

WORKMEN'S COMPENSATION LAW AND REHABILITATION
OF INJURED EMPLOYEE

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INTRODUCTION

For the past several years I have been associated with the personnel organization of a large industry. A great part of that time has been spent working with employees disabled off and on their jobs. Payments from our Company Benefit Plan replace a considerable amount of lost wages. This is generally true of most large companies today. However, there is more involved than loss of wages in the cases of those employees seriously disabled, namely, their restoration to a most normal life which they are individually capable. Many employers, I am sure, feel an obligation to do all in their power to rehabilitate "their own". However, I believe also that there are many employers who depend on Government Agencies to do the job.

Our Workmen's Compensation Laws protect the employee injured on the job in-so-far as partial payments are concerned, but fail miserably in most states in providing for the rehabilitation of these employees. I have believed for some time that our present system of Workmen's Compensation Laws are inadequate and serve more as a detriment to rehabilitating the occupational disabled employee rather than foster the program. It is my belief that in the next few years proper legislation will be enacted in all the States, as has been in a few of our States, to include provisions obligating Insurance Companies and Employers to rehabilitate their own occupational disabled employees.

With this belief, I approached Workmen's Compensation officials and read available material from experts on this subject. Those officials

with whom I talked believe that our present system of compensation will be revised within the next ten years to incorporate rehabilitation provisions. Legislation in this field in the States which have provided for rehabilitation is very recent and not much has been written on this subject. However, all agree that there appears to be an emerging concept in Workmen's Compensation that rehabilitation is really a most significant thing, and that in new legislation being proposed in this field there is always a consideration of the place of rehabilitation in it.

In this paper, I wish to consider the Workmen's Compensation Law, its history, the need for a revised compensation system which would include the incorporation of a rehabilitation program, the processes of rehabilitation relative to Workmen's Compensation, and the benefits of its program for all of us.

DEFINITION OF WORKMEN'S COMPENSATION AND REHABILITATION

According to Webster's New International Unabridged Dictionary, 1934, the Workmen's Compensation Act is a statute fixing the Compensation that workmen may recover from an employer in case of accident or occupational disease arising out of employment indemnity according to a definite schedule without regard to fault.

Perhaps the most widely used definition of the rehabilitation program is "the restoration of the handicapped to the fullest physical, mental, social, vocational, and economic usefulness of which they are capable."¹ Another definition is that used by the Federal-State civilian rehabilitation program meaning "any services necessary to render a disabled individual fit to engage in a remunerative occupation."²

HISTORY OF WORKMEN'S COMPENSATION

In order to understand why we need a rehabilitation program it is necessary to look at our Workmen's Compensation Law, its background and its purpose. Workmen's Compensation was not invented; it evolved. It developed out of a series of social adjustments to meet a social need. The history of United States laws dealing with the compensation of injured workmen may be divided into three major periods: (1) the pre-compensation period when the worker's only recourse was to a personal injury damage suit under the common law, later modified by employer's liability statutes; (2) the period of popular rejection of the common law and its statutory modifications, and the struggle for nation-wide enactment of compensation legislation; (3) the period of widespread legislative action and the institutionalization of workmen's compensation.³

In 1911, the first workmen's compensation law now in effect in the United States was passed. Since that time there have been notable developments in that field. It has as its main objective the payment of benefits to injured employees or to the dependents of employees killed in industry, regardless of who is at fault in the accident.

Every state has a workmen's compensation law. While all states agree as to its principle, no two of them have exactly the same benefits.

According to experts in the Workmen's Compensation field, our Workmen's Compensation Law is inadequate in many respects, such as: limited coverage, over-emphasis on litigation, low benefits, poor administration in some States, and high insurance costs.⁴ However, we are primarily concerned with the inadequacy of the law in regard to restoring the economic restoration of the injured employee.

DEVELOPMENT OF REHABILITATION PROGRAM

The concern with replacement of wage loss has emphasized the disability and the payment of cash awards rather than early return to employment. In consequence of this emphasis the workmen's compensation system paradoxically is hampering the full utilization of rehabilitation. A disability with an evaluation upon which a payment can be made is comprehended by all. The disability is there in plain view. Rehabilitation, however, utilizes the latent or existing capabilities of the handicapped person. That is intangible and less readily understood. Furthermore, because there has been built up a system based on this prevailing concept the claimant husbands and nurtures his disability in order to collect benefits.⁵

