

REHABILITATION UNIT

ADMINISTRATIVE GUIDELINES

ADOPTED February 14, 1997

INDEX

- 1-10-01 Application of Administrative Guidelines
- 8-10-01 Undocumented Workers
- 8-10-02 Injured Worker Living Out-of-State/Country (Amended effective September 25, 1998)
- 8-10-03 Non-English Speaking Qualified Injured Worker (Amended effective September 25, 1998)
- 8-10-04 Return to Modified/Alternate Work via the RU-94 (Amended effective September 25, 1998)
- 8-20-00 Qualified Rehabilitation Representative (Amended effective September 4, 1997)
- 8-20-01 Independent Vocational Evaluator
- 8-20-02 Work Evaluation/Testing
- 8-30-01 Employee Requests for Vocational Rehabilitation Services
- 8-30-01.1 Deferral/Interruption of Rehabilitation Services
- 8-30-01.2 Employee Request for Reinstatement of Rehabilitation Services (Amended effective September 4, 1997)
- 8-30-01.3 Declination and Employee Request for Services Following Declination
- 8-30-01.4 Statute of Limitations
- 8-30-02 Initiation of Vocational Services/Referral to a Qualified Rehabilitation Representative (Amended effective September 4, 1997)
- 8-30-02.1 Change of Qualified Rehabilitation Representative

- 8-30-02.2 Waiver of Qualified Rehabilitation Representative
- 8-40-00 Continuous Trauma/Multiple Employers
- 8-40-01 Disputed Compensability and Compromise and Release Cases
- 8-40-02 Uninsured Employer Fund Cases
- 8-50-00 Nature, Extent and Duration of Plan Services
- 8-50-01 Plan Evaluation and Approval
- 8-50-01.1 Subsequent Rehabilitation Plan
- 8-50-02 Vocational Rehabilitation Maintenance Allowance/Vocational Rehabilitation Temporary Disability (Amended effective September 25, 1998)
- 8-50-02.1 Vocational Rehabilitation Maintenance Allowance/Vocational Rehabilitation Temporary Disability During On-the job Training (Suspended effective June 5, 1997)
- 8-50-02.2 Maintenance Benefits due to Public Safety Employees
- 8-50-03 Self-employment/Capital Investment (Amended effective September 4, 1997)
- 8-50-04 Additional Living Expenses (Amended effective September 25, 1998)
- 8-50-04.1 Transportation Expenses
- 8-50-04.2 Relocation Expenses
- 8-50-04.3 Tools
- 8-50-05 Job Placement
- 8-50-06 Plan for Modified/Alternate Work via the RU-102
- 8-60-00 Interpreting Fees
- 8-60- Multiple Rehabilitation Providers

01

8-60-
02 Sub Rosa Films

8-60-
03 Service of Medical/Vocational Reports

8-60-
04 Dispute Resolution

8-60-
05 Determinations

8-60-
06 Enforcement of Unit Determinations

8-60-
07 Attorney Fees

8-60-
08 Fee Disputes

8-60-
09 Communication with the Parties

8-60-
10 Venue Assignment, Maintenance and Transfer of Case Files

8-60-
11 Jurisdiction of the Rehabilitation Unit

8-60-
12 Proceedings before the WCAB/Procedures following Appeal

8-70-
00 Conclusions/Terminations

8-80-
00 Public Access to Rehabilitation Unit Records/H.I.V. Case Handling

8-80-
01 Considerations For Audit Referral

SUBJECT: APPLICATION OF GUIDELINES

SECTION NUMBER: 1-10-01

EFFECTIVE DATE: February 14, 1997

Issues before the Unit shall be addressed on the basis of their individual merits. The Unit will discharge its obligations in a fair, uniform and consistent manner.

The Unit Consultants shall adhere to the Administrative Guidelines in reaching determinations on issues addressed herein on all cases before the Unit. Deviations from established Guidelines shall not be undertaken by Consultants absent unique, extraordinary or distinctive factors which would render the application of established Guidelines inappropriate, or yield a result unfair to the parties, contrary to the best interest of the injured worker or contrary to the statutory responsibilities of the Unit. Circumstances not covered by these Guidelines shall be discussed with the Area Supervisor and Rehabilitation Unit Manager.

While the Guidelines included herein are expected to be applied as established, it is recognized that exceptions may exist in line with the above noted conditions. But under such conditions, the Area Supervisor must be involved in the decision making process and give approval for the deviation.

Any variations from established Guidelines must be specifically identified in a Determination which shall also identify the factors incompatible with the Guideline and provide a rationale for the action or determination taken. Copies of such Determinations shall be sent to the Rehabilitation Unit Manager.

References in these guidelines to "L.C. §" are to sections of the California Labor Code; references to "A.R. §" are to administrative rules contained in Title 8, of the Code of California Regulations; and references to "A.G. §" are to sections of these administrative guidelines.

SUBJECT: UNDOCUMENTED WORKERS

SECTION NUMBER: 8-10-01

EFFECTIVE DATE: February 14, 1997

The Rehabilitation Unit is to insure that Undocumented workers shall be treated like all other workers involved in the Workers' Compensation Rehabilitation system. However, offers of modified work, alternate work or job placement assistance shall not be provided unless the employee has met the federal requirements to establish work eligibility in the United States.

The Consultant shall require the early identification provisions of L.C. § 4636 are met. Additionally, if medical eligibility is determined, vocational feasibility should be determined and a rehabilitation plan shall be developed provided the employee cooperates in the provision of services.

The Unit Consultant shall require any plan developed for an undocumented worker, which is submitted for approval, address all services required to restore the injured workers' employability, including, but not limited to, necessary training, job-seeking

skills, labor market assessment and additional living expenses. Direct placement activities by the Qualified Rehabilitation Representative are not required.

The Unit does not have jurisdiction to determine an employee's work eligibility. However, it does have responsibility to determine the need for, kind of and practicality of vocational rehabilitation services.

Where there is a dispute regarding an employee's legal entitlement to work in the United States, which cannot be resolved among the parties, the Unit Consultant will not order the provision of placement services, utilization of modified/alternate work with the pre-injury employer, development of an on-the-job training or self-employment in the United States, pending resolution of residency status by the appropriate agency or agencies.

Upon the request of an undocumented Qualified Injured Worker, a plan providing for vocational rehabilitation services in the injured worker's native country may be developed with agreement of the parties. When a dispute develops, the consultant will consider the positions of the parties and determine the most appropriate services. For DOI's on/after 1/1/94, the Unit's determination shall consider the cost effectiveness of out-of-state services in line with L.C. § 4644 (g). (Also, see A.G. § 8-10-02)

The Unit will not order payment of rehabilitation temporary disability benefits or maintenance allowance to undocumented employees during self-directed placement activities in the United States.

SUBJECT: INJURED WORKERS LIVING OUT OF STATE/COUNTRY

SECTION NUMBER:8-10-02

EFFECTIVE DATE: September 25, 1998

Workers injured prior to 1/1/94, who meet the eligibility criteria of L.C. §4635(a)(1-2) or A.R. §10003(c)(1-2), are entitled to vocational rehabilitation benefits and services regardless of the worker's place of residence.

When a worker is injured on or after 1/1/94, the Claims Administrator and the injured worker may agree to vocational rehabilitation services at a location outside of California. In the event of a dispute, the Rehabilitation Unit shall not order services unless it is demonstrated that they are more cost-effective than similar services provided in the state.

When a dispute for an out-of-state worker is filed, the Unit will establish a case in accordance with the Rehabilitation Unit form filing instructions. (See Appendix "A", Form Filing Guidelines and Appendix "B", Venue List.) Any exceptions require prior written approval of the Area Supervisor.

For disputes regarding out-of-state workers injured on or after 1/1/94, the Unit Consultant shall consider the injured worker's proposal setting forth costs attendant to out-of-state services (i.e. expenses of VRMA, tuition, travel, additional living expenses, QRR, etc.) and compare this proposal to the Claims Administrator's opposing arguments and/or evidence of the cost of similar services in state. The Unit Consultant may order a consultation by a Qualified Rehabilitation Representative, if deemed necessary to facilitate a determination. The cost of this consultation is within the counseling fee cap. In such cases the Consultant shall issue a finding as to which services are the most cost effective and as to the out-of-state employee's entitlement or non-entitlement to services, on an expedited basis, within 10 days of receipt of all information pertinent to the nature and extent of services.

Upon a finding of entitlement to out-of-state services, the parties should agree on a QRR to provide rehabilitation services in line with L.C. §4638 and the California Standards Governing the Timeliness and Quality of Vocational Rehabilitation Services.

The Unit lacks jurisdiction to apply A.R. §10126(k) to private vocational schools located outside of the State of California. In the event a dispute arises involving A.R. §10126(k) and an out-of-state private vocational school, the Unit shall require the QRR confirm whether the school is required to be approved by a state or national agency analogous to the California Council for Private Post Secondary Education, and if so, require the appropriate approval.

Should a dispute arise due to the employee making a change of residence unanticipated by an approved plan, the Consultant shall determine whether:

- 1) The injured worker has abandoned his/her plan and if the employer has met its obligations to provide vocational rehabilitation services;
- 2) whether the plan should be interrupted (For DOI's on or after 1/1/94, the plan, inclusive of the interruption, must be completed within 18 months of approval or commencement, as applicable);
- 3) whether the plan can reasonably be completed in the new location, (For DOIs on or after 1/1/94, the Unit shall not order plan completion out-of-state without agreement of the parties or a determination that such services are more cost effective than similar in-state services); and
- 4) whether further evaluation is necessary, (For DOI's on or after 1/1/94, such costs are within the counseling fee cap.).

Unless the plan provides for relocation, the Unit will not require payment of rehabilitation temporary disability benefits/maintenance allowance during the period required by the employee's relocation. Vocational rehabilitation services shall be interrupted during this period.

SUBJECT: NON-ENGLISH SPEAKING QUALIFIED INJURED WORKER

SECTION NUMBER: 8-10-03

AMENDED EFFECTIVE September 25, 1998

An injured worker's inability to communicate in English does not affect the worker's right to receive vocational rehabilitation services.

The Unit will recognize that assessment of the employee's linguistic and/or communication skills is an element of the vocational evaluation process and encourages an early assessment of those skills.

