

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1224

6 By: McCullough

7 COMMITTEE SUBSTITUTE

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

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

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

18 Section 338. A. An employee who has suffered an accidental  
19 injury or occupational disease covered by the Workers' Compensation  
20 Code shall be entitled to prompt and reasonable physical  
21 rehabilitation services. When, as a result of the injury, the  
22 employee is unable to perform the same occupational duties the  
23 employee was performing prior to the injury, the employee shall be  
24 entitled to such vocational rehabilitation services provided by a  
technology center school, a public or private vocational skills

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

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

14 C. Upon the request of either party, or by order of the Court,  
15 the Vocational Rehabilitation Director will assist the Court in  
16 determining if it is appropriate for a claimant to receive  
17 vocational rehabilitation training or services. If appropriate, the  
18 Court shall refer the employee to a qualified expert for evaluation  
19 of the practicability of, need for and kind of rehabilitation  
20 services or training necessary and appropriate in order to restore  
21 the employee to gainful employment. The cost of the evaluation  
22 shall be paid by the employer. Following the evaluation, if the  
23 employee refuses the services or training ordered by the Court, or  
24 fails to complete in good faith the vocational rehabilitation

1 training ordered by the Court, then the cost of the evaluation and  
2 services or training rendered may, in the discretion of the Court,  
3 be deducted from any award of benefits to the employee which remains  
4 unpaid by the employer. Upon receipt of such report, and after  
5 affording all parties an opportunity to be heard, the Court shall  
6 order that any rehabilitation services or training, recommended in  
7 the report, or such other rehabilitation services or training as the  
8 Court may deem necessary, provided the employee elects to receive  
9 such services, shall be provided at the expense of the employer.  
10 Except as otherwise provided in this subsection, refusal to accept  
11 rehabilitation services by the employee shall in no way diminish any  
12 benefits allowable to an employee.

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

22 E. No person shall be adjudicated to be permanently and totally  
23 disabled, except in claims against the Multiple Injury Trust Fund,  
24 unless first having obtained an evaluation as to the practicability

1 of restoration to gainful employment through vocational  
2 rehabilitation services or training. The employee seeking permanent  
3 and total benefits shall pay the cost of the evaluation. If an  
4 employee claiming permanent total disability status unreasonably  
5 refuses to be evaluated or to accept vocational rehabilitation  
6 services or training, or is capable of retraining but is ineligible  
7 pursuant to subsection A of this section, permanent total disability  
8 benefits shall not be awarded during the period of such refusal, and  
9 the employee shall be limited to permanent partial impairment  
10 benefits only.

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

21 G. Where rehabilitation requires residence at or near the  
22 facility or institution which is away from the employee's customary  
23 residence, reasonable cost of the employee's board, lodging, travel,  
24 tuition, books and necessary equipment in training shall be paid for

1 by the insurer in addition to weekly compensation benefits to which  
2 the employee is otherwise entitled under the Workers' Compensation  
3 Code.

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

17 I. There shall be a rebuttable presumption that vocational  
18 rehabilitation services are appropriate for the following medical  
19 conditions and occupations:

20 1. Traumatic brain injuries, including, but not limited to,  
21 cerebral vascular accidents and strokes, truck driver, laborer;

22 2. Seizures, truck driver, laborer performing high-risk tasks;

23 3. Bilateral wrist fusions, manual laborer;

24

- 1        4. Radial head fractures with surgical excision, assembly-line  
2 worker;
- 3        5. Myocardial infarctions with congestive heart failure,  
4 identified as class 3 or 4 according to the New York Heart  
5 Association functional classification system, heavy laborer;
- 6        6. Multilevel neck or back fusions, if more than two levels,  
7 heavy manual laborer;
- 8        7. Massive rotator cuff tears either with or without surgical  
9 intervention, laborer performing work requiring use of the arms  
10 above the head, such as a painter;
- 11        8. Recurrent inguinal hernias following unsuccessful surgical  
12 repair, heavy laborer;
- 13        9. Total knee replacements or total hip replacements, heavy  
14 manual laborer;
- 15        10. Calcaneal fractures, either medically or surgically  
16 treated, roofer;
- 17        11. Total shoulder replacements, laborer;
- 18        12. Amputations of hand, arm, leg or foot, laborer;
- 19        13. Tibial plateau or pilon fractures, laborer;
- 20        14. Ankle or knee fusions, laborer;
- 21        15. Unilateral industrial blindnesses, driver, heavy equipment  
22 operator; and
- 23
- 24

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

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

5  
6        53-2-9796            SDR            02/28/12

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24