

Vocational Rehabilitation

Self-insurance Claim Adjudication Guidelines

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Historical Role of Vocational Evaluation

There are several court decisions dealing with the impact of vocational evaluation in industrial insurance claims. Two cases which have significantly affected how and why vocational evaluation is done are *Kuhnle v. Dept of L&I* (1942) and *Fochtman v. Dept of L&I* (1972).

Kuhnle is an early “odd lot” decision where the court held that if, as a result of an industrial injury, the worker cannot return to his/her former work and the limitations are such that the worker is suited only for “odd jobs” or special work not generally available, the burden of proof is on the department or employer to show that such special work is available to the individual. *Fochtman* is of importance because it accepted a vocational expert’s opinion in conjunction with medical findings to establish a finding of total permanent disability. Concurrence by the attending physician is not necessary if the vocational expert, based on the majority of the medical findings and physical restrictions, has determined the worker is totally permanently disabled.

Substitute House Bill No. 1084 found “the vocational rehabilitation program created by Chapter 63, Laws of 1982 (had) failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike.” RCW 51.41 was repealed while [RCW 51.32.095](#) was amended. The new rehabilitation laws became effective on May 16, 1985, with major revisions in the delivery and extent of rehabilitation services and benefits.

Determination of Eligibility for Rehabilitation Benefits

[WAC 296-15-4302](#)

Determination of eligibility for vocational rehabilitation benefits is at the sole discretion of the supervisor of industrial insurance or the supervisor’s designee. When making this determination, the supervisor or supervisor’s designee considers the conclusion reported by the self-insurer in the [Self-insurance Vocational Reporting Form](#) (SIVRF). This report should take into account the following variables:

- The injured worker’s education and past work experiences.
- Any physical and/or mental restrictions which are a direct result of the industrial injury, or which existed prior to the industrial injury, or which exist as a result of unrelated past industrial injury conditions.
- Those acquired or demonstrated work-related skills which remain viable in light of the injured worker’s physical and/or mental limitations (transferable skills).
- Labor market data reflecting the existence of occupational options consistent with the injured worker’s transferable skills which are within the worker’s labor market.

Interpreting the Terms [RCW 51.32.095\(1\)](#), [WAC 296-19A-010](#)

Self-insurance Policy S6.41 is to be used for interpreting the terms “employable”, “gainful employment” and “necessary and likely”.

Employable

“Employable” means having the skills and training that are commonly and currently necessary in the labor market to be gainfully employed on a reasonably continuous basis when considering the worker’s age, education, experience, and physical and mental capabilities due to the industrial injury or subsequent reopening.

The following facts should be established before deciding an injured worker is “employable”.

- The injured worker should have the documented skills to work in the proposed occupation(s). A description of the **required skills** of the proposed occupation may be obtained from technical resources, such as [O*Net OnLine](#) or a job analysis, or by such means as employer contacts. The injured worker’s **demonstrated skills** are most appropriately identified by a thorough review of his/her employment history. Additional resources might include occupational descriptions in O*Net OnLine and the ‘work performed’ portion of a job analysis.
- The specific vocational preparation (SVP) time of the proposed occupation(s) should be equal to the injured worker’s work and/or training time in occupations of a similar nature.

The SVP time required in the proposed occupations(s) can be established by referencing technical documents such as the “Classification of Jobs” or the “Selected Characteristics”, or by such means as employer contacts and job analyses.

The SVP is the amount of time required to learn the techniques, acquire information and develop the facility needed for **average performance** in a specific job worker situation.

- The **work to be performed** in the proposed occupation(s) should be similar in nature to work performed by the injured worker in the course of his/her employment history.

The proposed occupation(s) should be similar in the materials, products, subject matter and services (MPSMS), as well as machines, tools, equipment and work aids used (MTEWA). Information on the MPSMS and MTEWA can be derived from such sources as the “Classification of Jobs” and job analyses. The industry designation (standard industrial classification) of the proposed occupation should be related to the industry(ies) in which the injured worker worked.

Note: Information regarding industry classification is available in the revised edition of the “Classification of Jobs”.

- The term “commonly and currently necessary” is interpreted to mean the injured worker’s skill and/or training level meets the minimum qualifications for the proposed occupation(s).

Information regarding the minimum qualification for specific occupations can be obtained from a variety of sources, including [O*Net OnLine](#) and job announcements.

