

## **RULE 36**

### **ELIGIBILITY AND APPROVAL OF VOCATIONAL REHABILITATION SERVICES**

- A.** Vocational rehabilitation services shall be made available as soon as it has been medically determined that the employee is capable of undertaking such activity and that he or she is unable to perform suitable work for which he or she has had previous training or experience.
- B.** All proposed vocational rehabilitation plans shall be evaluated by a vocational rehabilitation specialist of the court and approved or disapproved by such specialist. Any party who refuses to accept the decision of the specialist may request a hearing before a judge of the court.
  - 1. Notice of all plans approved or disapproved by a specialist of the court shall be sent to the employee, and either the employer, its workers' compensation insurer or risk management pool, and the vocational rehabilitation counselor.
  - 2. If a plan is approved by a specialist of the court, such employer or workers' compensation insurer or risk management pool shall inform the specialist within 14 days of the date such notice is sent whether or not it will accept the plan and shall concurrently with such acceptance agree to the payment of temporary disability to the employee while he or she is participating in the plan and making satisfactory progress.
  - 3. Failure of an employee to participate or make satisfactory progress in a plan approved by a specialist of the court and voluntarily agreed to by the employer may result in cancellation of the plan by the specialist or termination of funding by the administrator of the court. Any party who refuses to accept the decision of the specialist or administrator may request a hearing before a judge of the court.

Sections 48-121, 48-162.01, 48-163, 48-165, R.R.S. 2010.

Effective date: December 18, 2008.

**RULE 37**  
**VOCATIONAL REHABILITATION**  
**REPORTING**

Words in italics are defined in Rule 49.

- A.** When a vocational rehabilitation counselor is agreed to or appointed pursuant to Rule 42, any reports provided to any party that are prepared by such vocational rehabilitation counselor or job placement specialist acting under the supervision of such vocational rehabilitation counselor shall be provided to all parties, with an additional copy sent directly to the employee. An additional copy shall also be sent to the court, except that reports relating to a loss of earning power evaluation shall be sent to the court only if the counselor is also agreed to or appointed to provide vocational rehabilitation services.
- B.** In all cases involving an approved training plan, the vocational rehabilitation counselor shall provide the court with the employee's grade report or transcript which includes the term and cumulative grade point averages and a copy of the employee's class schedule for the next training period, including the days of the week. These shall be provided on or before the first class day of the next training period. The employee shall provide the counselor with a signed release form authorizing the training provider to release the employee's grade report, transcript, and class schedule to the counselor. Failure of the vocational rehabilitation counselor to provide a copy of the class schedule, grade transcript or a training progress report, or any other data requested by the court when due may result in a loss of funding or cancellation of the employee's vocational rehabilitation plan.
- C.** When an employee fails to make satisfactory progress or discontinues participating in an approved vocational rehabilitation plan, the court shall be immediately notified by the vocational rehabilitation counselor. The vocational rehabilitation counselor shall also promptly notify the employer or his or her insurer, in writing, when an employee has discontinued participating in an approved vocational rehabilitation plan.
- D.** The vocational rehabilitation counselor shall notify the court within five working days of termination of vocational rehabilitation services using a form developed by the court for such purpose.
- E.** Failure of a vocational rehabilitation counselor to comply with the reporting requirements of this rule may cause the certification of such counselor to be denied, *revoked*, or placed in a *probationary status*.

Sections 48-162.01, 48-163, 48-165, R.R.S. 2010.

Effective date: December 12, 2013.

