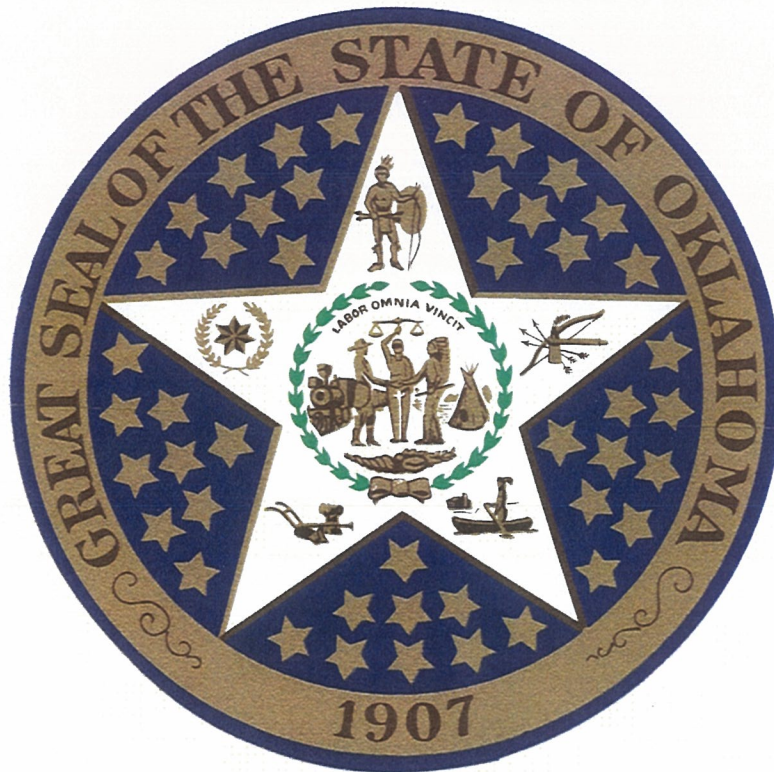


FINAL REPORT

TASK FORCE ON VOCATIONAL REHABILITATION FOR INJURED WORKERS



Representative Mark McCullough, Chair

Senator Clark Jolley, Vice Chair

November 30, 2010

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HOUSE BILL 2650 (2010)

Representative Mark McCullough, Chair

Senator Clark Jolly, Vice Chair

Report Submitted: November 30, 2010

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INTRODUCTION

In the Second Session of the 52nd Legislature, Section 7 of House Bill 2650, signed into law by Governor Henry on June 10, 2010, created a Task Force on Vocational Rehabilitation for Injured Workers. The task force's stated goal is to study methods and procedures to improve vocational rehabilitation programs for injured workers in Oklahoma.

As required by HB 2650, this is a report of the task force's findings and general recommendations for submission to the Speaker of the House of Representatives and the President Pro Tempore of the Senate by November 30, 2010.

Statutory Authority of the Task Force:

SECTION 7. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

- A There is hereby created until November 30, 2010, the Task Force on Vocational Rehabilitation for Injured Workers. The purpose of the task force is to study methods and procedures to improve vocational rehabilitation programs for injured workers.
- B The task force shall be composed of ten (10) members as follows:
 - 1. Three members to be appointed by the President Pro Tempore of the Senate, one of whom shall represent employees and one of whom shall represent physicians;
 - 2. Three members to be appointed by the Speaker of the House of Representatives, one of whom shall represent employers and one of whom shall represent labor;
 - 3. Three members to be appointed by the Governor, one of whom shall represent insurance carriers and one of whom shall represent vocational experts; and
 - 4. A representative from the Oklahoma Department of Career and Technology Education.
- C The chair and vice-chair of the task force shall be designated by a joint agreement of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.
- D A quorum of the task force shall be six members. A quorum of the task force shall be required in order for the task force to take any final action on recommendations to the Legislature.
- E Members of the task force shall not receive compensation for their service, but shall receive travel reimbursement as follows:
 - 1. Legislative members shall be reimbursed in accordance with Section 456 of Title 74 of the Oklahoma Statutes;

2. State employees who are members of the task force shall be reimbursed for travel expenses incurred in the performance of their duties by their respective agencies in accordance with the State Travel Reimbursement Act; and
 3. All other task force members shall be reimbursed by the appointing authority for travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.
- F Staff support for the task force shall be provided by the staffs of the Senate and House of Representatives, with the assistance of the State Department of Rehabilitation Services.
- G An organizational meeting shall be called by the chair no later than July 15, 2010.
- H Prior to November 31, 2010, the task force shall submit a report of its findings and recommendations to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

PROCEEDINGS OF TASK FORCE

The Task Force on Vocational Rehabilitation of Injured Workers met on Thursday, November, 18, 2010. The task force convened at 9:00 a.m. CST and adjourned at 4:30 p.m. CST.

The members of the task force first reviewed the task force's goals outlined in HB 2650. The Chairman emphasized that the role of the task force was to gather information from every perspective in vocational rehabilitation in order to improve vocational rehabilitation for injured workers in Oklahoma. He explained that it is in the state's best interest for citizens to return to work as soon as possible and to keep citizens productive. The Chairman asked for names and introductions from the members of the task force before calling the first presenter.

I. Insurance Company Perspective

Sarah Long, Territory Manager, Liberty Mutual, Cascade Disability Management

Ms. Long was the first presenter. Ms. Long provided general information on the usefulness of vocational rehabilitation and its appropriate role in workers' compensation.

Ms. Long presented an overview of the in-house vocational rehabilitation services provided by her company. The company first performs a vocational assessment of an injured worker after an incident. This assessment includes an interview and/or vocational testing with the injured worker to obtain employment history, educational level, interests, and aptitudes. Specifically, the company uses tests to evaluate the academic potential of the injured worker. The purpose of the assessment is to determine what other jobs the injured worker can perform based on their current physical restrictions. Ms. Long noted that vocational assessments seem to be central to the process because they determine the interests of the employee and sometimes lead to the employee considering different training fields. For example, by focusing on the worker's interests, an injured truck driver may consider becoming a teacher. She recognized the importance of completing the assessment in a timely manner because, in her experience, if a injured worker is off work for more than six months, the worker often does not return to work. While most vocational assessments are done after Maximal Medical Improvement (MMI) is reached, it would be helpful to start the process before MMI for the reasons stated above.

The next step in the vocational rehabilitation program is to provide labor market research and/or surveys which help provide a realistic view of the jobs and wages available in the injured worker's local area. After the specialist performs

the vocational assessment and a labor market review, the company will then attempt to place the worker in a job. In some cases, the injured worker is able to return to the same employer. The company will also consider the injured worker's physical restrictions, mental abilities, and transferable skills when identifying appropriate job leads in order to reach their goal of securing gainful employment for the injured worker. Additionally, national and state certified vocational consultants can provide expert vocational testimony on employability, salary, job availability, educational potential, and any other vocational issues. In appropriate cases, the experts will determine that the injured worker can not return to work.

