

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1287

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1287

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1287

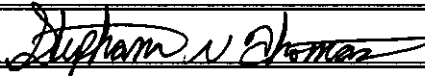
House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2407

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1287.

Rep. Bill Amerman, District 26: The focus really isn't on the rehabilitation; it seems to me that they don't put enough effort into it. I only speak from what I've heard, because I've never had to go through the process. There's a lot of trouble I hear about the Corvell, which is the institute they use. What I'm trying to do here is even though they have methods, this is something that I think should probably cross borders between those that pay premiums, and those that have to use the service, because they are injured, and to get them back to work, because I think everybody agrees if you can get them reevaluated, get them back to work, they feel better about themselves, and it's just better all around. What I'm trying to do here is maybe if they could just take what they have now in WSI, and think outside a little bit. Is there something that we're not doing, because sometimes you get kind of set in a certain method.

Rep. Keiser: Would you be open to an amendment on this bill? If you look at lines 7 and 8 it's so open ended, it kind of scares me a little bit. What I'm suggesting is that maybe what we should ask them to do is to implement a pilot program to look at some of the alternative methods, and report that back, because then there's no question of what we're expecting.

Rep. Amerman: Certainly, I'm open to amendments.

Rep. Ruby: Do you know if they do these at this time?

Rep. Amerman: I know that they have a lot of rehab programs. I'm just thinking of what we hear in WSI Review Committee, maybe we can do better here, and see if we can come up with something.

Rep. Zaiser: I think with the job description, you need to tie it down a little bit. I don't know the scope of a pilot program, have you talked to the WSI folks on this?

Rep. Amerman: I did talk to them, and I guess I'm not really against if you want to tie them to one program, but we've heard several bills here, and when it comes down to trying to tie them to something, it gets a little difficult.

Rep. Kasper: If you read the fiscal note it says that being they already do these things with the rehab programs, they say no fiscal impact. Have you thought of instead of a pilot program, duplicate what's already in affect? What if there was something put into place where WSI would survey the injured workers, and ask a series of questions about how they feel about locations, medical and psychological economic and social rehab services, and then ask them to comment on ways that you would ask the disabled workers how to improve the system.

Rep. Amerman: That certainly sounds like a good idea, the only thing is the injured workers for the most part already told WSI what they think, and it's not working.

David Kemnitz, AFLCIO: Supports HB 1287.

See handouts A and B.

Rep. Kasper: Since 2000, would you agree that what we've done as far as enhancing benefits to injured workers is this committee's work and other committee's in this legislature, maybe would repeat some of the findings in this handout?

David: In other sections of law, there have been improvements. Has there been an improvement in the area in which claimants can assert their position and their need for the system, I think it lacks.

Sebald Vetter, CARE: For the record, I support HB 1287.

Leroy Volk: For the record, I support HB 1287.

Doug Kapach, CARE: For the record, I support HB 1287.

Dan Fitterman: For the record, I support HB 1287.

Rob Forward, WSI: Opposed to HB 1287. See written testimony #1.

Rep. Kasper: What if the injured worker wants to go back to work, had some opportunities, and was refused the opportunities, because of some ruling by some testing that was done that he disputes. What do you do in a case like this where he wants to work, and he's frustrated because he can't?

Rob: I can't talk about Mr. Fitterman's case without a release.

Robin Halvorson, WSI: I manage our return to work services. What we do is we support our claims adjusters in our claims department assisting them with return for the process. We do this by providing different programs to different individuals, and vocational rehabilitation in the 80's and the 90's was the soul program that we really had implemented for our injured worker. Now what we do with our return to work services is we have hired, through the authority of the legislative committee, case managers which are registered nurses that are located geographically across the state, and what we do is we have them step on a case as soon as we possibly can when we see there may be issues with them in their ability to return to work. They will work with that injured worker in understanding their injury, they work with that injured worker on working with the employer of the injuries to see if there is transitional work either on a temporary basis, or on a permanent basis that they can help coordinate someone, and they