## **RULE 38**

### **VOCATIONAL REHABILITATION COSTS**

- A.** Costs of tuition, books, tools, and such other fees and costs as are deemed appropriate by the court shall be paid directly to the service provider or payor from the Workers' Compensation Trust Fund upon receipt of a training progress report, as required, and proper billing or other appropriate documentation.
- B.** When residence is required at or near the facility or institution away from the employee's customary residence and board and/or lodging is available at the training facility, such costs shall be paid directly to the training facility from the Workers' Compensation Trust Fund upon receipt of proper billing.
- C.** When residence is required at or near the facility or institution away from the employee's customary residence and board and lodging are available at the training facility or institution and the employee elects to utilize local housing in lieu of that available at the training facility or institution, the equivalent of the published cost of the training facility's or institution's board and lodging, but not local travel, may be paid directly to the employee from the Workers' Compensation Trust Fund. Such costs shall be established and approved by the court.
- D.** When residence is required at or near the facility or institution, away from the employee's customary residence and board and/or lodging is not available at the training facility, the reasonable cost of board, lodging and travel will be paid directly to the employee from the Workers' Compensation Trust Fund. Such costs shall be established and approved by the court.
- E.** When it is in the best interests of the employee to commute to and from the facility or institution rather than to reside at or near the facility or institution the reasonable cost of travel or the equivalent of the reasonable cost of room and board, whichever is lower, may be paid directly to the employee from the Workers' Compensation Trust Fund. Such costs shall be established and approved by the court.

Sections 48-162.01, 48-162.02, 48-163, R.R.S. 2010.

Effective date: December 19, 2000.

## RULE 39

### **VOCATIONAL REHABILITATION CERTIFICATION OF VOCATIONAL REHABILITATION SERVICE PROVIDERS**

Words in italics are defined in Rule 49.

- A. The court will certify vocational rehabilitation service providers in the following areas: vocational rehabilitation counselor and job placement specialist.
- B. No vocational rehabilitation service provider shall provide vocational rehabilitation services unless he or she has satisfied the standards for certification established by the court and has been certified by the court.
- C. Any loss of earning power evaluation performed by a vocational rehabilitation counselor shall be performed by a vocational rehabilitation counselor who has satisfied the standards for certification established by the court and has been certified by the court.
- D. Certification may be denied, *revoked*, or placed in a *probationary status* if the court determines that the vocational rehabilitation service provider is not capable of rendering competent vocational rehabilitation services or for any of the following reasons:
  - 1. Failure to comply with the ethical standards and responsibilities established by the court or the generally accepted standards of conduct in the vocational rehabilitation profession, including but not limited to the Code of Professional Ethics for Rehabilitation Counselors adopted by the Commission on Rehabilitation Counselor Certification.
  - 2. Conviction of a crime that is reasonably related to professional activities performed in providing vocational rehabilitation services.
  - 3. Deliberately withholding pertinent information from or submitting false or misleading information to any of the parties, another vocational rehabilitation service provider, or the court.
  - 4. Failure to provide sufficient supporting documentation or deliberately presenting false or misleading information or omitting relevant facts in the application for certification under Rules 40 and 41.
  - 5. Failure to comply with the reporting requirements of Rule 37.
  - 6. Failure to comply with the requirements of the Nebraska Workers' Compensation Act or the court's Rules of Procedure.

- E. Certification of a vocational rehabilitation service provider shall not be denied, *revoked*, or placed in a *probationary status* pursuant to Rules 37, 39, 40, or 41 until after he or she has had notice and an opportunity to be heard by a judge of the court. A request by a vocational rehabilitation service provider to be heard by a judge of the court shall not stay operation of the denial, *revocation*, or *probationary status* unless such a stay is ordered by the judge.

Sections 48-162.01, 48-163, R.R.S. 2010.

Effective date: November 16, 2006.

## **RULE 40**

### **VOCATIONAL REHABILITATION CERTIFICATION OF COUNSELORS**

Words in italics are defined in Rule 49.

- A.** The vocational rehabilitation counselor certification process is designed to ensure individuals working in this specialized area of rehabilitation have attained an acceptable level of education, knowledge, and experience necessary to provide all relevant vocational rehabilitation services to the employee, and are otherwise capable of rendering competent vocational rehabilitation services to the employee.
- B.** For the purpose of the Nebraska Workers' Compensation Act, the vocational rehabilitation counselor, to be eligible for certification, shall meet the required education and/or experience. All education and/or experience claimed and used as a basis for certification shall have been attained at the time of application. Acceptable experience shall be:
  - 1. Paid employment performing five or more of the following duties:
    - a. Client Assessment;
    - b. Transferable Skills Analysis;
    - c. Labor Market Research and Analysis;
    - d. Vocational Counseling;
    - e. Job Placement;
    - f. Loss of Earning Power Evaluation;
    - g. Application of Medical Information to Vocational Rehabilitation;
    - h. Vocational Plan Development and Implementation;
    - i. Case Management.
  - 2. Professionally supervised internships, preceptorships, or practica performing five or more of the duties listed in Rule 40,B,1, whether paid or unpaid.
- C.** Certification shall be for a period of two years. To be eligible for certification, the applicant shall present documentary evidence that he/she has attained:
  - 1. A master's or doctoral degree in rehabilitation counseling or rehabilitation administration from an accredited college or university, or;