English language training may be provided when such training is necessary to complete a plan. When language training is provided, it should be concurrent with other components of a plan or other reasonable and necessary vocational rehabilitation services, unless (a) by agreement of the parties or (b) the Qualified Rehabilitation Representative recommends that such training together with allowable placement services is all that is necessary to return an otherwise employable injured worker to suitable gainful employment. The QRR's recommendation must confirm that the employee's skills and aptitudes have been assessed and that a defined period of ESL training can reasonably be expected to increase his/her English to the level of proficiency necessary to achieve competitive employment.

The Unit recognizes the importance of English as a second language training as an avenue towards increasing a non-English speaking employee's ability to benefit from vocational rehabilitation services. The Unit will promote the provision of appropriate English language training as noted above.

Further, the Unit recommends that non-English speaking QIW's participate in ESL Training, at their own expense, where not appropriate as a vocational rehabilitation service. To that end, the Unit shall grant a deferral or interruption of V.R. services to allow self-directed ESL training within the allowable time frames set forth in L.C. §4644(c) and L.C. §5410.

SUBJECT: MODIFIED WORK OR ALTERNATE WORK WITH SAME EMPLOYER VIA THE RU-94

SECTION NUMBER: 8-10-04

AMENDED EFFECTIVE September 25, 1998

The Rehabilitation Unit shall define an offer of modified work as follows:

1) Meeting the conditions of L.C. §4644(a-5);

and

2) Modification of the duties of the injured employee's usual and customary occupation consistent with the employee's documented medical restrictions; and/or

3) Modification of the injured employee's work station or environment consistent with medical restrictions

The Rehabilitation Unit considers a modified job to be one which is consistent with A.R. §10122(m).

The Rehabilitation Unit shall require an offer of alternative work to meet the conditions outlined in L.C. § 4644 (a-6) (A,B,C &D).

When resolving disputes regarding the offer of modified/alternative work, for DOI's on/after 1/1/94, the Rehabilitation Unit will require that the RU-94 be prepared at the time a **bonafide** offer of modified/alternative work is made in the notice to the employee pursuant to L.C. § 4636. In the event of the Claims Administrator's initial delay, the RU-94 is to be submitted to the employee within 30 days of the notice of delay in accordance with A.R. § 9813 (d-2) (F). Should parties agree to extend the delay, the Rehabilitation Unit will require the RU-94 be submitted to the employee within 10 days of the end of the agreed upon delay.

The Unit will not grant a deferral of rehabilitation services to an employee if the employer has offered to provide alternative or modified work which does not exceed restrictions or other conditions set forth in L.C. §4644(a-5) or(a-6).

In resolving disputes regarding the identification of modified/alternative work subsequent to the date of the employer's obligation to send the Notice of Potential Eligibility, the Unit Consultant shall require the work meet the criteria of suitable gainful employment described in L.C. §4635(f). Either party may request the Unit assess whether a delay has occurred per L.C. §4642 and A.R. §10125.1, and for DOI's on/after 1/1/94, whether these benefits are attributable to the maximum expenditure cap.

SUBJECT: QUALIFIED REHABILITATION REPRESENTATIVE

SECTION NUMBER: 8-20-00

AMENDED DATE: September 4, 1997

The Unit shall require vocational rehabilitation services be provided to injured workers by individuals who meet the definition of Qualified Rehabilitation Representatives

[Labor Code § 4635(b)], except where a QRR waiver has been granted. A qualified injured worker is to be referred to a QRR selected by agreement between the employee and claims administrator within the time frames and conditions of Labor Code § 4637(a).

If agreement on a QRR cannot be reached within 15 days, either party may request the Unit appoint an Independent Vocational Evaluator [L.C. § 4640 and A.R. § 10127.2 (b) and (c)].

The Unit considers 10 calendar days to be a reasonable period for the Claims Administrator to forward to the agreed QRR all medical and vocational reports, (absent agreement of the parties or extenuating circumstances, e.g. intervening legal holidays, natural or social conditions so disastrous as to impede normal business operations).

If presented with a dispute regarding the selection of, or referral to, an agreed QRR, the Unit Consultant will determine whether any failure to complete the selection and referral in a timely manner constitutes a "delay" pursuant to L.C. § 4642 or reflects a "lack of cooperation" by the employee addressed in L.C. § 4643. The Unit Consultant shall identify which, if any, party is responsible for the untimely selection of or referral to a QRR, as well as the time period which such selection or referral was delayed. For DOI's on or after 1/1/94, the Unit shall determine whether any affected benefits are subject to the total maximum expenditures (\$16,000).

The Rehabilitation Unit shall resolve all submitted disputes regarding the application of the fee schedules in line with A.R. § 10132 and 10132.1.

SUBJECT: INDEPENDENT VOCATIONAL EVALUATOR

SECTION NUMBER:8-20-01

EFFECTIVE DATE: February 14, 1997

The Unit shall appoint an Independent Vocational Evaluator (I.V.E.) if it is determined such appointment will be in the best interest of the parties or in compliance with A. R. § 10127.2. The I.V.E. shall meet the criteria set forth in L.C. § 4635(c). The I.V.E. is responsible for updating their address and active status with the Rehabilitation Unit annually, in accordance with the I.V.E. application instructions.

Pursuant to A.R. § 10127.2 (c), within 15 days of receipt of a request, the Unit shall issue a determination on whether to utilize an I.V.E. The Consultant shall contact the Area Supervisor or their designee for assignment. Assignments shall be made in rotation from a panel of all I.V.E.'s in the geographic area included within the venue of the appropriate Rehabilitation Unit district office and who meet the language and specialty requirements, if any, of the employee.

The Consultant shall issue a determination appointing the I.V.E., which shall be simultaneously served on the I.V.E. and all parties. The determination should:

- 1) Direct the Claims Administrator to forward all medical and vocational reports to the I.V.E. within 10 days and pay the reasonable fees of the I.V.E. in line with A.R. § 10132, 10132.1, and 10133.1. In the event a narrative report is requested by the Unit Consultant the cost should be borne by the insurer.
- 2) Require notification from the I.V.E. or either party if the Unit needs to appoint another I.V.E. due to the inability of the appointed I.V.E. to meet with the employee within 10 days of receipt of the medical and vocational reports;
- 3) Provide instruction to the I.V.E. as to the services to be provided and/or the manner in which their assignment is to be carried out; and
- 4) Include admonitions to the parties regarding improperly communicating with the I.V.E. unless directed to do so by the Rehabilitation Unit as noted in A.R. § 10127.2 (e).

Note: For plans developed by an I.V.E., see A.G. § 8-50-01.

The Rehabilitation Unit may order that vocational rehabilitation services be provided by an IVE at the expense of the claims administrator upon a finding of any of the following:

- 1) The claims administrator failed to provide VR services in a timely manner subsequent to the employee requesting VR services;
- 2) An I.V.E. is necessary for the Rehabilitation Unit to determine if an employee is vocationally feasible;
- 3) An I.V.E. is necessary for the Rehabilitation Unit to determine if a vocational rehabilitation plan gives the QIW a reasonable opportunity of returning to suitable gainful employment;
- 4) The employee and Q.R.R. cannot agree on a vocational goal;
- 5) The appointment is otherwise in the best interest of the parties; supporting rationale must be included in the determination.

An I.V.E.'s fees shall be included as expenditures for purposes of calculating any applicable cap on counselor fees for employees injured before 1/1/94 and became medically eligible on or after 1/1/94, fees which are in excess of the fee schedule shall be allowed only with approval of the unit. Approval shall be documented by the Unit consultant by Determination.

The Rehabilitation Unit recognizes Qualified Rehabilitation Representatives may enter into agreements to provide services at rates less than the fee schedule pursuant to A.R. §

10132 (d-1). However, A.R. 10132 (h) (5) requires Q.R.R.'s acting in the capacity of an I.V.E. to strictly adhere to the fee schedule. In instances when a dispute arises over fees or billing of a Q.R.R. acting in the capacity of an I.V.E., the Rehabilitation Unit shall be guided by A.R. § 10132 (h) (5).

The Rehabilitation Unit Manager shall compile a list of I.V.E.'s who meet the qualifications of L.C. § 4635 (d). Candidates may obtain an application from any district rehabilitation office.

The Rehabilitation Unit Manager may remove an I.V.E. from the rotational list due to any of the following reasons:

- 1) Upon request of the I.V.E.;
- 2) When the I.V.E. is no longer available to provide necessary rehabilitation services during the business week;
- 3) Failure to comply with the Labor Code, Administrative Rules, Guidelines, Standards, and Determinations of the Rehabilitation Unit;
- 4) Falsification of the application for I.V.E.; or
- 5) Failure by the I.V.E. to accept 3 consecutive referrals within 12 months

Note: An I.V.E. remaining on inactive status for a 12 month period will be removed from the rotational list.

Should the Rehabilitation Unit be unable to identify an I.V.E. willing to accept a case where an I.V.E. request has been made, the parties are to submit their position statements to the Unit and the Consultant shall resolve the dispute accordingly.

SUBJECT: WORK EVALUATION/TESTING

SECTION NUMBER:8-20-02

EFFECTIVE DATE: February 14, 1997

Work evaluation and work sample testing can be an appropriate resource where additional objective information is needed to assess the employee's physical capacities (tolerances and stamina), current level of skills and aptitudes, vocational interests, worker traits and/or vocational temperament. (This information may also be readily available by other means.)

The Rehabilitation Unit will encourage the use of work evaluation and work sample testing as necessary to assist the QRR in making recommendations regarding an

employee's ability to benefit from rehabilitation services or to determine the proper direction for services. The work evaluation shall be considered part of the diagnostic effort and not determinative by itself.

When work evaluation is utilized solely to determine the appropriateness of modified/alternate work offered pursuant to L.C. § 4644 (a) (5,6 or 7), the referral may be made by non-QRR's.

In resolving a dispute over the need for a work evaluation, the Unit shall consider the QRR's recommendation(s) detailing the type of module (e.g. work sample testing, vocational testing, situational assessment, etc.), the reason for referral and whether the information was readily determinable by other means. The Unit shall also determine whether the QRR has established that the work evaluation facility/test site selected is appropriate and in compliance with L.C. § 139.5 (h). Additionally, the Unit shall require fees for work evaluations be paid in line with A.R. § 10132.1, phases I and II only, codes 32, 34, 35, 60, 61, 62 & 63. For DOI's on/after 1/1/94, the costs are subject to maximum expenditures. Subsequent work evaluations shall only be made by agreement of the parties, or if appropriate rationale is provided, at the specific direction of the Rehabilitation Unit. The Unit shall not order subsequent work evaluations where applicable fee caps have been exhausted. For DOI's on/after 1/1/94, where Phase I Subcaps are exhausted, the Consultant shall consider alternate means of determining the injured employee's ability to benefit from services (e.g. medical reports, volunteer work, participation in substance abuse counseling, etc.). For pre '94 DOI's subject to phase caps, subsequent work evaluations or testing may be undertaken by agreement of the parties or at the discretion of the Unit Consultant under extraordinary circumstances. Billings should be made under "code 90".