also assist them with any questions they may have regarding their medical treatment. When it appears as though there is a likelihood that they may not be able to return to their previous employer, then what we do is bring up a vocational rehabilitation system, which gives our contracted company called Corvall Cooperation, even though it is out of our Fargo office, they still have consultants that are geographically located throughout the state. What they will do is come in and start doing vocational testing with our injured workers to see academically where they're at. They do not perform functional tasking, but they may coordinate a functional capacity of physical therapist, or an occupational therapist in one of our medical facilities. This is a test that's done either on a two day or a one day basis, and what it does is measure their capacity, and what their physical abilities would be. This gives us an idea as to the job market we should be looking at for the individuals. When this process becomes very emotional for us is when we have to take somebody who has worked in a heavy industry for many years, and now start to identify something that they can do within a light capacity. We've have implemented a job developer, which will go out, help them write a resume, work with them on their interview skills, and approach employers that may have this type of work that we can implement our preferred worker program into. What the preferred workers program tries to do is make sure that the jobs that they are locating match the physical restrictions and limitations, because the last thing we want to do is put somebody in a position that has a potential to harm them.

Rep. Nottestad: If this bill passes, what would you do differently, because of this?

Robin: When I read this bill, there are some areas of return to work services that you could work with on this bill; however a lot of these are already in the works, things that we're trying to do to make sure that we're getting to each one of our injured workers. We have what's called a pilot program that we're working on right now, and it's what we call the injury management

program. What happens is our medical director, our doctor of pharmacy, each one of the members of the claims that was in the management program, myself, and then the claims director, any claim that has the potential for being a time off claim, or any claim that the adjuster would like assistance with, we bring them all into one of our conference rooms, and we go to each one of these claims, because we want to get the services they need right up front, and get them going right away. So, if there's any potential for return to work, we'd rather you'd return as soon as you possibly can. We also need to do more surveys, and find out from the injured workers what is working or not working for them.

Rep. Nottestad: It was incurred that this bill could be changed into a singular program. Are you incurring this survey type of thing could be a pilot program that would benefit both injured employees and the department?

Robin: I think it would be very beneficial for our agency, and also for the injured worker individuals. It is something that we already have in place, and we do have the ability to do it under the current law right now.

Rep. Thorpe: How many people did you work with through this program, and what your success ratio is?

Robin: We had in just the vocational rehabilitation program approximately 395 individuals that we're working with. With those individuals, we probably have 58 to 59 individuals that are getting to the training programs.

Rep. Keiser: The injured workers say we don't have enough input into what direction to go, we're kind of a passive entity that goes into the system, and the system says you must go here, you must go there. Is there room for piloting anything that would give more opportunity for them to participate in designing the direction that their therapy goes?

Robin: I think there's always a need for piloting in any type of program like this.

Rep. Keiser: If I'm injured, how much opportunity do I get in the process to say I don't have any interest in doing that?

Robin: How the vocational rehabilitation process works is that we identify our referral to our vocational companies. They will go out and do an initial intake, and that intake goes over their work history, covers any of their educational services, and things like that. The biggest question that is included in there is what is the desire to the injured worker; we want to know what they want to do, and how we can get there.

Bill Shalhoob, ND Chamber of Commerce: See written testimony #2.

Rep. Amerman: I move a do pass

Rep. Zaiser: Second.

Rep. Dosch: There was some discussion as far as perhaps limiting the scope of this. Are we going to consider any of that?

Rep. Amerman: I will rescind my motion.

Rep. Zaiser: Rescind second.

Rep. Kasper: I would certainly favor limiting the scope to a survey where the workers are much more involved, get some feedback, do some analysis of that feedback, and then have that report come to the legislative committee either during the interim, or the next session.

Rep. Ruby: Didn't they already mention they were planning to do that, and we can have access to that anytime we want.

Rep. Zaiser: I thought he read out of code, and it looked like a real bureaucratic language that I couldn't figure out what he was saying.

Rep. Amerman: If somebody wanted to draw up some amendments that would be alright.

Rep. Ruby: I move a do not pass.

Rep. Dietrich: Second.

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House Industry, Business and Labor Committee

Bill/Resolution No. HB 1287

Hearing Date: January 31, 2007

Roll call vote was taken. 8 Yeas, 5 Nays, 1 Absent, Carrier: Rep. Nottestad

Hearing closed.

FISCAL NOTE
Requested by Legislative Council
01/10/2007

Bill/Resolution No.: HB 1287

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation requires WSI to implement an ongoing system of pilot programs relating to workers' compensation rehabilitation services.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1287

BILL DESCRIPTION: Pilot Rehabilitation Programs

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation requires WSI to implement an ongoing system of pilot programs relating to workers' compensation rehabilitation services.