2. A master's or doctoral degree in a counseling discipline from an accredited college or university, and 1,000 hours acceptable experience or;
3. A master's or doctoral degree in a human services field and 2,000 hours acceptable experience or;
4. Designation of Certified Rehabilitation Counselor (CRC) from the Certification of Rehabilitation Counselor Commission (CRCC), or;
5. Certification as a Fellow or Diplomate by the American Board of Vocational Experts (ABVE), or;
6. Designation of Certified Vocational Evaluator (CVE) from the Commission on the Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES), and 2,000 hours acceptable experience or;
7. A bachelor's degree in a human services related field and at least 4,000 hours acceptable experience or;
8. A bachelor's degree in any field (other than human services), at least 4,000 hours acceptable experience and completion of at least nine credit hours of training or course work from an accredited college or university or 110 contact hours of CCMC/ CDMSC/ CRCC/ CCWAVES/ IARPS/ NBCC/ ABVE approved continuing education units in any of the following subject areas:
  - a. Medical (and/or psychological) aspects of disability;
  - b. Counseling theories;
  - c. Vocational evaluation and testing;
  - d. Occupational and labor market information;
  - e. Rehabilitation plan development and implementation;
  - f. Job placement process in rehabilitation;
  - g. Introduction to/overview of rehabilitation;
  - h. Loss of earning power evaluations.

**D.** An individual desiring certification as a vocational rehabilitation counselor shall submit to the court:

1. A completed application for certification. A form developed by the court shall be used for this purpose.
2. An official college transcript or, if applicable, proof of national certification by CRCC, CCWAVES, or ABVE.

3. A detailed employment history including at a minimum: names, addresses, and telephone numbers of the applicant's employers and immediate supervisors; inclusive dates of employment; and copies of official job descriptions or detailed summaries of job responsibilities for positions intended to meet the required employment experience.
  4. Any other information, including supporting documentation, as requested by the court.
- E.** Individuals shall apply for renewal of certification within 60 days prior to the expiration date of their current certification period. Upon receipt of a written request, the court at its discretion, may grant the vocational rehabilitation counselor additional time to apply for renewal. If certification is not renewed, either at the normal expiration date or within the time prescribed by the court, the individual will be notified that his or her certification has not been renewed. The individual's name shall be removed from the directory of certified vocational rehabilitation counselors maintained by the court, and the counselor shall provide no further services in cases subject to the Act. The counselor shall notify the court of all employees for whom services are currently being provided, and a new counselor will be agreed to or appointed pursuant to Rule 42.
- F.** An individual desiring renewal of certification as vocational rehabilitation counselor shall submit to the court:
1. A completed application for certification. A form developed by the court shall be used for this purpose.
  2. Documentary evidence that he or she has completed 24 contact hours of continuing education. A minimum of two hours shall be in ethics. Continuing education contact hours shall be approved by CCMC/ CDMSC/ CRCC/ CCWAVES/ IARPS/ NBCC/ ABVE or the court's vocational rehabilitation section. Hours not approved by one of the certifying boards listed shall be in the areas identified in Rule 40,C,8. The dates of completion of continuing education hours must fall within the current certification period.
  3. Any other information, including supporting documentation, as requested by the court.
- G.** A counselor whose certification has not been renewed shall reapply for certification in order to provide services under the Act. In order to be eligible for certification after nonrenewal the applicant shall submit to the court:
1. A completed application for certification. A form developed by the court shall be used for this purpose.
  2. Documentary evidence that he or she has completed at least 24 contact hours of continuing education. A minimum of two hours shall be in ethics.

Continuing education contact hours shall be approved by CCMC/ CDM-SC/ CRCC/ CCWAVES/ IARPS/ NBCC/ ABVE or the court's vocational rehabilitation section. Hours not approved by one of the certifying boards listed shall be in the areas identified in Rule 40,C,8. The dates of completion of continuing education hours must fall within the 24 months immediately preceding the application for certification.