If a dispute exists regarding the provision of vocational testing, the Unit Consultant shall consider the QRR's opinion regarding the need for vocational testing in developing a vocational plan. Rationale provided shall be in line with The California Standards Governing Timeliness and Quality.

The Rehabilitation Unit will encourage testing be performed at a work evaluation facility when this type of facility provides the most appropriate, cost effective and objective method of delivering these services.

SUBJECT: EMPLOYEE REQUESTS FOR V.R. SERVICES

SECTION NUMBER:8-30-01

EFFECTIVE DATE: February 14, 1997

The Rehabilitation Unit will resolve disputes regarding an employee's entitlement for vocational rehabilitation services when the employee files a request due to:

- A) The failure of the Claims Administrator to assign a QRR as required by L.C. § 4637;
- B) The failure of the Claims Administrator to notify the employee of possible entitlement to these services pursuant to L.C. § 4637 or
- C) The failure of the Claims Administrator to timely provide vocational rehabilitation services.

The Unit shall issue a determination denying requests for dispute resolution, (RU 103's) which have not been "properly submitted" in line with A.R. § 10123.

The Rehabilitation Unit shall not process requests for services, filed against the Uninsured Employers' Fund. Except pursuant to a finding by the W.C.A.B. or as otherwise specified in A.G. § 8-40-02.

Upon receipt of a properly submitted RU 103 (and RU 101 if no case was previously established) from an injured worker or his/her attorney, the Unit will establish a case and immediately advise the Claims Administrator of the receipt of the request. The notification shall inform the Claims Administrator that response to the request is required within 20 days and identify the location of the Rehabilitation Unit office to which the response is to be directed. If the Claims Administrator, within 20 days of receipt of the Rehabilitation Unit's notification, fails either to agree to provide vocational rehabilitation services or to demonstrate that the employee is not a Qualified Injured Worker, the Rehabilitation Unit shall authorize the provision of VR services through a QRR of the employee's choice, or at the employee's request, through an I.V.E. Generally, disputes of this nature do not require a conference.

An employee may request an evaluation of vocational feasibility pursuant to L.C. § section 4637. The Unit considers any such evaluation a vocational rehabilitation service and shall note in its determination that fees are attributable to maximum counseling fee caps, if applicable.

SUBJECT: DEFERRAL/INTERRUPTION OF REHABILITATION SERVICES

SECTION NUMBER:8-30-01.1

EFFECTIVE DATE: February 14, 1997

The Rehabilitation Unit shall encourage the parties to agree to a deferral or interruption of services and benefits when the employee is unable to participate in rehabilitation for a designated period of time. If agreement cannot be reached, either party may request the Rehabilitation Unit to render a finding as to the appropriateness of the deferral or interruption based on the existence of good cause. Good cause may include but is not limited to: pregnancy, non-industrial illness, family illness, personal problems, incarceration, and participation in self-directed ESL training.

For injuries prior to 1/1/94:

1) The Unit shall resolve any dispute, regarding the employee's entitlement to defer, interrupt or extend a previously granted interruption in line with A.R. § 10129. The Unit's determination shall include language regarding the statutory time frame to request a reinitiation of services if interruption or deferral is granted.

2) If the employee is requesting a deferral of services and the employer offers a plan which contemplates modified or alternate employment, the Rehabilitation Unit is to determine whether or not the offer provides the employee with suitable gainful employment. If the offer is found to be reasonable and appropriate, the Rehabilitation Unit shall not require the development or implementation of an additional plan.

For injuries on or after 1/1/94:

1) The Unit shall resolve any dispute regarding the employee's entitlement to defer services. The Unit may grant the employee's request only if the employer has not offered alternate or modified work not exceeding the medical restrictions in line with A.R. § 10129.1. The Unit's determination shall include language regarding the statutory time frame to request a reinitiation of services.

2) The Unit shall resolve any dispute regarding the employee's entitlement to interrupt services subsequent to accepting services. If the employee is in an agreed or approved plan, the Unit shall include in its determination an explanation that the plan must be completed within 18 months of approval/commencement (as applicable) in line with L.C. § 4644(c).

SUBJECT: REQUEST FOR REINSTATEMENT OF REHABILITATION SERVICES

SECTION NUMBER:8-30-01.2

AMENDED DATE: September 4, 1997

The Unit will encourage requests for reinstatement of rehabilitation services be initially directed to the claims administrator pursuant to A.R. § 10130.

Where a request for reinstatement of services is made to the Unit, the Unit will confirm that the injured worker or his/her representative has communicated his/her interest and availability for vocational rehabilitation services to the Claims Administrator and that the request is made within the statutory time frame. (see A.G. § 8-30-01.4)

Where the Claims Administrator fails to respond to the Unit's notification regarding an employee's request for services within 20 days, the Unit shall, within forty-five days, (a) make a determination as to the need for services on the basis of available information, (b)

ask for additional information, or (c) set the matter for formal conference. The Unit will also consider whether or not the Claims Administrator has been in compliance with L.C. § 4642 and A.R. § 10125.1.

SUBJECT: DECLINATION AND EMPLOYEE REQUEST FOR SERVICES FOLLOWING DECLINATION

SECTION NUMBER: 8-30-01.3

EFFECTIVE DATE: February 14, 1997

For D.O.I.'s Prior To 1/1/90:

The Unit will consider an injured worker's request to participate in vocational rehabilitation services where he/she has previously declined those services if such request is made within the applicable statutes of limitations. (See Section 8-30-01.4).

The Unit will direct an injured worker to communicate his/her interest in and availability for vocational rehabilitation services to the Claims Administrator. The Unit will recommend such communication be in writing.

If the Claims Administrator fails to provide services within 20 days from the date of the injured worker's request for services, the Unit will proceed in accordance with A.G. § 8-30-01 (Employee Request for Vocational Rehabilitation Services)

For D.O.I.'s on or After 1/1/90:

The Rehabilitation Unit recognizes the purpose of the declination is to formally end an employee's right to rehabilitation benefits and terminate the Claims Administrator's liability to provide rehabilitation benefits and services.

Where a dispute arises regarding the termination of a Claims Administrator's liability due to a declination, either party may request the Rehabilitation Unit issue a Finding. (Note: The Employee's Filing of the Request For Dispute Resolution in response to the Notice of Termination, RU-105, must be received within the time period set forth in A.R. § 10131.) The Unit shall consider whether or not the Claims Administrator has obtained a RU-107 or RU-107A signed by the employee and his/her Representative, if applicable, and if the Claims Administrator has complied with the following:

- 1) Sending the employee a Notice of Potential Eligibility pursuant to L.C. § 4637(a) and A.R. § 9813(c)(2), (d)(2).
- 2) Providing an employee, injured prior to 1/1/94, with a full explanation of his/her rights and obligation pertaining to VR services by a Qualified Rehabilitation Representative pursuant to L.C. § 4636(a)

OR

3) Providing an employee, injured on or after 1/1/94, with a Notice of Potential Eligibility which includes explanation of his/her rights and obligations as required in A.R. § 9813(d)(2).

The Unit shall not grant a termination of liability if the above applicable requirements are not fulfilled. Additionally, if the Unit Consultant determines that the RU-107 or RU-107A (Statement of Declination) is signed by the employee under duress or in conflict with L.C. § 4646, the facts supporting the determination shall be documented and a termination of the Claims Administrator's liability shall not be granted.

If an employee requests vocational rehabilitation services following termination of the Claims Administrator's liability due to a declination, the request should be initially directed to the claims administrator. If a dispute exists regarding the employee's entitlement for vocational rehabilitation services either party may file a RU-103 with the Rehabilitation Unit. In resolving the dispute the Unit Consultant will consider the timing of the employee's request in light of L.C. § 5410. (See Statute of Limitation Guideline 8-30-01.4.)

The Unit Consultant should refer a copy of any determination which finds the Claims Administrator failed to comply with L.C. § 4646 to the Audit Unit for review.

SUBJECT: STATUTE OF LIMITATIONS FOR REQUESTING INITIATION/REINITIATION OF SERVICES

SECTION NUMBER: 8-30-01.4

EFFECTIVE DATE: February 14, 1997

The unit will conduct initial reviews of all matters regarding the provision of vocational rehabilitation services.

At the request of an injured worker, the Unit will assess the need for and kind of services, if any, that are reasonably necessary to provide an injured worker with the opportunity to return to suitable gainful employment.

The jurisdiction of the Rehabilitation Unit to determine the provision of rehabilitation services at the request of the employee is limited by time constraints. The Unit will respond to employee requests for services in a manner consistent with those time constraints and will encourage clear communication of those limitations and related information to all concerned parties.

The Unit has jurisdiction to order vocational rehabilitation services when an injured worker has made an initial request for such services: (1) one year from the last finding of

permanent disability by the WCAB, or one year from the WCAB approval of a Compromise and Release of other issues; or (2) five years from the date of injury where the original injury causes a need for vocational rehabilitation services, whichever occurs last. (see L.C. § 5410)

Any initial request made after these periods where notice has been given will be denied in a Determination on the basis that the Unit lacks jurisdiction.

Subsequent requests must be made within five years from date of injury.

Except in instances where the insurer has not complied with A.R. § 10128, 10129 & 10129.1 and a timely request for rehabilitation benefits has been made, the Unit retains jurisdiction to order services more than five years from the date of injury only if the Unit had previously retained jurisdiction through a Determination or by agreement of the parties.

SUBJECT: INITIATION OF VOCATIONAL REHABILITATION SERVICES/REFERRAL TO A Q.R.R.

SECTION NUMBER: 8-30-02

AMENDED DATE: September 4, 1997

The Unit encourages the early identification of Qualified Injured Workers and provision of timely and appropriate rehabilitation services to return them to the labor market as expeditiously as possible. To that end the Unit shall resolve disputes regarding the RU-91, (Description of Employee's Job Duties) required by L.C. § 4636 as expeditiously as possible. For D.O.I. on or after 1/1/94 such disputes are to be resolved within 15 days of request and receipt of pertinent information to enable a determination.

