



## Vocational Rehabilitation

by William D. Holt and Richard L. Johnson

Ohio Revised Code 4121.61 requires the administrator of the Bureau of Workers' Compensation to "adopt rules, take measures, and make expenditures" to aid injured workers in returning to work or in lessening or removing any handicap related to a compensable injury or occupational disease. Rules 4123-18-01 through 4123-18-22 of the Ohio Administrative Code were promulgated in response to that statutory mandate. As a whole, those rules are entitled "Rehabilitation of Injured and Disabled Workers."

The goal of vocational rehabilitation is to facilitate an injured worker's return to work from a compensable claim's disability. It is approached in a hierarchical progression of a return to the same job with the same employer, return to a modified or other job with the same employer, return to a similar industry or return to any industry. Where necessary, appropriate skill enhancement or short term training may be included.

Self-insured (SI) employers are required to "furnish" vocational rehabilitation services equal to or greater in quality than those provided by the BWC and a managed care organization (MCO). One of the assessment categories for SI employers provides funding for vocational rehabilitation. The composite assessed amount to be put into the fund is based on the amount needed to support it. While, as a group, SI employers ultimately cannot "take" from the fund more than they put into it, individual employers may end up

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gaining or losing with respect to their own claims and how much is recovered. The law allows a SI employer to exercise an irrevocable option to be excluded from the fund, pay no more assessments into it and bear all vocational rehabilitation costs on its own. Most, if not all, SI employers have exercised this option.

The vocational rehabilitation process begins with a referral. While any person may refer an injured worker for vocational rehabilitation, referrals most often come from the injured worker directly, the injured worker's attorney or the injured worker's attending physician. Anecdotally, it has been observed that the likelihood of a vocational rehabilitation referral increases equally as the likelihood of an injured worker's compensation being terminated increases. Seldom does the anticipation of continuing compensation seem to inspire a fervent desire for vocational rehabilitation.

Once a vocational rehabilitation referral is made, the eligibility of the injured worker is the first issue to be considered. An injured worker is considered eligible for vocational rehabilitation if there is a recognized claim where the allowed condition(s) reflects a significant impediment to the injured worker's employment or maintenance of employment and where at least one of the following is present: receiving temporary total/wage loss/or permanent total disability compensation, or has been granted an award for scheduled loss/loss of use, or is receiving payments in lieu of compensation, or has received a permanent partial disability award and has restrictions as a result of that award, or has reached maximum medical improvement and has documented job restrictions, or is receiving job retention services to maintain employment, or has sustained a catastrophic injury. In the daily processing of vocational rehabilitation referrals, the eligibility consideration frequently does not stop further evaluation. Eligibility ends immediately upon the effective date of a lump sum settlement or upon subsequent disallowance of the claim.

Upon a determination that the injured worker is eligible for vocational rehabilitation, attention turns to analysis of the feasibility of participating in those services. Feasibility looks at whether there is a reasonable probability the injured worker will benefit from and return to work as a result of vocational rehabilitation services. The feasibility analysis is the first place in the referral process where everyone involved needs to look to the future if there is to be a legitimate effort for a successful referral. It is at this point where injured workers hoping to head straight to a permanent total disability application set their sights on a "not feasible" determination. It is also at this point that those who only hope to find another way to extend a weekly compensation benefit start to sort themselves out due to unrealistic or unreasonably rigid expectations. On the other hand, for those who seriously hope to benefit from services and return to work, this is where realistic expectations and planning start to take focus. The aforementioned hierarchy of progression can be a useful tool in considering the feasibility of a vocational rehabilitation referral. Those in the vocational rehabilitation profession have various forms and aids to help. In order to determine feasibility, it is necessary to interview the injured worker, review claim and medical documentation, consult with the injured worker's physician of record, communicate with the injured worker's authorized representative and, as important as all else, address all issues of the referral with the injured worker's employer. It is absolutely critical that an SI employer insist it be constantly and completely apprised of the information concerning and status of a vocational rehabilitation referral involving one of its injured workers.

Having passed through the issues of eligibility and feasibility, a vocational rehabilitation case manager will interview the injured worker securing personal demographic information, employment history and information, legal history, both personal and claim-related medical histories, information concerning prior claims and the present claim, and other vocational rehabilitation information that could have an effect on the referral. The case manager will make an initial assessment report, provide appropriate progress/change reports and arrange any evaluations needed to assist in the vocational rehabilitation process. The physician of record will be contacted. It is critical that the case manager also contact the employer; not only because in SI claims it is the employer who



pays the cost, but also because a successful return to work will occur with the same employer only with that employer's assistance and cooperation. Once the case manager has assembled the necessary information, a personal plan for the vocational rehabilitation of the injured worker will be written and offered to the injured worker and SI employer for agreement.

