

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988

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5403 SLAB SB 322 (file 18)

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The Honorable Bettye Fahrenkamp-December 18, 1987

insurance or the equivalent], shall for the purpose of this chapter be an employee of any employer under this chapter for whom he is performing service in the course of the trade, business profession or occupation of such employer at the time of the injury.

Wis. Stat. §102.07(8)

It would seem only reasonable that Alaska consider a similar approach, thereby relieving employers from the burden of attempting to establish employment relationships under a structure such as that presently existing, which tends to foster uncertainty.

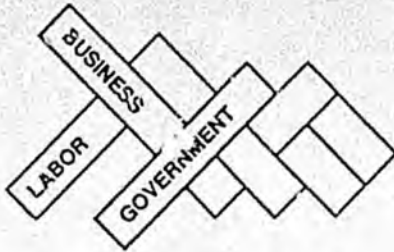
In summary, either of the approaches outlined above would achieve the desired result--*i.e.*, provide clear and relatively definite criteria around which predictable employment relationships might be built. It is long past time for legislative action regarding this matter, and any help you can provide in raising this issue to the appropriate individuals and legislative committees would be very much appreciated.

Sincerely,

Daniel M. Duame
Attorney at Law

DMD:lk

cc: Mr. Charles P. Rees, President ✓
Unified Fairbanks



UNIFIED FAIRBANKS

WORKERS' COMPENSATION SEMINAR
DECEMBER 12, 1987

RECOMMENDATIONS

INSURANCE

Facilitators: Gordon Depue, Kevin J. Krauklis

1. How to enforce the Alaska Statutes for Workers' Compensation at Alaska rates on contractors that come in from out of state and bring their payroll with them to perform Alaska jobs.

Certificate of Insurance states that workers' compensation policy is in force and qualifies under Alaska Statutes. Add wording that says that this is a public money project and certification of insurance is in place at Alaska rates with Alaska benefits. A copy of that goes to the insurance company who ought to be interested in collecting Alaska rates on that payroll. Also notification to insurance company of amount of payroll.

We should extend the penalty that applies to people who have no workers' compensation which is \$1,000 per week or \$50,000.00, to contractors who have improper workers' compensation. Contractors without proper workers' compensation would have to pay what they owe plus penalty, which should be turned over to the Attorney Generals' Office to ensure collection of that penalty.

EMPLOYER

Facilitator: Jan Steele

1. Medical Evaluations/Doctors.

The facilitators were questioning the doctors' opinions and some of these things are in place, but they'd like to see more teeth put into them. Right now the doctors can be selected by the patient, you then as the employer can have an independent medical evaluation, but then who is the tie breaker if these things are different?

Possibly there be a list of doctors or a tie breaker appointed by the state.

2. Voluntary Loss Control.

We'd like to see the funding restored and really plugged up on the state program for voluntary loss control, everything is in place right now but the funding has been cut and every one of the employers felt that this would be an excellent benefit to have more people out there assisting us in the loss control.

WORKERS' COMPENSATION SEMINAR
ISSUES RECOMMENDED ELSEWHERE (Continued)
Page Two

2. Fraudulent Claims.

Some teeth put into workers' comp law. Either there is a fine in place if your discovered to have submitted a fraudulent claim, and this should be for all parties involved. Doctors and attorneys who may have decided that it would be a good way for the state to make money.

Mandatory employer contact prior to the doctor issuing his opinion of whether or not this person is or should be placed on compensation. So doctor has more than just claimants information to base his evaluation on.

3. Workers' Compensation Payments.

Would like to see prompt payment on an injury. Sometimes payment has been delayed as much as 6 weeks, this causes hardship for the employee who cannot work and has no money either.

REFERRED TO TASK FORCE

1. The Insurance Companies are going to be looking at catching up, so even though we may be doing something quickly to turn this around the Insurance Companies are probably still looking at trying to recoup some of the differences between the premiums that they received and the benefits that they paid. So we may still be looking at increases from the Insurance Companies and this may be something we still need to address.

Suggestions and solutions to this problem still need to be addressed.

2. Attorney Fees.

State regulates the claimant's attorney fees and sets them minimally, that's why approximately five attorneys in the state will take compensation cases and the rest won't. The defense side is unregulated or regulated by the market, its whatever they can charge.

Require a form by which the court or some agency, probably the Board make some kind of determination on a fair fee for each side.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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3. Mandatory Review - Insurance.

We would like to see a mandatory review of the insurance department anytime there is going to be an increase. We want an independent evaluation so these people have to justify anytime that there is an increase. This was done in Texas. Dr. Merkel was talking about it earlier, they cried that they were losing money right and left; when the independent audit was finally done they saw that they were making a hellacious amount of profit instead. We would like to see this put in place and done on an annual basis.

4. Benefit Offset

Collateral Benefits

At this time I don't believe there is a benefit offset. So if somebody is receiving compensation and say that they have insurance on the side or something like that they would like to see some sort of benefit offset so this doesn't become such a lucrative business to be in; this being on compensation. This would also include retirement programs, maybe even a second job while on compensation or other incomes coming from insurance companies pertaining to the accident. There is Social Security Offsets.

5. Alaska Compensation Rates.

One of the employers brought up that he would like to see the state or an independent auditor investigate the dollars that would be saved by the employers by lowering the Alaska Maximum Compensation Rate to a figure closer to the national average, to reevaluate what our compensation rate is set on and see just what exactly we would save if we even knocked it down further. Compensation rates could be based on current wages at the time of the injury and adjustment for people under 18 who are dependents, like college students who are living at home, who may not have the same income requirements as others, if there could possibly be an adjustment for dependents that have other sources of income.

Next week
Wages - Current/Future.

Get some kind of a formula to look at what the difference in the benefit structure would be if it was based on current or future wages, and see what kind of a savings there would be.

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EMPLOYEES

Facilitator: Jim Carroll

1. Recommendations.

- a. The board pass recommendations that implement the law before the 1988 session.
- b. Rehabilitation voluntary for the employees.
- c. The Division of Insurance develop a method they can break down costs that are paid out by these categories:
 - (1) Attorney fees
 - (2) Compensation to employees
 - (3) Vocational Rehabilitation
 - (4) Medical
- d. That more hearing officers be hired.

LEGAL

Facilitator: Art Robson

1. Priorities.

A realignment of priorities which must be executive in nature to cause the Attorney General to expend some percentum of his or her budget on prosecution of matters in which the employers have either no insurance or insurance that is not correct; that is not at the Alaska rate, so your probably not going to get paid at the Alaska rate, or in which the employee is committing fraud by drawing compensation.

2. Certificate of Insurance.

Require a filing of a particular form of a Certicate of Insurance (we discussed whether political subdivisions of the state should get this) the only thing where anybody who is an employer has to get anything is a business license, maybe thats the vehicle that you have to use to require that it be filed and forwarded to Department of Labor who forwards a copy to the Insurance Company. The form should be designed to cover all the loopholes, ie. yes we paid Alaska Rates, heres the estimated amount of the payroll, etcetera.

3. Hearing Calendar.

Hearings should be within one month of decision that one is needed. More Hearing Officers will be required. Also opinion should be submitted in ten days instead of thirty days, this will also require more Hearing Officers.

WORKERS' COMPENSATION SEMINAR

RECOMMENDATIONS NOT PASSED

1. Temporary Partial Disability, (TPD's).

There should be a cap on this as it goes on forever unless you force them into a rating and get either a settlement or some kind of a percentage to pay out on these people that you can live with. It was decided that the TPD right now looked more like a retirement program than benefit program.

2. Insurance Brokering - State

Some employers felt that it might be a good idea that the state enter into the insurance brokering business. If you make it a little bit competitive out there maybe some of the rates would come down. The State of Arizona is a good example.

3. Time Limit on Temporary Total Disability, TTD.

Encountered problems due to treatments that have to be given for certain types of injuries and claimants are going through rehab, time limits will have to be set out to about two and a half to three years, which is longer than it should be set if these problems are not a factor. We did not come up with any suggestions or solutions and realize this still needs to be addressed.

4. Procedural Matter.

After finishing hearing on a case, take your vote at that time if its at all possible, (if you don't have to read a mass of medical records or something), try to take the vote then in interest of time efficiency.

5. Workers' Compensation Rates.

Change the rates to by the hour instead of by the dollar. At the present time with rates set by the dollar everyone wants to hire as cheap as possible so they may not always get qualified people to save on insurance.

RECOMMENDED ELSEWHERE

1. Audit - Insurance Companies

We would like an independent audit of all the insurance companies that provide insurance in the State of Alaska, whether they reside here in Alaska or whether they just sell insurance to Alaskan companies. Again make them justify any rate increases that they may have.

REPORT OF THE MEDICAL COMMITTEE
UNIFIED FAIRBANKS TASK FORCE ON WORKERS' COMPENSATION

Attached is a copy of the existing section of the Alaska Workers' Compensation Act (§095) which covers medical benefits for injured workers. The Medical Committee has accepted some of the changes proposed in the new bill before the Labor and Commerce Committee (indicated by underlining) and has rejected others. To help explain the Medical Committee's recommendations, section by section, the following explanation is provided:

Subsection (a).

1. The committee accepts most of the proposed changes in this subsection, particularly the limitation to one change of treating physician, designed to discourage "doctor hopping."

2. The committee believes use of the term "primary physician" is preferable to the suggested change to "attending physician," and has used "primary physician" throughout.

3. The committee does not agree with the proposed change requiring notice to the employer/carrier prior to changing primary treating physician. The committee has adopted language that notice must be "within 14 days" of the change, which is in line with the present law.

Subsection (b).

1. The present subsection (b) has been left unchanged both by the Medical Committee and by the proposed new law.

Subsection (c).

1. The committee recommends subsection (c) of the existing law be left without revision. Its opinion is that the proposed changes are not a good idea: (a) requiring written treatment plans before the commencement of treatment and (b) additional documentation for treatment in excess of certain limitations (20 visits the first 60 days; 4 visits a month after 60 days).

Subsection (d).

1. The present subsection (d) has been left unchanged both by the Medical Committee and by the proposed new law.

Subsection (e).

1. The committee believes the present provisions for an examination or examinations of the injured worker by the employer are adequate. The committee rejects the proposed change specifically authorizing such examination(s) to be requested every thirty (30) days.

Subsection (f).

1. The Medical Committee has adopted without revision the language proposed by the new law.

Subsection (g). [Previously repealed]

Subsection (h).

1. The present subsection (h) has been left unchanged both by the Medical Committee and by the proposed new law.

Subsection (i).

1. The present subsection (i) has been left unchanged both by the Medical Committee and by the proposed new law.

Subsection (j).

1. The committee disagrees with the suggested repeal of present subsection (j), which places reliance on an already existing Board regulation generally following the AMA Guide for the Evaluation of Permanent Impairment. This provision should be left in the law without revision.

2. The committee also rejects the proposed new subsection (j) which would give the board authority to appoint a committee or hire an existing organization to "advise the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter."

Subsection (k).

1. The committee disagrees with the suggested totally new subsection (k) creating a "second independent medical evaluation" whose opinion shall control ("be presumed to be correct") in all medical disputes before the Board. The committee recommends that no such provision be adopted and that medical disputes continue to be handled by presentation of medical reports and evidence to the Board under existing procedures.

AS 23.30.095 Medical Examinations.

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-years period runs from the time the employee has knowledge of the nature of his disability and its relationship to his employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician inside the state where the employee resides to render the care. Upon procuring the services of a physician, the injured employee shall give proper notification of his selection to the employer within a reasonable time after first being treated. The employee may not make more than one change in the employee's choice of primary physician without the written consent of the employer. Referral to a specialist by the employee's primary physician is not considered a change in physicians. Notice of a change in the primary physician shall be given within 14 days after the change.

(b) If the employee is unable to designate a physician and the emergency nature of the injury requires immediate medical care, or if he does not desire to designate a physician and so advises the employer, the employer shall designate the physician. Designation under this subsection, however, does not prevent the employee from subsequently designating a physician for continuance of required medical care.

(c) A claim for medical or surgical treatment is valid and enforceable against the employer unless, within 14 days following treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee.

(d) If at any time during the period the employee unreasonably refuses to submit to medical or surgical treatment, the board may by order suspend the payment of further compensation while the refusal continues, and no compensation may be paid at any time during the period of suspension, unless the circumstances justified the refusal.

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice. No fact relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or

examined the employee, or who may have been present at an examination is privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit to an examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for recovery of damages under this chapter, be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. No autopsy may be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

(f) All fees and other charges for medical treatment or service shall be subject to regulation by the board but may not exceed usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, as determined by the board.

(g) Repealed by §27 ch 93 SLA 1982.