In a system in which the damage award is emphasized rather than the return to gainful employment, and where there is greater emphasis upon comparing workmen's compensation benefits with jury awards in liability cases, the claimant comes to feel that his security is enhanced for himself and his family by favoring his disability and continuing to collect benefits.⁶

Workmen's Compensation, to emerge once more in the position it held some 40 years ago at the forefront of social legislation, must undergo basic revisions. Its direction must be toward the conservation of human resources; the concern--to the exclusion of all others--with disabilities and ways of measuring and compensating them can be tolerated no longer. The requisite knowledge exists for immense achievements in restoring handicapped persons to a productive life; it waits to be integrated with existing laws and arrangements of Workmen's Compensation.⁷

It would appear that workmen's compensation should concern itself with promoting the best interests of the injured workman by replacing a part of the wage loss, and, even more important from the social, economic, and productive points of view, return him as quickly to employment.

If rehabilitation is the goal it seems that rehabilitative techniques are required for the present system. This would mean deemphasis of disability, deglorification of the attorney's role, rejection of the attempt to make of workmen's compensation a court for meeting out personal injury awards, recognition by employers of the need to utilize the physically handicapped, responsibility of all insurance carriers to consider the claimant as something other than a case file and premium risk.⁸

Sweeping changes are needed to modernize the nation's workmen's compensation laws. There is probably no better place to start than with the establishment of a definite program of rehabilitation for occupationally disabled workers. Rehabilitation should be as firmly established under workmen's compensation as the responsibility for medical care. Whether the services should be directly provided by the workmen's compensation board or purchased from community centers is not the basic issue.

The need is the assumption of responsibility for comprehensive rehabilitation and for a vast expansion in its availability. The medical care provisions should be broadened to cover the cost of medical restoration in full. The administrative agency should be given clear authority to make rehabilitation services and income-maintenance benefits available to all who need them.

The administrative reforms which are urgently needed in workmen's compensation generally--in the direction of a clinical rather than a forensic system--can most logically and appropriately begin with rehabilitation. Once rehabilitation becomes a definitive part of workmen's compensation, further improvements will become possible, such as the revision of the much critized disability rating system. This is the most promising prospect for workmen's compensation as it stands today.⁹

Progress toward adequate medical care has been slow, due to restrictions which exist in the Compensation Law limiting the cost and duration of care. "Such restrictions exist in as many as 17 states."¹⁰ A physician working with the injured employee should utilize all the community resources, such as the community hospital and the rehabilitation center. However, most hospitals are crowded and can not allocate sufficient space and beds for rehabilitation services. The President's Commission found that: "All told, there are less than a dozen comprehensive rehabilitation centers in existence."¹¹ Obviously a great expansion in hospital and center facilities is needed to rehabilitate the injured employee from the medical standpoint.

Seventeen states have made statutory provisions under their workmen's compensation laws to provide, promote or facilitate rehabilitation. Fifteen states facilitate rehabilitation by providing limited maintenance allowances during its course; a few of them, probably five, finance or help pay for rehabilitation services as a direct part of workmen's compensation. Four states and Puerto Rico directly operate rehabilitation facilities for injured workers under the workmen's compensation program.¹²

The volume of rehabilitation is critically inadequate. The Labor Department and the Office of Vocational Rehabilitation have estimated that at least 200,000 of the nearly 2,000,000 workers injured each year could benefit from rehabilitation. By this standard of eligibility, "only 3 percent of the injured workers in the United States are receiving the type of service needed".¹³

Notwithstanding the many lags in the progress of rehabilitation, the merits of rehabilitation are gaining recognition. For example, the Workmen's Compensation Commission of Ohio was authorized to advance \$300,000

to establish a rehabilitation center. Puerto Rico appropriates \$50,000 annually for the rehabilitation of injured workers. Numerous community rehabilitation facilities are being planned and built. Labor unions, observing the slow progress in bringing modern rehabilitation to injured workers are now studying the possibility of promoting rehabilitation through Collective bargaining. Insurance Companies are operating centers which have produced excellent results, having derived many of the advantages of a program closely integrated in the workmen's compensation process.

PROCESS OF REHABILITATION

The process of rehabilitation involves three major fields: medical, social adjustment and vocational adjustment.

