

Injured Employee Partial Permanent Disability Payment Working Group

MEETING MINUTES

Tuesday, November 14, 2023

12:00 PM in on Zoom and YouTube Live

The meeting was called to order at 12:05 PM by Chairman, Rep. Quinn

The following task force members were present:

Members: Ackert T. 008; Conley C. 040; Bud Drapeau; Collette Griffin; Marie Gallo-Hall; Nathan Shafner; Joseph Passarretti; Quinn M. 082; Brooke Foley

Absent were: Bill Beckert; Colin Hoddinott; Sampson R. S16; Sanchez E. 024; Kissel J. S07; Kushner J. 024

Guests: Karen Sargent

Remarks by the Chairs:

Representative Quinn calls the meeting to order and welcomes everyone to the Injured Employee Partial Permanent Disability Payment Working Group meeting. Following this, he asks Co-Chair Conley if she has any initial remarks.

In her opening remarks, Representative Conley extends her gratitude to the members of the committee for attending this meeting.

Approval of Minutes - October 24th:

Representative Quinn asked for a motion to approve the minutes from the October 24th meeting. A motion is made by Representative Ackert and seconded by Representative Conley. A vote was taken, and the motion passed.

General Discussion:

A brief acknowledgement is made by Representative Quinn to Attorneys Bud Drapeau and Nate Schafner for proposing changes to Permanent Partial Liability. It is his intention to share these changes with the committee membership, even though they will not be discussed at today's meeting. The current meeting will address the vocational rehabilitation application process. Representative Quinn introduced today's presenter from Worker Rehabilitation Services, Karen Sargent.

Karen Sargent introduces herself as the supervisor of the Workers Rehabilitation Services (WRS). The purpose of her organization is to rehabilitate injured workers in Connecticut so that they are able to obtain employment that is physically appropriate for them.

Presentation on the Vocational Rehabilitation Application Process:

Karen Sargent begins her presentation by discussing injured workers' return to physical appropriate jobs within the confines of their permanent restrictions. There is also a process by which a determination is made regarding the treating physician and the client. Her organization offers a variety of resources to assist injured workers. Among these services are vocational counseling and training in order to identify the resources available to clients.

She begins her presentation by discussing referral requirements within Workers Rehabilitation Services. She states that anyone is permitted to submit a referral (e.g., an injured worker with a compensation claim, chairmen, judges, attorneys, insurance companies, medical providers, rehabilitation nurses, rehabilitation centers, therapists, employers, etc.). Their website provides information on their application, aptitude testing, and vocational testing. Testing in this manner (interest testing) enables employers to effectively match candidates with their strengths and job interests. In fact, her organization offers certificates through the community college system. They will also fund 60 credits of a four-year program through state funding and the Workers' Rehabilitation Services. In addition to providing on-the-job training, employers have decreased their use of these services. This was not always the case. However, employers will be compensated for the cost of training their employees so they can acquire a more advanced skillset in order to maintain or change employment. WRS also does a job skill-seeking training and job placement services working with individuals and institutions to help their clients find employment.

An initial interview with the new client is conducted by a vocational rehabilitator during the intake process. This way, they will gain an understanding of the client's work history, educational background, and future goals after collecting relevant information about their injury. They will then perform the aforementioned assessments as necessary and

determine if the client is eligible for these services. There are four key factors that determine eligibility including: a documented compensable injury; permanent restrictions; a record with no light-duty work (LDW) available, and U.S citizenship other form of permanent residency.

When it comes to misrepresenting eligibility criteria, termination of employment is not required prior to applying. It should be noted that WRS is not a mandated program, nor will participation in their program affect the adjudication of an injury claim. She states that clients need permanent restrictions from their physicians. It is not always necessary to undergo retraining. It is the mission of WRS to facilitate the efficient return of injured workers to the workforce. Although some clients may not be able to return to their original occupation, they may be placed in careers that are similar to their original occupations.

Representative Quinn requested clarification on the language limitations in the qualification guidelines for the program. In his question, he asks whether language could be a barrier to accessing these services or preventing qualification.