Liberty Mutual rarely utilizes vocational rehabilitation. Ms. Long estimated that 20 percent of their total workers' compensation claims involve anything related to vocational rehabilitation. Based on her best estimate, five to ten percent of all claims involve vocational rehabilitation and injured workers are successfully retrained.

Sometimes, injured workers ultimately decide not to return to work and "drop out" of the vocational rehabilitation service after the employer/insurer/service provider has already expended a large amount of funds on attempting to rehabilitate the injured worker. Ms. Long stated that there is not likely a way to predict if the injured worker will choose to be successful and complete the program in order to save money. However, her company tries to identify "motivating factors" in order to encourage the worker.

The task force discussed the cost of vocational rehabilitation. Ms. Long said that her company's cost to perform vocational assessments falls on the indemnity side of the claim. In her opinion, there is an incentive to settle instead of approving vocational rehabilitation. Representative McCullough raised the idea to possibly "mine indemnity to pay for vocational rehabilitation." In other words, Permanent Partial Disability payments could be "clawed back" to pay for vocational retraining under the argument that vocational rehabilitation constitutes a form of compensation.

Ms. Long found that injured workers are commonly opting not to go back to work because of a perceived loss of medical benefit coverage. Often the worker is entering a position that does not include medical benefits. Lisa Cox later agreed she has also experienced this as a motivating factor for workers not to return to work.

The task force discussed that the objective of vocational rehabilitation was not to simply secure a low paying job for a disabled worker, but instead secure a job that will provide a decent living comparable to the employees previous salary.

II. Vocational Rehabilitation Specialists

The next three presenters were vocational rehabilitation specialists.

Kathy Bottroff, President of Professional Rehabilitation and Occupational Services (PROS)

Ms. Bottroff's presentation focused on predictors of success in vocational rehabilitation programs. According to a study in a group of Ohio workers who received vocational rehabilitative services during 1995 by Patrick Dunn, Ph.D., C.R.C. and Hal Cain, Ph.D., C.R.C., there were several variables that affect a programs success. These include personal characteristics of workers (age, sex, education) and characteristics of the injury sustained. Other variables are related to case management such as case velocity (the number of days the case is open) and early intervention (how quickly vocational rehabilitative services were implemented). While most vocational variables did not reach statistical significance regarding successful return to work, the variables that had the most significance appear to be related to abilities to communicate, work with people, and demonstrate flexibility in adapting to different types of work. Variables that did not reach statistical significance were considered evidence that many elements of the process known as Transferrable Skills Analysis (TSA) are not relevant in determining vocational outcome. (TSAs take into account past capabilities of the injured worker to see if they will be transferrable into lighter work skills.) However, TSAs may be more effective for persons with certain trait capacities who have relatively limited physical effects from injury. Successful rehabilitation of a disabled worker is dependent upon a number of factors including age, education and motivation. Injured workers 25 to 45 years of age are more likely to succeed and return to work. She identified motivation as a big problem in vocational rehabilitation with no known solution because there is no test to quantify a disabled worker's motivation. However, motivation does seem to be stronger when there is earlier intervention. Her observation was that those who had a higher income pre-injury tend to lack the motivation to re-train through the vocational rehabilitation process because the expectation that they would not return to their previous salary level. There was discussion that, instead, such workers look toward a monetary settlement. In her experience, those with moderate incomes pre-injury, were easier to retrain.

After discussing what it takes for a vocational rehabilitation system to be successful, Ms. Bottroff discussed what vocational rehabilitation specialists can do with this information. She suggested that initial assessments of injured workers should occur prior to Maximum Medical Improvement.

Ms. Bottroff said the attitudes of employers can sometimes be problematic. Employers need incentives to get their employees back to work as soon as

possible. She stated that, in her experience, there is a lot of job loss that is unnecessary.

Ms. Bottroff completed her own study of the last 100 injured worker evaluations she performed and most workers had reading and math skills below the twelfth grade level. She noted that, in her experience, most workers need to have at least a ninth to tenth grade reading level to be successful in retraining. If a worker reads below this level, he or she cannot handle basic academics of education programs or basic job training.

She noted problems with FORM 5 (Physician's Report on Release and Restrictions). She indicated the form lacks a detailed analysis of what functions the worker is able to perform. In her observations, physicians tend to default to blanket retractions. For example, she experiences frustration when physicians impose only five pound because, in her opinion, this minimalist approach is not realistic when all workers lift five pounds in their everyday lives. These types of restrictions do not translate to what type of jobs the worker is able to perform. Ms. Bottroff recommended improving FORM 5 so that it discusses "real life work capacity." Lisa Cox and Bruce Smith later agreed that sometimes lifting restrictions are unrealistically low. Mr. Smith stated that sometimes when a lift restriction is set at five pounds, it discourages the injured worker and instills into him that he may have a career ending injury. Mr. Smith suggested changing FORM 5 to provide a more objective standard for weight restrictions.

Mr. Smith and Ms. Cox agreed that a functional capacity assessment would be useful to overcome the problems with FORM 5. However, because a functional capacity evaluation can be expensive, Mr. Smith believed it would be most useful when performed only when there is an "inconsistency." Ms. Bottroff expressed skepticism of the utility of functional capacity assessments and said that functional capacity assessments are more "about settling workers' compensation claims." She stated that utilizing functional capacity assessments is not the answer to vocational rehabilitation problems; early intervention is.

Lisa Cox, CRC, Claims and Rehabilitation Enterprises (C.A.R.E.)

Ms. Cox is a certified rehabilitation counselor at C.A.R.E.

Ms. Cox stated that returning the injured worker to a previous salary level, while ideal, is not a realistic goal. She explained that the Oklahoma statute only requires that the injured worker be returned to "gainful employment." However, the term was too broad and is not subsequently defined in the statute. In her opinion, since "gainful employment" is not defined, her only responsibility under the statute is to return the worker to a minimum eight dollar an hour job. Ms. Cox recommended possibly providing a definition of "gainful employment" in the statute.

She also recommended that the statute should address whether undocumented or illegal workers are entitled to vocational rehabilitation services. Jim Ferguson agreed. Bruce Smith agreed there is a need to address this question because while illegal workers are entitled to workers' compensation benefits, there is no finality on the issue of whether they are eligible for vocational rehabilitation services.

Ms. Cox was opposed to private or "for-profit" schools receiving money for vocational rehabilitation because, in her opinion, they provide sub-standard education for a high tuition rate. Instead, she recommends that workers attend education programs at Career Tech or other technical schools because she believes they provide a better quality education for a smaller tuition fee.

She noted that many workers have had bad experiences early in their school years (early school failure), so counselors should help to guide them through the initial registration process to "get the workers in the door." In order to remedy the fallout of early school failure, namely subsequent failure in vocational rehabilitation, Ms. Cox suggested counselors should engage in aggressive case management.

Ms. Cox discussed the growing difficulty of providing job placement assistance. It is harder now to place an injured worker with a job without a G.E.D. than it used to be. Job placement assistance is the "bane of their existence" right now due to the bad economy. Facts that affect the success of job placement include education, intelligence of the worker (reasoning skills), and language barriers (harder to place those who do not speak English). She noted that many workers lack these skills and have previously secured employment from friends and networking and were never previously required to fill out forms or to negotiate/reason.