1. The medical field comprises all those services which are directed toward the restoration of the disabled individual to maximum physical competence and mental health.
2. The social adjustment field, helping the disabled individual to make a satisfactory social and emotional adjustment to his environment and in his relationship with others.
3. The vocational adjustment field, helping the disabled individual select, prepare for, and establish himself in the occupation which offers maximum scope for his abilities and maximum likelihood of adequate satisfactions.¹⁴

A Subcommittee on Industrial Relations of the American College of Surgeons has for the past five years discussed the problems of the injured worker under our present compensation system. It submitted as a

basis for working out the details of problems in cooperation with workmen's compensation administrators and members of the medical profession and its organizations, the following recommended principles:

1. A recognition of the necessity for more adequately trained and skilled medical and surgical care of injured workers.
2. A recognition that medical aid to injured workers should not be limited by cost or other legal prohibition.
3. A recognition that the goal of medical aid in compensation cases is prompt recovery, minimum residual disability, maximum physical restoration, and preparation of the injured worker for resumption of gainful employment.
4. A recognition that the law should place direction of medical aid in the compensation administrative authority.
5. A recognition that rehabilitation must begin with first aid and continue throughout the period of disability; that, in order for a physician to carry out his responsibility under workmen's compensation medical practice, it is basic for him to consider the total medical problem, including preparation for the injured worker's return to work; that the physician, therefore, must bring to bear on these problems all of the skills and disciplines which society can offer and utilize all community resources in the accomplishment of such objectives.
6. A recognition of the necessity for close association and cooperation between the compensation administrative agency and local medical groups.

7. A recognition of the need for more expertly trained and better informed physicians in traumatic surgery, occupational medicine, and physical medicine.¹⁵

According to leaders in the Compensation field, an adequate and successful workmen's compensation system depends materially on the extent to which these recommended principles are carried out.

Relative to social adjustment of the disabled employee, to be complete, a rehabilitation program must include a thorough evaluation of the patient's social circumstances and environment as they may relate to the rehabilitation process.

As an early and most important step in the rehabilitation of the handicapped, a thorough evaluation needs to be made of the patient's social circumstances and environment as these may obstruct, interfere with, or contribute positively to success of rehabilitation efforts. This is generally but not always accomplished by skilled case workers. When rehabilitation takes place in a medical setting, this function is performed by specialized medical social workers who are familiar with the implications of the patient's social situation, the attitudes within his family, and his worries and concerns about finances on the successful outcome of his treatment; and, conversely, of his disease and condition on his family and environment. In a psychiatric setting this function is performed by specially trained and skilled psychiatric social workers.¹⁶

Relative to the vocational adjustment of the disabled worker, some states have passed legislation authorizing cooperative agreements between the Workmen's Compensation and Division of Vocational agencies. According to experts in the field of Rehabilitation that much valuable

service is and could be gained faster for injured workers by wider use of such cooperative agreements. However, they believe that all activities for the care, cure, maintenance, and restoration to work of injured workmen should be and remain under the direct control and supervision of the compensation agency. They also believe that each compensation agency should be required by law, and be provided by law, with the staff facilities and money to supply all required services and the power to use same as early as possible in the rehabilitation process.¹⁷

The personnel of the Vocational Agencies counsel and advise the injured workmen in helping them to re-establish themselves in former occupations or planning for new vocational goals, attempting in so doing to assist the individual in developing a positive outlook towards his occupational possibilities. They help the injured workman to decide on mutually agreeable and suitable training programs through discussion whenever such will further their rehabilitation. They contact employers or their representatives, union agents, officials of the National Employment Service and social welfare agencies for the purpose of discovering job opportunities; also they contact former employers of injured workmen to discuss reemployment or retraining, and to make suitable arrangements for same.¹⁸

ECONOMICS OF REHABILITATION PROGRAM

There are three important reasons why the physically handicapped among us should be employed in work that they are able to do, and in which they can make a living for themselves and their families. All three of these reasons are vitally important, not only to the handicapped and to the employers who hire them, but to you and every other American.

1. In our democracy, a fair opportunity belongs to everyone.

Equal opportunity for work that they can do is the right of all Americans, regardless of race, creed or physical condition.

2. The physically handicapped should be employed because, as a group, they produce. Surveys show that their production rates on the job are fully equal to those of workers who happen to be unimpaired. Actually, some of the surveys show that handicapped workers produce at slightly higher rates than unimpaired workers on the same job. All of the surveys show that the handicapped are just as safe in their work as their fellow workers, who have no disabilities. The surveys show also that handicapped workers are as reliable and steady as other workers.
3. It is clear that if the opportunity to be self-supporting is denied to the handicapped, the result will be many more forced to apply for public assistance for themselves and their families. This would impose severe hardship upon the disabled and their families, would lower the nation's productivity and purchasing power, and would increase the tax burdens on all of us.