Once medical eligibility has been determined, the Unit expects the parties to initiate services in line with L.C. § 4637. The Unit will promote cooperation and consultation between the parties regarding the selection of a Qualified Rehabilitation Representative (QRR). The parties are encouraged to agree on a QRR. If agreement cannot be reached within 15 days, either party may request the Unit appoint an IVE pursuant to A.R. § 10127.2.

The Unit considers 10 days, absent extenuating circumstances (see note below), from agreement to a QRR to be a reasonable period for the Claims Administrator to forward file material to the QRR and not be subject to delay.

Where the claims administrator appoints a QRR without consulting the employee or otherwise causes a delay in the selection of an agreed QRR in line with L.C. § 4637(a), the Unit Consultant, upon request, shall determine whether maintenance benefits outside

the expenditure cap are due in line with L.C. § 4642 and A.R. § 10125.1 and whether an Independent Vocational Evaluator should be appointed.

Note: Extenuating circumstances is defined as; intervening legal holidays, natural or social conditions so disastrous as to impede normal business operations.

SUBJECT: CHANGE OF QUALIFIED REHABILITATION REPRESENTATIVE

SECTION NUMBER: 8-30-02.1

EFFECTIVE DATE: February 14, 1997

The Unit shall require that a request for a change of qualified rehabilitation representative, and the reasons therefore, is made in writing and served upon all parties.

When a request for a change of a qualified rehabilitation representative is made and agreement is not reached, either party may request the Unit to determine whether a change is in the best interest of the parties.

When the Unit determines a change of qualified rehabilitation representative is in the best interest of the parties, the Unit shall issue Determination appointing an independent vocational evaluator and identifying the reasons for the decision.

A change of QRR should not be made without a compelling reason, such as:

- 1) Failure by the QRR to determine vocational feasibility within 45 days of initially meeting with the employee;
- 2) Failure by the QRR to develop a Vocational Rehabilitation plan within 90 days of determining feasibility, or failure of the Employee and QRR to agree to a plan within that 90 day period.
- 3) Failure of the QRR to timely report to the parties;
- 4) Failure to meet the requirements of a QRR pursuant to L.C. §4635 (b).
- 5) Failure of the QRR to provide appropriate services as set forth in the Labor Code, Administrative Rules and Standards Governing Timeliness and Quality of Vocational Rehabilitation Services.

SUBJECT: WAIVER OF QRR

SECTION NUMBER: 8-30-02.2

EFFECTIVE DATE: February 14, 1997

When an employee injured on or after 1/1/94, notifies the Claims Administrator of his/her desire to waive use of a Qualified Rehabilitation Representative, the parties should work expeditiously and in the spirit of co-operation to determine whether or not the employee may waive such services and if so, develop an appropriate rehabilitation plan. The claims administrator does not have the statutory authority to deny a QRR waiver when the employee meets the "substantial progress" criteria.

Where the parties are unable to reach agreement, either party may request the Unit make a determination. The Unit Consultant shall render a determination on an expedited basis within 10 days of receipt of the RU-103. The Unit Consultant shall determine if the employee demonstrates substantial progress towards completion of a certificate or degree program from a Community College, California State University or the University of California and verify that the employee serves documentation of the progress on the Claims Administrator. "Substantial progress" includes but is not limited to situations where the employee can demonstrate all of the following:

- 1) The employee is, was, or will be enrolled as a full-time student taking 12 units or more;
- 2) The employee has completed 35% or more of the units necessary to complete the degree or certificate program and has attained at least a "C" grade in those courses necessary to complete the degree or certificate program;
- 3) The employee has produced a letter of recommendation from the school in which the employee is enrolled supporting the employee's course of study from one of the following: the Dean of Admission, the school department head or the school counselor. Accompanying the letter shall be an outline of the courses to be taken and the estimated time frames for completion of each course; and
- 4) The employee has identified the vocational goal to be achieved, the resources and time frames required to achieve the goal and, if the goal extends beyond the maximum expenditures and time frames allowed, the alternative resources available to the employee to complete the program.

Note: The Rehabilitation Unit shall not grant QRR waivers on out-of-state plans pursuant to L.C. § 139.5 (a) (2).

Maintenance benefits which are paid or accrue during the evaluation of the QRR waiver and plan development are counted against the maximum allowable expenditures set forth in L.C. § 139.5 (a)(5).

The Unit Consultant shall issue a determination granting or denying the Q.R.R. Waiver within ten (10) days of receipt of the employee's written request with substantiation.

The Unit Consultant will assist the employee in completing the RU-102 form as necessary. The injured employee shall be provided instructions for waiver of a QRR to aid the employee in plan completion. (See appendix E.) The Unit Consultant shall not function as a QRR..

The Unit shall require that all plans with a QRR waiver contain a description of the level of participation expected of the employee in order to continue to receive the maintenance allowance. Further, the plan should detail the manner and method by which the Claims Administrator may monitor the employee's level of participation.

Within 15 days after the employee and Claims Administrator have agreed to the terms and condition of the vocational rehabilitation plan, the plan shall be submitted to the Rehabilitation Unit for review and approval. The Rehabilitation Unit shall approve or disapprove the plan within thirty (30) days of receipt of the plan. If the Unit does not disapprove the plan within thirty (30) days of receipt of a properly submitted plan, the plan shall be deemed approved. Notice of approval shall issue on all plans with a QRR waiver.

SUBJECT: CONTINUOUS TRAUMA/ MULTIPLE EMPLOYERS

SECTION NUMBER: 8-40-00

EFFECTIVE DATE: February 14, 1997

The Unit shall require that vocational rehabilitation services on continuous trauma/multiple employer cases be provided in the same manner as on any other case.

Where the continuous trauma claim is admitted or found compensable, the Unit will encourage the parties to voluntarily identify one Claims Administrator to administer vocational rehabilitation benefits. However, where no selection is made within twenty days, and if benefits are being withheld from the injured worker, the Unit will identify the Claims Administrator to administer vocational rehabilitation services.

In identifying the appropriate Claims Administrator, the Unit Consultant will elect the same Claims Administrator who is required to administer the normal worker's compensation benefits by the worker's compensation referee. If no Findings and Award has been issued, the Unit Consultant is encouraged to elect the Claims Administrator for the last employer, unless jurisdictionally precluded. In that case, the consultant should consider the medical record and positions of the parties in identifying the most appropriate Claims Administrator and in the determination recognize their right to seek contribution for Vocational Rehabilitation costs from the co-defendant(s) at the WCAB.

SUBJECT: DISPUTED COMPENSABILITY CASES & COMPROMISE AND RELEASE

SECTION NUMBER: 8-40-01

EFFECTIVE DATE: February 14, 1997

When compensability is disputed, the Unit will defer action on rehabilitation issues pending a determination of the injured employee's right to workers' compensation benefits by the WCAB. The Unit will provide notice of its action to the parties and administratively retire its file pending resolution of the issue of injury AOE/COE.

Where an injured worker is otherwise eligible, he/she will be deemed to be entitled to vocational rehabilitation services where the claim has been settled by Compromise and Release agreement absent an expressed finding by the trier of fact that a good faith issue exists which if resolved against the injured worker, would defeat the injured worker's claim to any workers' compensation benefits. (Thomas vs. Sports Chalet, 42 CCC 625)

In such instances, the Unit will require the party requesting dispute resolution to provide the Compromise and Release documents as well as the Order Approving C&R, or a copy of the WCAB findings.

SUBJECT: UNINSURED EMPLOYER'S FUND CASES

SECTION NUMBER: 8-40-02

EFFECTIVE DATE: February 14, 1997

The Rehabilitation Unit recognizes that the Uninsured Employers' Fund is a special fund of the Department of Industrial Relations and is not an insurer. As such, the UEF's liability for benefits is derivative of the liability of the uninsured employer and the UEF has the obligation to recover any funds paid to satisfy the unpaid liability of an uninsured employer. It is important that Determinations ordering VR benefits be handled by the Unit in a manner which does not impair the UEF's ability to seek recovery from an uninsured employer pursuant to L.C. § 3715, 3716 and 3717.

The Rehabilitation Unit shall adhere to the procedures which follow in resolving disputes between an uninsured employer and injured employee. However, in cases involving illegally uninsured employers, no Rehabilitation Unit file shall be established unless the RU 103 (Request for Dispute Resolution) is accompanied by all of the following 4 items:

1) Either:

a) A Findings and Award/Order OR a Notice of Intention to Issue Order Approving Compromise & Release and Order Approving Compromise and Release OR a Notice of Intention to Issue Stipulated Findings & Award and Stipulated Findings & Award. Such an Award or Order must be issued by the WCAB in compliance with L.C. § 3715(e) and

must require the employer to provide benefits besides reimbursement for medical-legal costs.

or

b) Evidence that the U.E.F. has voluntarily elected to provide benefits pursuant to L.C. § 4903.3 as demonstrated by a copy of a letter from the UEF to that effect;

2) A copy of the injured employee's written request for VR services, directed to the uninsured employer;

3) Supporting medical reports with an indexed listing;

4) Proof of service or other evidence that a carbon copy of the RU- 103 together with #1, #2 & #3 above have been provided to the UEF.

All Unit correspondence and determinations are to be addressed to, and sent to the employer with a copy to UEF. (i.e. the Determination should be issued against Phillip Flub Up, individually and DBA 'Phil's Tire Service') UEF is not to be shown as the insurer.

Regardless of whether the UEF has agreed to pay discretionary benefits, the Unit shall consider the employee's request for VR services filed directly against the UEF, rather than the uninsured employer, to be invalid. The date of filing of such a request shall not be considered the date of demand for commencement of benefits.

SUBJECT: NATURE, EXTENT AND DURATION OF PLAN SERVICES

SECTION NUMBER: 8-50-00

EFFECTIVE DATE: February 14, 1997

The Unit shall require that a rehabilitation plan be tailored to the individual needs of the injured worker and that services provided afford the injured worker a reasonable opportunity to return to suitable gainful employment in line with the California Standards Governing Timeliness and Quality of Vocational Rehabilitation Services.