3. Any other information, including supporting documentation, as requested by the court.

**H.** Failure to provide sufficient supporting documentation or deliberately presenting false or misleading information or omitting relevant facts in the application may cause certification to be denied, *revoked*, or placed in *probationary status*.

Sections 48-162.01, 48-163, 48-165, R.R.S. 2010.

Effective date: November 16, 2006.

## **RULE 41**

### **VOCATIONAL REHABILITATION CERTIFICATION OF JOB PLACEMENT SPECIALISTS**

Words in italics are defined in Rule 49.

- A.** The job placement specialist certification process is designed to ensure individuals working in this specialized area of rehabilitation have attained an acceptable level of education and experience necessary to provide all relevant services to the employee, and are otherwise capable of rendering competent job placement services to the employee.
- B.** The job placement specialist, under the supervision of the vocational rehabilitation counselor, shall be responsible for assisting the employee in returning to gainful employment within the individual's capabilities. In conjunction with the vocational rehabilitation counselor, the job placement specialist shall confirm the employee's job readiness and overall preparation to seek employment.
- C.** The job placement specialist shall work closely with the employee to identify appropriate potential positions and/or vacancies for which the individual should apply. These positions shall be consistent with the employee's skills, interests, aptitudes, physical limitations and restrictions, and the specific vocational goal(s) listed on the approved vocational rehabilitation plan written by a vocational rehabilitation counselor.
- D.** A vocational rehabilitation counselor or job placement specialist employed by a state agency providing vocational rehabilitation services and not working as a private vocational rehabilitation service provider shall be exempt from meeting job placement specialist certification or renewal of certification requirements for so long as he or she remains employed by such agency and shall be considered qualified and certified to provide job placement services.
- E.** To be eligible for job placement specialist certification, the applicant shall meet the required education and/or experience. All education and/or experience claimed and used as a basis for certification shall have been attained at the time of application. Acceptable experience shall be:
  - 1. Paid employment performing all of the following duties:
    - a. Job development;
    - b. Resume writing;
    - c. Interview assistance;
    - d. Job lead identification;

- e. On-the-job-training development;
  - f. Employee and employer follow up.
2. Professionally supervised internships, preceptorships, or practica performing all of the duties listed in Rule 41,E,1, whether paid or unpaid.
- F.** Certification shall be for a period of two years. To be eligible for certification, the applicant shall present documentary evidence that he/she has attained:
- 1. A master's degree or higher in a counseling discipline from an accredited college or university, or;
  - 2. Designation of Certified Rehabilitation Counselor (CRC) from the Certification of Rehabilitation Counselor Commission, or; Rehabilitation Counselor Commission (CRCC), or;
  - 3. Certification as a Fellow or Diplomate by the American Board of Vocational Experts (ABVE), or;
  - 4. Designation of Certified Vocational Evaluator (CVE) from the Commission on the Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES), and 2,000 hours acceptable experience or;
  - 5. A bachelor's degree in a human services field from an accredited postsecondary institution and 1,000 hours acceptable experience, or;
  - 6. An associate degree or higher from an accredited postsecondary institution, and 2,000 hours acceptable experience, or;
  - 7. A minimum of 6,000 hours acceptable experience.
- G.** An individual desiring certification as a job placement specialist shall submit to the court:
- 1. A completed application for certification. A form developed by the court shall be used for this purpose.
  - 2. An official transcript from the postsecondary institution or, if applicable, proof of national certification.
  - 3. A detailed employment history including at a minimum: names, addresses, and telephone numbers of the applicant's employers and immediate supervisors; inclusive dates of employment; and copies of official job descriptions or detailed summaries of job responsibilities for positions intended to meet the required employment experience.
  - 4. Any other information, including supporting documentation, as requested by the court.