Ms. Cox noted that vocational rehabilitation dollars are not wasted. To the contrary, these services help to change people's lives.

Bruce Smith, Oklahoma Rehabilitation Specialists

Mr. Smith has been a vocational rehabilitation counselor for 38 years.

He stated that early intervention in cases will solve many problems and informs the worker there is a job when he or she recovers. Early contact will help to encourage the worker to return to work earlier. Mr. Smith stated that, on average, he receives a referral for a vocational rehabilitation in a litigated case eight to ten years after the date of injury. However, he noted that other vocational rehabilitation specialists receive referrals, on average, two to four years after the

date of injury. Lisa Cox commented that she receives referrals, on average, two to three years after the date of injury.

Mr. Smith noted that when an injured worker is going through a retraining program, the lack of financial support during the program is often a factor when the worker is unsuccessful in the program. He recommended that that the worker should have some kind of financial support while they are in training. The task force further discussed the difficulty of supporting one's self and/or family while attempting to complete retraining. Mr. Smith discussed the idea of a worker completing a retraining program while he or she is receiving benefits from Temporary Total Disability (TTD), but, in most cases, the employer should begin the program well before the worker reaches Maximum Medical Improvement (MMI). Other task force members expressed concerns if the injured worker goes back to work or retrains while he or she is still injured.

III. Alternative View on Vocational Rehabilitation: Does it Work?

Allyn Tatum, Former Commissioner of Arkansas Workers' Compensation Commission

Mr. Tatum has represented both employees and employers in workers' compensation cases, served as the Compensation Commissioner in Arkansas, and worked with the National Council on Compensation Insurance. He is now employed in the private sector of workers' compensation. His presentation provided a comparison of Arkansas' vocational rehabilitation system and Oklahoma's vocational rehabilitation system.

Mr. Tatum noted that early intervention relating to vocational rehabilitation was the key phrase 30 years ago. Some states even mandated vocational rehabilitation. However, Florida had to repeal their mandatory vocational rehabilitation law because it was "extremely expensive." In his opinion, legislating early intervention in vocational rehabilitation does not work. He suggests that instead of changing vocational rehabilitation in our statute, we should instead "emphasize return to work."

Arkansas is one of the "lowest cost states" regarding vocational rehabilitation. When vocational rehabilitation was created, an employer provided medical care and was responsible for putting the injured worker back to work. When the Arkansas statute was amended in the early 1990's, vocational rehabilitation was not doing "what it was intended to do." Now, counselors and additional parties are involved in vocational rehabilitation, rather than just the employer and employee. He believes that the employer and employee are the best parties who understand the realities of the injured worker returning to work. And the more people you put between the employer and the employee, the less effective you become at putting disabled employees back to work.

In Arkansas, there are several motivating factors for both the employee and the employer to return the employee to work. The employee is motivated to return to work because his benefits will discontinue after a certain period of time. At the end of the healing period, when the injured worker is no longer receiving Temporary Total Disability (TTD) benefits and Maximum Medical Improvement (MMI) is reached, the Permanent Partial Disability (PPD) rates drop to 75 percent of what the TTD benefits were. Additionally, if the employee refuses an offer from the employer to return to work, the employee will lose his or her PPD benefits beyond his or her impairment rate. There is substantial motivation for the employer to return the injured worker back to work because he or she is statutorily required to do so. The employer has already expended money training the employee and providing the medical care. If the employer refuses to “take back” the employee, the employer must pay a monetary amount based on a formula.

While vocational rehabilitation is in the Arkansas statute, it is not often utilized. There is little litigation that involves vocational rehabilitation because of the “return to work provisions.”

Mr. Tatum stated he would like to see a program designed to return the employee to work for his or her previous employer but does not require the employer to expend a great deal of money in the effort to return the employee. This would especially affect small employers who cannot legitimately bring the employee back to work.

IV. Large Employer Perspective

Carl Martincich, Director of Risk Management, Love’s Travel Stops and Country Stores, Inc

Mr. Martincich’s presentation provided an overview of a large employer’s in-house vocational rehabilitation program. Other Love’s representatives, Patti Phillips, Workers’ Compensation Supervisor, and Angela LeBlanc, Claims Manager, were also present. Love’s is an Oklahoma based company that has 300 retail locations in 38 states. It retains thousands of employees in various occupations such as truck drivers, maintenance workers, railroad workers, and administrative staff.

Love’s workers’ compensation program is a self insured program. Mr. Martincich estimated that Love’s employees file approximately 400 workers’ compensation claims annually. Claims are not administered by Love’s; a third party administrator is used to adjust the claims. Mr. Martincich stated that a large employer, such as Love’s, has the ability to retrain employees within their own system when employees are injured on the job. Mr. Martincich stated their vocational rehabilitation program is much like a “Modified Duty Work Program.”

Love's goal is to retain the injured worker and move the worker to a light load capacity job if they are unable to return to their previous position. For example, if an employee cannot work at the cash register anymore because of a back injury, then Love's will find a position for the worker in their corporate office. Mr. Martincich stated that Love's is continually moving people throughout the company.

According to Mr. Martincich, Love's has not found vocational rehabilitation through the Oklahoma court system to be successful or a functional tool. Approximately, 50 workers' compensation cases involving Love's injured employees in the last 15 years involved a court ordered rehabilitation process, and, anecdotally, Mr. Martincich does not know of any employees who retained outside employment after going through the court process.

In his opinion, a large employer will take a lot more time and interest in retraining an injured worker than a court ordered vocational rehabilitation service. Love's utilizes resources and time to educate their employees about its in-house vocational rehabilitative services and attempts to address the issue of employee injuries proactively by quickly following up with claims.

Mr. Martincich believes that the employer begins to lose control of the goal to get the employee back to work once an attorney represents the employee. According to him, word of mouth from friends and family that the injured worker could "get money" out of a claim may be a motivating factor for litigation.

When ranking states' workers' compensation systems with respect to cost per claim, medical intervention, time to get employee back to work, and other areas, Mr. Martincich stated that Oklahoma has ranked in the bottom five states.

In contrast, task force member Daniel Flickner from Great Plains Coca-Cola provided an additional large employer's perspective on vocational rehabilitation for injured workers. Mr. Flickner noted that Coca-Cola experiences a high turnover rate with respect to its employees in part because it does not have a lot of light duty or modified duty positions due to the nature of their business. It is Coca-Cola's goal to contact the injured worker immediately after an incident to discuss what the company can do to assist them. Approximately 15 to 20 percent of its workers' compensation cases involve vocational rehabilitation. A large percent of injured workers end up settling their claims (both those cases that are litigated and not litigated) and the worker leaves the company.

V. Oklahoma Department of Rehabilitation Services Perspective

Director Michael O'Brien, Ed.D., Oklahoma Department of Rehabilitation Services

The Oklahoma Department of Rehabilitative Services is a state agency that evaluates injured workers for Social Security Disability (SSD) benefits. His presentation was beneficial in highlighting the relation between injured workers collecting PTD as well as SSD benefits.