FISCAL IMPACT: It is our understanding that the proposed legislation would require the implementation of pilot rehabilitation programs that would effectively duplicate rehabilitation programs that currently exist. To the extent the services contemplated under the proposed legislation already exist, no fiscal impact is anticipated.

DATE: January 26, 2007

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*

item, and fund affected and the number of FTE positions affected.

- C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-3760	Date Prepared:	01/26/2007

Date: 1-31-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1287

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Ruby Seconded By Rep. Dietrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		X
Vice Chairman Johnson			Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch		X	Rep. Zaiser		X
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigasaa	X				

Total Yes 8 No 5

Absent 1

Floor Assignment Rep. Nottestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 31, 2007 1:36 p.m.

Module No: HR-21-1661
Carrier: Nottestad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1287: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING).
HB 1287 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

HB 1287

#1

**2007 House Bill No. 1287
Testimony before the House Industry, Business, and Labor Committee
Rob Forward, Staff Attorney
Workforce Safety and Insurance
January 31, 2007**

Good morning, Mr. Chairman and Members of the Committee:

My name is Rob Forward and I am a staff attorney for Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am testifying in opposition to HB 1287 which proposes pilot programs for workers' compensation rehabilitation services.

WSI already has a statute, section 65-05.1-03(1), that requires the Director of Rehabilitation Services to "direct the implementation of programs for individual workforce safety and insurance claimants in accordance with organization determinations in compliance with the purpose of" the vocational rehabilitation laws. The organization would also like to note that it has a strong Return-to-Work Services Department and that the pilot program suggestions included in the bill are currently utilized by WSI as regular methods of rehabilitation. Consequently, while WSI is appreciative of the bill's intended support, a mandate to implement a system of pilot programs regarding rehabilitation services would be redundant.

For example, WSI already has the following programs in place: 1) return-to-work trial periods through the regular operation of the vocational statutes; 2) intensive job search assistance through WSI's Job Developer who prepares job seeking workshops, provides job search coaching, job matching, and employment leads; 3) recognition of, and focused services for, injured employees who are at risk through the implementation of the Official Disability Guidelines and triage methods; and 4) coordination with other state agencies like Job Service. Furthermore, under 65-05.1-03(2), WSI is specifically required to cooperate, contact, and assist other agencies and private organizations and businesses to carry out the vocational rehabilitation of injured employees.

In addition to the areas previously mentioned, WSI's Return-to-Work Services Department provides medical case management, vocational testing, labor market research, facilitation of transitional and modified work, a Preferred Worker Program, and school coordination services.

Although this bill is well-intended, WSI requests that you provide a "do not pass" recommendation on HB 1287. I'd be happy to answer any of your questions.



**Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1287
January 31, 2007**

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also specifically representing sixteen local chambers with a total membership of 7,236 and eleven employer associations. Lists of the specific members and associations are attached to my testimony. As a group we stand in opposition to HB 1287 and urge a do not pass vote from the committee on this bill.

The programs mentioned in this bill are already in place at WSI. We do not feel it is necessary to codify specific rehabilitation services. They will change as treatment procedures evolve. I don't know if many of us can define the role of an occupational therapist vs. a physical therapist in a rehab program much less judge the actual program prescribed. This area is best left to the professionals to determine a treatment path for a specific injury. Treatment methods will naturally evolve as knowledge is gained.

Thank you for the opportunity to appear before you today in opposition to HB 1287.

I would be happy to answer any questions.



**The following chambers are members of a coalition that support our 2007
Legislative Policy Statements:**

Beulah Chamber of Commerce - 107

Bismarck - Mandan Chamber of Commerce - 1080

Cando Area Chamber of Commerce - 51

Chamber of Commerce Fargo Moorhead - 1800

Crosby Area Chamber of Commerce - 50

Devils Lake Area Chamber of Commerce - 276

Dickinson Chamber of Commerce - 527

Greater Bottineau Area Chamber of Commerce - 153

Hettinger Area Chamber of Commerce - 144

Langdon Chamber of Commerce - 112

Minot Chamber of Commerce - 700

North Dakota Chamber of Commerce - 1058

Wahpeton Breckenridge Area Chamber of Commerce - 293

Watford City Area Chamber of Commerce - 84

Williston Chamber of Commerce - 401

West Fargo Chamber of Commerce - 400

Total Businesses Represented = 7236 members

Associated General Contractors of North Dakota

Independent Community Banks of ND

Johnsen Trailer Sales Inc.

