COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1224 _____ Of the printed Bill

Page _____ Section _____ Lines _____ Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Mark McCullough

Adopted: _____

_____
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 1224 By: McCullough

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85 O.S. 2011, Section 338, which relates to vocational rehabilitation services; creating rebuttable presumption that vocational rehabilitation is appropriate for certain injuries and occupations; specifying injuries and occupations subject to presumptions; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 85 O.S. 2011, Section 338, is amended to read as follows:

Section 338. A. An employee who has suffered an accidental injury or occupational disease covered by the Workers' Compensation Code shall be entitled to prompt and reasonable physical rehabilitation services. When, as a result of the injury, the employee is unable to perform the same occupational duties the employee was performing prior to the injury, the employee shall be entitled to such vocational rehabilitation services provided by a

technology center school, a public or private vocational skills center or public secondary school offering vocational-technical education courses, or a member institution of The Oklahoma State System of Higher Education, which shall include retraining and job placement so as to restore the employee to gainful employment. Vocational rehabilitation benefits shall not be provided to any nondocumented employee who is unable, by law, to be hired in Oklahoma.

B. The Administrator of the Workers' Compensation Court shall hire or contract for a Vocational Rehabilitation Director to oversee the vocational rehabilitation program of the Workers' Compensation Court. The job of the Vocational Rehabilitation Director is to help injured workers return to the work force through the encouragement of light-duty work or retraining.

C. Upon the request of either party, or by order of the Court, the Vocational Rehabilitation Director will assist the Court in determining if it is appropriate for a claimant to receive vocational rehabilitation training or services. If appropriate, the Court shall refer the employee to a qualified expert for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the Court, or

fails to complete in good faith the vocational rehabilitation training ordered by the Court, then the cost of the evaluation and services or training rendered may, in the discretion of the Court, be deducted from any award of benefits to the employee which remains unpaid by the employer. Upon receipt of such report, and after affording all parties an opportunity to be heard, the Court shall order that any rehabilitation services or training, recommended in the report, or such other rehabilitation services or training as the Court may deem necessary, provided the employee elects to receive such services, shall be provided at the expense of the employer. Except as otherwise provided in this subsection, refusal to accept rehabilitation services by the employee shall in no way diminish any benefits allowable to an employee.

D. Whenever it is apparent to the Court that the employee's injury will prevent the employee from returning to his or her former employment, the Court may order vocational rehabilitation services, even though the employee remains temporarily totally disabled and under active medical care. In granting early benefits for vocational rehabilitation, the Court shall consider temporary restrictions and the likelihood that such rehabilitation will return the employee to gainful employment earlier than if such benefits are granted after the permanent partial impairment hearing in the claim.

E. No person shall be adjudicated to be permanently and totally disabled, except in claims against the Multiple Injury Trust Fund,

unless first having obtained an evaluation as to the practicability of restoration to gainful employment through vocational rehabilitation services or training. The employee seeking permanent and total benefits shall pay the cost of the evaluation. If an employee claiming permanent total disability status unreasonably refuses to be evaluated or to accept vocational rehabilitation services or training, or is capable of retraining but is ineligible pursuant to subsection A of this section, permanent total disability benefits shall not be awarded during the period of such refusal, and the employee shall be limited to permanent partial impairment benefits only.

F. Vocational rehabilitation services or training shall not extend for a period of more than fifty-two (52) weeks. This period may be extended for an additional fifty-two (52) weeks or portion thereof by special order of the Court, after affording the interested parties an opportunity to be heard. A request for vocational rehabilitation services or training may be filed with the Administrator by an interested party at any time after the date of injury but not later than sixty (60) days from the date of the final determination that permanent partial impairment benefits are payable to the employee.

G. Where rehabilitation requires residence at or near the facility or institution which is away from the employee's customary residence, reasonable cost of the employee's board, lodging, travel,

tuition, books and necessary equipment in training shall be paid for by the insurer in addition to weekly compensation benefits to which the employee is otherwise entitled under the Workers' Compensation Code.

H. During the period when an employee is actively and in good faith being evaluated or participating in a retraining or job placement program for purposes of evaluating permanent total disability status, the employee shall be entitled to receive benefits at the same rate as the employee's temporary total disability benefits for a period of fifty-two (52) weeks, which may be extended by the Court for up to a maximum of an additional fifty-two (52) weeks. No attorney fees shall be awarded or deducted from such benefits received during this period. All tuition related to vocational rehabilitation services shall be paid by the employer or the employer's insurer on a periodic basis directly to the facility providing the vocational rehabilitation services or training to the employee.

<u>I. There shall be a rebuttable presumption that vocational rehabilitation services are appropriate for the following medical conditions and occupations:</u>

<u>1. Traumatic brain injuries, including, but not limited to, cerebral vascular accidents and strokes, truck driver, laborer;</u>

<u>2. Seizures, truck driver, laborer performing high-risk tasks;</u>

<u>3. Bilateral wrist fusions, manual laborer;</u>

4. Radial head fractures with surgical excision, assembly-line worker;

5. Myocardial infarctions with congestive heart failure, identified as class 3 or 4 according to the New York Heart Association functional classification system, heavy laborer;

6. Multilevel neck or back fusions, if more than two levels, heavy manual laborer;

7. Massive rotator cuff tears either with or without surgical intervention, laborer performing work requiring use of the arms above the head, such as a painter;

8. Recurrent inguinal hernias following unsuccessful surgical repair, heavy laborer;

9. Total knee replacements or total hip replacements, heavy manual laborer;

10. Calcaneal fractures, either medically or surgically treated, roofer;

11. Total shoulder replacements, laborer;

12. Amputations of hand, arm, leg or foot, laborer;

13. Tibial plateau or pilon fractures, laborer;

14. Ankle or knee fusions, laborer;

15. Unilateral industrial blindnesses, driver, heavy equipment operator; and

16. Three-, four-, or five-level positive results of a provocative discograph of the cervical spine or lumbar spine which is medically treated, laborer.

SECTION 2. This act shall become effective November 1, 2012.

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