Of the cases that involve injured workers who the agency handles, 58 percent of those workers return to work. An employee must secure a job for 90 days before they are qualified as securing employment. In his best estimate, a successful rehabilitation of an injured worker will cost \$7000; an unsuccessful rehabilitation will cost \$4000.

A fundamental issue discussed was whether the main objective of vocational rehabilitation can be both returning people to work and mitigating costs at the same time. Mr. O'Brien agreed with the idea that the employer should essentially "work for the employee" to get him or her back to work. A crucial aspect to success is that the employers make reasonable accommodations to assist the employees in keeping their current job, or modifying the existing job to accommodate the employees' restrictions. Utilizing Oklahoma's certified rehabilitation specialists is also beneficial.

He noted that in the there is often an unpleasant environment between the employee and the employer after the employee has filed a claim.

Mr. O'Brien noted that there is an incentive for a worker to aspire to be a participant in vocational rehabilitation when negotiating settlement of a claim. However, sometimes the money never gets used for training. He suggested that if settlement money was designated for use in a vocational rehabilitation program, this might solve this problem. Representative McCullough brought up a recommendation that the indemnity might be diverted into an account to be used exclusively for future medical or vocational rehabilitation use.

Mr. O'Brien agreed that motivation is a big contributing factor to successful rehabilitation. Like other presenters, Mr. O'Brien encouraged incentives for the employee to return to work as soon as possible.

Mr. O'Brien has observed a "dueling agency" scenario where non-interested parties perform vocational rehabilitation evaluations. Other "dueling parties" who have different goals are employers and vocational rehabilitation counselors. In his experience, he does not see the employers and counselors working together effectively.

VI. Medical Perspective of Vocational Rehabilitation

The next two presenters included a medical doctor and a doctor of chiropractic, who provided an overview of the medical perspective of vocational rehabilitation.

Dr. Bryan Hawkins, Central States Orthopedic Specialists

Workers' compensation cases account for 44 percent of Dr. Hawkins' practice. Overall, workers' compensation injuries are 85 percent orthopedic in nature. Dr. Hawkins treats many of the same workers' compensation injuries over and over. Therefore, Dr. Hawkins believes that some reoccurring injuries allow him to predict certain results. When outcomes of injuries are predictable, the time that the worker remains non-productive can be minimized.

For example, a calcaneus (heel) fracture (CF) is a fairly common injury seen in workers' compensation cases and one where the outcome of the injury is often predictable. However, there are potentially many other injuries that are equally predictable. A CF is often a life changing injury for the laborer and is often associated with permanent disability. A CF is very common with blue collar workers such as roofers because the workers suffer the injury when they fall off tall buildings. A CF is more problematic for a blue collar worker or laborer because of the physical demands of the job. The injury often becomes arthritic and causes stiff "subtalar" joints which prohibit motion in the foot. The blue collar worker usually has minimal transferrable skills that could be utilized in another position. In contrast, a CF has little effect on the white collar worker's ability to work. A CF usually only affects the white collar worker from a pain standpoint.

From the date of a CF injury, Dr. Hawkins can almost always medically guarantee that the injured worker is not returning to a job that involves labor. These injuries usually result in Temporary Total Disability (TTD) for a minimum of six months and the worker cannot even return to a light duty position during this time. Sometimes, the worker is incapacitated for one full year. In cases where the outcome of an injury is predictable, the worker needs a vocational assessment from day one. In his experience, vocational assessments are like a "black hole"; sometimes the assessments are performed when requested, and sometimes they are not.

Dr. Hawkins suggested that if a medical provider is able to state that a worker will not return to a previous job, it would be better to begin vocational assessment and retraining during the first six months the worker is disabled. It is not ideal for the worker to wait months or years to retrain only after full medical release.

The task force discussed a program for evidence based guidelines for assessment of the worker's vocational prognosis to set up vocational rehabilitation as soon as possible. The guidelines for the assessment would be

concise and fact specific. The task force mentioned the idea that the Physician's Advisory Council could draft guidelines to codify into the statute. This "prognosis assessment" would be a "trigger" for whether vocational rehabilitation assessments will be ordered. Such a program would be helpful to begin the vocational process earlier. However, Randy Feagan, Lon Huff, and other task force members discussed how codifying fact specific guidelines for a potential prognosis may present problems. Other concerns about the proposed "prognosis assessment" indicated that the idea was too complicated and should only apply to physicians that "absolutely know the answer" to injury outcomes.

Dr. Tom Derstien, Unified Chiropractic Association

Dr. Derstien had a private chiropractic practice for several years. He is now the executive director of Unified Chiropractic Association.

In his experience, neck and back injuries are a large part of workers' compensation injuries.

It is beneficial to instill confidence in the patient and not make the patient fearful when discussing restrictions and injury. Today, Magnetic Resonance Imaging (MRI) is a fairly new technology used in chiropractic practice. While the technology is beneficial, an MRI will reveal a "bulging disk" or a "disk that is out of place" in almost every single patient. Physicians must use caution to not instill unnecessary fear in patients that may contribute to motivational issues in injured workers.

Dr. Derstien recommends more conservative treatment, such a chiropractic treatment, before a patient undergoes expensive MRI scans. He has experienced very good results when using conservative treatments early in the injury. If a patient waits too long after the date of the injury, the muscles are often more damaged and require more intense and frequent treatment.

He suggested that employees and employers should be better informed of the rights of the employees when they are injured to prevent a hostile environment when an injury occurs. Educating employees about earlier conservative treatment through "workplace wellness programs" would also be helpful. He noted that every employee who is performing a physical job should be taking calcium magnesium to help prevent injuries.

FINDINGS AND RECOMMENDATIONS

1. Randy Feagan (submitted written findings and recommendations)
 - a. Technology centers offer programs that train workers for light duty work. These offerings are based on local labor market demand.
 - b. The learning objectives of technology center programs and the requirements for admission into technology center programs are established with local industry input.
 - c. All community colleges currently offer remedial coursework in math, science, English, and reading. Vocational rehabilitation clients that do not meet the entrance requirements of technology center programs should be able to rely upon community colleges for remediation. Offering remedial coursework at technology centers represents a duplication of effort.
2. Jim Ferguson (submitted written findings and recommendations)
 - a. He agrees that early involvement in Vocational Rehab services is important.
 - b. He does not agree that we should pay Temporary Total Disability (TTD) or any other form of weekly payments to the claimant after Maximum Medical Improvement (MMI) is achieved. If TTD is required after MMI, it could significantly drive up the cost of claims and could lead to much abuse. He thinks that our treating physicians could help identify candidates for vocational retraining early in the healing process so that retraining can take place while the injured worker is receiving TTD.
 - c. He believes it is important to amend the statute to specifically state that vocational retraining or job placement services not be provided to illegal aliens.
3. Daniel Flickner (submitted written findings and recommendations)
 - a. Mr. Flickner indicated that vocational rehabilitation is not an effective program. In his opinion, vocational rehabilitation is rarely utilized appropriately and is often used as a “bargaining chip” in settlement during litigation. As a representative for a large employer, Mr. Flickner experiences problems when potential employees apply with his company with permanent restrictions that are unknown to the employer at the time of job placement.

