

RULE V

VOCATIONAL REHABILITATION RULES APPLICABLE TO CLAIMS BASED UPON AN INJURY OR ILLNESS OCCURRING PRIOR TO JULY 2, 1987 at 4:16 p.m.

A. STATEMENT OF BASIS AND PURPOSE

The rules of procedure governing the vocational rehabilitation component of worker's compensation are promulgated to afford the injured worker an opportunity to re-enter the workforce with a minimum of lost time. These rules accomplish that purpose through establishing procedures for early intervention by providing guidelines for comprehensive vocational evaluation to yield appropriate, achievable vocational rehabilitation plans. The rules also set guidelines for rehabilitation facilities and assisting in the vocational rehabilitation process, to gain the approval of the Division pursuant to C.R.S. 1973, section 8-49-101(4).

B. DEFINITIONS

In addition to the definitions already adopted in the rules, the following definitions apply to vocational rehabilitation procedures:

1. "Job Modification" is the environmental adaptation of a job either through the use of aids or devices or the alteration of the physical environment of the job, or both, to allow an impaired individual to perform within the scope of tasks originally designed for the job flow.
2. "Job Restructuring" is a special application of job analysis that involves the identification of jobs within the context of the system of which they are a part and the analysis and rearrangement of the job tasks to achieve a desired purpose.
3. "Qualified Worker" means an employee who because of the effects of a work-related injury or occupational disease, (a) is permanently precluded from engaging in his/her usual and customary occupation and is unable to perform work for which the individual has previous training or experience, and (b) can reasonably be expected to attain suitable, gainful employment upon successful completion of a vocational rehabilitation program.
4. "Qualified Rehabilitation Consultant" means a person authorized by a rehabilitation vendor to conduct a vocational evaluation and develop a rehabilitation plan for a qualified worker. This individual must demonstrate a level of professional training and experience as may be required by the director. The qualifications may consider, among other things education, experience and cumulative levels of expertise.

5. "Rehabilitation Vendor" means an individual, firm or facility which exists to provide any or all of the services necessary to determine an injured employee's eligibility as a qualified worker, and/or provide those services designed to return an individual to work. A vendor must register with the Division and be approved by the director.
6. "Suitable Gainful Employment" means employment which is reasonably attainable and which offers an opportunity to restore the injured worker as soon as possible and as nearly as possible to employment with the employee's qualifications, including but not limited to the employee's age, education, previous work history, interests and skills. Special consideration shall also be given to the economic level of the employee at the time of injury and to the present and future labor markets, to attempt to restore him/her to the maximum level attainable.
7. "Transferable Skills" means those skills an individual possesses which were attained through previous training or experience and are readily marketable and a need for them exists in the current labor market and would provide suitable gainful employment. Transferable skills may also mean those skills gained through experience which can be redirected into a related occupation (Example: plumber-counter sales or sales representative for plumbing supply house, or contract estimator for plumbing work).
8. "Vocational Evaluation" means the service and/or rehabilitation services required to determine an injured employee's eligibility as a qualified worker. The services may include, but are not limited to work evaluation, vocational testing, counseling, job analysis and labor market analysis.
9. "Vocational Rehabilitation Plan" means a written document completed and signed by a qualified rehabilitation consultant which describes the manner and means by which it is proposed that a qualified worker may be returned to suitable gainful employment through the participation in a rehabilitation program.
10. "Vocational Rehabilitation Program" means the actual providing of services as prescribed in the vocational rehabilitation plan and approved by the director as reasonably necessary to restore a qualified worker to suitable gainful employment. Such services shall include but are not limited to medical services, counseling, education, vocational training (including on-the-job training), books, supplies and tools, job development and placement assistance and on-site follow-up.