- H.** Individuals shall apply for renewal of certification within 60 days prior to the expiration date of their current certification period. Upon written request the court, at its discretion, may grant the job placement specialist additional time to apply for renewal. If certification is not renewed, either at the normal expiration date or within the time prescribed by the court, the individual will be notified that his or her certification has not been renewed. The individual's name shall be removed from the directory of certified job placement specialists maintained by the court, and the job placement specialist shall provide no further services in cases subject to the Nebraska Workers' Compensation Act. The job placement specialist shall notify the court of all employees for whom services are currently being provided.
- I.** An individual desiring renewal of certification as a job placement specialist shall submit to the court:
1. A completed application for certification. A form developed by the court shall be used for this purpose.
  2. Documentary evidence that he or she has completed at least 24 contact hours of continuing education. A minimum of two hours shall be in ethics. Continuing education contact hours shall be approved by CCMC/ CDM-SC/ CRCC/ CCWAVES/ IARPS/ NBCC/ ABVE or the court's vocational rehabilitation section. Hours not approved by one of the certifying boards listed shall be in the areas identified in Rule 41,E,1. The dates of completion of continuing education hours must fall within the current certification period.
  3. Any other information, including supporting documentation, as requested by the court.
- J.** A job placement specialist whose certification has not been renewed shall re-apply for certification in order to provide services under the Act. In order to be eligible for certification after nonrenewal the applicant shall submit to the court:
1. A completed application for certification. A form developed by the court shall be used for this purpose.
  2. Documentary evidence that he or she has completed at least 24 contact hours of continuing education. A minimum of two hours shall be in ethics. Continuing education contact hours shall be approved by CCMC/ CDM-SC/ CRCC/ CCWAVES/ IARPS/ NBCC/ ABVE or the court's vocational rehabilitation section. Hours not approved by one of the certifying boards listed shall be in the areas identified in Rule 41,E,1. The dates of completion of continuing education hours must fall within the 24 months immediately preceding the application for certification.

3. Any other information, including supporting documentation, as requested by the court.

**K.** Failure to provide sufficient supporting documentation or deliberately presenting false or misleading information or omitting relevant facts in the application may cause certification to be denied, *revoked*, or placed in *probationary status*.

Sections 48-162.01, 48-163, 48-165, R.R.S. 2010.

Effective date: November 16, 2006.

## **RULE 42**

### **VOCATIONAL REHABILITATION CHOICE OF COUNSELOR**

- A.** If entitlement to vocational rehabilitation services is claimed by the employee, or a loss of earning power evaluation is desired by any party, the selection requirements of section 48-162.01(3) shall apply. The parties shall make a good faith attempt to agree on the choice of a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors.
1. Any party may propose the selection of a vocational rehabilitation counselor from the directory.
  2. The proposed vocational rehabilitation counselor shall obtain written agreement of his or her selection from each of the parties. The vocational rehabilitation counselor may contact the parties directly for this purpose. If agreement of all parties is obtained, the vocational rehabilitation counselor shall notify the court of his or her selection within five working days, using a form developed by the court.

Before agreement is obtained from the employee, the vocational rehabilitation counselor must provide written notice to the employee of his or her rights regarding the selection of the vocational rehabilitation counselor. The written notice shall include:

- a. The employee's right to agree to the proposed vocational rehabilitation counselor to provide vocational rehabilitation services and/or perform a loss of earning power evaluation;
- b. The employee's right not to agree to the proposed vocational rehabilitation counselor;
- c. The employee's right to propose a vocational rehabilitation counselor of his or her own choosing from the directory of vocational rehabilitation counselors;
- d. The employee's right to request the court to appoint a vocational rehabilitation counselor at no cost to the employee, if the parties are unable to agree on a vocational rehabilitation counselor.

A form developed by the court may be used to provide the required notice to the employee.

3. If, after a good faith attempt, the parties are unable to agree on the selection of a vocational rehabilitation counselor, a party shall request that the court appoint a vocational rehabilitation counselor from the directory. This

request shall be made using a form developed by the court with the requestor providing copies to all other parties.

4. Within 15 working days following receipt of a form requesting appointment of a vocational rehabilitation counselor, a rehabilitation specialist of the court shall appoint a vocational rehabilitation counselor from the directory and advise the parties of the name of the court appointed vocational rehabilitation counselor.

**B.** When appointing a vocational rehabilitation counselor, a rehabilitation specialist of the court shall contact the individual whose name appears at the top or first position of the directory to ascertain if that vocational rehabilitation counselor agrees to accept the appointment, taking into consideration, but not limited to, such factors as geographic location of the employee and counselor, availability of the counselor to provide the requested services, ability of the counselor to provide timely services, and whether the counselor or another counselor associated with the same firm has provided or will provide medical case management services in the same claim.

