

# DEPARTMENT OF LABOR AND EMPLOYMENT

## Division of Workers' Compensation

7 CCR 1101-3

### WORKERS' COMPENSATION RULES OF PROCEDURE

#### **Rule 15 Vocational Rehabilitation Rules Applicable to Claims based upon an Injury or Illness Occurring prior to July 2, 1987 at 4:16 p.m.**

##### 15-1 STATEMENT OF BASIS AND PURPOSE

The rules of procedure governing the vocational rehabilitation component of worker's compensation as originally promulgated pursuant to §8-49-101(4), C.R.S 1973 (repealed 1987) provide a qualified worker an opportunity to re-enter the workforce by establishing guidelines for vocational rehabilitation.

##### 15-2 DEFINITIONS

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

- (A) "Job Modification" is the adaptation of a job either through the use of aids or devices or the alteration of the physical environment of the job, or both, to allow an impaired individual to perform within the scope of tasks originally designed for the job flow.
- (B) "Qualified Worker" means a claimant who because of the effects of a work-related injury or occupational disease, (a) is permanently precluded from engaging in his/her usual and customary occupation and is unable to perform work for which the individual has previous training or experience, and (b) can reasonably be expected to attain suitable, gainful employment upon successful completion of a vocational rehabilitation program.
- (C) "Qualified Rehabilitation Consultant" means a person authorized by a rehabilitation vendor to conduct a vocational evaluation and develop a rehabilitation plan for a qualified worker.
- (D) "Rehabilitation Vendor" means an individual, firm or facility which exists to provide any or all of the services necessary to determine a claimant's eligibility as a qualified worker, and/or provide those services designed to return an individual to work.
- (E) "Suitable Gainful Employment" means employment which is reasonably attainable and which offers an opportunity to restore the qualified worker as soon as possible and as nearly as possible to employment with the claimant's qualifications, including but not limited to the claimant's age, education, previous work history, interests and skills. Special consideration shall also be given to the economic level of the claimant at the time of injury and to the present and future labor markets, to attempt to restore him/her to the maximum level attainable.

- (F) "Transferable Skills" means those skills an individual possesses which were attained through previous training or experience and are readily marketable and a need for them exists in the current labor market and would provide suitable gainful employment.
- (G) "Vocational Evaluation" means the rehabilitation services and testing required by the Director to determine a claimant's eligibility as a qualified worker.
- (H) "Vocational Rehabilitation Plan" means a written document completed and signed by a qualified rehabilitation consultant which describes the manner and means by which it is proposed that a qualified worker may be returned to suitable gainful employment through the participation in a rehabilitation program.
- (I) "Vocational Rehabilitation Program" means the actual providing of services as prescribed in the vocational rehabilitation plan and approved by the Director as reasonably necessary to restore a qualified worker to suitable gainful employment.

15-3 INITIATION OF VOCATIONAL EVALUATION AND DIRECTOR'S DETERMINATION OF ELIGIBILITY

- (A) A vocational evaluation shall be provided by a rehabilitation vendor designated by the insurer, or upon failure of such designation, by the Division in consultation with the claimant, immediately upon knowledge that a claimant is unlikely to be able to return to his/her usual and customary occupation on a permanent basis as determined by competent medical evidence and opinion.
- (B) A vocational evaluation summary report shall be submitted to the Director on a form prescribed by the Director and shall include the minimum elements listed on the form. The Director may request additional information necessary to determine eligibility.
- (C) The vocational evaluation summary report shall be signed by a qualified rehabilitation consultant responsible for the evaluation and shall contain a recommendation by the consultant whether the claimant is eligible for a vocational rehabilitation program. If the recommendation indicates the claimant is in need of vocational rehabilitation and would benefit from vocational rehabilitation, the summary shall include a description of suggested occupation(s) that would be considered for plan development.
- (D) A vocational evaluation shall be completed within sixty (60) days of assignment to the rehabilitation vendor.
- (E) Upon submission of the vocational evaluation summary report, the insurer shall indicate whether it is providing vocational rehabilitation voluntarily or is requesting that the Director determine eligibility. Upon a request to determine eligibility the Director shall issue a "Notice of Determination of Eligibility for Vocational Rehabilitation Benefits" within twenty days.
- (F) A party may object to the determination of eligibility by filing an application for hearing with the Office of Administrative Courts within fifteen (15) days of the date of the Director's determination.