For dates of injury on or after 1/1/94 the Unit will neither approve a vocational rehabilitation plan (when applicable) nor resolve any dispute which requires or allows the Claims Administrator to exceed the following limits (except as provided in L.C. §4642 and 4644 C,D, E):

1) In no event shall the expenses, counseling fees, training, rehabilitation maintenance allowance and costs associated with or arising out of VR services incurred after the conditions set forth in A.R. § 10125, exceed \$16,000; (see L.C. §139.5)

2) The aggregate permissible fees for evaluation, plan development and job placement service shall not exceed \$4500; (See L.C. § 139.5)

3) A maintenance allowance shall not be paid for a period exceeding 52 weeks in aggregate; (See L.C. § 139.5)

4) Vocational rehabilitation plans shall be limited to one per injured worker; (see L.C. § 4644)

5) Vocational rehabilitation plans shall be completed within an 18-month period after approval. If approval is not required, the 18 month period starts on the date of commencement of an agreed upon plan. (see L.C. § 4644 and A.R. § 10126)

6) Vocational rehabilitation plans shall not include a period of job placement exceeding 60 days.

For D.O.I's prior to 1/1/94 who are determined medically eligible on or after 1/1/94, the schedule governing fees paid for evaluation, plan development and job placement is presumed reasonable. In resolving disputes regarding the provision of services and/or fees beyond those listed (see A.R. § 10132.1) the Unit will permit an exception to this \$5700 counseling cap, only when exceptional circumstances exist and are documented by the QRR.

Prior authorization for excess billings for D.O.I's prior to 1/1/94 should be obtained before service delivery. In cases handled by an I.V.E., authorization for these extraordinary services must be obtained from the Unit Consultant assigning the file. (see A.G. 8-20-01)

Except as noted above, the Unit will reject the imposition of limits on the nature and scope of rehabilitation plans or services which deprive the injured employee of a reasonable opportunity to return to suitable gainful employment.

When a vocational rehabilitation plan is determined to be in violation of L.C. §139.5(h), the Unit shall not terminate the Claims Administrator's liability. For D.O.I.'s on or after 1/1/94, the costs for the plan shall not be attributable to the maximum expenditure for vocational rehabilitation services.

SUBJECT: PLAN EVALUATION & APPROVAL

SECTION NUMBER: 8-50-01

EFFECTIVE DATE: February 14, 1997

For D.O.I.'s prior to 1/1/94, the Rehabilitation Unit will review all plans.

For D.O.I.'s on or after 1/1/94, the Unit will review plans for

- 1) All employees who are unrepresented by an Attorney, and
- 2) Where the employee is provided discretionary monies to be used on a non-specific basis.

For plans where a Q.R.R. Waiver has been granted , the Unit will determine if the rehabilitation services proposed are appropriate and reasonable and whether the plan is likely to provide the injured worker with a reasonable opportunity to return to suitable gainful employment.

Plans agreed to by the Claims Administrator and represented employee do not require approval by the Unit. Either party may request the Unit resolve a dispute regarding the plan by filing a RU-103. Disputes regarding a vocational goal for injuries on or after 1/1/94 shall be decided on an expedited basis within 10 days of the receipt of an RU-103 or in accordance with A.R. § 10127 (b). In the latter circumstance, the consultant shall require submission of an RU-103 and appropriate documentation prior to the conference date.

Where the Unit determines that a plan is not likely to provide the injured employee with an opportunity to return to suitable employment, or is otherwise inconsistent with A.R. § 10126, it will be disapproved. The Determination of disapproval shall give the rationale and shall be consistent with A.G. § 8-60-05.

The Unit will review all plans as required by L.C.§ 139.5 (1)(2) and A.R. § 10126(b) (4). Within thirty (30) days of receipt of a properly documented plan, a determination will be made as to whether the plan will be approved. If a disapproval is not made within thirty (30) days, the plan shall be deemed approved. The Unit shall issue a notice of approval only in instances where the plan has been previously disapproved and as required in A.G. § 8-30-02.2.

Either party may request the Rehabilitation Unit to approve a plan modification because of an unforeseen circumstance arising subsequent to the initial plan agreement if agreement to the modification cannot be reached.

SUBJECT: SUBSEQUENT REHABILITATION PLAN

SECTION NUMBER: 8-50-01.1

EFFECTIVE DATE: February 14, 1997

For D.O.I.'s Prior to 1/1/94:

When a rehabilitation plan has been commenced or completed, the Unit shall not order additional services unless due to one of the following:

- (1) A change in the injured worker's physical condition precluding pursuit or engagement in the proposed employment;
- (2) Facts which with reasonable diligence could not have been reasonably discovered or were not brought to the attention of the Unit at the time of plan approval;
- (3) Failure by the Claims Administrator to provide in a timely manner all benefits and services required by Labor Code §139.5 and the approved plan;
- (4) Circumstances beyond the control of the Claims Administrator or injured worker which render a plan inappropriate for specified reasons identified by the Unit.

The Unit requires that the RU-103 objecting to termination or otherwise filed in line with one of the circumstances above must detail the reasons with evidence or support of the change of circumstances.

For D.O.I. on or After 1/1/94:

Vocational Rehabilitation plans prepared pursuant to Labor Code § 4638 shall be limited to one plan per injured worker. The Rehabilitation Unit shall not order an additional plan except for the circumstances set forth in L.C. § 4644 (c)(d)(e)(f).

The Consultant will only consider a second plan request when clearly stated on the RU-103. If the issue is first raised at conference, the Consultant, at their discretion, may schedule a second conference to address this issue.

In such situations, the Unit Consultant is to direct the parties to complete "second plan position statements" (see Appendix C) prior to or at conference. In situations where the Consultant deems a second plan appropriate, contact is to be made with the Area Supervisor. No determination shall issue ordering a second plan without the Area Supervisor's concurrence that conditions justifying a second plan have been met. Further, Consultants are to issue determinations regarding these disputes by using designated on-line determinations with a copy to the Rehabilitation Unit Manager.

Copies of second plan denials and conference agreements are to be submitted with monthly statistical reports to the Rehabilitation Manager and the Area Supervisor.

**SUBJECT: VOCATIONAL REHAB. TEMPORARY DISABILITY (VRTD)/
VOCATIONAL REHAB. MAINTENANCE ALLOWANCE (VRMA)**

SECTION NUMBER: 8-50-02

AMENDED EFFECTIVE September 25,1998

For D.O.I. Pre 1/190:

The Unit will require payment of rehabilitation temporary disability indemnity for an injured worker entitled to vocational rehabilitation services in accordance with L.C. §139.5(c), only where there is a preliminary showing of medical opinion that the employee is precluded or likely to be precluded from engaging in his/her usual and customary occupation and/or the occupation in which he/she was engaged at the time of injury. Should a dispute result regarding such payment , either party may seek Rehabilitation Unit resolution by filing an RU-103.

The Unit will require that rehabilitation temporary disability payments be adjusted in accordance with L.C. §4661.5.

For D.O.I on or after 1/1/90:

The Unit will require the provision of maintenance allowance for an employee who is medically eligible and chooses to enroll in a vocational rehabilitation program in line with L.C. §139.5(c)(d 1-2).

If a dispute arises either party may request Unit intervention by filing a request for dispute resolution. When there is a dispute regarding employee's entitlement to receive permanent disability advances pursuant to L.C. §139.5(d-2), the Consultant will confer with the parties to discern the viability of such advances. Disputes regarding the extent of permanent disability must be resolved by the WCAB.

Where the employee has received a Findings and Award granting permanent disability which has not been exhausted, he/she will be deemed entitled to enhance maintenance allowance with permanent disability advances consistent with the award and L.C. §139.5(d-2).

The Unit shall not order the provision of maintenance allowance to an employee who fails to reasonably cooperate in the provision of VR services subsequent to a request for services. In such situations, the Claims Administrator is to notify the worker of their intent to withhold maintenance allowance in accordance with A.R. §9813(c)4) and (d) (4). If the employee objects, the Unit shall schedule and hold a conference and issue a determination within ten (10) days of the date of receipt of the objection.

Only when the employee files a request for dispute resolution alleging the Claims Administrator has delayed provision of V.R. services as set forth in L.C. .§4642, the Unit shall determine whether or not the Claims Administrator caused a delay. If a delay has occurred, the Unit shall issue a determination requiring the Claims Administrator provide the entire maintenance allowance at the Total Temporary Disability rate for the period of delay.

For D.O.I. on or after 1/1/94, maintenance allowance payments may not exceed 52 weeks and may not exceed \$16,000 when added with all costs associated with and arising out of V.R. services. Payments due to the delay of the Claims Administrator are not counted against the maximum allowable expenditures, pursuant to A.R. §10125.1.

NOTE: The Rehabilitation Unit shall order the payment of Rehabilitation Temporary Disability indemnity benefits on a wage loss basis pursuant to L.C. §4657 during the pendency of an on-the-job training plan or during a self-employment plan.

Maintenance allowance payable during an on-the-job training or self-employment plan is not governed by L.C. §4657; it is to be calculated based on the statutory maximums for rehabilitation temporary disability.

SUBJECT: V.R.T.D./V.R.M.A. DURING ON-THE-JOB TRAINING

SECTION NUMBER: 8-50-02.1:

SUSPENDED EFFECTIVE June 5,1997

SUBJECT: MAINTENANCE BENEFITS DUE TO PUBLIC SAFETY EMPLOYEES

SECTION NUMBER: 8-50-02.2

EFFECTIVE DATE: February 14, 1997

The Unit will order the payment of Vocational Rehabilitation Temporary Disability/Vocational Rehabilitation Maintenance Allowance indemnity to public employees in the same manner as for other employees so long as the payments are consistent with applicable statutory requirements and case law. (See L.C. § 4850 and 4853.)

For D.O.I.'s Post 1/1/94: Monies paid pursuant to L.C. § 4850 and 4853 are not included in the calculation of the overall \$16,000 CAP for vocational rehabilitation benefits and services.

SUBJECT: SELF-EMPLOYMENT/CAPITAL INVESTMENT

SECTION NUMBER: 8-50-03

AMENDED DATE: September 4, 1997

The Unit recognizes that self-employment is an arduous, high risk pursuit. Unless an employee has previously been successfully self-employed or there is otherwise a persuasive rationale for self-employment, the Unit will require that all other reasonable vocational alternatives be fully explored before approving a self-employment plan.

The Unit will require an opinion from a qualified rehabilitation representative as to whether self-employment is the most appropriate alternative and whether it is likely to represent suitable gainful employment.