1. If the vocational rehabilitation counselor accepts the appointment, his or her name shall be placed at the end of the directory. The next vocational rehabilitation counselor's name on the directory shall then be moved to the top of the directory.
2. In the event that the vocational rehabilitation counselor does not accept the appointment, the vocational rehabilitation counselor whose name appears next on the directory shall be contacted to determine if he or she will accept the appointment. This process shall continue until the appointment is finally accepted.
3. Refusal without good cause to accept an appointment shall result in the vocational rehabilitation counselor's name being placed at the end of the directory.

**C.** All contact between the vocational rehabilitation counselor and the parties, other than the employee, shall be in writing with copies provided to all other parties, with an additional copy sent directly to the employee, except that the vocational rehabilitation counselor may have direct contact:

1. As provided in Rule 42,A,2;
2. With the employer to assess the likelihood of the employee being able to return to the previous job with the same employer, or being able to return to the previous job with modifications, or to obtain a new job with the same employer. For purposes of this paragraph "employer" shall not include attorneys, claims representatives, risk management personnel, or similar representatives of the employer, but shall only include the person or persons

required to explain what the applicable job entails, and what may be necessary to modify the job;

3. With all parties when they agree to jointly meet or to conduct a jointly held conference call with the vocational rehabilitation counselor to discuss the case;
  4. For the purpose of taking a deposition;
  5. With the employer or its insurer or risk management pool to assist the employee in obtaining special or adaptive equipment necessary for the employee to accomplish an approved vocational rehabilitation plan, or necessary for the employee to return to a job with the same employer as described in Rule 42,C,2;
  6. With the employer or its insurer or risk management pool to assist the employee in determining the status of temporary disability benefit payments while undergoing an approved vocational rehabilitation plan;
  7. With the employer or its insurer or risk management pool to assist the employee in arranging for necessary specialized or acute medical care while the employee is participating in an approved vocational rehabilitation plan.
- D.** The vocational rehabilitation counselor agreed to or appointed pursuant to this rule shall be the sole vocational rehabilitation counselor to provide vocational rehabilitation services at any one time.
- E.** The parties, other than the employee, shall not attempt to influence or to control the meeting place, the outcome of the evaluation, or the recommendations of the vocational rehabilitation counselor. The meetings shall be held at a neutral site, except as provided in Rule 42,C.

Sections 48-162.01, 48-163, R.R.S. 2010.

Effective date: November 16, 2006.

## **RULE 43**

### **VOCATIONAL REHABILITATION CHANGE OF COUNSELOR**

- A.** A change in the vocational rehabilitation counselor providing vocational rehabilitation services or performing a loss of earning power evaluation may be requested by the employee, the employer or its insurer or risk management pool, or the vocational rehabilitation counselor. This change shall only be made after approval has been obtained from the court.
1. The party or the vocational rehabilitation counselor desiring a change in vocational rehabilitation counselor must submit the request in writing to the court, using a form developed by the court with copies to all other parties and the counselor.
  2. The request shall identify the specific reasons for the requested change.
  3. A vocational rehabilitation specialist of the court will review the request and either approve or deny the request within 15 working days.
    - a. If the specialist of the court does not concur with the requested change, the specialist will notify all parties and the counselor of the denial and the reasons for rejecting the requested change. When a change request is not approved, vocational rehabilitation services must be continued with the previously agreed upon or appointed vocational rehabilitation counselor.
    - b. If the specialist of the court determines that the requested change should be approved, the specialist will notify all parties and the current counselor of the approval and the reasons for approving the requested change.
- B.** Following receipt of notification from the court that the request for change in vocational rehabilitation counselor has been approved, the procedures and requirements of Rules 42,A and 42,B shall apply.
- C.** Once a change of vocational rehabilitation counselor has been accomplished, the previous vocational rehabilitation counselor shall provide any and all pertinent information in the previous vocational rehabilitation counselor's possession to the newly appointed vocational rehabilitation counselor except for such information that may be legally considered proprietary in nature.

Sections 48-162.01, 48-163, R.R.S. 2010.

Effective date: November 16, 2006.