In response to Representative Quinn, Karen Sargent states that it does not. She states that claimants often work within linguistically diverse communities, which can hinder their ability to enroll in formal training programs. When this occurs, WRS will work with clients to find English as a second language (ESL) programs. As well as translation services. Additionally, because WRS does not have job banks, they have developed individualized training to help clients identify a vocational goal. In many cases, employees will have to start at the beginning of their careers, therefore WRS cannot guarantee clients will earn the same wage as their injured compensation earnings. Finally, Karen Sargent explains that vocational rehabilitation services are available as long as clients are eligible for them.

Karen Sargent asks if there are any questions regarding her previous statements regarding WRS.

Representative Quinn asked if Karen Sargent would delineate the percentage of injured workers who qualify for WRS use their services.

Karen Sargent responded that the percentage is unknown at this time. Nevertheless, the rehabilitation programs have resulted in nearly 640 applications, and 273 workers were able to return to work. She also explains that on average caseworkers maintain a case load of 120-150 clients annually.

Representative Ackert thanks Karen Sargent for presenting and asks how WRS is funded and whether it is through state, federal, or workers' compensation.

Karen Sargent explains that it is through workers' compensation funding.

Marie-Gallo Hall recalls that Karen Sargent mentioned that claimants do not need to be at maximum medical improvement before applying to services. Moreover, she asks her to elaborate on the discussion held in the previous working group meetings regarding individuals who run out of indemnity benefits before the end of their programs.

Karen Sargent states that the earlier WRS workers receive client cases, the sooner they are able to place them in services and return them to the workforce. Typically, training programs last between 10 months and two years. Unfortunately, many clients contact WRS after their benefits have ended. Although clients are permitted to work and attend the educational program at the same time, they are not eligible for WRS services if they earn more than 10% of their earnings prior to their injury. This is not very common, as clients generally have access to external financial assistance.

Representative Quinn asks a follow-up question regarding retention rates. Inquiring as to whether any individuals have dropped out of the program because attendance limited their earning potential.

Nate Schafner thanks Karen Sargent for her presentation and asks whether an early application is more advantageous for the claimant. This is so they can meet with their caseworkers. He explains that individuals who are transferred from total disability to temporary partial restrictions often become subject to permanent restrictions. Earlier initiation of the process will enable claimants to retrain while in temporary partial disability before reaching MMI. It would leave four to seven months of schooling and training available for clients who will receive benefits at the same time. He advises that claimants must have a compensable claim, and asks if WRS is seeking a voluntary agreement.

As Karen Sargent points out, this is indeed the most effective course of action for claimants who usually apply at PPD or MMI. She then asks the committee for assistance in proposing new outreach ideas to educate claimants regarding earlier referrals. It is agreed that a voluntary agreement or a letter from a judge is required. As a last resort, they will contact insurance companies if they are unable to obtain a voluntary agreement.

Nate Schafner asks whether individuals who completed the undergraduate program are eligible for WRS funding for their master's degrees. Following this, he asks clients which injuries are the most challenging when it comes to finding new employment. To conclude, he asks why employers no longer seek out candidates for Workers' Rehabilitation Services or on-the-job training.

Karen Sargent indicates that it depends upon the circumstances and the individual's permanent restrictions. In most cases, WRS will not fund a master's program unless it is in a field related to. Her explanation is that it depends on the individual's nature of work prior to their injury and whether their permanent physical restrictions affect their ability to perform a particular type of work. She cites an instance in which a medical coder lost the ability to use her hands. Although the client was unable to perform repetitive fine motor tasks, sedentary workability would allow them to work as a medical assistant. Furthermore, it is stated that employers used to search for candidates, but this practice has ended because of funding problems.

Bud Drapeau expresses his gratitude to Karen Sargent and WRS for the work they do and the differences they have made. He continues to inquire about the appeals process and WRS staffing, as they serve all 8 districts.