(h) Upon the filing with the board by a party in interest of an application or other pleading, all parties to the proceeding must immediately, or in any event within five days after service of the pleading, send to the board the original signed reports of all physicians relating to the proceedings which they may have in their possession or under their control, and copies of the reports shall be served by the party immediately on the adverse party. There is a continuing duty on the parties to so file and serve all the reports during the pendency of the proceeding.

(i) Interference by a person with the selection by an injured employee of an authorized physician to treat him, or the improper influencing or attempt by a person to influence a medical opinion of a physician who has treated or examined an injured employee is a misdemeanor.

(j) The board shall adopt and use a schedule for determining the existence and degree of permanent impairment consistent with the American Medical Association Guide to the Evaluation of Permanent Impairment."

Rep. Dave Donley, Chairman
House Labor and Commerce Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

As you may be aware, Unified Fairbanks formed a legislative task force following a seminar here in Fairbanks on December 12, 1987, concerning workers' compensation. The task force subdivided into committees, of which ours on vocational rehabilitation was one. We have reviewed in detail the proposed changes in the vocational rehabilitation law (§041) as it presently exists in the Alaska Workers' Compensation Act. Our committee agrees with some of the proposed changes and disagrees with others. A report of our work follows.

Unified Fairbanks is proud of the fact that our legislative task force is made up of individuals involved in all aspects of workers' compensation. There have been no secret sessions. Our seminar and its follow-up meetings have been open to anyone interested which has allowed us to have input from all sides of the issue and has eliminated the opportunity for certain special interest groups to become too dominant in our work.

Regardless of the affiliation of our individual members, employer, union representative, insurance broker, physician, vocational rehabilitation consultant, employee or employer attorney/representative, etc., the one underlying theme that seems to have permeated our work is our belief that merely changing the law will not solve the problem. We find no evidence from any source which indicates the law which has been proposed will reduce the cost of workers' compensation. We have repeatedly sought facts from the state government indicating what segment or segments of the workers' compensation system have been causing the greatest increase in cost. Absolutely no information has been forthcoming, although we have been able to obtain the same information from other states with a telephone call. In short, all we know is that there is a serious problem with the cost of the system. However, no one in our state government has been able to identify where the problem lies. We firmly believe it is wrong to legislate massive changes in what is basically a sound law when no one has as yet identified where the problem lies.

In fact, if anything, it is the opinion of our committee that the cost of the system may well be increased because of the substantial changes proposed and the confusion and litigation that will naturally result. In the area in which our committee worked, vocational rehabilitation, we feel the above problems are particularly acute. May we elaborate.

A. INEFFECTIVE WORK BY STATE AGENCIES, Division of Insurance:

Much of the blame for the increased cost of the workers' compensation system has been placed on vocational rehabilitation. However, the Division of Insurance has absolutely no information available to anyone concerning the costs of vocational rehabilitation or of any other workers' compensation benefit for that matter. Nonetheless, the Division continues to approve massive rate increases for workers' compensation insurance, and a portion of the blame gets placed on a "vocational rehabilitation system which is too liberal." The last increase was granted without the preparation of any findings of fact and without the presentation of any specific information to those in this State who are involved. We suggest legislation requiring some state agency to keep statistics on the cost of rehabilitation evaluations, rehabilitation plans, the cost of litigation, and so forth. When future rate increases are suggested, facts and figures will be available to indicate where the cost increase is coming from.

B. INEFFECTIVE WORK BY STATE AGENCIES, Workers' Compensation Board:

The Department of Workers' Compensation has seriously faltered in its obligation to administer the existing vocational rehabilitation law. Over five and a half years have passed without the promulgation of a single rule or regulation by the Board to govern procedures under the law which went into effect on July 1, 1982. The present law has never been given a chance to work and we find it ridiculous that the Legislature now stands ready to cast it aside. We suggest the legislature take whatever steps are necessary to immediately secure the promulgation of administrative rules and regulations by the Board.

Two good examples of what has happened as the present system has struggled without the benefit of administrative rules:

1. We suspect a major portion of any increased cost of vocational rehabilitation is in the payment of temporary benefits to injured workers while they wait for the vocational process to be completed. The system in Fairbanks has worked very slowly without the rules and regulations needed. As a result, injured workers remain far too long on temporary benefits. Rather than deprive injured workers of temporary benefits during vocational rehabilitation, which we think is a worthwhile benefit, we suggest the Board streamline the system with the promulgation of rules and that the existing law be tightened up to provide certain specific time limitations for each step of the process. This is the main thrust of our suggested changes in the existing law.

2. In Fairbanks there is no full time rehabilitation administrator. At present, the one administrator is in Fairbanks one day a month. This allows a maximum of three rehabilitation conferences. Without timely rehabilitation conferences available

AS 23.30.041. Rehabilitation of injured workers.

(a) The board shall select and employ a rehabilitation administrator. The board shall adopt regulations to implement this section. The board shall authorize the rehabilitation administrator to select and employ sufficient rehabilitation staff to conduct hearings and to collect and analyze statistical data. The rehabilitation administrator is in the partially exempt service under AS 39.25.120.

(b) The rehabilitation administrator shall implement the provisions of this section, study the issue of rehabilitation, both physical and vocational, enforce the regulations as adopted, and maintain and report statistical data on a continuing basis as to the cost of rehabilitation to the Legislature on at least an annual basis.

(c) If an employee suffers a compensable injury that could preclude return to the job at the time of injury, the employee shall be referred for an evaluation for participation in rehabilitation services within 30 days after the date of injury. A full evaluation shall be performed by a qualified rehabilitation professional within 30 days of the date of referral. If in the opinion of the qualified rehabilitation professional, the medical, physical, or emotional state of the employee precludes a full evaluation, the rehabilitation professional shall prepare a preliminary evaluation within 14 days of the date of referral. A preliminary evaluation shall include the reasons why a full evaluation cannot be made, an opinion as to when the employee will be able to participate in a full evaluation, and any information that would be included in a full evaluation that can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation. If the employer does not timely make a referral for evaluation under this subsection, the rehabilitation administrator shall retain a qualified rehabilitation professional to perform the evaluation. The employer shall pay the reasonable costs of an evaluation under this subsection.

(d) A full evaluation by a qualified rehabilitation professional shall include a determination whether rehabilitation services are necessary, as outlined in the regulations.

(e) Refusal by an injured employee to participate in an evaluation results in forfeiture of disability compensation for the period the refusal continues. The rehabilitation administrator shall find that an employee refuses to participate in an evaluation if the employee fails to cooperate with the rehabilitation provider as outlined in the regulations.

(f) After the evaluation is completed, the employee must elect in writing to the administrator within 14 days of receipt of the full evaluation whether or not he or she will participate in further rehabilitation services.

(g) The employee's election not to participate in rehabilitation services is final, provided, however, that the employee shall have the option within 30 days of the notice under subsection (f) to notify the administrator in writing that he now wishes to participate in rehabilitation services.

(h) After the employee has elected to participate in vocational rehabilitation services for which he is eligible, the vocational rehabilitation counselor will within 90 days submit a vocational rehabilitation plan to concerned parties including the rehabilitation administrator which will enable the employee to return to suitable gainful employment. A rehabilitation plan may consist of any of the following; however, if the employee can be restored to suitable gainful employment with rehabilitation plans of higher preference, then a rehabilitation plan of a lower preference need not be offered by the employer. The order of preference for rehabilitation plans is return to work

(1) with the same employer at the same or modified job as at the time of injury;

(2) with the same employer at a new job using transferrable skills;

(3) with a new employer at the same or modified job;

(4) with a new employer in a new job using transferrable skills;

(5) through developing already existing skills or acquiring new skills through on-the-job training;

(6) after developing already existing skills or acquiring new skills through vocational training;

(7) after developing already existing skills or acquiring new skills through academic training;

(8) in self employment; and

(9) through direct placement in an unrelated job not using transferrable work skills.

(i) If the employer and employee fail to agree in writing on the submitted vocational rehabilitation plan within 14 days, the employee shall submit an alternative plan to the rehabilitation administrator. The employee's alternative plan must be submitted within an additional 14 days. In the event of a dispute, the rehabilitation administrator or his staff may either write a decision or schedule a formal rehabilitation conference to be held within 10 days of receipt of the alternative plan. If a conference is held, a decision as to the appropriate plan shall be issued within 10 days after the conference. The rehabilitation administrator's decision is binding unless a party seeks review of the decision by requesting a hearing with the Board in accordance with AS 23.30.110.

(j) A vocational rehabilitation plan may not exceed up to 37 training weeks, except that the rehabilitation administrator may order a plan up to an additional 37 training weeks. This subsection does not prohibit an employer or carrier from

providing extended vocational rehabilitation services on a voluntary basis. If rehabilitation requires residence away from the employee's customary residence, reasonable cost of board, lodging, and travel shall be paid by the employer. Temporary disability under AS 23.30.185 or AS 23.30.200 shall be paid throughout the rehabilitation process. The employer shall pay all costs of a rehabilitation plan under this section.

(k) For purposes of this section, suitable gainful employment means employment that is reasonably attainable in the light of an individual's age, education, vocational history, and physical capabilities, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation that takes into consideration the local labor market and as nearly as possible to the individual's gross weekly earnings as determined by section AS 23.30.220.

(l) For purposes of this section, "labor market" means a geographical area that offers employment opportunities in the following priority:

- (1) area of last employment;
- (2) area of residence;
- (3) the State of Alaska;
- (4) outside Alaska.

(m) "Qualified rehabilitation professional" means a person who by education and experience has the skills to work in the field of rehabilitation as determined by Board established regulations.

(n) While an injured worker is participating in a preliminary evaluation and/or a subsequent full evaluation under this section, he or she shall receive temporary partial disability benefits under AS 23.30.200 when an employer under section (h)(1) or (2) and primary physician agree, prior to medical stability and a full release, that an employee may return to modified, light duty, part time, or trial work status.

Re: Offset against Collateral Benefits
Possible Amendment to AS 30.225:

Where an employee receives periodic disability benefits under the provisions of a pension plan, disability or accident insurance plan, financed in whole or in part by the employer, the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial and permanent total disability shall be reduced by an amount equivalent to such portion of the employer financed benefits paid to an employee in excess of temporary or permanent disability benefits calculated on the employee's spendable weekly wages.

or WCCA

M E M O R A N D U M

TO: United Fairbanks
FROM: John Connors
DATE: January 11, 1988
RE: Proposed Amendment to AS 23.30 Section 1(b); Standard of Evidence Applied in Determining the Compensability of a Workers' Compensation Claim.

California as of January 1, 1983 and North Dakota in 1977 legislatively adopted the preponderance of evidence standard in determining the compensability of workers' compensation claim.

In California, Section 3202.5 was added to the Labor Code effective January 1, 1983. That section is entitled Preponderance of Evidence Standard, and states:

Nothing contained in Section 3202 shall be construed as relieving a party from meeting the evidentiary burden of proof by a preponderance of evidence. "Preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.

Section 3202 entitled Liberal construction of Divisions 4 and 5 provides that the applicable sections of the Labor Code dealing with workers' compensation and insurance are to be liberally construed by the courts for the purpose of extending benefits for the protection of persons injured in the course of their employment.

Section 3202.5, as adopted in 1982 constituted the California legislature's attempt insure that worker's compensation cases would be decided upon their merits, supported by a preponderance of evidence which would withstand judicial review of challenged awards. The stated legislative intent was to assure the quick and efficient delivery of benefits to injured workers, while at the same time seeking to insure that awards of benefits are supported by the weight of evidence presented.

Incorporating the preponderance of the evidence standard into the proposed language used in the 12/30/87 work draft for section 23.30 section 1(b), one possible phrasing might be:

The Legislature declares that the workers' compensation laws must be fairly and impartially construed by the courts. In promotion of that goal, it is the intention of the legislature that the preponderance of evidence standard be utilized in determining the compensability of a workers' compensation claim. Preponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.

JJC/tlg

0086K

MEMORANDUM

TO: Unified Fairbanks Workers' Compensation Task Force
Art Robson Chairman

FROM: The Medical Committee

DATE: January 13, 1988

RE: Senate Bill HB 322 drafted by the Labor and Commerce
Committee

The Medical Committee deliberated over the proposed changes for AS 23.30.095. Attached you will find the Medical Committee's recommended changes in HB 322, § 095. The Workers' Compensation Task Force Committee should recognize that the Medical Committee determined to approve some of the remedial legislation recommended by the Labor and Commerce Committee, which, as a practical matter, was aimed at resolving some glaring problems in the delivery of medical benefits to injured workers at a reasonable cost to employers. The Medical Committee, however, wishes the Workers' Compensation Task Force Committee as a whole to note that in its collective opinion, until such time as the Medical Committee receives evidence that the tremendous increase in workers' compensation costs is attributable in some manner to a tremendous increase in medical costs in the workers' compensation system, any vast changes in AS 23.30.095 would not seem appropriate.