In appropriate cases, the Unit will require the provision of funds for reasonable costs attendant to the initiation of a business.

Recognizing it may be in the best interest of all parties for the employer to voluntarily contribute to an injured worker's capital needs, the Unit will not prohibit such voluntary contributions, provided such contributions do not conflict with L.C. § 4646.

Note: Plans which provide an employee with discretionary monies to be used on a non-specific and/or self directed basis must be reviewed by the Rehabilitation Unit to insure the plan is not in conflict with Labor Code § 4646.

For all self-employment plans, the Unit recommends a report on the self-employment proposal from the Small Business Administration, S.C.O.R.E. and/or a business consultation from an established financial institution or management consulting firm which comments on the advisability and the viability of the proposed business undertaking. For employee's with a D.O.I. on or after 1/1/94, the fees for such a business consultation should be applied to the appropriate fee schedule.

When the above is not available the Rehabilitation Unit shall require a statement by the Qualified Rehabilitation Representative (QRR) that such report cannot be procured or is not necessary as the injured worker has prior self employment experience. The QRR's opinion and supporting documentation shall be in compliance with the California Standards Governing the Timeliness and Quality of Vocational Rehabilitation Services.

SUBJECT: ADDITIONAL LIVING EXPENSES

SECTION NUMBER: 8-50-04

AMENDED EFFECTIVE September 25,1998

The Unit will require the provision of reasonable additional living expenses to an injured worker necessary for or incurred by his or her participation in vocational rehabilitation services, subject to the CAP on rehabilitation services for post 1/1/94 DOI's.

The Unit will require that rehabilitation plan documentation identify any anticipated additional living expense, the amount to be paid and the schedule of payment.

For all dates of injury, the Unit will require the provision of additional living expenses (within applicable caps, if any), including but not limited to:

- 1) The reasonable cost of food and lodging to cover an injured worker's expenses when he/she is required to be away from home on a temporary basis and at a location too distant to allow for a reasonable commute. The Unit recognizes such living expenses may vary from plan to plan. Where the parties do not agree as to the amount to be paid in such instances, the Unit will refer to State of California rates for per diem expense. (See Appendix "D")
- 2) Funds for dependent care, upon the recommendation of the qualified rehabilitation representative and/or a upon showing that the injured worker's participation in rehabilitation services is dependent upon the provision of dependent care. When resolving disputes, the unit should consider the contribution of the injured worker to the family's total household income. The defendant's responsibility might reasonably be considered to be in line with that contribution.
- 3) Allowance for clothing recommended by the qualified rehabilitation representative or identified by the Unit Consultant as reasonably necessary to allow an injured worker to participate in training, placement or work activities when the employee does not possess suitable attire. The amount allocated should take into consideration the precise needs of the injured worker during training, interviewing or other placement activity, during each or any combination of them all. Funds for clothing should be provided prior to the commencement of the activity for which it is needed.

The Rehabilitation Unit recognizes that employees may elect to waive additional living expenses in order to keep overall plan costs within the maximum allowable expenditures. Waivers should be documented on the RU 102. In such cases, when a dispute arises after the claims administrator and the employee have fulfilled their respective obligations per the plan and maximum expenditures have not been reached, the Unit may order the retroactive provision of these waived additional living expenditures with appropriate supporting documentation.

NOTE: Waiver of these benefits is not a justification for the employee's failure to reasonably cooperate with the provision of VR services pursuant to A.R. § 10125.1.

SUBJECT: TRANSPORTATION EXPENSE

SECTION NUMBER: 8-50-04.1

EFFECTIVE DATE: February 14, 1997

An injured employee receiving vocational rehabilitation services is entitled to all reasonable transportation expenses incidental to the provision of such services and within the limitation of the \$16,000 CAP for post 1/1/94 D.O.I.'s.

Where a dispute exists, the Unit will require that payment for the injured worker's use of a personal automobile be made in an amount not less than that specified by L.C. § 4600.

The Unit will assume, absent explicit advice to the contrary, that an injured worker will travel by personal vehicle. However, nothing precludes the injured worker from requesting funds for alternative transportation in lieu of mileage reimbursement. The unit will review rehabilitation reports and/or plans for documentation of the regular prompt provision of transportation funds in accordance with L.C. § 4600.

When necessary, the Unit will require the employer to submit a report from a qualified rehabilitation representative identifying the mode of travel to be used by an injured worker and the cost attendant thereto. The Rehabilitation Unit requires the provision of travel funds in advance of anticipated travel in order to facilitate the injured worker's unimpeded participation in the rehabilitation services.

The Unit will require that transportation alternatives be evaluated in terms of the injured worker's medical circumstances, schedule of training or other rehabilitation activity, distances and commute time involved, materials, if any, to be transported and other pertinent factors. Additionally, the Unit shall not require transportation expenses exceed the maximum allowable expenditures for dates of injury on or after 1/1/94.

The Rehabilitation Unit recognizes that employees with post 1/1/94 DOI's may elect to waive all or part of the necessary transportation expenses in order to keep overall plan costs within the maximum allowable expenditures. Waivers should be documented on the RU-102. In such cases, when a dispute arises after the claims administrator and the employee have fulfilled their respective obligations per the plan and maximum expenditures have not been reached the unit may order the retroactive provision of the waived transportation expenses with appropriate supporting documentation.

NOTE: Waiver of these benefits is not a justification for the employees's failure to reasonably cooperate with the provision of VR services pursuant to A.R. § 10125.1.

SUBJECT: RELOCATION EXPENSE

SECTION NUMBER: 8-50-04.2

EFFECTIVE DATE: February 14, 1997

The Unit will only require the provision of relocation expense to an injured worker when such relocation is required by the injured worker's participation in rehabilitation services and/or to allow the worker an opportunity to return to suitable gainful employment. The Unit will require that the anticipated relocation expenses be identified as a component of rehabilitation plan documentation. For D.O.I.'s on or after 1/1/94, such expenses are within the \$16,000 CAP. Waivers of relocation expenses should be documented on the RU-102.

Absent extenuating circumstances, agreement of the parties or where multiple relocation is an integral part of a rehabilitation plan, the Unit will not require the employer to bear the cost of multiple relocations during vocational rehabilitation services. Additionally, unless by agreement of the parties or a determination that services in a location outside the State are more cost effective, the Unit shall not order relocation expenses be provided to facilitate a relocation outside of California.

Where agreement between the parties is not reached, the Unit will order the payment of costs in appropriate cases. The cost may include, but are not limited to, the cost of moving household goods and other personal articles, the cost of transportation to the new residence, and reimbursement of non-refundable deposits and other charges usually attendant to a permanent change of residence.

In determining appropriate relocation costs, absent agreement between the parties, the Unit shall utilize Department of Personnel Administration Guidelines on Moving and Relocation Expenses (See Appendix "D").

SUBJECT: TOOLS

SECTION NUMBER: 8-50-04.3

EFFECTIVE DATE: February 14, 1997

The Unit shall require the Claims Administrator to bear the costs of all tools, materials and supplies necessitated by the rehabilitation plan, subject to applicable caps. The Unit defines tools, equipment, materials and supplies as those items customarily required as a condition of employment or necessary to complete training. The need for the provision of such items shall be incorporated in plan documentation.

The Unit will require that ownership of tools and equipment necessitated by a rehabilitation plan remain with the Claims Administrator until the rehabilitation plan has been completed, unless other arrangements are agreed to by the parties. Provision shall be made to ensure prompt replacement in the advent of loss or theft, subject to applicable caps and time frames as appropriate.

The Unit will require that plan documentation not only identify items needed or highly recommended for the successful acquisition and employment of marketable skills, but also identify the type and amount or number of tools necessary, the source of supply, when the items will be provided, any unique provisions of their ownership, transfer, etc.

The Rehabilitation Unit recognizes that employees with post 1/1/94 DOI's may elect to waive all or part of the necessary tool cost in order to keep overall plan cost within the maximum allowable expenditures. Waivers should be documented on the RU-102. In such cases, when a dispute arises after the claims administrator and the employee have fulfilled their respective obligations per the plan and maximum expenditures have not

been reached the Unit may order the retroactive provision of the waived tool cost with appropriate supporting documentation.

Note: Waiver of these benefits is not a justification for the employee's failure to reasonably cooperate with the provision of VR services pursuant to A.R. § 10125.1

SUBJECT: JOB PLACEMENT

SECTION NUMBER: 8-50-05

EFFECTIVE DATE: February 14, 1997

Except in cases of self-employment, the Unit will not require payment of Rehabilitation Maintenance benefits once an employee has been placed in suitable gainful employment.

For dates of injury prior to 1/1/94, The Unit will not order job placement services exceed 60 days absent agreement of the parties or a substantiated request to modify the plan prior to completion.

For D.O.I.'s on or after 1/1/94, the Unit will not order Job Placement services, (which are either a component of a plan or the plan in its entirety), to exceed 60 days. The maximum aggregate permissible QRR fees is not to exceed \$2,000 or the maximum expenditures of \$16,000, whichever occurs first.

Where Unit approval is required a plan consisting only of job placement will be approved consistent with the California Standards and where there is an evaluation of the employee's employability with his/her existing skills, which may include a pre plan exploratory placement.

The Unit will not require direct placement of known undocumented workers within the State of California or where precluded by Federal law. (See A.G. § 8-10-01.)

SUBJECT: MODIFIED WORK OR ALTERNATE WORK WITH THE SAME EMPLOYER

SECTION NUMBER: 8-50-06

EFFECTIVE DATE: February 14, 1997

For D.O.I.'s before 1/1/94:

The Unit will require that Modified/Alternative RU-102'S meet the criteria for suitable gainful employment consistent with L.C. § 4635(f) and A.R. § 10129 (d). Plans are to be submitted within 10 day of completion as prescribed in the form filing Guidelines.

If the employer offers Modified/Alternative work and the employee refuses to sign the RU-102 after accepting vocational rehabilitation services, either party may request the Unit (via an RU-103) issue a determination as to whether the offer constitutes suitable gainful employment. If the Unit finds the offer reasonable and appropriate, the employee shall not be entitled to the development or implementation of a plan.