4. Lon Huff (submitted written findings and recommendations)
 - a. Early intervention- He recommended a vocational assessment be ordered or provided by the respondent at any time the treating physician notes a probability the worker will not be able to return to their previous employment. In addition, a diary system could also improve early intervention by a requirement for vocational assessment if the worker has not returned to work within 90 to 120 days of the injury.
 - b. Weekly benefits- It is vital the injured worker have financial support during retraining. If the worker is receiving Temporary Total Disability (TTD) benefits, there is no need for additional funds. However, if and when their TTD benefits cease before completing retraining, it is suggested the same weekly amount be provided until completion of training and re-employment. Of course, this should not exceed the two years allowed under the Workers' Compensation Statute.
 - c. Vocational case management- Upon being awarded or provided vocational services, a vocational case manager (CRC) should be assigned to coordinate services to help ensure expeditious and cost-efficient vocational services while assisting in the worker's successful completion of the process.
 - d. He indicated that there are many ways to improve the services, but these three steps are vital to successful vocational rehabilitation. While costs may be more for individual claims, success would be more prevalent; thus, reducing costs to the entire system, i.e. additional injuries or receipt of long-term disability benefits. Therefore, he recommends the implementation of the three items noted above.
5. Betsy Lou Kay (submitted written findings and recommendations)
 - a. Neither vocational rehabilitation, nor vocational rehabilitation assessments should be mandatory, but voluntary, used as a tool by the adjuster to determine the best solution for the resolution of the claim. Cost effectiveness should be the emphasis. Court ordered vocational rehab is not a cost effective tool, but a requirement without regards to cost.
 - b. Vocational rehabilitation should not be considered a benefit or an entitlement. It can, however, serve as a cost effective solution to a lifetime Permanent Total Disability (PTD) claim. In considering such a solution, the cost of the vocational rehab program and the wage replacement capability should be elements to any analysis. If it appears that it is cost effective to offer such training in order to minimize the PTD claim, Temporary Total Disability (TTD) should be required during such training. TTD should last the length of the vocational rehabilitation training.

- c. Such tools should be available to the adjuster as soon as it is determined or suggested that it might be needed and would be a cost effective solution, even if Medical Maximum Improvement (MMI) hasn't been reached yet. Early intervention is a best practice and should be exercised by the adjuster. However, failure to consider such an option is a contractual service issue left best between the insurer and the insured. (Let's keep government out of business of legislating contractual terms and conditions.)
- d. The vocational rehab assessment, if requested, should take into consideration the need for specific training in the locale where the injured worker resides, unless the injured worker is agreeable to relocation (at the employer's expense, up to a maximum of \$1,500). If the injured worker is agreeable to such relocation, boarder employment opportunities could be considered. It is meaningless to retrain an injured employee in a field where there is no need or placement services guaranteed.
- e. An injured employee can petition an employer (or his insurer) to consider a vocational rehab program by showing good analysis why such a training program would mitigate the cost of the claim. A motivated injured worker would be the result of such a petition.
- f. Vocational rehab training costs should only be paid to a training facility and not as an additional amount within the settlement. Such payments add costs to the system, encouraging the injured employee's attorneys to pursues and extract fees. (Even though the current law prohibits attorneys from taking a fee on the TTD paid, but not on the cost of the vocational rehab added to the settlement.)
- g. If vocational rehab training is economically feasible to return the injured employee to some form of work, it is the duty of the employee to take advantage of such training. It is now and always has been the obligation of the plaintiff to mitigate his claim if possible. Refusing to retrain, would indicate a less than motivated individual, and that should be considered by the Court to reduce any future payments. The Court needs to determine if the vocational rehab training is viable based on the individual's educational abilities. (She would want to ensure this wasn't used to avoid sums owed.)
- h. Revamp the FORM 5 to make it more meaningful for the vocational rehabilitation assessment.
- i. Explore the return to work stick and carrot idea, keeping in mind that many of the Oklahoma employers are small. What did Arkansas do to encourage employers to take back an MMI injured employee?

- j. Require the adjusters to communicate with the employer concerning the possibility of vocational rehabilitation in a Permanent Total Disability situation. This would make the adjuster justify his analysis of why it would be beneficial or why it isn't beneficial. This would let the employer know that he may have some opportunity to mitigate the cost of the claim that he will ultimately bear the cost of. It is a form of education that currently is non-existent. Many employers do not understand how workers' compensation works or how they may control some of the costs after the loss prevention failed.
6. Philip Ryan (submitted written findings and recommendations)
 - a. Mr. Ryan expressed disappointment that no one was asked to speak to the task force on behalf of the injured worker. The task force heard from speakers offering presentations on behalf of the business community, the insurance industry, and the medical profession. The task force also heard from vocational rehabilitation specialists as well as "workers' compensation experts" from other states. However, no one was asked to present the perspective of the injured worker who, in his opinion, has more at stake in this "situation" than any of the other parties.
 - b. He suggested that the biggest impediment to efficient vocational rehabilitation in workers' compensation cases arises out of the lack of financial support available to the injured worker during the period of retraining. Simply stated, in the vast majority of cases it is virtually impossible for an injured worker to complete a course of retraining due to the fact that they have no funds to live on while being retrained.
 - c. He suggested that vocational retraining is not an issue that is "manufactured" by the injured worker or their attorney. Contrary to certain assertions made by certain presenters at the task force, in the very vast majority of cases, the subject of vocational retraining only arises when a claimant's treating physician (often a physician chosen by an agreement of all the parties or a judge) places restrictions upon the injured worker that prevents the injured employee from returning to their former job. The concept that an injured worker or their attorney would either encourage or discourage vocational retraining in an effort to enhance the value of a workers' compensation claim really "flies in the face" of common sense.
 7. Representative McCullough raised the idea to possibly "mine indemnity to pay for vocational rehabilitation." In other words, Permanent Partial Disability payments could be "clawed back" to pay for vocational retraining under the argument that vocational rehabilitation constitutes a form of compensation.

8. All three vocational rehabilitation specialists (Kathy Bottroff, Lisa Cox, and Bruce Smith) recommended improving FORM 5 (Physician's Report on Release and Restrictions) as it currently lacks a detailed analysis of what functions the worker is able to perform.
9. Allyn Tatum stated he would like to see a program designed to return the employee to work for his or her previous employer but does not require the employer to expend a great deal of money in the effort to return the employee.