- “Labor market” is interpreted to mean:
 - The proposed occupation exists within the labor market.
 - The appropriate labor market to be considered is one in which the injured worker resides and/or where the worker was employed at the date of injury.
 - A labor market includes positions within a reasonable commuting area. Consider the physical limitations of the injured worker and the usual commuting distance from the locality.
- “Reasonable continuous basis” is interpreted to mean the proposed occupation is consistent with the injured worker’s work pattern at the time of injury or most recent permanent partial disability settlement. Examples of work pattern include full-time, part-time, seasonal, etc.
- “Physical” with respect to the injured worker’s physical capacities is interpreted to mean:
 - Verifiable documentation of the injured worker’s capacities.
 - The physical demands of the proposed occupation should be consistent with the physical abilities of the injured worker subsequent to the industrial injury and defined in the “Selected Characteristics”, the “Classification of Jobs” and/or job analysis.

Note: When determining employability:

- Conditions unrelated to the industrial injury but present at the date of injury are to be considered in the evaluation.
 - Conditions unrelated to the industrial injury and whose onset is subsequent to the date of injury should be noted but not considered in the employability assessment.
- “Mental capabilities” is interpreted to mean:
 - The injured worker’s mental capabilities should be compared to those required for the proposed occupation.
 - Questions regarding the medical aspects of the claim should be clarified before making an employability decision.

Gainful Employment

“Gainful employment” means any occupation, not to exclude self-employment, which allows a worker to be compensated with wages or other earnings considering [RCW 51.12.020](#).

The following should be considered when determining gainful employment: State or federal minimum wage, whichever is higher, is to be used as the minimum acceptable level of compensation.

Necessary and Likely

“... Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker’s permanent disability and in the sole opinion of the supervisor or supervisor’s designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment...”

The following should be considered when determining if services are necessary and likely:

- **Necessary** is interpreted to mean:
 - Vocational services are needed to enable the injured worker to become employable.
 - This decision may be based on the expert opinion of a vocational rehabilitation professional.
- **Likely** is interpreted to mean necessary services will more probably than not result in the injured worker becoming employable at gainful employment.
- **Necessary and likely** are at the discretion of the supervisor’s designee.

Employable or Able to Work

If the injured worker is found employable, they will not be eligible for vocational services. A determination of employable/not eligible will result in the termination of time loss benefits.

Eligible for Vocational Services [WAC 296-19A-220](#)

If the worker is found eligible for vocational services, a referral will be made by the department’s vocational services specialist to a vocational rehabilitation counselor for development of a vocational plan. The approved plan is then submitted to the supervisor’s designee for review and approval.

Vocational Services [RCW 51.32.095\(3\)](#), [WAC 296-19A-010](#)

Vocational services are those services designed to enable the injured worker to become employable at gainful employment. Time loss benefits will continue while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

Not Likely to Benefit from Vocational Services

There are factors that may render an injured worker unemployable and not likely to benefit from vocational rehabilitation services. They are:

- The direct effects of the industrial injury.
- Condition(s) pre-existing the industrial injury.
- Unrelated, post-industrial injury circumstances.
- Claimant's action precluding his/her ability to benefit (e.g., noncooperation).

Injured Worker's Responsibility [RCW 51.32.110](#), [WAC 296-19A-030\(4\)](#)

If any injured worker, without good cause, refuses, obstructs or does not cooperate with reasonable efforts of vocational rehabilitation, the department, or the self-insurer upon approval from the department, may suspend or deny any compensation for such period.

Time loss benefits will be reinstated when the injured worker demonstrates a willingness to cooperate. Time loss will not be paid retroactively for the period of noncooperation.

Vocational Rehabilitation Plan [RCW 51.32.095\(2\)](#), [RCW 51.32.095\(3\)](#), [WAC 296-15-4306](#)

The purpose of rehabilitation in worker's compensation is to help those injured workers found eligible for services to become employable at gainful employment. The following return to work priorities are used for developing a return to work plan:

- Return to the previous job with the same employer.
- Modification of the previous job with the same employer including transitional return to work.
- A new job with the same employer in keeping with any limitations or restrictions.
- Modification of a new job with the same employer including a transitional return to work.
- Modification of the previous job with a new employer.
- A new job with a new employer or self-employment based upon transferable skills.
- Modification of a new job with a new employer.

- A new job with a new employer or self-employment involving on-the-job training.
- Short-term retraining and job placement.