NOTE: For DOI's after 1/1/94, see A.G. § 8-10-04

SUBJECT: INTERPRETING FEES

SECTION NUMBER: 8-60-00

EFFECTIVE DATE: December 17,1990

Where an injured employee's inability to proficiently speak or understand the English language necessitates interpreting services, the Rehabilitation Unit shall require that the qualified interpreter's fees be paid by the Claims Administrator pursuant to A.R. § 9795.1 through § 9795.4. For DOI's on or after 1/1/94, the Unit will not apply interpreting fees arising out of an informal or formal conference towards the maximum fee cap. All other services provided by a qualified Interpreter, which are associated with or arise out of vocational rehabilitation services shall apply towards the maximum fee cap. The Unit shall require that interpreters providing services at Formal Conferences make available their certification number at the time of conference sign-in.

Where a dispute develops regarding interpreting and/or translating services provided by a Qualified Rehabilitation Representative (QRR), who is or is not a qualified interpreter, the Rehabilitation Unit shall require that fees be billed pursuant to the counselor fee schedule in A.R. § 10132 & § 10132.1 and not the interpreter fee schedule. Examples include but are not limited to translation of the Rehabilitation Plan (RU-102) and Job Analysis. The Rehabilitation Unit shall apply such services toward the maximum counseling fee cap. Should a dispute arise regarding the need for such services, the Rehabilitation Unit shall determine whether these services are "reasonably necessary" based upon the relative merits of the provision.

Disputes may develop regarding fees for interpreting services during pre-vocational services provided by a QRR, who acts in the capacity of a qualified interpreter. The Rehabilitation Unit shall not apply fees for these services to the maximum counseling fees or the \$16,000 fee cap. Examples of pre-vocational services include, but are not limited to, services performed by a QRR as a result of a Notice of Offer of Modified or Alternative Work (RU-94) and/or a Description of Employee's Job Duties (RU-91).

SUBJECT: MULTIPLE REHABILITATION PROVIDERS

SECTION NUMBER: 8-60-01

EFFECTIVE DATE: February 14, 1997

Absent agreement by the parties, the Unit will discourage the concurrent use of multiple Qualified Rehabilitation Representatives on a single case.

Upon advice that a dispute has arisen over two or more Qualified Rehabilitation Representatives providing services to an injured worker at one time, the Unit will notify the parties and direct them to meet and confer in order to identify a single qualified rehabilitation representative to conduct the vocational evaluation and plan development.

Where the parties are unable to reach agreement on a qualified rehabilitation representative, the Unit will provide the parties with an opportunity to present information relative to the selection of a qualified rehabilitation representative and thereafter will issue an order identifying the one qualified rehabilitation representative selected to per L.C. 4639 or shall appoint an Independent Vocational Evaluator.

(Also see A.R. § 10127 and § 8-30-02 and § 8-30-02.1.)

SUBJECT: SUB ROSA FILMS

SECTION NUMBER: 8-60-02

EFFECTIVE DATE: February 14, 1997

The Unit will not view Sub Rosa Films relative to rehabilitation issues.

Sub Rosa Films may be viewed by the WCAB, but are inappropriate in the informal proceedings conducted by the Unit.

SUBJECT: SERVICE OF MEDICAL AND VOCATIONAL REPORTS

SECTION NUMBER: 8-60-03

EFFECTIVE DATE: February 14, 1997

Any party filing reports with the Unit must serve copies concurrently on all other parties. (See A.R. § 10123).

The Unit will require the party requesting action submit all pertinent medical and vocational reports, in accordance with the form filing guidelines.

The Unit shall require that reports be submitted within twenty days of the date of the request. A copy of the determination requesting this information shall be placed on top of requested information.

Where requested reports are not provided or are provided in an untimely fashion, the Unit shall determine whether an Independent Vocational Evaluation is indicated, and if so, order same at the expense of the Claims Administrator, within applicable maximum expenditure caps.

The Unit will not retain unsolicited reports.

SUBJECT: DISPUTE RESOLUTION

SECTION NUMBER: 8-60-04

EFFECTIVE DATE: February 14, 1997

The Unit shall foster and promote informal, expeditious administrative solutions to problems or disputes between the parties. The Unit shall resolve disputes in line with A.R. § 10127. Additionally, the Unit may schedule conferences on its own motion consistent with the general provisions of L.C. § 139.5.

In keeping with the foregoing, the Unit will not permit use of court reporters or mechanical/video recording devices at unit conferences. Upon a request for a court reporter or mechanical/video recordings devices at a Unit conference, the Unit will inform the party making the request of Unit policy and decline to hold a conference with a reporter or recording present.

The Unit expects all parties to be present, in person, at all conferences. However, recognizing that extraordinary circumstances may occur, the Unit Consultant has the discretion to allow participation by telephone. Identification of the parties who may participate by telephone shall be made by the consultant, prior to the conference date.

The Unit will discourage continuances or other delays in scheduled conferences. Conferences are to be held at the date and time scheduled pursuant to A.R. § 10127.1. Any party unable to attend may submit a written position statement prior to or at the time of conference. Continuances may be granted for good cause or at Unit Consultant's discretion, which may include the fact a party or their attorney was previously scheduled at another proceeding conducted by DWC. Continuances that must be granted are to be rescheduled not later than thirty days from the date the continuance is granted.

Following every conference, the Unit will, within 30 days from the date of conference, issue a determination or Conference Agreements to the parties. Conference Agreements shall be signed by all parties at the conference.

The Unit will make expeditious qualified injured worker determinations based upon the review of medical records submitted and will not routinely require the procurement of additional medical evaluation. The Unit will reject RU-103's not including an indexed listing of medicals, which is served on the opposing party.

The Unit will hold single issue expedited conferences or resolutions on the following disputes, as required the Labor Code and Administrative Rule:

- 1) Employee objections to a notice of intent to withheld maintenance allowance for D.O.I.'s post 1/1/90.
- 2) The identification of vocational goals for D.O.I.'s post 1/1/94. The parties may contact the Unit for a telephone conference discussion. Should this consultation be unsuccessful, a formal conference may be scheduled on an expedited basis. An RU-103 must be filed prior to any scheduled conference.
- 3) The description of the employee's job duties at the time of injury for D.O.I.'s post 1/1/94.

On occasion expedited and non-expedited issues may be presented on the same RU-103. The Unit will not routinely address expedited and non-expedited issues in a single conference, but may elect to do so at the consultant's discretion. Where the Unit determines that a subsequent conference must be held on the non-expedited issues, the parties shall be required to file a new RU-103 outlining the remaining issues.

Should the Rehabilitation Unit make a finding that the Claims Administrator has failed to comply with the provisions of an agreed plan or failed to comply with L.C.§ 4642, the Unit may send a copy of the Determination to the Audit unit to assess any necessary penalties.

SUBJECT: DETERMINATIONS

SECTION NUMBER: 8-60-05

EFFECTIVE DATE: February 14, 1997

The Unit will issue a Determination to convey its finding regarding any dispute which pertains to workers' compensation rehabilitation benefits.

Unit Determinations shall be written in clear, succinct, simple English. The Consultant shall use on-line data mailers except where not appropriate to the circumstance. Deviations to on-line determinations for a second plan require approval by the Area Supervisor.

Determinations of the Unit other than Form Orders shall be composed of the following elements, presented in the order shown below:

- 1) Where a Determination issues following conference, it shall identify the parties present at the conference.

- 2) The Determination shall contain a description of the issue(s) presented.
- 3) The Determination shall contain a summary of any agreements reached between the parties and/or a summary of the position(s) of each party relative to the disputed issue(s) under consideration. (Written statements incorporated into the record may be referenced.)
- 4) The Unit shall present its Determination, including discussion of the positions presented and the rationale for the Determination. The Unit does not require or encourage the routine citation of case law in determinations. However, such citations should be incorporated when it will make a significant contribution to an expeditious and fair resolution of the issues.
- 5) The Determination section of the Unit 's finding shall specifically direct the parties as to their responsibilities relative to the Determinations issued.
- 6) All Unit Determinations shall contain notice of the parties right to appeal and incorporate reference to L.C. § 4645 (d)

SUBJECT: ENFORCEMENT UNIT DETERMINATIONS

SECTION NUMBER: 8-60-06

EFFECTIVE DATE: February 14, 1997

The Unit shall support enforcement of its determinations.

The Unit will look to the parties or their representatives to initiate proceedings before the WCAB for enforcement of Unit determinations.

The injured worker may be referred to the Information & Assistance Unit to initiate necessary proceedings where the injured is not represented and enforcement of a Unit determination is required to expedite the provision of vocational rehabilitation services to the injured worker.

The Rehabilitation Unit may, upon request or on its own motion refer non-compliance of determinations to the Audit Unit for the assessment of appropriate penalties under A.R. § 10111.1 (d)(4).

SUBJECT: ATTORNEY FEES

SECTION NUMBER: 8-60-07

EFFECTIVE DATE: February 14, 1997

The Unit will recognize that determination of Attorneys' fees is solely within the jurisdiction of the Workers' Compensation Appeals Board.

However, the Rehabilitation Unit will not require an attorney's fee be withheld from VRMA/VRTD benefits if the representative of the employee is not a member in good standing of the California State Bar [A.R. § 10122 (1)]

Upon request of the Worker Compensation Referee the Unit will provide assistance to facilitate the determination of a reasonable Attorney fee for services rendered relative to rehabilitation issues.

SUBJECT: FEE DISPUTES

SECTION NUMBER: 8-60-08

EFFECTIVE DATE: February 14, 1997

The policy of the Rehabilitation Unit is that the resolution of fee disputes, like any other dispute in the rehabilitation process, are within the jurisdiction of the Rehabilitation Unit and should be handled the same as other disputes. The process is outlined in A.R. § 10127.

The fee schedule is contained in A.R. § 10132 and § 10132.1. Among other provisions, vocational rehabilitation provider fees must be paid within 60 days, unless an objection is filed contesting the billing or any portion thereof. Any portion of the billing not contested must be paid within the 60 day period. Absent objection as described, billings not paid within 60 days from date of receipt are subject to penalty assessment if audited by the DWC Audit Unit.

The regulations further require that copies of each billing are to be sent by the QRR to the employee and his/her representative at the time the bill is sent to the Claims Administrator. This is especially important for workers who have been injured on or after 1/1/94, since available monies from the counselor fees may be applied to the injured workers plan.

Objections to billings may be sent by the Claims Administrator or their agent and should specify the reason for their position and the person to contact to resolve the dispute.