GENERALLY AGREED UPON OBSERVATIONS AND RECOMMENDATIONS

1. "Return to work" with the current employer was, overwhelmingly, the preferred method for returning the worker to productivity, reducing litigation and controlling costs. Potential policies that might encourage this outcome were looked on favorably. Velocity and aggressiveness of claim management by the employer was crucial to this outcome.
2. Getting an employee back to productivity as soon as possible after the injury (primarily through return to work or secondarily through vocational rehabilitation) was the best method of insuring that the claim would not languish and grow more costly and that the employee would not eventually end up permanently disabled and out of the work force. Again, velocity and aggressiveness of claim management by the employer was crucial to this outcome.
3. That Vocational Rehabilitation can, in limited circumstances, be an effective option for an employee.
4. If vocational rehabilitation is used, it needs to start much earlier in the case timeline, nearly always before Maximum Medical Improvement (MMI) and while the worker is still eligible to receive some kind of support, which would, most practically, be Temporary Total Disability (TTD).
5. Evidence based medical guidelines for identifying injuries that could "trigger" a mandatory vocational rehabilitation evaluation in limited circumstances, may be helpful.
6. Vocational rehabilitation through our system is utilized infrequently, rarely successfully places an injured worker in a different occupation, is not attractive to the injured worker for a variety of reasons, occurs much too late in the case timeline and is perhaps cynically used to settle a claim for a higher dollar amount with no real belief by either party that the funds will actually be

used for the purpose of vocational rehabilitation. (Philip Ryan's objections were duly noted)

7. The current Form 5 is inadequate and should be made more specific in detailing limitations. Current weight restrictions by physicians are often unrealistically low.
8. Define in statute whether or not illegal aliens are entitled to vocational rehabilitation.

INDEX TO APPENDICES

- Appendix A: Enacting Legislation- Enrolled House Bill 2650 (2010),
Section 7
- Appendix B: Organizational Meeting Agenda, November 18, 2010
- Appendix C: PowerPoint Presentation by Sarah Long, Liberty Mutual.
Vocational Rehabilitation.
- Appendix D: PowerPoint Presentation by Kathy Bottroff, Professional
Rehabilitation and Occupational Services (PROS).
Predictors of Success in Vocational Rehabilitation Programs.
- Appendix E: PowerPoint Presentation by Bryan J. Hawkins, M.D., Central
States Orthopedic Specialists. *Calcaneus Fractures.*

Appendix A

ENROLLED HOUSE
BILL NO. 2650

By: Sullivan, McCullough and
Walker of the House

and

Sykes, Coffee, Coates and
Branan of the Senate

An Act relating to workers' compensation; . . .

SECTION 7. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

A. There is hereby created until November 30, 2010, the Task Force on Vocational Rehabilitation for Injured Workers. The purpose of the task force is to study methods and procedures to improve vocational rehabilitation programs for injured workers.

B. The task force shall be composed of ten (10) members as follows:

1. Three members to be appointed by the President Pro Tempore of the Senate, one of whom shall represent employees and one of whom shall represent physicians;

2. Three members to be appointed by the Speaker of the House of Representatives, one of whom shall represent employers and one of whom shall represent labor;

3. Three members to be appointed by the Governor, one of whom shall represent insurance carriers and one of whom shall represent vocational experts; and

4. A representative from the Oklahoma Department of Career and Technology Education.

C. The chair and vice-chair of the task force shall be designated by a joint agreement of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

D. A quorum of the task force shall be six members. A quorum of the task force shall be required in order for the task force to take any final action on recommendations to the Legislature.

E. Members of the task force shall not receive compensation for their service, but shall receive travel reimbursement as follows:

1. Legislative members shall be reimbursed in accordance with Section 456 of Title 74 of the Oklahoma Statutes;

2. State employees who are members of the task force shall be reimbursed for travel expenses incurred in the performance of their duties by their respective agencies in accordance with the State Travel Reimbursement Act; and

3. All other task force members shall be reimbursed by the appointing authority for travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

F. Staff support for the task force shall be provided by the staffs of the Senate and House of Representatives, with the assistance of the State Department of Rehabilitation Services.

G. An organizational meeting shall be called by the chair no later than July 15, 2010.

H. Prior to November 31, 2010, the task force shall submit a report of its findings and recommendations to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Appendix B



House of Representatives State of Oklahoma

November 17, 2010

- TO:** Task Force on Vocational Rehabilitation for Injured Workers
(created per HB 2650)
- SUBJECT:** First Meeting
- DATE:** Thursday, November 18, 2010
- TIME:** 9:00 a.m. – 4:30 p.m.
- PLACE:** Room 412C, State Capitol Building
- AGENDA:** Welcome and Introductions – Chair and Vice Chair
- 9:15 – 10:00 1. Sarah Long, Territory Manager, Liberty Mutual
- 10:00 – 11:00 2. Vocational Rehabilitation Specialists: Kathy Bottroff, President of Professional Rehabilitation and Occupational Services (PROS)
Lisa Cox, CRC, Claims and Rehabilitation Enterprises (C.A.R.E.)
Bruce Smith, Oklahoma Rehabilitation Specialists
- 11:00 – 11:45 3. Allyn Tatum, Workers' compensation expert from Arkansas
- 11:45 – 1:15 **LUNCH BREAK**
- 1:15 – 2:00 4. Carl Martincich, Director of Risk Management, Love's Travel Stops and Country Stores, Inc.
- 2:00 – 2:45 5. Director Michael O'Brien, Ed.D., Oklahoma Department of Rehabilitation Services
- 2:45 – 3:00 **BREAK**
- 3:00 – 4:15 6. Medical Perspective on Vocational Rehabilitation:
Medical Doctor
Unified Chiropractic Association
Dr. Bryan Hawkins, Central States Orthopedic Specialists
- 4:15 – 4:30 7. Public Comment and Task Force Discussion regarding findings and proposed recommendations
- 4:30 8. Other business and adjournment

Members:

Rep. Mark McCullough, Chair
Sen. Clark Jolley, Vice Chair
Randy Feagan
Jim Ferguson
Daniel Flickner
Lon Huff
Betsy Lou Kay
Dr. Al Moorad
Phillip Ryan
Jerry Yates

Appendix C

Vocational Rehabilitation

Sarah Long
Territory Manager
Liberty Mutual
Cascade Disability Management

Vocational Assessment

- **Interview and/or perform vocational testing with injured worker to obtain the employment history, educational level, interests, aptitudes and determine what other jobs they can perform based on their current physical restrictions**

Labor Market Research/Survey

- **Provides a realistic review of the jobs and wages available in the injured worker's local area**

Job Placement

- **Identify appropriate job leads for the injured worker that are within his or her physical restrictions, mental abilities, and transferable skills that leads to suitable gainful employment.**

Expert Vocational Testimony

- **National and State Certified Vocational Consultant can provide expert vocational testimony on Employability, Salary, Job Availability, Educational Potential, and any other Vocational issues**

Appendix D

PREDICTORS OF SUCCESS IN VOCATIONAL REHABILITATION PROGRAMS

PROS & Associates

Presented by Kathy Bottroff, M.S., C.R.C., L.P.C.

39 variables were studied in a group of Ohio workers who received VR services during the 1995-1996 year by Patrick Dunn, Ph.D., C.R.C. and Hal Cain, Ph.D., C.R.C.