A vocational rehabilitation plan can include many things: various therapy programs, job skills enhancement, job search assistance, training in body mechanics, etc., but it may not include services that are purely medical in nature. An injured worker who participates will not be eligible for temporary total compensation, but will be eligible for an equivalent benefit called living maintenance. Depending on the plan, there may be a benefit known as living maintenance wage loss. Vocational rehabilitation plans have limited durations, are more defined than periods of temporary total compensation and carry periods of suspension or diminished benefit for noncompliance.

If an injured worker is referred for vocational rehabilitation, it is crucial the SI employer has a process in place to immediately acknowledge that referral. A flat denial probably never is appropriate while a prompt response to eligibility and, when proper, an expeditious move to feasibility analysis, can go a long way toward maximizing the effectiveness of the process and minimizing any potential losses. If a third-party provider is used, that provider needs to understand the unique expectations of the SI employer and cannot be allowed to impose its expectations on those of the employer. From the beginning, there must be a system providing mutual responsibilities for complete disclosure and updating between the employer and the provider. The provider may not make any commitments to the injured worker or any conclusions as to feasibility or participation without consulting the employer. The SI employer must be involved in claims where there are vocational rehabilitation referrals.

The vocational rehabilitation process sounds rosy, but it is not without thorns. It is a purely voluntary process. With higher paying wage structures, SI employers pay higher weekly workers' compensation disability rates to injured workers. There frequently is a disincentive for an injured worker to take extraordinary action to return to work, particularly at a lower paying job. Too often, it is the finding of maximum medical improvement that spurs a worker towards vocational rehabilitation, and then the purpose is to extend the weekly benefit, not return to work. There continues to be a debate over who has the choice of the rehabilitation provider – the injured worker or the SI employer. Some argue vocational rehabilitation is akin to medical services and that the injured worker has free choice. Others assert BWC policy and the rules place a distinction between medical services and vocational rehabilitation thus not creating free choice. The fact that BWC policy and the rules require SI employers to provide vocational rehabilitation and make them responsible for the quality of the program would tend not to support free choice. There is a new sub-industry of vocational rehabilitation providers who advertise strictly to the injured workers and their representatives alluring them with promises of "We work with you and your doctor and lawyer" or "There is free choice and you can pick who has your best interests at heart." At the moment, the Industrial Commission has taken the position there is not free choice. Who gets to decide eligibility, feasibility, and the plan? For now, absent MCO limitations, SI rehabilitation issues are addressed by the SI employer but can be taken to the Commission hearing process. Do SI employers really want hearing officers determining their vocational rehabilitation plans? Injured worker representatives are referring their clients to vocational rehabilitation for no other reason than to have them rejected as not feasible so that the rejection can be used to support an application for permanent total disability. The vocational rehabilitation process is not designed to confront and challenge an injured worker who sabotages a referral, and the hearing process is not focused to look beyond the fact that the referral was found not to be feasible.

Self-insured employers value the ability to actively control their workers' compensation costs. As the first decision maker in a claim, an SI employer can speed good claims along. Questionable claims can be identified more easily and addressed by an SI employer. Depending on how it is managed, the vocational rehabilitation process can be a significant strength or weakness in the cost control effort. There is big money in vocational rehabilitation. The BWC reports it paid over \$40,000,000 in rehabilitation benefits in FY2008, up by more than \$4,000,000 from FY2006. Weekly living maintenance benefits can run as high as \$767, not including SI assessments. There are the added costs of paying vocational rehabilitation service providers as well as paying for added services such as retraining, skill updating or job-specific therapies. Vocational rehabilitation often is approached with a thought process that the services to be provided are primary and the goals and measurements are secondary. Such a thought process encourages waste. Clear-cut, realistic, measurable and achievable goals should be established first. Vague concepts such as "improve" and "facilitate" are to be avoided. The plan should be strictly based on those goals and only amended if necessary to meet them. Plan amendment should not be taken lightly. As with many processes, once direction is changed, waste occurs.

It is not only an obligation but it is also in the best interests of an SI employer to provide quality vocational rehabilitation programs. A process put in place ahead of time, including the employer's own philosophy of how vocational rehabilitation fits into its loss control strategy, should help assure the quality required in a program, minimize unnecessary loss and maximize the opportunity for a beneficial outcome for both the injured worker and the employer.

*For questions concerning vocational rehabilitation, please contact Mr. Holt or Mr. Johnson at our Toledo office (419-241-6000).*



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