C. INITIATION OF VOCATIONAL EVALUATION AND DIRECTOR'S DETERMINATION OF ELIGIBILITY

1. A vocational evaluation shall be provided by a rehabilitation vendor designated by the insurance carrier, or self-insured employer, or upon failure of such designation, by the Division in consultation with the employee, as soon as the need is identified as outlined below. The carrier shall commence a vocational evaluation upon the occurrence of either of the following:
 - a. Immediately upon receipt of the first report of an injury in which liability is admitted and involves any of the following: (1) mangling, crushing or amputation of a major portion of an extremity, (2) traumatic injury to spinal cord that has caused or may cause paralysis, (3) severe burns that require burn center care, (4) serious head injury or loss of both eyes.
 - b. Immediately upon knowledge that an injured employee is unlikely to be able to return to his/her usual and customary occupation on a permanent basis as determined by competent medical evidence and opinion.
2. Immediately following one hundred twenty (120) days of temporary total disability for injuries or occupational diseases not evaluated under 1a & 1b above, one of the following must occur:
 - a. The employee will be referred for vocational evaluation.
 - b. The employee will be referred for re-evaluation of his/her medical conditions to determine maximum medical improvement and the likelihood of a need for vocational rehabilitation or that (s)he will return to work and a report thereupon shall be filed with the Division.
 - c. The self-insured employer or insurance carrier will file with the Division a report that the employee will be able to return to work accompanied by competent medical evidence that also provides a date for maximum medical improvement.
3. A vocational evaluation shall contain the elements listed below and be submitted in a summary report to the director:
 - a. An on-site analysis of the tasks and duties of the job the employee was performing as his/her usual and customary occupation at the time of injury.
 - b. An analysis of the previously submitted medical reports and physicians' evaluations as they relate to the physical and skill requirements of the job the employee was performing as his/her usual or customary occupation at the time of injury.

- c. An analysis of the employee's work history and academic achievement to determine transferable skills to other occupations within the scope of medical limitation and the prognosis for rehabilitation.
 - d. A medical report, either supplemental or previously filed, from the authorized treating physician providing: a diagnosis of the injury, a medical prognosis, prescribed medications, medical limitations, necessary continued medical care, and a reasonable commencement date for vocational rehabilitation, if applicable.
 - e. An assessment by a qualified rehabilitation consultant regarding the employee's likelihood of benefiting from rehabilitation services, considering such factors as attitude, interests, aptitudes, motivation and physical condition.
 - f. And where it is deemed necessary, the rehabilitation vendor shall provide for vocational testing and shall attach a written justification for such provision to the summary report submitted to the director.
 - g. In cases where it is determined that an individual possesses transferable skill or skills, there must be an analysis that the skill or skills are current and marketable.
- 4. A vocational evaluation shall be completed within sixty (60) days of assignment to the rehabilitation vendor or within one hundred eighty (180) days of the injury, whichever occurs first, at which time a comprehensive summary report shall be submitted.
 - 5. A summary report of the vocational evaluation, signed by the qualified rehabilitation consultant responsible for the evaluation, shall be submitted to the director and shall contain a recommendation that the injured employee is or is not eligible for a vocational rehabilitation program.
 - 6. If the recommendation indicates that the employee is in need of vocational rehabilitation, the recommendation shall include a description of the suggested occupation(s) that would be considered for plan development.
 - 7. Upon submission of the summary report, the director shall determine the status of eligibility within twenty (20) days and shall issue a "Notice of Determination of Eligibility for Vocational Rehabilitation Benefits" to the self-insured employer or insurance carrier, and employee and his/her attorney.

8. Either party may object to the determination concerning eligibility within fifteen (15) days of the date of the director's determination. The objecting party may request a hearing or reserve the objection to a later date in writing.

D. SUBMISSION AND IMPLEMENTATION OF THE VOCATIONAL REHABILITATION PLAN

1. If the employee is determined a qualified worker, the director shall order that a vocational rehabilitation plan be developed. The plan shall be developed and submitted to the director and the parties within forty-five (45) days of the Director's determination of eligibility, unless said determination has been contested.
2. In developing the plan, the rehabilitation vendor shall strive to achieve vocational objectives in the following priorities:
 - a. Return to work for the same employer to a modified or restructured job requiring rehabilitation services, which is deemed to be suitable gainful employment and within the feasibility of the medical and physical limitations determined in the vocational evaluation.
 - b. Return to work for the same or a new employer in a related occupation, deemed to be suitable gainful employment, for which the individual has received rehabilitation services to upgrade skills attained from previous training or experience so as to achieve marketable transferable skills, and is within the feasibility of the medical and physical limitations determined in the vocational evaluation.
 - c. Return to work in an on-the-job training capacity at an occupation which is deemed to be suitable gainful employment and that is within the feasibility of the medical and physical limitations determined in the vocational evaluation.
 - d. Return to work after the completion of a vocational program into a new occupation, deemed to be suitable gainful employment, within the medical and physical limitations determined in the vocational evaluation.
3. Once developed, the proposed plan shall be written and submitted to the parties. The written plan shall include:
 - a. The vocational objective(s) leading to suitable gainful employment.
 - b. The name and location of the educational institution, vocational training agency, company or business involved in vocational rehabilitation program.
 - c. The nature, extent, duration of services to be provided in the rehabilitation program which will include, but are not limited to physical and occupational

therapy, counseling, job development and placement activities, and medical treatment.