## **RULE 44**

### **VOCATIONAL REHABILITATION PLAN DEVELOPMENT AND IMPLEMENTATION**

- A.** The vocational rehabilitation counselor voluntarily chosen or appointed shall perform the unbiased and accurate evaluation, development, submission, and implementation of the employee's vocational rehabilitation plan.
1. When required, the vocational rehabilitation counselor shall evaluate the employee's vocational interests, aptitudes, skills, and physical, psychological, and psychosocial abilities. In addition to reviewing medical data or consulting with medical and/or mental health professionals, the vocational rehabilitation counselor may obtain the data via interviews, review of medical, diagnostic, psychometric, and related information describing the individual's injury and functional capabilities.
  2. When required, the vocational rehabilitation counselor or other qualified personnel under the supervision of the vocational rehabilitation counselor shall perform transferable skills analyses, labor market surveys, utilization of occupational and employment information, and on-the-job evaluations (including real or simulated work activity determinations), administering and/or interpreting psychometric and/or vocational testing (to include standardized interest, aptitude, achievement, and specific skills tests).
- B.** The vocational rehabilitation counselor voluntarily agreed to or appointed shall evaluate the employee to determine what vocational rehabilitation services, if any, may be needed to assist the employee to return to suitable employment.
1. The vocational rehabilitation counselor shall follow the priorities pursuant to section 48-162.01 in evaluating the employee and developing a rehabilitation plan. No formal retraining plan shall be submitted to the court unless the vocational rehabilitation counselor certifies that all lower priorities have been determined to be unlikely to result in a suitable job placement or return to work opportunity for the injured employee.
  2. No higher priority may be utilized unless the vocational rehabilitation counselor has determined that all lower priorities would unlikely result in the job placement or return to work of the injured employee. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized.
  3. The following priorities are listed in order from lower to higher priority.
    - a. Return to the previous job with the same employer;
    - b. Modification of the previous job with the same employer;

- c. A new job with the same employer;
  - d. A job with a new employer;
  - e. A period of formal training which is designed to lead to employment in another career field. This is designed to prepare the employee for suitable employment in another occupation. Formal training shall be applicable to the specific vocational goal listed on the proposed vocational rehabilitation plan and shall be appropriate and necessary to enable the employee to meet the vocational goal.
- C.** Only certified vocational rehabilitation counselors shall develop vocational rehabilitation plans. When the vocational rehabilitation counselor determines the injured employee will be unable to return to suitable employment without the provision of vocational rehabilitation services, the vocational rehabilitation counselor shall develop a vocational rehabilitation plan and submit it directly to the court. The plan shall list the specific vocational goal, the specific types of services and estimated costs necessary to meet the specific vocational goal.
- D.** All proposed rehabilitation plans shall be submitted on a vocational rehabilitation plan form developed by the court and shall be completed in accordance with the instructions provided on the form.
- E.** The fee of the vocational rehabilitation counselor for the evaluation and for the development and implementation of the vocational rehabilitation plan shall be paid for by the employer or his or her insurer within 30 days of receipt of a statement of charges. Such fee shall include expenses for job placement services provided by the vocational rehabilitation counselor as well as expenses for a certified job placement specialist or an interpreter when necessary to assist the vocational rehabilitation counselor in the performance of his or her duties. Any such job placement specialist or interpreter shall be selected by the vocational rehabilitation counselor.

Sections 48-162.01, 48-163, 48-165, R.R.S. 2010.

Effective date: December 18, 2008.

## **RULE 45**

### **LOSS OF EARNING POWER EVALUATION**

- A.** Loss of earning power evaluations shall be performed by private vocational rehabilitation counselors whose names appear on the approved directory established by the court.
- B.** If the parties cannot agree on the choice of a vocational rehabilitation counselor from the directory to perform the loss of earning power evaluation, the parties shall request the court to assign a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors pursuant to the procedures outlined in Rule 42.
- C.** The fee of the vocational rehabilitation counselor for the loss of earning power evaluation shall be paid by the employer or his or her insurer within 30 days of receipt of a statement of charges. Such fee shall include expenses for an interpreter when necessary to assist the vocational rehabilitation counselor in the performance of his or her duties. Any such interpreter shall be selected by the vocational rehabilitation counselor.

Sections 48-162.01, 48-163, R.R.S. 2010.

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