ASB/las
1644s
Attachment

WORKERS' COMPENSATION TASK FORCE
Meeting Minutes
January 6, 1988

MEMBERS PRESENT

Arthur Robson, Attorney (Chair)
Ann Brown, Attorney
Jim Carroll, Iron Workers #751
John Connors, Attorney
Clare Hiratsuka, Northern Rehab
Judith Hannig, APSI
Ed Husted, Paralegal
Mary Klink, Paralegal
Kevin Krauklis
Phil Nelson, Holiday Parks
George Riley, UAF Employee Relations
Earl F. Romans, Alaska Battery
Charles Rublee, D.C.
Bill Sager, Chandler Plumbing & Heating
Carolyn Webster, Culligan
Tom Wilton, Wilton Adjusters
Eugene Yurkovich, Cook & Haugeburg

MEMBERS ABSENT

Ralph Beistline, Attorney
Dennis Brownsfield, Iron, Inc.
Skip (Dennis) Cook, Attorney
Gordon DePue, Alaska 100 Insurance
Scott Emery, M.D.
Vince Collogly, Northern Rehab
George Haltuch, ARC
Owen Hanley, M.D.
Kurt Merkel, M.D.
Gene Rutland, Mechanical Contractors of Fairbanks
Mary Stella, Denali Transport Corp.
Joe Thomas, Laborers #945

CALL TO ORDER

Meeting was called to order at 3:10 p.m.

APPROVAL OF MINUTES:

Minutes of December 30, 1987, meeting were approved with the following correction: name of person in the Division of Insurance is Don Koch, not Don Cope.

WORKERS' COMPENSATION TASK FORCE

Meeting Minutes
January 6, 1988
Page Two

NEW COMMITTEES:

George Riley stated his concerns regarding the administration of the Workers' Compensation program. An Administrative Structure Committee was formed to make a recommendation for language to forward to the Governor. The members are:

Ann Brown
George Riley
Earl Romans

REVIEW OF PROPOSED LEGISLATIVE CHANGES:

The Task Force reviewed the WCCA proposed legislative changes beginning with Sec. 1.

Sec. 1: This section concerns legislative intent. John Connors will provide a copy of the California language in their Workers' Compensation law which the task force will review and may choose to use as an example to modify the proposed changes in this section.

Sec. 2: The part of this Section regarding the enforcement of attendance and testimony of witnesses (the last sentence) will be addressed by the Administrative Structure Committee. That committee will also consider the matter of mandatory language as opposed to discretionary language throughout the law; i.e., the use of "may" instead of "shall" or "will".

Sec. 3: False statements on an employment or preemployment questionnaire is the issue. Action on this matter was referred to the Second Injury Fund Committee. Earl Romans will ask Skip Cook to draft new language for this Section.

Sec. 4: The inclusion to the law of "...The contribution shall be compensation payments made during the preceding calendar year." should read, "...shall be BASED ON compensation payments..."

Sec. 5: This Section concerns vocational rehab and was referred to the Vocational Rehabilitation Committee for a report next week. Judith Hannig is now a member of this committee.

Sec. 6: Discussion of this Section lead to the matter of insurance carriers not being able to recapture funds paid on a case which the Board rules fraudulent. Art Robson will address this issue.

Sec. 7: The changes here regard curbing the practice of "doctor shopping." Redraft of the language was referred to the Medical Committee. Judy Hannig is now a member of this committee.

WORKERS' COMPENSATION TASK FORCE
Meeting Minutes
January 6, 1988
Page Three

Sec. 8: Treatment plans are the subject of this addition. This Section was referred to the Medical Committee for review and recommendations. The Task Force would also like the committee to address the subject of settlement of future medicals.

Sec. 9: Art Robson will draft new language to include the definition of physician as described by law.

Sec. 10: Modifications are acceptable.

Sec. 11: Once again, the use of mandatory language is preferred by the Task Force; i.e., "The board may...." should read, "The board will..."

Sec. 12: Art Robson will draft new language changing "independent medical examiner" to "independent medical panel". There will be further discussion on this at the next meeting.

MEMBERS' COMMENTS:

Report on WCCA: Tom Wilton reported that Steve Hague, president of WCCA, said they have hired a public relations' group and are meeting with Anchorage politicians who are leaving for Juneau. At this point, WCCA is involved mainly with political strategy.

Report Deadlines: The Task Force agreed that all committees should finalize their reports by next week.

Premium Rates: Gene Yurkovich distributed a report on premium rates on behalf of his committee.

ADJOURNMENT:

The meeting was adjourned at 5:15 p.m.

MEMORANDUM

Date: January 6, 1987
 To: United Fairbanks
 From: Gene Yurkovich *GW*
 Subject: Workers' Compensation Premium Rates

Redetermining premium rates for workers' compensation can be somewhat arbitrary in that methods can shift cost from one class of employee/employer to another. For example, to shift the higher cost of construction workers to office workers. If the total cost of workers' compensation for Alaska workers is still the same, a shift may be said unfair.

The easiest method for premium rate change would be to go back to a maximum weekly cap as we had in the 1970s.

Example: \$1,000 per week maximum base - Employers would only pay a maximum premium on \$52,000 annual wage.

Costs must be cut on the benefit and administration side first. Oregon has benefits based on two-thirds of gross. The minimum wage base is \$55.55 per week. Gross from \$55.56 to \$75.00 per week qualifies for a \$50.00 benefit ($\$75.00 \times 2/3 = \50.00). Gross over \$75.00 would be $2/3 \times 95$ percent with a maximum benefit of \$355.04 for everyone.

Piece meal or production/fishery workers who are hired on an "as needed" basis are averaged over a 26 week period for a wage base. Others, such as teachers, drivers etc., who normally work more than the four weeks but not all year also have a special calculation.

Oregon also analyzed the cost of 1986 vocational rehabilitation..

NCCI (National Council of Comp Ins.) estimate of cost was 12.6 percent
 Claims were 11.2 percent

State said cost should be only 5.4 percent and a rate increase for 1987 was denied.

Analysis (Mike) - said cost should be 8 to 10 percent

Cost benefits of premium collected for 1986 (Oregon)

	<u>Percent</u>
Medical	32.4
T.T.D. - time loss	30.3
P.P.D.	11.9
P.T.D.	8.9
Legal	2.3 claimant only
Rehabilitation	11.2
Denial*	<u>3.0</u>
Total	<u>100.0</u>

*Two parts -

1. Interim compensation to mediate loss (after 14 days)
2. Complimentary release - lump sum is "case questionable" status

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Total	<u>100.0</u>

*Two parts -

1. Interim compensation to mediate loss (after 14 days)
2. Complimentary release - lump sum is "case questionable" status

WORKERS' COMPENSATION TASK FORCE
Meeting Minutes
December 23, 1987

Members Present:

Ralph Beistline, Attorney
Jim Carroll, Iron Workers #751
John Connors, Attorney
Skip (Dennis) Cook, Attorney
Vince Collogly, Northern Rehab
George Haltuch, ARC
Clare Hiratsuka, Northern Rehab
Ed Husted, Attorney } *para legal*
Mary Klink, Attorney }
Phil Nelson, Holiday Parks
George Riley, UAF Employee Relations
Arthur Robson, Attorney
Earl F. Romans, Alaska Battery
Charles Rublee, M.D.C.
Bill Sager, Chandler Plumbing & Heating
Joe Thomas, Laborers #945
Tom Wilton, Wilton Adjusters
Eugene Yurkovich, Cook & Haugeburg

Members Absent:

Dennis Brownsfield, Iron, Inc.
Gordon DePue, Alaska 100 Insurance
Scott Emery, M.D.
Owen Hanley, M.D.
Judith Hannig, APSI
Kevin Krauklis, Arco
Kurt Merkel, M.D.
Mary Stella, Denali Transport Corp.
Carolyn Webster, Culligan

Meeting was called to order at 3:10 p.m. Art Robson was named chairman.

The majority of those present agreed the best path is to progress as rapidly as is possible while there is momentum and the legislature is paying attention.

Art Robson requested volunteers for a committee to research the basis of premium rates, ascertain what the law is and make recommendations for

WORKERS' COMPENSATION TASK FORCE
Meeting Minutes
Page Two

appropriate action. The members for this committee on premium rates--what the basis is for them and what we should do about it--are:

- ① Jim Carroll
Gordon DePue
George Haltuch
Gene Yurkovich

Premium Rates basis

The committees will report to the Task Force at their next regular Wednesday meeting.

- 2 Tom Wilton will find out when WCCA is meeting and report to Art. Tom will be our liaison with WCCA on working on joint recommendations. The WCCA meetings take place in Anchorage.

Art Robson suggested going through the items referred to the Task Force and decide which items should have a committee. The first problem on the list was the possibility of insurance companies looking to catch up which would result in rate increases in the future. After discussion, it was decided a committee on this was not necessary at this time.

The second item on the list is Attorney Fees--these are regulated on one side, and not the other. There is concern on how the legal fees effect their premiums. The Workers' Comp Board does not have the figures on the defense attorneys' fees, although a form is filed with them which requests the information. At the time the form is submitted, this information is not usually available and is left unanswered. There is no supplemental form sent when the figures do become available. The Workers' Comp Board has never enforced this requirement, although recently action was taken to begin doing so. The legal fees effect the premiums because it is totally paid by the carrier, hence the employer.

There seems to be two issues regarding the attorney fees. One regards the concern that many people share the overall costs. The other issue seems to be whether or not individuals are getting equal treatment under the law. The labor side is concerned that an individual might not feel they are getting equal treatment if their attorney's costs are structured, but the other side's attorney's costs are not.

There is no breakdown of where the premium funds are going to as far as attorney fees, vocational rehab, medical, etc. The information to determine the breakdown appears to be in Juneau, but is not available in an organized form.

There was discussion regarding the lack of audits done on the insurance companies. Of special concern is that no audits are done at the time of rate increase requests. Audits may provide information on the breakdown of costs; specifically, which areas are responsible for the increase.

WORKERS' COMPENSATION TASK FORCE

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Returning to the question of attorney fees. There are two systems of compensation for attorneys. The defense attorneys generally bill the insurance companies by an hourly rate. The plaintiff's attorneys receive basically a minimum of 10% of the compensation paid out to the applicant. At times, the court has allowed a doubling of the attorneys' fees awarded to the plaintiff because of the contingent system. These different methods of payment between the attorneys make it difficult to compare the attorney's fees.

Art Robson stated that the bottom line is the costs of litigation in general and how to determine these costs. Before a committee can be formed to address the attorneys' fees problem, the breakdown of premium figures is necessary. A committee was formed to obtain these figures from Juneau:

3 Bill Sager
Ed Husted

The appointees were approved by those present.

Copies of the proposed law changes were distributed. The members agreed unanimously to read these proposed changes by next week's meeting, at which time it will be discussed.

Returning to the problems submitted to the Task Force, Mandatory Review was addressed. The mandatory review was meant to pertain to the auditing of the insurance companies. The members would like an audit of the insurance commission which grants the rates and the insurance companies which request the rates. Vince Collogly will research the independent audit done for Texas and Mary Klink will research the independent audit done for Maine.

George Riley discussed the necessity of educating the employers to use effective loss control, loss prevention activities, and have effective claims management. Without this, nothing is going to be done to reduce the losses because the reserves will not be reduced by the insurance companies. There is going to be a seminar in the future by the American Society of Safety Engineers regarding safety and loss control.

Jim Carroll stated that many injuries are a result of out of state contractors who know nothing of Alaska's elements. Those injuries effect all the rates. He discussed the possibility of having pre-employment physicals for all employees as a possible loss control measure. There was general discussion on a pre-employment questionnaire. George Riley is obtaining a copy of the University's pre-employment questionnaire which is going to be distributed by Chuck Rees.

The problems with the Second Injury Fund were discussed. Many employers do not want to take back the employee and give him a different job until he fully recuperates. This often results in the employee remaining off the job, collecting his benefits. The 104 weeks waiting period on the Second Injury Fund should be reduced. The Second Injury Fund cases seem to be low priority to the State.