The parties must first attempt to resolve the dispute informally. Absent informal resolution, a Request for Dispute Resolution (RU-103) may be filed by either party or the QRR with the Rehabilitation Unit. The efforts at informal resolution should be summarized in the documentation attached to the form. Copies must be served on all parties. The opposing party has 15 days to respond [A.R. § 10127 (d)(2)].

The Rehabilitation Unit then may set the matter for conference or issue a determination on the record. Generally, disputes of this nature do not require a conference.

When deciding the merits of a fee dispute, the Rehabilitation Unit will review any prior billing agreements between the parties. Determinations of the Rehabilitation Unit shall be consistent with the Administrative Director's rules and regulations governing provider fees for rehabilitation services and consider the provisions of the California Standards Governing the Timeliness and Quality of Vocational Rehabilitation Services.

NOTE: It is the policy of the Rehabilitation Unit to accept the RU-103 from the QRR in accordance with A.R. § 10132 (f).

SUBJECT: COMMUNICATIONS WITH PARTIES

SECTION NUMBER: 8-60-09

EFFECTIVE DATE: February 14, 1997

The Unit will engage in communications with and between the parties to facilitate the expeditious return of injured workers' to suitable gainful employment and the expeditious and equitable resolution of disputed rehabilitation issues and problems.

The Unit will not engage in prejudicial communications or base its determination on information not available to all parties.

Unit determinations shall be based on assessment of the issues and shall include the rationale for the decision. (See A.G. § 8-60-05).

SUBJECT: VENUE ASSIGNMENT, MAINTENANCE AND TRANSFER OF CASE FILES

SECTION NUMBER: 8-60-10

AMENDED EFFECTIVE December 17, 1999

The Rehabilitation Unit will maintain case files consistent with the policy of the WCAB.

In instances where an application for adjudication of claim has been filed prior to a request for vocational rehabilitation services the unit's file will be maintained in the same venue as the WCAB.

When a request for vocational rehabilitation is made prior to the filing of an application, the file shall be made up in the county where the injured resides. If the WCAB's file is in

a different venue the unit's file will be transferred to that venue upon a request of either party.

Any issues before the unit amenable to resolution on the existing record are to be resolved by the Consultant responsible for the file prior to case transfer, e.g., QIW Determination, appointment of an IVE, Injured Employee's objection to a Notice of Intent to Withhold Maintenance Allowance, Retro VRMA. In the event a conference is necessary, transfer the file to the appropriate venue for resolution of the dispute(s).

A Unit Consultant shall not arbitrarily transfer case files, intra-office or inter-office, absent prior approval from the Presiding Judge. When a decision has been made to transfer a file the Unit Consultant must complete a file transfer memorandum, with a copy to all parties, at the time of file transfer which shall accompany the file to the receiving office.

Unit Consultants are expected to handle cases as assigned and shall not issue determinations on files not assigned to them without approval of the Presiding Judge. Circumstances not covered by this guideline shall be discussed with the Presiding Judge.

SUBJECT: JURISDICTION OF THE REHABILITATION UNIT

SECTION NUMBER: 8-60-11

EFFECTIVE DATE: February 14, 1997

All disputed matters regarding the provision of vocational rehabilitation services shall be submitted to the Rehabilitation Unit for its determination.

Any determination issued by the Unit shall be binding unless a petition is filed with the Appeals Board within twenty (20) days after service of the determination.

The Unit lacks jurisdiction when there is an issue as to whether the employee's injury arose out of employment or occurred in the course of employment (AOE/COE) or an Order Approving a Compromise & Release has been issued which includes a specific finding by the Workers' Compensation Judge that rehabilitation has been foreclosed pursuant to the Thomas decision.

SUBJECT: PROCEEDINGS BEFORE THE WCAB/ PROCEDURES FOLLOWING APPEAL

SECTION NUMBER: 8-60-12

EFFECTIVE DATE: February 14, 1997

The Rehabilitation Unit Consultant shall make every attempt to cooperate with the parties to assist them in exercising their rights to discovery. At the time of a conference the consultant should advise the parties when it appears that an appeal might occur that reasonable notice should be given as it could lead to a delay in the process.

In order to minimize the loss of productive work time by Rehabilitation Consultants and any adverse impact on other injured workers' pending cases when a Consultant receives a subpoena the following procedure should occur:

- 1) The Consultant shall contact the parties and attempt to work out any calendar conflicts;
- 2) Should the above fail the Consultant is directed to communicate this to the Area Supervisor so that the supervisor may determine whether to file a motion to quash the subpoena.

When a subpoena compels the attendance of a Rehabilitation Consultant at a location other than their assigned office, the subpoena must be served along with a check or money order made out to the "Department of Industrial Relations" for appropriate mileage and parking expenses. The Consultant shall not accept payment by cash, check, money order, or by other instrument made out to the Consultant. In the event the Consultant is required to travel 50 miles or greater for a morning hearing or deposition, expenses for one night's lodging in accordance with the State of California's per diem rate must also be provided.

SUBJECT: CONCLUSIONS/TERMINATIONS

SECTION NUMBER: 8-70-00

EFFECTIVE DATE: February 14, 1997

FOR DOI'S PRIOR TO 1/1/90:

The Unit will review all requests for conclusion of rehabilitation submitted on the RB-105 by the Claims Administrator. When the request is inappropriate, the Unit Consultant will advise the parties within 20 days of receipt via a Determination. The Determination is to advise the Claims Administrator as to what is incorrect or inappropriate and what action(s) should be taken. Once the request is perfected, the Unit shall issue a Determination of Conclusion.

Should the injured employee object to the request, the Rehabilitation Unit will within 30 days of receiving the objection, hold a conference or otherwise obtain the employee's reasons for objection together with substantiating evidence and issue its determination. The Unit will not issue a determination in response to a RB-105 which is deemed granted.

FOR DOI'S ON OR AFTER 1/1/90:

The Unit will review all copies of the "Notice of Termination of Rehabilitation Services (RU-105) submitted by the Claims Administrator. When the notice is inappropriate, improper or fails to comply with L. C. §4644 (a) or A.R. § 10131 or § 10131.1, the Unit Consultant will advise the parties within 20 days of receipt via a Determination. The Determination is to advise the Claims Administrator as to what is incorrect or inappropriate and what action should be taken. Further, the Unit shall direct the Claims Administrator to resubmit a perfected notice to the employee. The Unit will not issue a determination granting Termination.

When the injured employee objects to the Claims Administrators notice, the Rehabilitation Unit, within 30 days of receiving the Employee's objection, shall hold a conference or otherwise obtain the employee's reasons for objection together with substantiating evidence and issue its Determination. Where the Claims Administrator has properly notified the injured employee of its decision to terminate rehabilitation services and the employee has not objected within 20 days, the Unit will not issue a Determination of termination.

The Rehabilitation Unit Staff will record statistical data from the RU-105 as prescribed by the Rehabilitation Unit Manager, reflecting disposition of the rehabilitation services.

SUBJECT: PUBLIC ACCESS TO REHABILITATION RECORDS/H.I.V. CASE HANDLING

SECTION NUMBER: 8-80-00

EFFECTIVE DATE: February 14, 1997

The Unit will maintain custody and supervision of the Rehabilitation Unit files and records in accordance with the Public Records Act and applicable sections of the Government Code and Civil Code.

In accordance with Government Code § 6253, records of the Rehabilitation Unit are technically public records.

The Unit will recognize exceptions to open access to its records and files. Rehab Unit records will be held not to be open to public inspection when: a record contains information on an individual which is of a personal (cc §1798.3 (b)), confidential (cc §6254 (c)) nature.

Any record to which the aforementioned code sections are applicable shall be made available for inspection only under specified conditions. Conditions germane to the interest of the Rehabilitation Unit would be:

- 1) With the written consent of the subject of the record;
- 2) Pursuant to subpoena, court order or other compulsory legal process;
- 3) Pursuant to a search warrant.

Note: In line with Administrative Rule 10133.3 (a) the Unit shall retain its files until 90 days from receipt of a RU-105, Determination following objection to a RU-105 or final finding, Decision or Determination following an appeal.

The WCAB has adopted a policy for the handling of cases involving individuals diagnosed with AIDS or who have been identified as testing positive for the presence of HIV antibodies. (See DWC/WCAB Policy & Procedure, index #6.1.2 (a). The Rehabilitation Unit shall adopt a similar procedure to ensure non-disclosure of vital information and confidentiality on these cases.

The following procedures shall be followed by the Unit in handling such cases which are so identified:

1. Case files shall be opened under a fictitious name and with a dummy Social Security number.
2. The injured employee shall not be identified by any document generated by the Rehabilitation Unit (e.g. letters, notices or Determinations).
3. Such cases are to be referred to the regional Area Supervisor to ensure confidentiality. The Area Supervisor shall make arrangements for the file to be kept under his/her custody and control or a person designated by the Area Supervisor to handle such cases. Under no circumstances should a file be provided for public inspection without an order from the Presiding Worker's Compensation Judge.
4. When an injured worker is HIV positive, every care should be taken to prevent disclosure of his/her HIV status. To that end, the following shall occur:
 - a) Dispute resolution should be handled on the record whenever possible.
 - b) Where necessary, conferences shall be closed to all but the immediate parties having a clear legal interest in the proceedings and the Q.R.R.
 - c) Conferences should be held without the presence of the injured employee. Where the injured employee's appearance is necessary and/or the injured employee voluntarily appears, proceedings are to be handled in line with "b" above.
5. Should a case not be identified as being diagnosed with AIDS or as testing positive for the presence of HIV antibodies or have been exposed to same and later be identified, the Unit Consultant should contact the Area Supervisor for handling requirements.

Great care must be taken in the handling of HIV and AIDS cases in that there is some limited potential liability. Further, an individual who is HIV positive is protected against improper disclosure of his/her status based upon 1) The right to privacy under Article 1, Section 1 of the California Constitution and 2) Health and Safety Code Sections 199.25 which govern disclosure of HIV blood tests.

SUBJECT: CONSIDERATIONS FOR AUDIT REFERRAL

SECTION NUMBER:8-80-01

EFFECTIVE DATE: February 14, 1997

When a Rehabilitation Consultant notices a consistent pattern of conduct or egregious significant act(s) that would warrant investigation by the Audit Unit, the consultant should discuss the matter with his or her area supervisor.

Should it be decided that an audit referral is warranted, the consultant should complete an audit referral form and forward it to the Audit Unit.