Personal Characteristics of Workers

- Age
- Sex
- Marital status
- Years of education
- Maximum demonstrated strength capacity

Characteristics of Injury Sustained by Worker

- Residual Strength
- Strength drop or loss of lifting capacity
- Presence of back or neck injury

Variables Related to Case Management

- Case velocity, i.e., the number of days the case was open
- Early Intervention, i.e., how quickly VR services were implemented

Worker Traits

- Vocational demands of workers' previous employment*
 - ▣ Aptitudes
 - ▣ Specific vocational preparation
 - ▣ General educational development
 - ▣ Worker functions

*determined using the Dictionary of Occupational Titles

Results of Study

Twelve variables considered in the study were found to be significant or approached statistical significance regarding successful return to work. Four variables were related to extra vocational traits of the individual were found to be highly correlated to RTW.

Age	Case Velocity
Strength Drop	Residual Strength

...

Most vocational variables did not reach statistical significance. The variables that had the most significance appear to be related to abilities to communicate, work with people, and demonstrate flexibility in adapting to different types of work. Persons who demonstrated these skills are perhaps at a greater advantage when trends of occupational growth are considered.

...

Thirty of the 39 variables considered in the study were purely vocational in nature.

Aptitudes	Temperaments
Specific Vocational Preparation	General Educational Development
Worker Functions	

...

Twenty-two of these variables did not even reach statistical significance. This could be considered evidence that many elements of the process known as Transferrable skills Analysis (TSA) are not relevant in determining vocational outcome.

...

The results of this study and previous research has indicated that prediction of vocational outcome is more consistent for individuals who have demonstrated certain vocational traits.

...

Those traits involve communication and people skills
and
with persons who have shown less loss of physical
capacity.

...

TSA may be more effective for persons with certain trait capacities who have relatively limited physical effects from injury or illness.

For those who have other skill sets and traits and who have greater physical effects from illness or injury, TSA may not be sensitive in identifying vocational alternatives.

...

More traditional vocational assessment methods (such as psychometric testing and work sampling) may be more sensitive in identifying appropriate vocational goals or vocational potential.

Results of other RTW studies

Variables found to be predictive of RTW:

Type of disability	Marital Status
Length of healing period	Former occupation
Age	Population density of residence
Sex	Type of former employer
Education	Unemployment rates
Type of disability payment	Locus of control

(Gardner, Laforage & Hoarrison, Beck, Kamkar & Tenney, Duzoisetal, and Hester.)

...

Farrell, Knowlton & Taylor found that successful rehabilitation of a disabled worker is dependent upon a number of factors including:

- ❑ Age range of 25 to 45 year olds
- ❑ Moderate income at time of disability
- ❑ Higher education
- ❑ Varied work experience including specialized skills
- ❑ Motivation
- ❑ Attitude of employer
- ❑ Cooperative medical specialists
- ❑ Strength of the local labor market

...

A study by Stokes and Maestri suggests that those injured workers with high levels on educational and intelligence tests are more likely to earn higher wages both pre-injury and post-injury.

This study suggests that education can help minimize the effect of disability on the loss of wage earning capacity and increase employability.

SO WHAT?

Which of these variables can our WC/VR system realistically positively effect?

Case Velocity
Level of Education
Attitude of Employer
Development of Skill Set relevant to local Labor Market
Cooperative Medical Specialists
Age
Locus of Control

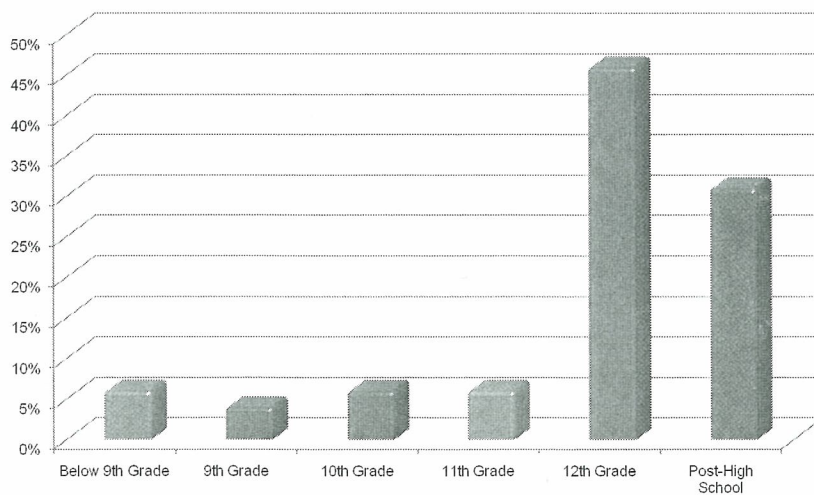
Each injured worker faces a myriad of personal, financial, legal, medical, and other circumstances that have little or no relationship to vocational capacity. The rehabilitation system itself can be confusingly difficult to maneuver, and the perceived adversarial nature of workers' compensation can be frustrating for injured workers.

Along with such issues, there are considerations of economic and labor market circumstances that may make it difficult even for those individuals who possess strong vocational capacities to return to employment. If their vocational capacities are not marketable in the local labor market, employment is not as likely to be achieved, or may not happen as quickly.

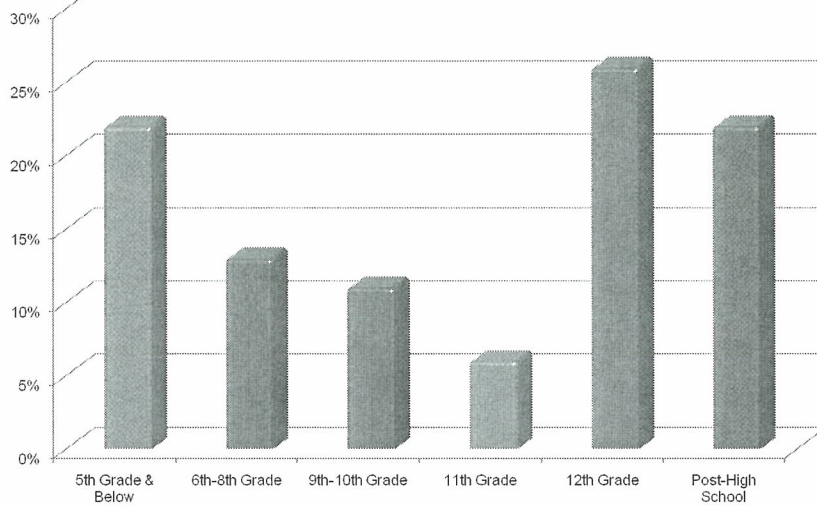
Predicting employability or employment outcome is a difficult matter that requires knowledge and experience of vocational rehabilitation processes and the psychosocial aspects of disability. It may indeed be impossible to ultimately explain all the issues involved in vocationally-limiting injury.

VARIABLE	ACTION
Case Velocity	Early referral to determine RTW/VR potential alternatives
Cooperative Medical Specialists	Redesign FORM5 to tie it to real world of work demands, identify patients early in recovery process who may benefit from RTW/VR intervention.
Attitude of Employer	Incentivize pre-injury employer to return injured worker to physically appropriate job ASAP – offer specialized job modification
Level of Education	<ol style="list-style-type: none"> 1.) Identify IW's who may need academic upgrade through vocational evaluation. 2.) Begin remedial academics or vocational retraining while IW is still in treatment. 3.) Identify those claimants who are unable to benefit from training.