WORKERS' COMPENSATION TASK FORCE
Meeting Minutes
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A committee was formed to work on changes in the Second Injury Fund. The previous committee which is obtaining figures from Juneau will also try to find figures pertaining to the Second Injury Fund. The committee members for the Second Injury Fund Recommendation Committee are:

5
Skip Cook
Vince Gollogly
Earl Romans

The next item on the problem list is Benefit Offset (also known as collateral benefits). This has been declared unconstitutional in a number of states, although not necessarily where Workers' Comp is concerned. George Riley feels management often takes a punitive attitude towards the injured employee and we should stay away from this way of thinking. Mary Klink gave an example of a case with the City of Fairbanks which she felt was a good example of the type of problem the Task Force had been asked to work on. The intent being to prevent the employers from paying double, not to prevent the employee from getting what they deserve. The goal of the benefits should be to have the injured employee receiving 100% of his wages, but not over 100% as that then effects their incentive to return to work. There was disagreement as to how that might punish the employee who has tried to cover himself through other insurances. A Collateral Benefits Committee was formed with the following members:

6
Jim Carroll
John Connors
Clare Hiratsuka
George Riley

Wages, Current or Future is the next item on the problem list. This addresses the issue of basing the benefits on the employee's previous, current and/or future wages. The current system is not designed for Alaska's boom or bust economy. A committee will be formed on this subject next week.

Art Robson asked for input from members on any items not addressed today that still should be.

Dr. Rublee suggested looking into the medical costs area. A committee was formed consisting of:

7
Kurt Merkel, M.D.
Mary Klink
Charles Rublee, M.D.C.

WORKERS' COMPENSATION TASK FORCE
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Page Five

At Vince Gollogly's suggestion, a Vocational Rehab Committee was formed:

7 ~~Phil Nelson~~
Vince Gollogly
Clare Hiratsuka
Mary Klink
Joe Thomas (?)

Meeting was adjourned at 4:55 p.m.

WORKERS' COMPENSATION TASK FORCE

Committee List

Premium Rates

Jim Carroll
Gordon DePue
George Haltuch
Gene Yurkovich

Premium Rates Breakdown

Bill Sager
Ed Husted

Second Injury Fund Recommendations

Skip Cook
Vince Collogly
Earl Romans

Collateral Benefits

Jim Carroll
John Connors
Clare Hiratsuka
George Riley

Medical Costs

Kurt Merkel, M.D.
Mary Klink
Charles Rublee, M.D.

Vocational Rehab

Vince Collogly
Clare Hiratsuka
Mary Klink
Joe Thomas (?)
Phil Nelson

Chancy Croft, Attorney

613 Cushman Street Suite 210

Fairbanks, Alaska 99701

(907) 456-8777

MEMO TO: UNIFIED FAIRBANKS

FROM: Ed Husted, Chancy Croft Law Office

RE: Average payment to injured workers

DATE: December 30, 1987

I have been unable to contact Jan Hansen, the person responsible for computer work at the Alaska Workers' Compensation Board. She has been on vacation since our last meeting. No one else wanted to attempt an answer as to what the average weekly benefit to an injured worker was in Alaska.

At last week's meeting, most who work regularly with the workers' compensation program felt the average would fall between \$500.00 and \$600.00 a week. In an effort to verify this figure, I took an average of all cases we have handled in the Croft Law Office for the last two years, a total of 279 claims. The average weekly compensation to these claimants was \$560.82. This included the full range of benefit payments, three workers at the minimum of \$110.00 and one at the maximum of \$1108.00.



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MEMO TO: UNIFIED FAIRBANKS
FROM: Ed Husted, Chancy Croft Law Office
RE: Second Injury Fund
DATE: December 30, 1987

As of November 30, 1987, the balance in the Second Injury Fund was slightly over \$5,900,000.00.

Payments already committed for fiscal year 1988 (July 1, 1987, through June 30, 1988) are \$2,387,000.00, of which roughly half have already been paid out. Thus, about \$1,200,000.00 of the balance in the Second Injury Fund is already committed for payments between now and June 30, 1988. This leaves approximately \$4,700,000.00 in unencumbered funds.

This information was obtained by telephone conference today with Richard Osterman, who is director of the Second Injury Fund. He is an employee of the Alaska Workers' Compensation Board.

The Second Injury Fund is funded by assessments against employers/insurance carriers. For injuries occurring between July, 1981, and December, 1985, the assessment was 6% of all wage loss benefits paid to injured workers. This assessment dropped to 5% for 1986. The assessment was eliminated altogether for injuries occurring in 1987. Mr. Osterman indicated no assessment is contemplated for 1988 injuries.



MEMO

TO: Workers' Compensation Task Force
FROM: Art Robson, Chairman
DATE: January 4, 1988
SUBJECT: Meeting Notification

Enclosed please find the minutes for the December 30, 1987, Workers' Compensation Task Force meeting.

Our next meeting is Wednesday, January 6, 1988, at 3:00 p.m. at the North Star Terminals conference room. We will continue to meet each Wednesday at 3:00 p.m. through the month of January.

WORKERS' COMPENSATION TASK FORCE
Meeting Minutes
December 30, 1987
Page Three

Medical Costs: There will be a report next week as Kurt Merkel has been unavailable to work with the committee.

Vocational Rehabilitation: Vince Gollogly reported that currently the employer selects the rehab counselor. There is a proposal to go to a CIRS system. There is currently no CIRS in Fairbanks, although Vince is taking his CIRS examine in March. This will prevent current Fairbanks' vocational rehabilitation counselors from working in this field, and will require people to be brought in from outside the city, and possibly the state. The committee will study the proposed law further before making recommendations.

MEMBERS' COMMENTS:

Out of State Audits: Mary Klink reported on general information she learned during her research into the independent audit done for the state of Maine. The NCCI is very heavy into lobbying, with effective results. There are about 20 states which use NCCI ratings. Most of the states which do not use NCCI ratings are probably self-insured. In many states having problems similar to Alaska, the premiums are being increased, while benefits are being reduced.

Regarding Texas, Vince Gollogly reported that the audit was not an independent one. Many insurance companies have pulled out of Texas, and the majority of workers' compensation policies are written by the pool.

Letter From Bettye Fahrenkamp: Earl Romans read a letter from Senator Fahrenkamp offering her help on the workers' compensation issue. The Task Force should take advantage of her offer.

Proposed Legislative Changes: The committee will review the proposed changes at the next meeting, based upon committee reports.

ADJOURNMENT:

The meeting was adjourned at 5:15 p.m.

COMMITTEE REPORTS:

Premium Rates: Gene Yurkovich reported that benefits, overtime, holiday, room and board, if applicable, are all included in wages used to determine premium rates. Benefits are not included if they are put into trust funds, as with the unions. Employer's premium rates are based on the classification given to their employee's position by NCCI. In Alaska, Workers' Compensation is optional for partners and sole proprietors. The committee will recommend a new basis for premium rates at the next meeting.

Premium Rates Breakdown: Ed Husted distributed a memo with figures on the Second Injury Fund and a memo regarding the average weekly benefit received by Alaskan injured workers (attached). He will continue his efforts to contact Jan Hansen at the Division of Workers' Compensation. Gene Rutland wrote a letter to John George, Division of Insurance, requesting figures for the percentage of the premium dollar that is spent on each major component; i.e., medical costs, workers' compensation payments, vocational rehabilitation, insurance carrier reserves, legal fees, insurance carrier overhead and profit, and costs of administration. He requested separate breakdowns for insurance carriers and workers. He also asked what the change has been in each of these components since 1985, and in addition, what are the total annual costs of each of these major components for 1986, 1987 and what is projected for 1988. Gene has not received a reply yet, but he did speak with Don Cope of the Division of Insurance. Don Cope said he was not sure if they could provide the requested information, but is preparing a preliminary report which will be sent to us next week. Much of the requested information is not reported to the NCCI in the form in which we would like. The insurance carriers report costs lumped together in one figure, although their files do contain the individual figures. The problem which needs to be investigated is the line between the insurance companies and NCCI. Mary Klink commented on our state law which requires insurance carriers to file the Workers' Compensation Reports with the Workers Compensation Board. The inclusion of the breakdown of figures on these reports (medical, attorney fees, etc.) should be enforced by the Board and made available.

Second Injury Fund Recommendations: Skip Cook has obtained information on the Second Injury Fund from Senator Fahrenkamp's office (attached). The members would like the waiting period for SIF benefits to be reduced from 104 weeks to 30 days. Vince Gollogly is researching information on other liability coverage which can be used prior to the Second Injury Fund benefits going into effect. The committee will find out which account receives the interest earned on SIF.

Collateral Benefits: Page 22, Section 26 of the proposed law concerns this subject. Clare Hiratsuka reported committee members could not agree on recommendations. Task Force members present at the meeting agreed that we need to develop a formula for workers' comp to take an offset for pension benefits and possibly permanent disability benefits. Clare will continue to work on this issue.

WORKERS' COMPENSATION TASK FORCE
Meeting Minutes
December 30, 1987

MEMBERS PRESENT

Skip (Dennis) Cook, Attorney
Vince Gollogly, Northern Rehab
Clare Hiratsuka, Northern Rehab
Ed Husted, Paralegal
Mary Klink, Paralegal
Phil Nelson, Holiday Parks
Arthur Robson, Attorney
Earl F. Romans, Alaska Battery
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Judith Hannig, APSI
Kevin Krauklis, Arco
Kurt Merkel, M.D.
George Riley, UAF Employee Relations
Mary Stella, Denali Transport Corp.
Carolyn Webster, Culligan
Joe Thomas, Laborers #945
Tom Wilton, Wilton Adjusters

CALL TO ORDER

Meeting was called to order at 3:18 p.m.

APPROVAL OF MINUTES:

Minutes of December 23, 1987, meeting were approved with the following corrections: changing of titles for Ed Husted and Mary Klink from attorney to paralegal; changing of title for Charles Rublee from M.D. to D.C.; and Phil Nelson to be included as member of Vocational Rehabilitation Committee.

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MEMORANDUM

State of Alaska

TO: Jacquelyn L. McClintock, Director
Workers' Compensation Division

DATE: November 10, 1987

Frank Spargo, Director
Administrative Services Division

FILE NO:

TELEPHONE NO: 465-4500

FROM: *Chuck Caldwell*
Chuck Caldwell, Chief
Research and Analysis

SUBJECT: Second Injury Fund
Contribution Rate 1988

The Second Injury Fund contribution rate, calculated in accordance with AS 23.30.040(b), is zero for calendar year 1988. Under state law, the contribution rate is zero when the Second Injury Fund reserve rate is at least 175 percent. The reserve rate is 277.3 percent.

Calculations are as follows:

$$\text{SIF Reserve Rate} = \frac{\text{Unencumbered Balance 10/31/87}}{\text{Disbursements 7/1/86-6/30/87}} = \frac{\$5,783,215.69}{\$2,085,270.84} = 277.3\%$$

Attachment

cc: Chris Miller w/attachment
Michael Hurst w/attachment
Thom Wylie w/attachment

09-Nov-87

SECOND INJURY FUND CONTRIBUTION RATE

(1) YEAR	(2) SECOND INJURY FUND UNENCUMBERED BALANCE 12 MOS. ENDING 10/31	(3) SECOND INJURY FUND DISBURSEMENTS 12 MOS. ENDING 6/30	(4) RESERVE RATE (2)/(3)	(5) SECOND INJURY CONTRIBUTION
1982	301,036.00	1,129,462.28	26.7%	0.06
1983	253,250.21	1,147,289.51	22.1	6.0
1984	406,028.00	1,954,027.08	20.8	6.0
1985	1,305,989.18	1,867,983.93	69.9	5.0
1986	4,098,516.83	2,182,056.03	187.8	0.0
1987	5,783,215.69	2,085,270.84	277.3	0.0

SOURCE: ALASKA DEPT. OF LABOR, ADMINISTRATIVE SERVICES DIVISION, FISCAL SECTION.