15-4 SUBMISSION AND IMPLEMENTATION OF THE VOCATIONAL REHABILITATION PLAN

- (A) If the claimant is determined a qualified worker, the Director shall order that a vocational rehabilitation plan be developed. The plan shall be developed and submitted to the Director and the parties within forty-five (45) days of the Director's determination of eligibility, unless said determination has been contested.
- (B) In developing the plan, the rehabilitation vendor shall strive to return the qualified worker to suitable gainful employment within the qualified worker's medical and physical limitations as determined in the vocational evaluation in the following priorities:
  - (1) Return to work for the same employer to a modified job requiring rehabilitation services.
  - (2) Return to work for the same or a new employer in a related occupation, for which the individual has received rehabilitation services to upgrade skills attained from previous training or experience.
  - (3) Return to work in an on-the-job training capacity.
  - (4) Return to work after the completion of a vocational program into a new occupation.
- (C) Once developed, the proposed plan shall be written and submitted to the parties on the form prescribed by the Director. The written plan shall include the minimum elements listed on the form. All parties shall sign the vocational plan prior to submitting the plan to the Director for approval. The Director may request additional information necessary to determine if the plan should be approved.
- (D) The Director, upon receipt of a proposed vocational rehabilitation plan and upon review, shall order the plan either approved or disapproved or modified. Implementation of the plan may begin as soon as the qualified worker is capable of participating in the program, as indicated by competent medical evidence. The plan shall begin upon the Director's approval or the date specified in the plan as applicable, whichever is later. The insurer shall continue to provide temporary disability benefits, if applicable, until implementation of the plan and the employee begins his vocational rehabilitation program.
- (E) All matters regarding rehabilitation plans or programs shall be initially submitted to the Director except in those cases where the question of need for vocational rehabilitation first arises during the course of a hearing or hearings on other issues.
- (F) If there is a dispute regarding the vocational rehabilitation plan, the disputing party shall request a hearing by filing an application for hearing at the Office of Administrative Courts.
- (G) If the qualified worker does not choose to enroll in a vocational rehabilitation program, nothing in these rules and regulations shall require the qualified worker to do so.

15-5 MODIFICATION, SUSPENSION OR TERMINATION OF THE VOCATIONAL REHABILITATION PLAN OR VOCATIONAL EVALUATION

- (A) If a vocational evaluation or an approved vocational plan is modified, terminated or suspended for any reason, and the parties are in agreement, the Director shall be notified. Plan modifications shall be submitted to the Director for approval on the prescribed form for vocational plans.
- (B) If there is a dispute regarding the progress of a vocational evaluation or vocational rehabilitation plan, the disputing party shall request a hearing by filing an application for hearing at the Office of Administrative Courts.

15-6 REPORTING REQUIREMENT

All vocational rehabilitation forms and reports based upon an injury occurring on or prior to July 2, 1987 at 4:16 P.M. shall be filed with the Division and all parties copied.

15-7 QUALIFIED REHABILITATION VENDOR

- (A) A vendor will be considered qualified by the Director if the vendor has the services of a consultant who had previously registered with the Division when the registration program existed or can demonstrate one of the following credentials:
  - (1) The individual is a Certified Rehabilitation Counselor under the guidelines of the Commission on Rehabilitation Counselor Certification or can demonstrate equivalent credentials.
  - (2) The individual has a Master's degree in Vocational Rehabilitation, Guidance and Counseling, Psychology, or in a related field or can demonstrate equivalent work experience on a year for year basis for formal education. The individual must also have one (1) year of experience as a practitioner in the field of vocational rehabilitation.
  - (3) The individual has a Bachelor's degree in Vocational Rehabilitation, Guidance and Counseling, Psychology, or a related field or can demonstrate equivalent work experience on a year for year basis for formal education. The individual must also have two (2) years experience as a practitioner in the field of vocational rehabilitation.
- (B) If a dispute occurs concerning a counselor's credentials, the counselor shall submit to the Director a resume, transcripts, diploma and any other requested documentation. The Director will determine whether the counselor is qualified.