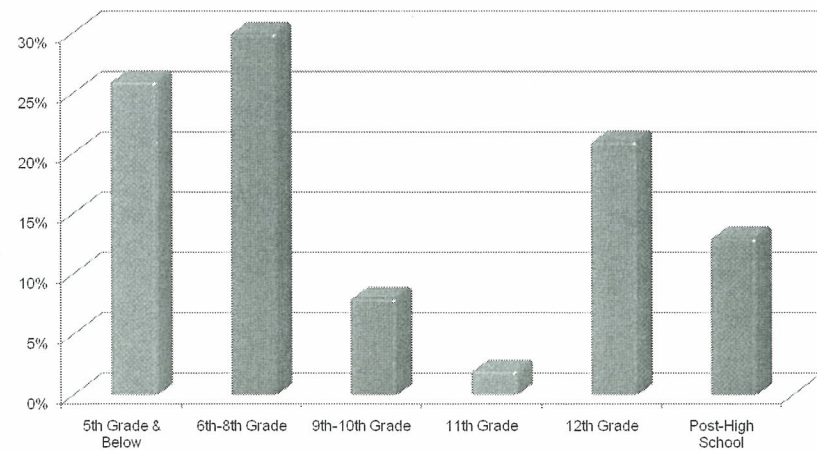
Educational Grade Level Attained



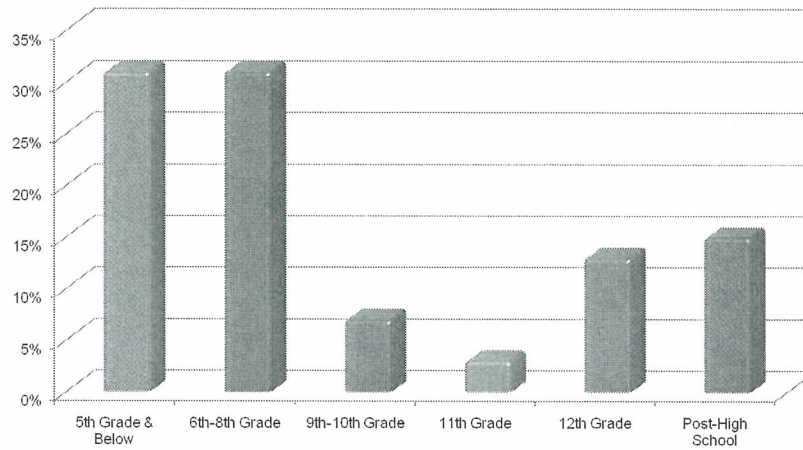
Word Reading Grade Level



Spelling Grade Level



Math Skills Grade Level



VARIABLE	ACTION
Age	<p>1.) Allow older workers to opt out of the VR process, as the likelihood of RTW decreases for workers over 55 and those who do or are likely to receive SSDI benefits. Utilize the VR dollars where return on investment is likely to be greater.</p> <p>2.) Find some way to conclude WC cases of older IW's without participation in VR unless IW is motivated and interested in RTW.</p>
Development of Skill Set relevant to local Labor Market	Encourage CareerTech and Community Colleges to develop training programs that meet IW's academic and physical capacities in major metropolitan areas that have a positive labor market.
Locus of Control	Aggressive case management and early vocational intervention will reduce the chances that the IW feels powerless to regain control of the vocational destiny.

Appendix E

Calcaneus Fractures

Bryan J. Hawkins, M.D.
Central States Orthopedic Specialists
www.csosortho.com

Alternative Title:

When can we read the future?

- Race horses...NO!
- Lottery numbers...NO!
- Worker's Compensation Injuries...MAYBE!

Workers Compensation Injuries

- 85% "Orthopedic"
- Injuries seen over and over
- Results are predictable in many cases
- Need to minimize the time that the worker remains "non" productive

**Want to focus on one single
injury...**

**There are potentially many others
that qualify however**

Calcaneus Fractures

**Medical lesson
Calcaneus="Heel Bone"**

Very Difficult Injury

- **Life changing**
- **Multiple “work” implications**
- **Highly associated with permanent disability**

Demographics

- **Rare in prehistoric times (fossil)**
- **Common since industrial revolution**
- **Tall buildings (falls)**
- **Motorized vehicles (trauma)**

Today

- **Workers who fall**
- **Very common in roofers
(blue collar)**
- **Very rare (white collar)**

Blue Collar

- **Education level**
- **High School/GED**
- **Minimal “other” skills**
- **Often worked in laboring job all their life**
- **Other medical issues**
- **Family to support**

White Collar

- **Little effect on ability to work**
- **Sit at a desk**
- **In a court**
- **Doing surgery**
- **Often occurs cleaning the gutters on the weekend**

What about this is so bad?

Subtalar Motion

- **Side to side**
- **Inversion/Eversion**
- **Not ankle motion**
- **Motion occurs between ankle bone talus and calcaneus**

Bad Actor

- **Stiff “subtalar” joint**
- **No motion**
- **Post traumatic arthritis**
- **PAIN**

Stiff Joint

- Normally foot accommodates uneven surfaces
- Rolls over ground inconsistencies
- Allows body to walk on sloped surfaces (Roof?)

Disability

- Hurts to walk!! Cant lift/carry
- Cannot negotiate slopes/uneven surfaces
- So much for roofing!!
- *There's the rub....*

	<h2>Workers' Comp Implications</h2>

	<h3><u>TTD</u></h3>
	<ul style="list-style-type: none">■ All laborers!!■ 3 months on crutches■ 6 months minimum TTD■ Often one year

Light Duty

- **Excellent candidates**
- **Sit down only – no exception**
- **Ability to accommodate – RARE!**

Economic Impact

- **All usually incapacitated (totally) for one year**
- **20% incapacitated for three years**
- **All left with permanent impairment**
- **All usually require “accommodation” which is not available.....**

Permanent Impairment

■ 100%

■ 100%

■ 100%



**May return to
ground labor
will not
return to roofing!**

	Vocational Rehab
	<ul style="list-style-type: none">■ Recommend assessment day 1■ Retraining essential■ Education level – BIG FACTOR

	<p style="text-align: center;">PROBLEM IS.....</p> <p style="text-align: center;">This does not happen!!</p>

Vocational Assessment

- Difficult to obtain
- “Resistance”Cost?
- Recommend retraining in another job
- *This historically does not occur until patient is completely released!*
- *Makes very little sense*

Economic Impact...again

- All usually incapacitated (totally) for one year
- 20% incapacitated for three years
- All left with permanent impairment
- All usually require “accommodation”
- To become productive....they need a new JOB!!!

	From a medical standpoint:
	<ul style="list-style-type: none">■ If provider can state that worker will not return to previous job it would be better to begin vocational assessment and training ASAP and not waste months or years waiting for full release....

	It is impossible to read the future but this is one instance where we have learned that the future is predictable!!

Questions?



THANK YOU!

Bryan J. Hawkins, M.D.
Central States Orthopedic Specialists
www.csosortho.com