Karen Sargent states that claimants can appeal their denial of a training program. In response to their appeal, she has 15 days to respond. In the event that claimants are dissatisfied with this response, they may appeal to the chairmen for further consideration. In response to the question about staffing levels, she responded yes. At present, there are three rehabilitation coordinators. A full staff would consist of four rehabilitation coordinators, a supervisor, and an administrative assistant.

Bud Drapeau concludes his line of questioning by asking if there is a stipend program during training.

Karen Sargent explains that a stipend program did previously exist for clients, however that has since ended.

Representative Quinn asks Karen Sargent what the amount of the stipend was when the program was active. He shares that the committee is considering expanding 308A benefits for post-specific employees, so it would be beneficial for WRS to reinstate its stipend program.

She regrettably informs him that she does not currently possess that amount, but that she will find it and follow up on the matter.

In her opening remarks, Representative Conley thanked Karen Sargent for her presentation and asked how applications could be submitted and received by WRS more quickly. She inquires as to whether the mailing information could be updated on the application form. Additionally, she asks whether individuals who have transportation limitations could meet virtually with their WRS caseworker. She asks if BAR members can assist in expediting the application process by providing documents. Lastly, Representative Conley asks Karen Sargent whether childcare services were provided to clients through WRS in conjunction with the stipend program.

Karen Sargent confirms that applications can be submitted by mail, online, or via email and agrees that WRS can make these changes as needed. Furthermore, she states that clients are currently able to use the virtual alternative to in-person training and testing. She is willing to work with Representative Conley to outline the documents clients will need to submit to be considered for vocational assistance. In addition, she agrees to investigate possible childcare services.

Karen Sargent was asked by Marie Gallo-Hall to determine how the stipend was funded and what department/organization provided funding. Karen Sargent agreed.

Representative Quinn thanks Karen Sargent and asks if she would like to present on these topics in the future. As well as, informing her that Committee Clerks Kirstin and Nate will send her presentation to the group.

Discussion Regarding Current Benefit Limits:

Representative Quinn introduces this discussion about current benefit limits. He explains that currently 308A benefits are capped at the number of weeks of your permanency rating. Prior to the cap being implemented, claimants had an unlimited amount of access to their benefits. He believes the cap should be expanded upon rather than eliminated and looks to flesh this concept out further in this discussion. The variety of perspectives serves as an advantage to the committee and the prospective course of action to take to expand on these benefits.

Representative Ackert asks if there is a national standard regulation for these benefits or are they enforced by the state.

Representative Quinn responded that benefits are indeed state-enforced.

Nate Schafner adds that states maintain individual compensation acts. Each state decides whether to implement a cap or not. Furthermore, Connecticut benefits are limited to a specific number of weeks while some states with permanent-partial liability assess a value of loss of earning capacity and have indefinite eligibility.

In response to Representative Quinn's comments, it appears that insurance companies will be responsible for covering the costs. He says vocational rehabilitation is helpful but cannot guarantee a return to the previous income level for less educated workers who lose their jobs as a result of physical injuries.

Brooke Foley asks what base rate is being used to investigate whether benefit rates in Connecticut are inadequate. Obtaining a basis for comparison between our Workers' Compensation and Personal Injury Protection regulations is of great importance to her. As of now, she does not see a viable state-to-state comparison that illustrates the issue in Connecticut's current benefit limits.

Despite CT's high ranking when it comes to workers' compensation, Nate Schafner asserts that it imposes arbitrary limitations once someone has reached maximum medical improvement (MMI). Before MMI, there were total disability benefits without limitations; temporary-partial disability benefits that could be awarded for up to 520 weeks by the commissioners. MMI, however, imposes an arbitrary limitation that caps benefits and leaves it up to the commissioners to determine how many weeks are to be paid. As a result, CT treats injured workers with varying levels of injury severity unfairly. His belief is that CT must consider the claimant as a whole person and not just as an injured body part. A labor-intensive job will cause a different injury than a sedentary job, but because the statute refers to a body part not a person, it disadvantages them. Judges should be able to discern between the two groups of workers and award the appropriate benefits. Massachusetts offers "open medicals" where individuals can be on total or temporary-partial disability for an extended period.