Plan Content [WAC 296-15-4308](#)

The supervisor's designee approves funding for vocational rehabilitation plans which represent the most expedient method of return to gainful employment. The rehabilitation plan shall contain the following:

- An assessment of the skills and abilities based on the physical and mental status, aptitudes, and transferable skills of the injured worker.
- The services necessary to enable the injured worker to become employable at gainful employment.
- Labor market information indicating the employability of the injured worker at plan completion.
- An estimate of the cost and the time necessary for the completion of the plan.
- A direct comparison of the injured worker's skills with potential types of employment to demonstrate a likelihood of success.
- If necessary, a job analysis of the injured worker's previous occupation, including earnings, may be included.
- Any other information that will significantly affect the plan.
- Signed accountability agreements completed by the vocational rehabilitation counselor and the worker.
- Signed Option 2 Discussion Sheet.

Closing Report [WAC 296-15-4312](#)

Upon completion of a formal program, the self-insurer will submit the closing report to the department. The closing report shall contain at least the following:

- Assessment of the injured worker's employability at gainful employment.
- Whether or not the injured worker has returned to work.

- Any remaining barriers to the injured worker becoming employable at gainful employment.
- An ability to work summary may be substituted for a closing report.

Plan Terminology

Plan terminology may include:

- **Revised rehabilitation plan:** The resubmission of a plan that was previously disapproved is a plan revision.
- **Modified rehabilitation plan:** A change to a previously approved plan (including interruptions) is called a plan modification. Plans may be interrupted for good cause.
- **Plan interruption:** An approved plan that is interrupted for an acceptable reason includes a definite start and end date to the plan interruption. A cause for interruption is some reason that is beyond the control of the injured worker (i.e., medical excuses and summer breaks).

Note: Plan interruptions are not authorized under the new vocational law that went into effect January 1, 2008.

Plan Costs

Costs that may be authorized for vocational rehabilitation plans include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses. For vocational rehabilitation plans approved:

- On or after July 1, 1999 - \$4,000 for a 52 week retraining period.
- After January 1, 2008 - \$12,000 for a two calendar year retraining period.
- After July 1, 2008 - \$12,240 for a two calendar year retraining period.

Note: Funding levels are adjusted on July 1 each year.

Necessary expenses may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or re-employment. Reimbursement for mileage is paid at the Government Services Administration mileage rates. Transportation expenses are not part of the costs approved for retraining.

Option 2 [RCW 51.32.099](#), [WAC 296-15-4316](#), [WAC 296-15-4318](#)

Within 15 days of notification by the department of an approved rehabilitation plan, a worker may elect to decline further vocational rehabilitation services and elect Option 2 benefits. An Option 2 award is equal to six months of time loss compensation. When a worker elects Option 2 benefits, the self-insurer must take the actions outlined in [WAC 296-15-4316](#) within five working days of receiving the worker's request.

Loss of Earning Power

Loss of Earning Power (LEP) may be considered, under certain circumstances, as part of a vocational rehabilitation plan. Approval can only be extended during the approved period of the vocational rehabilitation plan. Any consideration for continuation of LEP after completion of the plan must be based upon medical opinion and information indicating the injured worker's condition

Vocational Disputes

[RCW 51.32.095\(6\)](#), [WAC 296-19A-410 through WAC 296-19A-470](#)

Vocational Dispute Resolution Office (VDRO) has specific responsibility as mandated in [WAC 296-19A-460](#) (disputes). This section is charged with the responsibility to research dispute issues and make recommendations for dispute resolution to the director. The dispute outcome can be appealed to the Board of Industrial Insurance Appeals (BIIA). However, the BIIA will not determine the merits of the case but whether the director has been arbitrary or capricious in the use of his/her discretion.

The authority for vocational disputes is found in statute which states in part: "... The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties."

The dispute process is provided to avoid a delay in the vocational rehabilitation process. Eligibility determinations and the suitability of vocational plans can be disputed to the director by injured workers, employers, and the referral source. A vocational rehabilitation provider cannot dispute a vocational determination. The aggrieved party must submit the reasons for the dispute, in writing, within 15 calendar days of the receipt date of the notification letter. Time limits for accepting a dispute may be extended by VDRO if good cause is shown. The director will notify the aggrieved parties of any action taken within 30 calendar days from receipt of the dispute.