An idea of how great this threat of an increased tax burden actually is can be gained from the statement of Dr. Howard A. Rusk, world-famous pioneer in rehabilitation, who said some months ago:

If we don't do something about using the disabled, the chronically ill, and the older age group in our economy, by 1980 for every able-bodied worker in America there will be one physically handicapped, one chronically ill, or one beyond the age of 65 on that worker's back.¹⁹

Substantially handicapped men and women are supporting themselves and their families by performing well on jobs in every career field.

Surveys have shown that handicapped workers are not almost as good, or even just as good as workers who are free of impairments. Studies in this field all confirm that, when given the chance to do work for which they are suited, the handicapped achieve work records that are actually a little better than those of other workers.

The records show that the handicapped are adaptable. They adjust quickly and satisfactorily to the conditions of the job. They're productive. In job performance they often surpass the production records of other employees. They're careful. Safety records of the handicapped are as good as those of other workers. They're regular. Handicapped have job attendance records that equal those of other workers doing the same type of work. They're reliable. The handicapped are not "job hoppers". Finally, they're capable. They do any kind of work where their impairments are not handicaps, and do it as well as those who are unimpaired.²⁰

CONCLUSION

I have attempted in this paper to show the need for a revised Workmen's Compensation Law, which would help to restore our occupational disabled employees to the most normal life possible with their particular handicaps. This was attempted by giving the history of the Workmen's Compensation Laws, its present inadequacies in most of our States in regard to rehabilitation in that primarily it stresses the financial assistance and thereby deter the employee's desire to help himself in the restoration of his physical well-being.

It was pointed out by experts in the Compensation field that to

produce best results, rehabilitation measures would have to be integrated into revised Workmen's Compensation Laws with as much emphasis as the financial and medical provisions of our present law.

The merits of rehabilitation are gaining recognition and legislation has been enacted in seventeen states at the present time to provide, promote or facilitate rehabilitation. However, the volume of rehabilitation is critically inadequate.

Next we reviewed the process of rehabilitation which involved the fields of medicine, social adjustment and vocational adjustment. All three of these phases must be properly integrated to extract the maximum benefit of this rehabilitation program.

Despite the fact that rehabilitation is frequently an expensive undertaking, it can be justified on economic as well as humanitarian grounds. For employers, for insurance companies, and for the public the costs of failure to rehabilitate are greater than those of rehabilitation.

Nothing is more challenging in America than the rehabilitation of injured workers to the most nearly normal life and work for which they are capable. There would be much satisfaction in its accomplishment. We need the will and the means to effect the culmination of the Compensation process--the restoration of the injured employee to productive living and employment.

FOOTNOTES

¹H. M. Somers, Workmen's Compensation (New York: John Wiley and Sons, 1954), p. 241.

²Ibid., p. 241.

³Ibid., p. 17.

⁴John P. Owen, Ph. D. "What's Wrong With Workmen's Compensation," Houston Studies in Business and Economics, No. 4.

⁵William Zucker, "Adequacy of Workmen's Compensation," Workmen's Compensation Problems. IAIABC Proceedings, 1954, p. 106

⁶Ibid., p. 106.

⁷Lisbeth Bamberger, "Rehabilitation Under Workmen's Compensation in California," Industrial Medicine and Surgery, (February, 1956), Vol. XXV, p. 71.

⁸William Zucker, IAIABC Proceedings, 1954, p. 109.

⁹James Pollack, "Rehabilitation," Workmen's Compensation in the U. S., Bulletin No. 1149, U. S. Dept. of Labor, p. 45.

¹⁰Ibid., p. 42.

¹¹Ibid., p. 43.

¹²Ibid., p. 43.

¹³Oscar R. Ewing, "Our Responsibility to the Disabled Worker," Proceedings from the National Conference on Workmen's Compensation and Rehabilitation, 1950.

¹⁴"The Processes of Rehabilitation," National Council on Rehabilitation, New York, pp. 5-6.

¹⁵Bruce A. Greene, "Medical Services," Workmen's Compensation in the U. S., Bulletin No. 1149, U. S. Dept. of Labor, 1954, p. 28.

¹⁶Survey Report, Rehabilitation Facilities in Marion County, 1957, p. 61.

¹⁷Elmer H. Kennedy, Workmen's Compensation Problems, p. 21. *Publ. No. 1149*

¹⁸Ibid., p. 47.

¹⁹"Independence for the Handicapped," A Review in Employing the Handicapped, Dept. of Health, Education and Welfare, 1955, pp. 1-2.

²⁰Ibid., pp. 5-6.

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