- d. The expected length of the vocational rehabilitation program.
 - e. A labor market analysis showing the feasibility of employment for a qualified worker retraining for a new occupation if the proposed program is successfully completed.
 - f. The amount of weekly income maintenance benefits, tuition, fees, and transportation costs, if any, and the time and manner of such payments to the employee during rehabilitation.
 - g. The name of the qualified rehabilitation consultant responsible for the plan and the vendor's name and registration number.
4. The vocational rehabilitation plan submitted to the parties shall include copies of the summary report in its entirety.
 5. The director, upon receipt of a proposed vocational rehabilitation plan and upon review, shall order the plan either approved or disapproved or modified. Implementation of the plan may begin as soon as the employee is capable of participating in the program, as indicated by competent medical evidence. The plan shall begin upon the director's approval or the date specified in the plan as applicable, whichever is later. The insurance carrier shall continue to provide temporary disability benefits, if applicable, until implementation of the plan and the employee begins his vocational rehabilitation program.
 6. All matters regarding rehabilitation plans or programs shall be initially submitted to the director except in those cases where the question of need for vocational rehabilitation first arises during the course of a hearing or hearings on other issues.
 7. Where the parties indicate area of disagreement, the director shall attempt to resolve the differences and upon obtaining agreement, order the plan approved. If the differences cannot be resolved, the director shall set the case for hearing to resolve the areas of disagreement.
 8. If the employee does not choose to enroll in a vocational rehabilitation program, nothing in these rules and regulations shall require the employee to do so.

E. MODIFICATION, SUSPENSION OR TERMINATION OF THE VOCATIONAL REHABILITATION PLAN OR VOCATIONAL EVALUATION

Problems, disputes or other matters regarding modification, suspension, or termination of a vocational rehabilitation plan or vocational evaluation shall be reviewed by the director upon the request of the insurance carrier, or the self-insured employer, or the employee, or upon the director's own motion. The Division shall issue an order modifying, suspending, or terminating the rehabilitation plan or vocational evaluation if it finds:

1. That satisfactory progress is not being made, or
2. That the plan is not likely to prepare the employee for suitable, gainful employment due to unexpected contingencies, or
3. That the employee refuses to complete or obstructs the vocational rehabilitation plan or vocational evaluation, or
4. That a more suitable plan becomes available so that a vocational evaluation is no longer necessary as shown by competent evidence.

F. REPORTING REQUIREMENT

Copies of the vocational evaluation, interim reports, vocational rehabilitation plan, progress of the rehabilitation plan, and final report including medical and vocational reports shall be sent to the employer or its insurance carrier, the employee and his/her attorney by the rehabilitation vendor. Copies of the vocational evaluation, vocational rehabilitation plan, and the final report shall be sent to the Division of Workers' Compensation by the rehabilitation vendor. A certificate of mailing shall be attached to all reports required under this rule.

G. REGISTRATION AND APPROVAL OF A REHABILITATION VENDOR

Every person, firm, or facility providing services as a rehabilitation vendor as defined, must register with the Division and be approved as a qualified facility in accordance with C.R.S., 1973, section 8-49-101(4). In granting approval the director may consider, among other things, that the vendor have available to it the services of a qualified rehabilitation consultant who demonstrates one of the following credentials:

1. The individual is a Certified Rehabilitation Counselor under the guidelines of the Commission on Rehabilitation Counselor Certification or can demonstrate equivalent credentials.
2. The individual has a Master's degree in Vocational Rehabilitation, Guidance and Counseling, Psychology, or in a related field or can demonstrate equivalent work experience on a year for year basis for formal education. The individual must also

have one (1) year of experience as a practitioner in the field of vocational rehabilitation.

3. The individual has a Bachelor's degree in Vocational Rehabilitation, Guidance and Counseling, Psychology, or a related field or can demonstrate equivalent work experience on a year for year basis for formal education. The individual must also have two (2) years experience as a practitioner in the field of vocational rehabilitation.