1984-85 $4.00 = \frac{15,000,000}{3,750,000}$

1985-86 $3.793 = \frac{7,586,000}{2,000,000}$

~~4059~~
~~1306~~

2793

~~306~~
~~406~~

712

~~4099~~
~~1306~~

3793

UND: 11117 SECOND INJURY FUND
 OA-YR: 1988 LEVEL: 30-FUND
 MONTH: 5 NOV. '87

MM - INTERNAL AND EXTERNAL ACTIVITY

INCEPTION TO DATE BALANCE FORWARD

ASSETS

0000 TOTAL ASSETS	6,120,743.48	5,416,261.48
10040 CASH	.00	.00
10060 CASH HELD IN TRUST	.00	.00
10061 CONVERS-CASH W/TREAS	.00	.00
10100 RECEIVABLES	6,120,743.48	5,416,261.48
10170 DUE FROM OTHER FUNDS	6,120,743.48	5,416,261.48
10171 CASH WASH ACCOUNTS	6,120,743.48	5,416,261.48
10191 CASH W/TP FUND 90100	6,120,743.48	5,416,261.48
TOTAL ASSETS	6,120,743.48	5,416,261.48

LIABILITIES

1000 TOTAL LIABILITIES	136,291.08-	384,877.31-
21000 CURRENT LIABILITIES	136,291.08-	384,877.31-
21275 ACCTS PAYABLE AFR	.00	289,742.46-
21300 ACCOUNTS PAYABLE	.00	289,742.46-
21331 ACCRUED PAYABLE	.00	289,742.46-
22595 WRTS OUTSTANDING AFR	136,291.08-	95,134.85-
22600 WARRANTS OUTSTANDING	136,291.08-	95,134.85-

FUND EQUITIES

000 TOTAL FUND EQUITIES	Balance 5,984,452.40-	5,031,384.17-
0600 RESERVES	5,023,204.63-	5,023,204.63-
33500 OTHER RESERVES	5,023,204.63-	5,023,204.63-
36100 DESIGNATED	5,023,204.63-	5,023,204.63-
36118 SECOND INJURY FUND	5,023,204.63-	5,023,204.63-
4000 BUDGETARY RESERVES	2,395,779.54-	8,179.54-
34100 RESERVE FOR ENCUMB	15,412.99-	4,153.24-
34200 CY RESERVE ENCUMB	41,840.23-	26,427.24-
34500 PY RESERVE ENCUMB	26,427.24	22,274.00
34900 RESERVE CONT PROGRAM	560.03-	3,593.21
35000 RES CONTINUING	560.03-	3,593.21
35600 GENERAL SURPLUS	2,379,806.52-	7,619.51-
35700 RES CY APPROP	2,379,806.52-	7,619.51-
36000 EST RESTRICTED REC	.00	.00
6700 AVAILABLE FUND EQUI	1,434,531.77	.00
36800 AVAILABLE FUND BAL	1,434,531.77	.00
TOTAL LIABILITIES AND FUND EQUITIES	6,120,743.48-	5,416,261.48-

CODE	EXPENDITURE CLASSIFICATION	PRIOR YEAR FY 87 ACTUAL	CURRENT YEAR FY 88 AUTHORIZED	BUDGET YEAR - FY 89		
				ADJUSTED BASE	INCREMENT/ DECREMENT	AGENCY REQUEST
73050	Land and Interest in Land					
75300	Buildings					
75500	Improvements Other Than Buildings					
75025	TOTAL LAND, BUILDING, NON-STRUCTURAL IMPROVEMENTS					
	INTER-AGENCY TRANSFERS (NON-ADD)					

77100	Local Assistance, State Sources					
77240	Benefits to Individuals	74.8	30.0	30.0		30.0
77350	Grants and Awards to Individuals	2738.8	2742.6	2742.6		2742.6
77440	Grants, Other Agencies	1.7	10.0	10.0		10.0
77570	Health Benefits					
77700	General Relief					
77000	TOTAL ASSISTANCE GRANTS AND BENEFITS	2755.3	2782.6	2782.6		2782.6
	INTER-AGENCY TRANSFERS (NON-ADD)	1.7	10.0	10.0		10.0

CODE	EXPLANATION	ADJUSTED BASE	INCREMENT/ DECREMENT
77240	Benefits to Individuals: Provides rehabilitation benefits from the Second Injury Fund for eligible workers injured prior to July 1, 1982. During FY87, 5 claimants received benefits at an average cost of 3.0. For workers injured after July 1, 1982, amendments to the Alaska Workers' Compensation Act require the employer/insurer to pay costs of rehabilitation rather than the Second Injury Fund.	30.0	SIF
77350	Grants and Awards to Individuals: Payments under AS 23.30.172 represent the amount of funding required to pay supplemental workers' compensation benefits to permanently disabled workers in compliance with a 1975 amendment to the Workers' Compensation Act. Currently there are 65 permanently disabled workers drawing supplemental	2,742.6	

C700 LAND AND GRANTS

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'87)-c700

	ADJUSTED BASE	INCREMENT/ DECREMENT
<p>the number of recipients and the amount of benefits paid may fluctuate upward on the eligibility status of existing recipients and any new claims filed</p>		
<p>30,205 reflect the Second Injury Fund benefits to disabled workers and employers/insurers on an estimated 100 claims at an estimated 23.4 cost per month orders and awards of the Alaska Workers' Compensation Board - 2,347.6 SIF</p>		
<p>to Department of Education, Vocational Rehabilitation Division, for costs of rehabilitation services provided to disabled workers under FY87, 1 claimant received benefits. SIF</p>	<p>10.0</p>	

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TYPE OF REVENUE: Restricted Revenue Second Injury Fund				NAME AND TELEPHONE NUMBER OF AGENCY CONTACT: Elaine VanderSande 465-2790						
FUNDING SOURCE	FUND	REVENUE ACCOUNT	COLLOCATION CODE	PRIOR YEAR FY 87 ACTUAL	CURRENT YEAR FY 88 AUTHORIZED	CURRENT YEAR FY 88 CASH ESTIMATE	BUDGET YEAR FY 89			FY 90 ESTIMATE
							ADJUSTED BASE	INCREMENT/ DECREMENT	AGENCY REQUEST	
1031	11119	58410	07003841	4,291.5	2,800.0	3,600.0	3,000.0		3,000.0	2,800.0
TOTAL				4,291.5	2,800.0	3,600.0	3,000.0		3,000.0	2,800.0

EXPLANATION (SEE INSTRUCTIONS):

Second Injury Fund receipts are derived solely from contributions made by employers/carriers in an amount equal to a varying percent of compensation paid to injured workers for job related injuries occurring in that year as determined annually by the commissioner, \$10,000 in cases of death of a worker leaving no dependents entitled to benefits under provisions of the Alaska Workers' Compensation Act, and civil penalties payable to the fund. The contribution rate and revenue received fluctuate based on the formula set out in AS 23.30.040. The contribution rate for injuries occurring in calendar year 1987 was reduced to 0% from 5% the previous year.

C21	REVENUE DETAIL
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Collateral references. — Workmen's compensation provision as precluding employee's action against employer for fraud, false imprisonment, defamation, or the like. 46 ALR3d 1279.

Sec. 23.30.035. Adjustment of insurance rates. If the provisions of this chapter require insurance rates adjustments, they must be made in strict compliance with the rate regulation provisions of state law. (§ 41 ch 193 SLA 1959)

Collateral references. — 82 Am. Jur. 100 C.J.S., Workmen's Compensation, § 671, § 353(1).
672.

Sec. 23.30.040. Second injury fund. (a) There is created a second injury fund, administered by the commissioner. Money in the second injury fund may only be paid for the benefit of those persons entitled to payment of benefits from the second injury fund under this chapter. Payments from the second injury fund must be made by the commissioner in accordance with the orders and awards of the board.

(b) If an employee suffers a compensable injury that results in temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability, the employer or insurance carrier shall contribute to the second injury fund. The contribution shall be made by one year from the date of the injury or on termination of the employee's claim, whichever is sooner. If the claim is not terminated within one year, subsequent contributions shall be made yearly until the termination of the employee's claim. The amount of the contribution is the product of the compensation to which the employee is entitled for temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability and the applicable contribution rate set out in column A of this subsection. Payment need not be made to the second injury fund if the total contribution under this subsection is less than \$20. By December 15 of each year the commissioner shall determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in column B of this subsection:

Column A Second Injury Fund Contribution Rate (Percent)	Column B Reserve Rate	
	At Least (Percent)	But Less Than (Percent)
6	0	50
5	50	75
4	75	100
3	100	125
2	125	150

§ 23.30.040

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The contribution
or on termination
aim is not termi-
ill be made yearly
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disability and the
of this subsection.
fund if the total
By December 15 of
ake available to the
wing calendar year
fund in column B of

i B
Rate

But Less Than
(Percent)

- 50
- 75
- 100
- 125
- 150

§ 23.30.041

LABOR AND WORKERS' COMPENSATION

§ 23.30.041

Column A
Second Injury Fund
Contribution Rate
(Percent)

Column B
Reserve Rate
At Least
(Percent) But Less Than
(Percent)

- 1
- 0

- 150
- 175

- 175

(c) If an employee suffers a compensable injury that results in death and the employee is not survived by a widow, widower, child, or dependent relative eligible to receive death benefits under AS 23.30.215, the employer or insurance carrier shall pay \$10,000 to the second injury fund.

(d) The board may refund a payment made into the second injury fund if the employer or insurance carrier shows that it made the payment by mistake or inadvertence, or if it shows there existed at the time of the death of the employee a beneficiary entitled to benefits under AS 23.30.215.

(e) [Repealed, § 27 ch 93 SLA 1982.]

(f) All amounts collected as civil penalties under AS 23.30.155(c) shall be paid into the second injury fund.

(g) The attorney general may investigate claims and hire expert witnesses necessary to prevent fraudulent or excessive claims for money in the second injury fund.

(h) Administration expenses of the state under this section and AS 23.30.205 shall be paid from the general fund.

(i) The amount of a payment to the second injury fund and the conditions under which a payment is required of an employer or insurance carrier must be in accordance with the version of (b) of this section in effect on the date that the injury to the employee occurred. (§ 32 ch 193 SLA 1959; am § 1 ch 117 SLA 1960; am § 8 ch 42 SLA 1962; am § 1 ch 99 SLA 1966; am § 1 ch 199 SLA 1970; am § 1 ch 6 SLA 1976; am §§ 2, 5 ch 59 SLA 1981; am §§ 2, 27 ch 93 SLA 1982)

Cross references. — For status of fund as an account in the general fund, see AS 37.05.155; for current provisions on vocational retraining, see AS 23.30.041; for contribution rate from July 1, 1981 until December 31, 1982, see sec. 6, ch. 69, SLA 1981 in the Temporary and Special Acts.

Effect of amendments. — The 1981 amendment rewrote this section.

The 1982 amendment substituted "or permanent total disability" for "permanent total disability, or for rehabilitation under AS 23.30.191" in the fourth sentence of subsection (b), added the present fifth sentence of subsection (b), and repealed subsection (a), which concerned vocational retraining and rehabilitation of certain permanently disabled persons.

NOTES TO DECISIONS

Applied in *Bignell v. Wise Mechanical Contractors*, Sup. Ct. Op. No. 2566 (File No. 5929), 651 P.2d 1163 (1982).

Quoted in *Ketchikan Gateway Borough v. Saling*, Sup. Ct. Op. No. 2006 (File No. 2220), 614 P.2d 590 (1979).

Sec. 23.30.041. Rehabilitation of injured workers. (a) The board shall select and employ a rehabilitation administrator and may autho-

DRAFT -- 9/10/86

TITLE 8. LABOR

Chapter

47. Vocational Rehabilitation (8 AAC 47.010 -- 8 AAC 47.999)

CHAPTER 47. VOCATIONAL REHABILITATION

Article

1. Eligibility (8 AAC 47.010 -- 8 AAC 47.030)
2. Reporting Requirements (8 AAC 47.040 -- 8 AAC 47.050)
3. Suitable Gainful Employment (8 AAC 47.060)
4. Dispute Resolution Procedures (8 AAC 47.070 -- 8 AAC 47.090)
5. Qualifications of Rehabilitation Service Providers (8 AAC 47.100 -- 8 AAC 47.130)
6. [Reserved]
7. [Reserved]
8. General Provisions (8 AAC 47.900 -- 8 AAC 47.999)

ARTICLE 1. ELIGIBILITY

Section

10. Eligibility for evaluation
20. Extensions of time for referral for rehabilitation evaluation
30. Offer of modified work

8 AAC 47.010. ELIGIBILITY FOR EVALUATION. (a) Unless medical or other evidence indicates that an employee will be able to return to suitable gainful employment without rehabilitation services, the employee is eligible for a vocational rehabilitation evaluation if the employee is entitled to workers' compensation benefits, and

(1) the employee has been unable to return to suitable gainful employment for no more than 90 continuous days;

(2) the employee has lost total use of an arm, leg, hand or foot, or the use of at least 80% of the vision in one eye; or the use of at least 80% of the hearing in one ear; or

(3) the employer and employee agree that a vocational rehabilitation evaluation is needed.

(b) If an employee is eligible for a vocational rehabilitation evaluation and has not been referred for an evaluation in accordance with subsection (a) of this section, the administrator may refer the employee for a vocational rehabilitation evaluation.

(c) An employer or employee may appeal a decision of the administrator under (b) of this section following the procedures contained in AS 23.30.110. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.020. EXTENSION OF TIME FOR REFERRAL. (a) An employer and an employee may agree, in writing, to extend the time for a vocational rehabilitation evaluation for a period not exceeding 60 days. The administrator may grant additional 60 day extensions.

(b) If an employee requests, in writing, a vocational rehabilitation evaluation during an extension under (a) of this section, the employer must refer the employee for evaluation within 14 days after the request. If the employer does not refer the employee for evaluation within 14 days after the request, the administrator will refer the employee to a provider for evaluation.