Time Loss During Disputes [RCW 51.32.090](#), [RCW 51.32.095](#)

Since payment of time loss during vocational disputes is discretionary, the following guidelines shall be followed:

- If the referral source finds the injured worker employable, time loss compensation will not be paid while a dispute is being reviewed by VDRO.
- When the director's decision overturns a finding of employability, retroactive time loss will be paid from the date time loss was ended.
- When the director's decision finds an injured worker medically unstable, time loss will be reinstated on the appropriate date as determined by the referral source.
- When the director's decision requires the self-insurer to obtain more information and submit a new SIVRF, time loss will be reinstated.
- When continued time loss is deemed appropriate, time loss will be reinstated to the date it was previously terminated.

Job Modifications [RCW 51.32.095](#), [RCW 51.32.250](#)

An additional discretionary benefit allows the payment of up to \$5,000 to assist employers in a cooperative effort to modify the injured worker's job site where necessary to return the worker to their job. Job modification is a desirable method of returning the injured worker to gainful employment, regardless of the date of industrial injury. Job modification includes modification of the injured worker's previous job or modification of a new job with the same employer.

Job Modification Reimbursement

Self-insured employers may submit reimbursement requests for job modification expenses to the department. **Self-insured employers are not entitled to reimbursement for "Pre-Job Accommodation" costs.** Once the funds used for the job modification are spent by the employer, vocational provider, ergonomic consulting firm, etc., the reimbursement request can be made. The professional consultative fee for services is not included in the \$5,000 and therefore, is not reimbursable. The following documents must be submitted when requesting reimbursement:

- Job Modification Assistance Application. The individual, to whom the reimbursement money will be sent, should be clearly identified on the application.
- Medical information from the attending physician regarding the need for the modification.
- Completed Ownership Agreement.
- Invoice.
- Proof of payment in the form of a receipt, photocopy of a check, or an invoice stamped paid.

Preferred Workers Program [RCW 51.16.120\(3\)](#), [WAC Sections 296-16](#)

The Preferred Workers Program is designed to promote jobs for workers with job-related injuries or disease. It offers qualified employers a financial incentive to hire such a worker.

This program offers two major incentives to employers who qualify. First, the new employer will not be charged any claims costs or experience rating penalties if a job-related accident occurs to the preferred worker within the first 36 calendar months following employment. If any accident does occur within this period, all claim costs will be paid out of the Second Injury Fund, without penalty to the new employer.

Secondly, the new employer is exempt from paying the industrial insurance premium (Accident Fund) and medical aid premium on the preferred worker during the first 36 calendar months following employment. Supplemental pension assessments would, however, continue to be shared equally by employer and employee.

To qualify for the preferred worker benefits, the employer must be covered by state industrial insurance (workers' compensation) either as a State Fund covered employer or as a self-insured employer. Employers must complete and submit to the department an "Intent to Hire Preferred Worker" form. The form must be received by the department no later than 60 days after the date of hire of the preferred worker.

[Intent to Hire Preferred Worker](#) forms are available at any of the department's service locations located across the state or on the department's website.

Catastrophic Injury Benefits [RCW 51.36.020](#)

Although not necessarily related to vocational rehabilitation services, the supervisor also has discretionary authority in the event of a "catastrophic injury" to approve payment of the following without regard to the date of injury:

- An amount not exceeding the state's average annual wage toward the cost of residence modification or construction. The payment shall only be made for one residence in which the worker resides, and only one residence can be modified or constructed. The supervisor may, however, order more than one payment for any one home up to the maximum permitted.
- An amount not exceeding 50 percent of the state's average annual wage towards the cost necessary to modify a motor vehicle owned by a worker who has become an amputee or becomes paralyzed because of an industrial injury.

Requirements for Self-Insurers

Employability Decision

When a self-insurer concludes an injured worker is employable, a [Self-insurance Vocational Reporting Form](#) (SIVRF) is submitted to the department for a formal determination of employability.

As soon as a review of the SIVRF is completed, the supervisor's designee will make a determination regarding employability and notify the self-insurer and worker.

Vocational Services [WAC 296-19A-010](#)

If the self-insurer concludes that vocational rehabilitation services are both necessary and likely to enable the injured worker to become employable at gainful employment, then a rehabilitation plan will need to be developed. The self-insured vocational rehabilitation plan will follow the same criteria as the State Fund.

Plan Development [WAC 296-15-4306](#), [WAC 296-15-4308](#), [WAC 296-15-4310](#), [WAC 196-19A-094](#), [WAC 296-19A-096](#)

How can a provider request an extension of time to complete plan development?