North American Coal

North Dakota Auto/Implement Dealers Association

North Dakota Bankers Association

North Dakota Healthcare Association

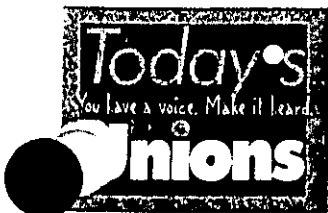
North Dakota Motor Carriers Association

North Dakota Petroleum Council

North Dakota Retail/Petroleum Marketers Association

Utility Shareholders of North Dakota

North Dakota Hospitality Association

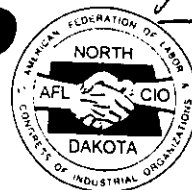


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MISSOURI SLOPE CLC

ning

ERN PLAINS UNITED LC

St. Michel

NORTHERN VALLEY LC

Mark Froemke

GREATER NORTHWEST LC

Mark Hager

ND Workers Compensation

Changes Needed in North Dakota's Worker's Compensation as recommended by ND AFL-CIO Convention August 26, 2006

- WHEREAS:** The North Dakota Workers Compensation system now known as Workforce Safety and Insurance or WSI has been changed significantly
- WHEREAS:** The control of WC/WSI has been removed from the executive branch and placed in the hands of a board of directors, and
- WHEREAS:** The system's ability to provide sure and certain relief to injured workers has come under question, now, therefore, be it
- RESOLVED:** That the following ' be provided to the 2007 legislative session.

- 1) Require that WC/WSI use hearing officers and that the hearing officers' finding be final.
- 2) Fraud. Require that the bureau use the same standard for fraud that is used in all other fraud cases. Equal standards would apply, no harm-no foul.
- 3) Permanent Partial Impairment (PPI). A PPI award is a one-time payment for job related injuries that result in permanent loss of use of bodily functions(s). Because of the use of weeks, rather than a dollar amount within the formula, Social Security unfairly offsets about 80% of that award. Change the formula for calculating PPI from a "weeks" calculation to a "dollar amount" calculation.
- 4) Executive Director. The Governor should have sole power to appoint the executive director of the bureau/WSI.
- 5) Office of Independent Review. Place the control of the OIR with the Governor.
- 6) Independent Medical Exam (IME). Require that independent medical examinations be conducted in state unless the specific specialty is not available. The IME should be conducted with a physician picked from a panel of all physicians licensed in and practicing in North Dakota.
- 7) Independent Medical Review (IMR). Give greater weight to the opinion of the claimant's treating physician when the claimant undergoes an independent medical review.
- 8) Physician. Eliminate the requirement that an employee choose his/her own doctor at the time of hire or 30 days prior to an injury. The injured claimant should be allowed to pick the treating physician.
- 9) Permanent Partial Impairment (PPI) awards. Presently, an individual must have 16 % whole body impairment to obtain a PPI award. If a person has 16%, in effect, they are getting 1 percent in an award. Although the Bureau/WSI does pay for the more catastrophic impairments, this still does not justify the denial of an award for 5% to 15% impairment. Exclusions for pain, disfigurement, loss of range of motion etc. need to be addressed.

10) Liberal Construction. The loss of the "liberal construction" of the Worker's Compensation Act has made it very difficult for the employee to establish an otherwise legitimate claim.

11) Definition of Compensable Injury. There is no specific definition of what is "objective medical evidence." Before 1995, the doctor's notations that the person has sustained an injury and has subjective complaints of pain sufficed. The argument is that the doctor's notations no longer meet the requirements of "objective medical evidence". Injury should be any need for treatment arising out of and as a result of any incident, event or cumulative trauma arising from work.

12) Pre-existing condition. The Bureau now denies claims because the claimant has a pre-existing condition. The language should be changed back to what it was before 1997, thereby requiring that if there is a pre-existing condition that it must be "active" at the time of the injury to allow an offset. Burden of proof should be on the employer to prove that the pre-existing condition would have caused the disability absent the work event.

13) Disability benefits. Changes made to 65-05-08.1, NDCC (1995), make it more difficult for employees to receive disability benefits and demands more from the doctor as to what the doctor is required to do in order for the employee to obtain disability benefits. Presently, the doctor is required not only to say that the person is disabled but also to exclude other types of employment, for example, light or sedentary. The doctor is also to list specifically what the restrictions are. If these are not all included in the doctor's letter, the person is not eligible for disability benefits. Expert vocational evidence by those experienced in job ergonomics is preferable.