(c) If the employer requests, in writing, that the employee participate in a vocational rehabilitation evaluation during an extension under (a) of this section, the employee must do so within 14 days after the request, or the employer may suspend benefits until the employee does participate. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.030. OFFER OF MODIFIED WORK. If an employer offers an employee who is eligible for a vocational rehabilitation evaluation an opportunity to return to work at a modified position, the employer must refer the employee to a provider for a rehabilitation evaluation unless the medical evidence indicates that the employee will be able to return to the same job as at the time of the injury. The provider must perform a job analysis, and obtain a physician's approval of the modified position. In the evaluation of the modified position the provider must consider the permanence of the work, the transferability of modified work activities and skills to other work sites or to other related jobs in the local labor market, and the suitability of the modified work for the employee considering the employee's physical and vocational abilities. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

ARTICLE 2. REPORTING REQUIREMENTS.

Section

- 40. Employer reporting requirements
- 50. Provider reporting requirements

8 AAC 47.040. EMPLOYER REPORTING REQUIREMENTS. An employer must submit a work status report, form 07-6140, to the administrator and the employee when the employee is referred for a vocational rehabilitation evaluation or by the 90th consecutive day of disability, whichever comes first. If a referral for a vocational rehabilitation evaluation is made, further work status reports are not required unless the employer stops rehabilitation services. If no referral is made, or if rehabilitation services stop, the work status report is required every 60 days until

- (1) the employee returns to work;
 - (2) for purposes of rehabilitation, the employee is permanently totally disabled;
 - (3) the employee has been referred for rehabilitation services;
- or
- (4) workers' compensation benefits have been stopped. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.050. PROVIDER REPORTING REQUIREMENTS. A provider must submit copies of all rehabilitation reports to the board, to the employer or its representative, and to the employee or his or her representative. The reports must be submitted in the format prescribed by the administrator. The reports must include

- (1) a preliminary evaluation report within 45 days after referral of an employee;
- (2) a full evaluation report within 90 days after referral, unless the provider determines a full evaluation is not appropriate because
 - (A) the employee is not medically ready for evaluation;
 - (B) the employee's disability is so severe that a vocational rehabilitation evaluation cannot be completed;
 - (C) the employee does not need rehabilitation services to return to work at suitable gainful employment;
 - (D) the employee is not available to complete the evaluation;

(E) the employee will not cooperate with the evaluation process;
or

(F) the employer refuses to provide a further rehabilitation evaluation;

(3) a vocational rehabilitation services plan within 90 days after referral for evaluation unless the provider determines a vocational rehabilitation services plan is not appropriate because

(A) the employee is not medically ready for a rehabilitation plan;

(B) the employee's disability is so severe that a rehabilitation plan cannot be completed;

(C) the employee does not need rehabilitation services to return to work at suitable gainful employment;

(D) the employee is not available to begin or complete a plan;

(E) the employee will not cooperate with rehabilitation planning and services; or

(F) the employer refuses to provide further rehabilitation planning or services;

(4) progress reports every 60 days, including reasons why a full evaluation report or a vocational services plan cannot be filed, until the provider or the employer discontinues rehabilitation services; and

(5) a rehabilitation closure report within 10 days after rehabilitation closure. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

ARTICLE 3. SUITABLE GAINFUL EMPLOYMENT.

Section

60. Suitable gainful employment

B AAC 47.060. SUITABLE GAINFUL EMPLOYMENT. (a) For purposes of developing a vocational rehabilitation plan and providing rehabilitation services under AS 23.30.041, a provider must determine whether employment is suitable gainful employment, as defined in AS 23.30.265(28), in accordance with the provisions of this section.

(b) A provider must consider each employment option in the order listed in (c) of this section and must utilize the option with the highest order of preference which returns the employee to suitable gainful employ-

ment. If none of the options in (c) of this section provide an employment option that matches the employee's gross weekly wage, the option that most nearly matches shall be selected.

(c) The order of preference for rehabilitation plans and rehabilitation services is return to work

(1) with the same employer at the same or modified job as at the time of injury;

(2) with the same employer at a new job using transferable skills;

(3) with a new employer at the same or modified job;

(4) with a new employer in a new job using transferable skills;

(5) through developing already existing skills or acquiring new skills through on-the-job training;

(6) after developing already existing skills or acquiring new skills through vocational training;

(7) after developing already skills or acquiring new skills through academic training;

(8) in self-employment; and

(9) through direct placement in an unrelated job not using transferable work skills (Eff. / / , Register)

(d) An employer and an employee may agree to a rehabilitation plan or rehabilitation services other than in (c) of this section. The provider must certify that the agreement is voluntary, is overall in the interest of the employee and is not the result of coercion, ~~by the employer~~.

Authority: AS 23.30.005
AS 23.30.041
AS 23.30.265

ARTICLE 4. DISPUTE RESOLUTION PROCEDURES.

Section

- 70. General procedures
- 80. Informal conference procedures
- 90. Formal rehabilitation conference procedures

8 AAC 47.070. GENERAL PROCEDURES. (a) A dispute between an employer and an employee over a rehabilitation plan or rehabilitation services must be referred to the administrator. The administrator may hold a formal or informal conference to resolve a dispute.

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(b) The administrator, the employer or representative, the employee, and all providers involved in the dispute must participate in the conference. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.080. INFORMAL CONFERENCE PROCEDURES. (a) The administrator, an employee, an employer, or a provider may request an informal rehabilitation conference. A party or provider shall request the conference in writing. The administrator will set a date for the conference and notify the parties and the providers. Copies of all documents to be discussed in the conference will be provided to all parties either before or during the conference.

(b) The administrator will send a summary of the issues discussed to all parties within seven working days after the conference. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.090. FORMAL REHABILITATION CONFERENCE PROCEDURES. (a) A party may request a formal rehabilitation conference of all the parties and the administrator.

(b) A request for a formal conference must be in writing and must include a description of the rehabilitation issue in dispute, a list of other compensation issues in dispute and the dates and times of any scheduled workers' compensation pre-hearings or hearing before the Alaska Workers' Compensation Board.

(c) The administrator may not hear the rehabilitation issue if resolution of other issues by the board might make consideration of the rehabilitation issue unnecessary. The administrator must notify appropriate parties of unresolved issues.

(d) The administrator must schedule a rehabilitation conference or decide not to hold a conference within 14 days after the receipt of the request. If a conference is scheduled it must be set no more than 30 days from the date of the receipt of the request. A change in the date or time for a rehabilitation conference will be allowed upon agreement of the employer, the employee, and the administrator. The party requesting the change is responsible for obtaining agreement of all parties to a new date and time. If the employer and employee do not agree on a change of date or time, the administrator may change the date and time if the party requesting the change shows good cause for the request.

Draft
- 2 -

(e) Each party must submit copies of all documents to be used at the formal rehabilitation conference to the administrator five days before the conference. The administrator may request additional information.

(f) Within 14 days after the rehabilitation conference the administrator must

(1) send a summary to all parties describing any agreement reached at the conference;

(2) issue a formal decision on issues not agreed upon by all parties; or

(3) issue any instructions necessary to complete the record.

(g) Any party may appeal to the board a decision issued by the administrator within ten days after the decision, by requesting a hearing in accordance with AS 23.30.110. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

ARTICLE 5. QUALIFICATIONS OF REHABILITATION SERVICE PROVIDERS.

Section

- 100. Determination of eligibility
- 110. Minimum qualifications for providers
- 120. Disqualification of provider
- 130. Review of administrator qualification or disqualification decisions

8 AAC 47.100. DETERMINATION OF ELIGIBILITY. (a) The administrator will review the qualifications of prospective providers and determine if an applicant possesses the minimum qualifications.

(b) The administrator shall maintain a list of providers who are eligible to receive referrals of employees for rehabilitation evaluation and services.

(c) If an employee requires a rehabilitation evaluation or services outside the state of Alaska, the administrator may qualify the out-of-state provider

(1) based on the same application procedures and qualifications that apply to Alaskan applicants; or

(2) based on eligibility to receive workers' compensation rehabilitation referrals in the provider's state of residence.

(d) Upon request, a provider shall submit transcripts and descriptions of past work experience and affidavits affirming the provider's knowledge and skills in accordance with procedures established by the administrator. All information submitted is subject to verification by the administrator. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.110. MINIMUM QUALIFICATIONS FOR PROVIDERS. (a) A provider must possess

(1) a masters or doctoral degree in vocational rehabilitation counseling or related social and health services from an institution of higher education accredited by the Northwest Association of Secondary and Higher Schools (or its counterpart in other regions), plus one year of work experience in vocational rehabilitation counseling or physical rehabilitation;

(2) a baccalaureate in vocational rehabilitation counseling or related social and health support services from an institution of higher education accredited by the Northwest Association of Secondary and Higher Schools (or its counterpart in other regions); plus two years of work experience in vocational rehabilitation counseling or physical rehabilitation, at least one year of which must have been spent in the rehabilitation of persons with disabling conditions or diseases;

(3) a diploma in nursing from a school of professional nursing, plus a current registered nurse license, plus three years of work experience in physical rehabilitation or vocational rehabilitation, of which at least one year must have been spent in the rehabilitation of persons with disabling conditions or diseases, and one year of which must have been spent under the supervision of a rehabilitation professional who meets the requirements in (1) or (2) of this subsection; or

(4) a baccalaureate from an institution of higher education accredited by the Northwest Association of Secondary and Higher Schools (or its counterpart in other regions), plus three years of experience in vocational rehabilitation, at least two years of which must have been spent in the rehabilitation of persons with disabling conditions or diseases, and one year of which must have been spent under the supervision of a rehabilitation professional who meets the requirements in (1) or (2) of this subsection.

(b) A provider's minimum qualifying rehabilitation skills must include

(1) knowledge of and skill in interviewing and counseling of injured workers and others involved in the rehabilitation process;

(2) knowledge of medical and psychological aspects of physical disabilities and the specific functional and work limitations of disabilities;

(3) knowledge of psychiatric disabilities and the specific functional and work limitations of psychiatric disabilities;

(4) knowledge of and skill in vocational and psychological testing, including the ethical application of various tests and vocational evaluation methods;

(5) knowledge of and skill in the use of labor market information;

(6) knowledge of and skill in assessing the requirements of specific jobs and the capacities of specific workers, including expertise in job analysis and job modification;

(7) knowledge of and skill in techniques of job development and job placement, including techniques for assisting workers in self-placement activities and use of placement incentives with employers; and

(8) skill in working with a variety of interested parties to accomplish rehabilitation goals, including working with employers, insurance carriers, the medical community, attorneys, and the board.

(c) A rehabilitation provider in Alaska who has provided rehabilitation services to a workers' compensation claimant in Alaska during the twelve months preceding / / 1986, is eligible for inclusion on the list of providers without regard to the minimum qualifications in this section if the provider submits an application within 120 days after / / 1986.

(d) An applicant who meets all qualifications except for experience may apply for qualification as an intern. An intern may work under the supervision of a provider until the minimum experience requirements have been attained, but in no event longer than three years from the date of application for intern status. An intern may reapply for qualification as a provider at the completion of the internship period. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.120. DISQUALIFICATION OF PROVIDER. (a) The administrator may disqualify a provider for

(1) failure to demonstrate suitable rehabilitation skills;

(2) failure to timely file rehabilitation reports or provide rehabilitation services;

(3) failure to adhere to statutory or regulatory requirements;

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(4) failure to achieve positive rehabilitation results;

(5) unethical conduct; or

(6) falsification of information on the provider's application for qualification.

(b) Before disqualifying a provider, the administrator shall

(1) notify the provider in writing of any proposed disqualification;

(2) within 30 days of the notification, give the provider an opportunity to meet with the administrator to discuss the proposed action; and

(3) issue a written decision within 30 days following the meeting, or if no meeting is requested, issue a written decision within 45 days of the written notice of proposed disqualification.

(c) The administrator's written decision will

(1) require the provider to change problematic behavior or upgrade skills according to a plan determined by the administrator; or

(2) disqualify the provider and explain reasons for the action, the duration of the disqualification, and the conditions, if any, under which the provider may reapply for qualification.

(d) The administrator's decision must be served upon the provider or the provider's representative, either personally or by mail. A disqualification decision is effective ten days after the date of the disqualification decision unless the provider requests board review of the decision by the board under 8 AAC 47.130.

(e) If the administrator is considering disqualification of a provider under (a)(1) -- (5) of this section, the administrator may meet with the provider and develop a plan of corrective action.