Representative Conley discusses why this issue isn't just about a PPD rating, but about the larger problems facing injured workers who cannot return to work. As well as arbitrary reemployment factors imposed by our state government. She doesn't believe these factors are sufficient. Members of this committee are sedentary desk workers such as herself, who may have substantial physical impairments or injuries, yet still be able to participate in their virtual activities. Due to our job type, we are not completely disadvantaged. However, for a laborer, these types of injuries would result in them becoming unemployed. Therefore, it is unfair that sedentary desk workers and laborers receive the same benefits for the same injuries. Rather than using social services unless they are needed, Rep. Conley believes we should develop more effective benefits that help injured workers reenter the workforce and maintain a stable income. By addressing the benefits scheme, she hopes to protect injured workers from abandonment. Ultimately, she wants them to be successful members of our state.

Bud Drapeau agrees with Representative Conley. In his remarks, he emphasizes the severity of these cases and the reason why workers turn to WRS. Often, workers are unable to return to work due to a permanent injury and restriction. As a result, their employer has informed them that they are unable to accommodate those restrictions at work. Leaving this resident unemployed and in need of financial assistance. In addition to reintroducing them to the workforce, the priority should be for them to be financially self-sufficient. Who will bear the cost of improving benefits? He wonders if it will be municipalities or state programs. In his view, ALJs' loss of discretion fostered an environment of injustice. Therefore, discretion should be returned to ALJ's.

Similarly, Representative Ackert agrees with Bud Drapeau. Despite deviating from company protocol and suffering an injury, an employee may still be eligible for workers' compensation benefits. Comparatively to other states, he believes Connecticut has done well in lowering worker's compensation rates.

Marie Gallo-Hall clarifies that it is a no-fault statute and discusses its history. She explains that the system has become more complex over time, but it is intended to prioritize workers' well-being. There should not be a waiting period that allows large corporations to avoid paying benefits due to the financial hardship of their employees. However, there are exceptions to the no-fault statute.

Joe Passeratti discusses PA93-228 and its role in Worker's Compensation Reform (WCR). In the past, during times of economic turmoil, benefits were reduced to ensure companies would not leave, resulting in economic prosperity. The group may have altruistic intentions for the injured worker, but he believes they should consider that employees need employers/organizations to return to. He believes that if companies pay out, they may not be able to sustain it financially and will leave. His contention is that there must be a balance between the committee's desire to return discretion to the ALJ and the desire to maintain industries that do business in Connecticut.

Representative Quinn recommends the following courses of action for the next meeting. In the first instance, there should be no change. The next topic is pre-1993 and deals with unlimited entitlements. As a final suggestion, they could open the discussion to include more economically focused suggestions. He encourages the committee to document their perspectives and provide proposals they would like to see implemented.

In addition, Nate Schafner and Bud Drapeau have submitted proposals that consider the perspectives of before, during, and after 1993 Workers Compensation Reform. Their proposal discusses options for reimplementing regulations around that time without repeating some negative outcomes that occurred around that time. To this end, he asks Representative Quinn to consider making their document the basis for moving forward.

Bud Drapeau concludes by expressing concern about respondents paying money that does not go to claimants.

Assuring members that the discussions about the committees' proposals will continue, Representative Quinn expressed gratitude for their attendance.

Brooke Foley asks Bud Drapeau to explain whether the opinion he provides is on behalf of the CT Bar Association or his own. He says his assessment is based on the severity of each injury and the impact it has on each employee he's worked with.

Additionally, Brooke Foley requests data on state-to-state comparisons to support the claim that CT rates are insufficient.

Lastly, Representative Conley asks to investigate which states have medical provider fees.

Announcement of Time and Date of Next Meeting:

Tuesday November 28th, at 12:00pm

Adjournment:

This meeting was adjourned at 1:31 PM

Nate Kalechman

Ana Allen

Task Force Administrator

Minutes Prepared by