- When the plan cannot be completed and submitted to the department within 90 calendar days the vocational rehabilitation provider seeking an extension must submit a written request to the department for state fund claims or the self-insured employer. The vocational rehabilitation provider must continue working on plan development while the department evaluates the extension request.
- The written request for extension must:
 - Explain why there is good cause for an extension, with supporting documentation.
 - Specify the number of additional calendar days requested to complete plan development.
 - Identify any anticipated barriers to the completion of plan development.

How will the department determine whether there is good cause to grant an extension of time?

- The department will determine whether good cause exists on a case-by-case basis.
- An extension will be granted for good cause when there is a significant delay in the plan development process and the cause is beyond the worker's or vocational rehabilitation provider's control. Examples of good cause include, but are not limited to:
 - A death in the worker's immediate family (spouse, domestic partner, child, grandchild, sibling, parent or grandparent).

- Delays caused by documented changes in the worker's medical ability to participate in plan development.
 - Information received by the vocational rehabilitation provider that impacts plan development and was not available when assessment services were provided.
 - Documented delay in receipt of requested information from a medical provider relevant to developing the vocational plan.
 - The impact of previously identified barriers to employment and/or retraining.
- Noncooperation by a worker, pursuant to an order issued by the department under [RCW 51.32.110](#) and [WAC 296-14-410](#), is not good cause for granting an extension of time.
 - If the department finds there is not good cause for the delay in submitting a vocation plan, the department may take action, including but not limited to:
 - Suspension of further vocational services if the worker has been found noncooperative, until such noncooperative actions cease or have been cured.
 - Assignment of a new vocational provider.
 - Allowing the vocation rehabilitation provider to complete the referral with monitoring of further plan development services by the department or self-insured employer.

Plan Implementation [WAC 296-15-4306](#), [WAC 296-15-4316](#), [WAC 296-15-4318](#)

When must a self-insurer submit a vocational rehabilitation plan to the department?

- No later than 90 calendar days after the date the department determined the worker was eligible for vocational plan development services, the employer must submit a [Self-insurance Vocational Reporting Form](#) (SIVRF) and a completed vocational plan for the worker.
- If the plan cannot be completed and submitted to the department within that time period, the self-insurer must, prior to the 90th day, submit a SIVRF and the vocational rehabilitation providers request for an extension as required in [WAC 296-19A-094](#).

What must the self-insurer do when the worker declines further vocational rehabilitation services and elects Option 2 benefits?

When the department approves a rehabilitation plan, the worker will be notified in writing of their right to decline further vocational rehabilitation services and elect Option 2 benefits within 15 calendar days. When the worker elects Option 2 benefits, the self-insurer must take the following action within five working days of receiving the worker's request:

- Terminate time loss benefits with proper notification to the worker as required in [WAC 296-15-420\(9\)](#).

- Establish the total amount of the Option 2 award and a payment schedule for the benefits that begins the date time loss is terminated.
- Submit a SIVRF to the department which must include:
 - The total vocational services costs paid since the date the worker was found eligible for services.
 - The Option 2 election form signed by the worker.
 - Documentation that includes the total amount of the Option 2 award and payment schedule, and
 - Advise the department of the date time loss was terminated.
- Commence payment of Option 2 benefits to the worker according to the established payment schedule. The first payment must be made no later than 15 days after the date time loss is terminated. Option 2 benefits may be paid before the department issues an order.

What must the self-insurer do when the worker elects Option 2 benefits and the claim is closed?

The self-insurer must submit a quarterly report to the department on a form stipulated by the department listing the total retraining costs paid to date for each worker since the Option 2 benefits was granted. These quarterly reports must document all funds expended and funds that remain available for all workers of the employer until each worker has expended the total vocational costs available to him or her, or until five years have passed since the benefit was granted.

Required Reports WAC 196-15-500

The self-insurer is required to submit the following reports to the self-insurance section:

- [Self-insurance Vocational Reporting Form \(SIVRF\)](#) – The purpose of the form is to report to the department the employability status of the self-insured worker. The form is used to notify the department of the worker’s medical instability, transitional work status, referral to a counselor for an assessment, ability to work based on transferable skills, eligibility for vocational services, or not likely to benefit from vocational services and the reason(s) why.

All vocational determinations, except return to work or released for work to the job of injury without restrictions, as well as vocational retraining plans must be submitted for review and approval to the department.

A signed and completed SIVRF form must be attached to all reports.

- Rehabilitation Outcome Reporting – This information is to be submitted on all claims, compensable and medical only, where vocational services have been provided and the self-insurer is requesting closure of the claim. The information has been incorporated into the SIF-5 and SIF-2 (for medical only claims).