(f) If the administrator believes that a provider has engaged in unethical practices or activity, the administrator may refer the issue to the ethics committee of the Alaska Rehabilitation Association or other appropriate professional rehabilitation organization for recommendations after written notification to the provider. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.130. REVIEW OF ADMINISTRATOR QUALIFICATION OR DISQUALIFICATION DECISIONS. An applicant or provider may request review by the board

of the administrator's decision under 8 AAC 47.110 or 8 AAC 47.120 by making a written request to the board within ten days after the date of the decision. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

ARTICLE 6. RESERVED.

ARTICLE 7. RESERVED.

ARTICLE 8. GENERAL PROVISIONS.

Section

- 900. - Statement of purpose
- 910. - Goals of vocational rehabilitation
- 999. - Definitions

8 AAC 47.900. STATEMENT OF PURPOSE. It is the intent of the Alaska Workers' Compensation Act (AS 23.30) and this chapter that vocational rehabilitation services be provided to assure the earliest possible return of the industrially injured or diseased worker to suitable gainful employment with the least possible wage loss. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.910. GOALS OF VOCATIONAL REHABILITATION. The board recognizes four major goals of AS 23.30.041 in support of the provision of vocational rehabilitation services. The are

(1) To identify as soon after the injury as possible, those employees needing rehabilitation services;

(2) to assure employers and injured employees that quality rehabilitation services are provided by qualified providers;

(3) to provide the best possible opportunities for direct return to suitable gainful employment; and

(4) to maintain an atmosphere conducive to rehabilitation among all parties. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.999. DEFINITIONS. (a) In this chapter,

(1) "administrator" means the Rehabilitation Administrator in the Department of Labor, Division of Workers' Compensation, or designee;

of the administrator's decision under 8 AAC 47.110 or 8 AAC 47.120 by making a written request to the board within ten days after the date of the decision. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

ARTICLE 6. RESERVED.

ARTICLE 7. RESERVED.

ARTICLE 8. GENERAL PROVISIONS.

Section

- 900. Statement of purpose
- 910. Goals of vocational rehabilitation
- 999. Definitions

8 AAC 47.900. STATEMENT OF PURPOSE. It is the intent of the Alaska Workers' Compensation Act (AS 23.30) and this chapter that vocational rehabilitation services be provided to assure the earliest possible return of the industrially injured or diseased worker to suitable gainful employment with the least possible wage loss. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.910. GOALS OF VOCATIONAL REHABILITATION. The board recognizes four major goals of AS 23.30.041 in support of the provision of vocational rehabilitation services. The are

(1) To identify as soon after the injury as possible, those employees needing rehabilitation services;

(2) to assure employers and injured employees that quality rehabilitation services are provided by qualified providers;

(3) to provide the best possible opportunities for direct return to suitable gainful employment; and

(4) to maintain an atmosphere conducive to rehabilitation among all parties. (Eff. / / , Register)

Authority: AS 23.30.005
AS 23.30.041

8 AAC 47.999. DEFINITIONS. (a) In this chapter,

(1) "administrator" means the Rehabilitation Administrator in the Department of Labor, Division of Workers' Compensation, or designee;

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

WORKERS' COMPENSATION TASK FORCE

Meeting Minutes
January 20, 1988

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MEMBERS PRESENT

Art Robson, Attorney (Chair)
Kevin Krauklis, ARCO Alaska
Skip (Dennis) Cook, Attorney
John Connors, Attorney
Mary Klink, Paralegal, Croft Law Offices
Vince Gollogly, Northern Rehab
Gene Rutland, Mechanical Contractors of Fairbanks
Phil Nelson, Holaday Parks
Bill Sager, Chandler Plumbing & Heating
Gene Yurkovich, Cook & Haugeburg

MEMBERS ABSENT

Claire Hiratsika, Northern Rehab
Judith Hannig, APSI
Ed Husted, Paralegal, Croft Law Offices
Kurt Merkel, M.D.
George Riley, UAF Employee Relations
Earl F. Romans, Alaska Battery
Charles Rublee, D.C.
Tom Wilton, Wilton Adjusters
Ralph Beistline, Attorney
Ann Brown, Attorney
Dennis Brownsfield, Iron, Inc.
Jim Carroll, Iron Workers #751
Gordon DePue, Alaska 100 Insurance
Mary Stella, Denali Transport Corporation
Joe Thomas, Laborers #945
Carolyn Webster, Culligan

CALL TO ORDER

Meeting was called to order at 3:15 PM

Chairman Art Robson spoke regarding a Legislative input teleconference scheduled for 1/29/88, by which time he would like to have substantial input. He is preparing a document to be presented which includes summaries of all reports presented by the Committees of the Task Force. This document will be included with the minutes for this meeting to be mailed to Task Force members by Monday, 1/25/88. This documents needs to be reviewed by all members before next weeks meeting scheduled for Wednesday, 1/27/88. Please note any inconsistencies or changes so we may be well prepared for presenting this document. Included will be a section regarding points raised so we may alert them accordingly. The finalized copy will then be prepared in time for the teleconference.

WORKERS' COMPENSATION TASK FORCE

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APPROVAL OF MINUTES:

Minutes of January 13, 1988, meeting were approved.

Art Robson spoke regarding a motion made during last week's meeting that appears in the minutes - a copy of the cover letter of a report that he sent to Representative Dave Doneley, Tim Kelley, and the Legislative Affairs Office 1/19/88 to send to Juneau, was distributed to the Task Force members. Included in this report are the minutes of the Workers' Comp Task Force meetings, Committee reports, and other information accumulated. Also included is an explanation of the processes involved in accumulating this information. Copies were also sent to each of the local media to inform them of our efforts.

Workers' Compensation Senate Bill: Hypothetically, there is a good representation of the labor force on the Committee, but they are not present today. The Task Force is in agreement with a great number of points, and phrase most amendments as additional points. Along with considering Legislative Changes, some regulation changes and administrative changes are being discussed. These would be supplemental. By unanimous consensus, the Task Force agreed to make every effort to study and amend current draft of the bill.

COMMITTEE REPORTS

Art states these reports must be unanimous; there must be no objection to these Committee reports.

Vocational Rehabilitation: Final details need to be handled. A meeting will be scheduled for this Saturday, January 23, and information will be ready for next week's Task Force meeting, on January 27. One or two changes need to be examined on the bill.

Medical Costs: No representative of this committee was present to report. The committee met on Friday, January 15, and examined basic questions taken from WICCA's Bill. Suggestions included:

1. Appoint a medical peer review committee;
2. Should be a multi-disciplined panel of Board certified physicians, (orthopedic, chiropractic, etc.);
3. The Board shall make the final decision;
4. The Board shall appoint a medical review committee;
5. The Board should be responsible for their decisions

Collateral Benefits: John Connors discussed disability benefits, and stated that the draft proposal in the Legislature now is acceptable. Ragland benefits should be kept in the bill, but there was no need for the offsets.

WORKERS' COMPENSATION TASK FORCE
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Second Injury Fund: Skip Cook referred to his memo regarding the redraft of Section 205. The following changes were suggested:

- Section B: The number of weeks.
- Section C: Written Records.

Some simple changes in wording of the bill were suggested. The question was raised as to whether the employer should receive the second injury fund if not aware of the previous injury.

It was recommended that the Board should adopt by regulation a standardized form for the Health Questionnaire for all employees with a warning regarding false statements. A sample form was submitted, on which the employer should maintain a medical history of its employees. This information is not required until the employee is considered employed.

Premium Rates: Gene Rutland stated that he had nothing further to add, since efforts to obtain information on Workers' Comp rates have been futile; no information has been received as yet. The information, when it is received, will be in a very rough form, and it will take some digging to sort through it.

The State of Alaska has hired an actuary to study the new Legislation for its cost effect. That firm is Milliman and Robertson. A report from that firm is still forthcoming. The first opinion from NCCI on the new Legislation was that it would end up being a "wash"; some things were added and some things were taken away.

There is some indication of increased utilization of the Workmans' Compensation system, and it has been more durable utilization in recent years. The problem is with getting people off of Workers' Compensation and back to work. It is believed that this is where the extra costs are coming from. There is also some coincidence between the flagging economy and the rise in utilization of Workers' Compensation benefits.

An interim rate increase is anticipated by July of this year. No changes in current Legislation is presently anticipated.

Administrative Structure: No members of this committee were present, and it was not known whether the committee has met or not.

MEMBERS' COMMENTS:

Art asked for comments and observations that committee members might have that they would like included in the final report. He expected that next week's meeting on January 27 should be the last meeting in which everything is finalized. Art favors creating some category with everybody's miscellaneous statements.

WORKERS' COMPENSATION TASK FORCE
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A meeting should be scheduled with the Governor's Task Force when they come to Fairbanks on February 12th or 13th, during which these points will be raised.

Art will try to get a compilation of all submitted information insofar as he can compile it at this point for review next week. He expects that at the conclusion of next week's meeting, it will take only some final drafting before submission.

ADJOURNMENT:

The meeting was adjourned at 4:35 p.m.

DRAFT REPORT TO THE ALASKA STATE LEGISLATURE
ON WORKERS' COMPENSATION BENEFITS

from

UNIFIED FAIRBANKS

This is the final report of the Special Task Force formed by Unified Fairbanks to address the problem of an apparently unjustified increase in workers' compensation premium costs.

The Task Force grew out of an information seminar attended by 160 people, and a followup seminar attended by half that many. Emphasis at the first seminar was on receipt of all information that the State could provide, together with information from professionals in every area. At the second seminar, the preliminary action areas were crystalized and direction was given thereon. At this point, the matter was transferred to the Task Force Committee which consisted of 24 persons who were employers, labor representatives, health professionals, rehabilitation professionals, and attorneys (on both sides). Meetings were held each Wednesday at North Star Terminal. Committees worked an average of 10 hours each on their various projects. Input was had from all members on all reports, and all recommendations contained herein are unanimous unless noted to the contrary.

Organizationally, this should be viewed as a supplement to the WCCA draft legislation which is now before you as SB

322. Sections will be taken in the order that they are set forth in SB 322. There are some additional recommendations beyond what was covered by that draft legislation. Some are of a legislative nature, there are also administrative recommendations for both proposed regulation and action. There are, finally, executive recommendations which must be considered by the Governor's Office in the budgeting process.

The overall goal was to make changes in the workers' compensation system which would reduce the cost of the system as it is reflected in premiums paid by employers.

The format for approaching each section or subject will be:

1. Comments addressing the WCCA proposal (SB 322);
2. The Unified Fairbanks recommended approach;
3. Actions proposed by Unified Fairbanks, whether legislative, administrative, or executive; and,
4. Arguments and problem areas which should be addressed.

I. LEGISLATIVE INTENT

COMMENTS

According to WCCA, this does not alter the presumption of compensability, but does indicate a legislative preference for a "preponderance of the evidence" test to be used by the Board without favor to either side. Additionally, the standard of judicial review is to be changed to provide that, on

4' 4'

questions of fact, the Board's findings are conclusive if supported by any evidence at all. Whether the court system will find a declaration of legislative intent sufficient to change the standard of judicial review is open to question. The final "intent" is to reduce benefits to persons with residences outside, so as to give them an incentive to go back to work.

RECOMMENDATION

Sections A and C are straight-forward legislative goals. Section B might better be amended along the lines of California Workers' Compensation Code, Section 3202.5 as follows: "The legislature declares that the workers' compensation laws must be fairly and impartially construed by the courts. In promotion of that goal, it is the intention of the legislature that the preponderance of evidence standard be utilized in determining the compensability of a workers' compensation claim. Preponderance of the evidence means such evidence as, when weighed ^{with} ~~of~~ that opposed to it, has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

ACTIONS PROPOSED

None in this area unless changing the standard of judicial review is seriously contemplated. If such is contemplated, there is a probability that multiple amendments may be requisite in such places as the Administrative Procedure Act and Title 22.

Act and Title 22.

ARGUMENTS AND PROBLEM AREAS

These have been raised above.

II. DEPARTMENT MAY SET UP TO SELECT AND REMOVE
REHABILITATION SPECIALISTS OR PHYSICIANS

COMMENTS

In Fairbanks, we felt strongly that the "may" should be replaced by "shall", "must" or "will" creating a mandate. WCCA feels that, providing the Board with the power will be enough to cause it to act. Additionally, the "or" probably should be a "and" because the two are not meant to be alternatives.

RECOMMENDATIONS

Our recommendations in the medical and rehabilitation areas are addressed in those particular areas of this report. We concur with the intent of WCCA in Section 2 with the strong recommendation that the word "may" be made mandatory, and clarifying that both rehabilitation specialists and "physicians" (as defined elsewhere) are to be selected.

ACTIONS PROPOSED

See above.

ARGUMENTS AND PROBLEM AREAS

Hopefully, the qualifications for health care providers will not strongly differ from the standard of licensing, etc.