14) Closed Claim Presumption. Once again, the 1995 legislature made it much more difficult for an individual to receive benefits that they were clearly entitled to. 65-05-35, NDCC (1995) states that an individual's claim is "presumed closed" if there has not been a payment of any benefit for four years on the claim. The Bureau/WSI maintains that this can be rebutted, however, the only way to rebut this is to establish that the employee proves by "clear and convincing evidence" the work injury is the sole cause of the later symptoms. Virtually throughout the Workers Compensation Act the employee is required to show "more likely than not" or by a preponderance that the claim is compensable. This standard of "clear and convincing evidence" and "sole cause" makes it virtually impossible for a claimant to have their case reopened or any medical bill paid if it has been more than four years since any activity on that claim. It should go back to the old standard of simply preponderance of the evidence rather than clear and convincing evidence.

15) Vocational Rehabilitation Services. Over the past 10 years, vocational rehabilitation services have been virtually eliminated. There are very few people being retrained and/or offered assistance back to work. Vocational Rehabilitation Services reform must address the needs of the claimant and the employers willing to hire people with special needs.


David L. Kennedy
President/Secretary-Treasurer
ND AFL-CIO 1-8-07



DECADE



OF WORKERS COMPENSATION CHANGE

10 YEARS OF REDUCTIONS IN BENEFITS TO INJURED WORKERS

Published by:

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June 2000

Rehabilitation Services

The idea of rehabilitation services is to get the injured worker back into the work force following an injury. If, as a result of the work injury, the injured worker is unable to go back to the injured worker's pre-injury employment, rehabilitation should be provided so that the employee can return to employment to restore the employee back to, or near, the wage earning capacity which the injured employee had enjoyed prior to the injury.

Throughout the 1990's, the emphasis has changed from attempting to return an injured worker as nearly as possible to the wage that the injured employee had worked prior to the injury, to returning an injured worker to as little as two-thirds of the State's average weekly wage (commonly referred to as the "income test"). Compare §65-05.1-01, N.D.C.C. (1989) to §65-05.1-01, N.D.C.C. (1999). In other words, if the injured worker was making \$500.00 a week prior to the injury, the Bureau only need "rehabilitate" that injured worker to two-thirds of the average weekly wage in the State (as of July 1, 1999, the average weekly wage in the State is \$436.00. Two-thirds of that wage would be \$291.00) to meet the "income test."

In 1995, the Legislature concluded that the "income test" described in the above paragraph "... must be waived when an employer offers the employee a return to work option at a wage lower than the income test. . . ." §65-05.1-01(7), N.D.C.C. (1995) (emphasis added). Consequently, if an employer wants to return an injured worker to employment at a much lower wage, the injured worker

must take the job or the Bureau could find that the injured worker was voluntarily limiting his/her income and refuse to pay any disability or rehabilitation benefits.⁴

Also, the Bureau has demonstrated that -- time and again -- it has no real interest in actual vocational rehabilitation to return injured workers to actual employment at substantial wages. Despite the laudatory "goal of vocational rehabilitation to return the disabled employee to substantial gainful employment with minimum retraining, as soon as possible after injured" (§65-05.1-01(3), N.D.C.C.), the North Dakota Supreme Court has spoken to the Bureau's efforts in this regard as "theoretical rehabilitation on paper only" and has rejected the "absurd consequences which might result" if the Supreme Court were to "adopt the Bureau's position." Svedberg v. North Dakota Workers Comp., 1999 ND 181, 599 N.W.2d 323, 326, ¶¶ 17, 18. Underscoring the reality that the Bureau too often uses the "rehabilitation services" chapter of the Act as a pretext to simply terminate benefits rather than actually rehabilitate injured workers, the Supreme Court stated as follows:

"We believe the legislature's intent was to create a process which leads to real rehabilitation and reemployment, not a theoretical rehabilitation which ignores the injured worker's actual situation. At some point the Bureau must recognize it is dealing with real people, not merely statistics and notations in a file." Svedberg at ¶ 19.

⁴Likely, if the employer would return the injured worker at a lower wage, the Bureau would be responsible for paying temporary partial disability benefits (66 2/3% of the difference between the pre-injury wage and the wage at which the injured employee returned to work).