. The retraining plan did not show the employee had the ability and interest to succeed in a formal course of study; it did not contain the physical requirements of the proposed job or

vocational testing or evaluations. The Labor Market Survey was inadequate and did not show the employee would find reasonably attainable employment.

- The retraining plan did not show retraining was reasonable compared to other job placement activities. The job search was inadequate and poorly documented and the employee's resume had poor grammar and misspellings. The retraining plan did not show the plan would likely result in reasonably attainable employment because the Labor Market Survey was inadequate with very limited wage data, no indication of hiring and only one employer provided the physical restrictions of the job. The retraining plan did not show the proposed job would produce an economic status as close as possible to that which the employee enjoyed without the disability and the anticipated earnings did not justify the expense of the plan.
- The retraining plan did not show retraining would likely result in reasonably attainable employment; the Labor Market Survey of 12 employers did not report information about current hires, anticipated hiring or job outlook. The retraining plan did not show retraining would produce an economic status as close as possible to that which the employee would have enjoyed without the disability given the lack of information about the number of available entry-level jobs and the future job outlook in this field.
- The employee informed the parties at the administrative conference that the employee was scheduled to undergo surgery. Given the outcome of the surgery was unknown and what, if any, physical restrictions would result from the surgery, the proposed retraining plan was premature.