III. WHEN ANYTHING IS DECLARED UNCONSTITUTIONAL,
DEPARTMENT "SHALL IMMEDIATELY" DRAFT NEW REGULATIONS

COMMENTS

A different drafter for WCCA uses the mandate "shall" and adds to it the word "immediately". This drafter probably meant to say "shall forthwith adopt a replacement regulation or regulations".

RECOMMENDATION

A good idea.

ACTIONS PROPOSED

See above.

ARGUMENTS AND PROBLEM AREAS

Since the Department does not have legal counsel and the route for cooperation with the Attorney General's Office is rather tortuous, any requirement of immediacy may be dysfunctional.

IV. FALSE STATEMENT ON PRE EMPLOYMENT QUESTIONNAIRE
WAIVES ALL BENEFITS

COMMENTS

First, there is no mechanism for determining whether ~~this~~ ^{any Particular} statement is actually false. Questions composed by individual employers can mean various things. Well designed questionnaires can even be susceptible of dual interpretations. Second, (1) is vague. It probably should provide that, had the

employer known the true state of facts, a) the employee would not have been hired, and b) the non-hiring would have been legal under federal and state law. Third, (2) is again vague because a representation on a piece of paper in the office seldom causes anything. Reference should be to the condition hidden from the employer by the misrepresentation.

RECOMMENDATION

Unified Fairbanks agrees with the intent and feels that the drafting should be cleaned up.

ACTIONS PROPOSED

See above.

ARGUMENTS AND PROBLEM AREAS

See above.

V. SECOND INJURY FUND CONTRIBUTIONS AND REPORT TO BE FILED ANNUALLY

COMMENTS

The State receives currently both data and funds within a short period of time after each case is concluded. This *amendment* permits the State to have data consolidated on a single annual report from each carrier. It also permits the insurance company to earn interest on money due for the intervening time between closing a case and the annual report.

RECOMMENDATION

Since the State is unable or unwilling to compile data

From
~~for~~ reports filed on a case-by-case basis, this appears to be a way in which the annual reports from the carriers can be summarized, thereby providing for the first time, some data with respect to, the validity of rates charged, and where the problems in the administration of the act happened to be. We join in the recommendation to attack the problem.

ACTIONS PROPOSED

Unified Fairbanks would like the State to explore the possibility that, either through the use of a personal computer or access to some other computer plus the addition of one person to the staff of the department, the reports as they are currently received could be entered into the computer so that all data necessary for fixing rates or ascertaining percentages of expenditure, etc. would be instantly available to the State and any employer or agency requesting the information. It is most likely that the cost to the State of a computer, its programming, and a person to operate it, at least on a part-time basis, would be less than the interest lost by providing the delay in payment by the carriers. There is no indication that the additional interest earned (which will probably be on the remainder in a claims reserve) will effect the workers' compensation premium rates in any way.

ARGUMENTS AND PROBLEM AREAS

The State Department of Insurance and the State Department of Workers' Compensation are both unable to produce

statistics indicating the basis for premiums or the disposition of monies paid out. If this problem is not addressed, we will continue to set rates in a blind fashion and amend legislation without knowing whether we are doing any good.

VI. REHABILITATION

COMMENTS

Unified Fairbanks agrees that rehabilitation should be voluntary with the employee. We find no evidence from any source which indicates the law which has been proposed will reduce the cost of workers' compensation. We have repeatedly sought facts from the State government indicating what segment or segments of a workers' compensation system had been causing the greatest increase in cost. Absolutely no information has been forthcoming, although we have been able to obtain the same information from other states with a telephone call. In short, all we know is that there is a serious problem with the cost of the system. However, no one in our State government has been able to identify where the problem lies. We firmly believe that it is wrong to legislate massive changes in what is basically a sound law when no one has yet identified where the problem lies. We are, in fact, worried that the cost of the system may be increased by the proposed changes. There have been no regulations adopted to put into effect the rehabilitation scheme that is presently in the law. We therefore do not know how the

presently existing scheme will work or what its costs will be. We are therefore reluctant to change for the sake of change.

RECOMMENDATION

A. INEFFECTIVE WORK BY STATE AGENCIES, Division of Insurance:

Much of the blame for the increased cost of the workers' compensation system has been placed on vocational rehabilitation. However, the Division of Insurance has absolutely no information available to anyone concerning the costs of vocational rehabilitation or of any other workers' compensation benefit for that matter. Nonetheless, the Division continues to approve massive rate increases for workers' compensation insurance, and a portion of the blame gets placed on a "vocational rehabilitation system which is too liberal." The last increase was granted without the preparation of any findings of fact and without the presentation of any specific information to those in this State who are involved. We suggest legislation requiring some state agency to keep statistics on the cost of rehabilitation evaluations, rehabilitation plans, the cost of litigation, and so forth. When future rate increases are suggested, facts and figures will be available to indicate where the cost increase is coming from.

B. INEFFECTIVE WORK BY STATE AGENCIES, Workers' Compensation Board:

The Department of Workers' Compensation has seriously faltered in its obligation to administer the existing vocational

rehabilitation law. Over five and a half years have passed without the promulgation of a single rule or regulation by the Board to govern procedures under the law which went into effect on July 1, 1982. The present law has never been given a chance to work and we find it ridiculous that the Legislature now stands ready to cast it aside. We suggest the legislature take whatever steps are necessary to immediately secure the promulgation of administrative rules and regulations by the Board.

Two good examples of what has happened as the present system has struggled without the benefit of administrative rules:

1. We suspect a major portion of any increased cost of vocational rehabilitation is in the payment of temporary benefits to injured workers while they wait for the vocational process to be completed. The system in Fairbanks has worked very slowly without the rules and regulations needed. As a result, injured workers remain far too long on temporary benefits. Rather than deprive injured workers of temporary benefits during vocational rehabilitation, which we think is a worthwhile benefit, we suggest the Board streamline the system with the promulgation of rules and that the existing law be tightened up to provide certain specific time limitations for each step of the process. This is the main thrust of our suggested changes in the existing law.

2. In Fairbanks, there is no full-time rehabilitation administrator. At present, the one administrator is in Fairbanks one day a month. This allows a maximum of three rehabilitation conferences. Without timely rehabilitation conferences available to all parties, increased costs of continuing temporary benefits have resulted. It is obvious additional staff are required.

C. LEGISLATIVE TASK FORCE

We believe the Legislature should form a task force to keep the existing vocational rehabilitation system moving. The group should have representatives of all major participants in the system. The information needed from the Division of Insurance could be pursued, enforcement of the Board's obligation to promulgate rules and regulations would be enhanced, and proposed changes in the law and regulations could be generated.

D. SECOND INJURY FUND/TEMPORARY PARTIAL DISABILITY

Our committee believes one of the greatest benefits to the system would be strong encouragement to employers to rehire injured workers. The present Second Injury Fund does nothing to provide this encouragement as coverage begins only after 104 weeks of disability. We suggest the period of coverage be drastically reduced to make it possible for injured workers' to return more rapidly to the work force. A further encouragement toward the goal of returning injured workers to a job is our

proposed new subsection(n) which encourages the use of TPD when employers rehire their injured workers in a "modified" or "light duty" capacity.

ACTIONS PROPOSED

In order to keep in line with the WCCA recommendation, we propose that the statutory language be as follows:

AS 23.30.041. Rehabilitation of injured workers.

(a) The board shall select and employ a rehabilitation administrator. The board shall adopt regulations to implement this section. The board shall authorize the rehabilitation administrator to select and employ sufficient rehabilitation staff to conduct hearings and to collect and analyze statistical data. The rehabilitation administrator is in the partially exempt service under AS 39.25.120.

(b) The rehabilitation administrator shall implement the provisions of this section, study the issue of rehabilitation, both physical and vocational, enforce the regulations as adopted, and maintain and report statistical data on a continuing basis as to the cost of rehabilitation to the Legislature on at least an annual basis.

(c) If an employee suffers a compensable injury that could preclude return to the job^{held} at the time of injury, the employee shall be referred for an evaluation for participation in rehabilitation services within 30 days after the date of injury. A full evaluation shall be performed by a qualified

rehabilitation professional within 30 days of the date of referral. If in the opinion of the qualified rehabilitation professional, the medical, physical, or emotional state of the employee precludes a full evaluation, the rehabilitation professional shall prepared a preliminary evaluation within 14 days of the date of referral. A preliminary evaluation shall include the reasons why a full evaluation cannot be made, an opinion as to when the employee will be able to participate in a full evaluation, and any information that would be included in a full evaluation that can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation. If the employer does not timely make a referral for evaluation under this subsection, the rehabilitation administrator shall retain a qualified rehabilitation professional to perform the evaluation. The employer shall pay the reasonable costs of an evaluation under this subsection.

(d) A full evaluation by a qualified rehabilitation professional shall include a determination whether rehabilitation services are necessary, as outlined in the regulations.

(e) Refusal by an injured employee to participate in an evaluation results in forfeiture of disability compensation for the period the refusal continues. The rehabilitation administrator shall find that an employee refuses to participate in an evaluation if the employee fails to cooperate with the

rehabilitation provider as outlined in the regulations.

(f) After the evaluation is completed, the employee must elect in writing to the administrator within 14 days of receipt of the full evaluation whether or not he or she will participate in further rehabilitation services.

(g) The employee's election not to participate in rehabilitation services is final, provided, however, that the employee shall have the option within 30 days of the notice under subsection (f) to notify the administrator in writing that he now wishes to participate in rehabilitation services.

(h) After the employee has elected to participate in vocational rehabilitation services for which he is eligible, the vocational rehabilitation counselor will within 90 days submit a vocational rehabilitation plan to concerned parties including the rehabilitation administrator which will enable the employee to return to suitable gainful employment. A rehabilitation plan may consist of any of the following; however, if the employee can be restored to suitable gainful employment with rehabilitation plans of higher preference, then a rehabilitation plan of a lower preference need not be offered by the employer. The order of preference for rehabilitation plans is return to work

- (1) with the same employer at the same or modified job as at the time of injury;

a same employer at a new job using
transferrable skills;

with a new employer at the same or modified job;
with a new employer in a new job using
transferrable skills;

- (5) through developing already existing skills or acquiring new skills through on-the-job training;
- (6) after developing already existing skills or acquiring new skills through vocational training;
- (7) after developing already existing skills or acquiring new skills through academic training;
- (8) in self employment; and
- (9) through direct placement in an unrelated job not using transferrable work skills.

(i) If the employer and employee fail to agree in writing on the submitted vocational rehabilitation plan within 14 days, the employee shall submit an alternative plan to the rehabilitation administrator. The employee's alternative plan must be submitted within an additional 14 days. In the event of a dispute, the rehabilitation administrator or his staff may either write a decision or schedule a formal rehabilitation conference to be held within 10 days of receipt of the alternative plan. If a conference is held, a decision as to the appropriate plan shall be issued within 10 days after the conference. The rehabilitation administrator's decision is

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

- (2) with the same employer at a new job using transferrable skills;
- (3) with a new employer at the same or modified job;
- (4) with a new employer in a new job using transferrable skills;
- (5) through developing already existing skills or acquiring new skills through on-the-job training;
- (6) after developing already existing skills or acquiring new skills through vocational training;
- (7) after developing already existing skills or acquiring new skills through academic training;
- (8) in self employment; and
- (9) through direct placement in an unrelated job not using transferrable work skills.

(i) If the employer and employee fail to agree in writing on the submitted vocational rehabilitation plan within 14 days, the employee shall submit an alternative plan to the rehabilitation administrator. The employee's alternative plan must be submitted within an additional 14 days. In the event of a dispute, the rehabilitation administrator or his staff may either write a decision or schedule a formal rehabilitation conference to be held within 10 days of receipt of the alternative plan. If a conference is held, a decision as to the appropriate plan shall be issued within 10 days after the conference. The rehabilitation administrator's decision is

binding unless a party seeks review of the decision by requesting a hearing with the Board in accordance with AS 23.30.110.

(j) A vocational rehabilitation plan may not exceed ~~up to~~ 37 training weeks, except that the rehabilitation administrator may order a plan up to an additional 37 training weeks. This subsection does not prohibit an employer or carrier from providing extended vocational rehabilitation services on a voluntary basis. If rehabilitation requires residence away from the employee's customary residence, reasonable cost of board, lodging, and travel shall be paid by the employer. Temporary disability under AS 23.30.185 or AS 23.30.200 shall be paid throughout the rehabilitation plan under this section.

(k) For purposes of this section, suitable gainful employment means employment that is reasonably attainable in the light of an individual's age, education, vocational history, and physical capabilities, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation ~~as~~ nearly as possible to the individual's gross weekly earnings as determined by section AS 23.30.220.

(l) For purposes of this section, "labor market" means a geographical area that offers employment opportunities in the following priority:

- (1) area of last employment;
- (2) area of residence;