

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1262

Introduced by

Representative Berg

Senator Mutch

1 A BILL for an Act to amend and reenact subsection 4 of section 65-05.1-01, subsection 3 of
2 section 65-05.1-02.1, subsections 4 and 6 of section 65-05.1-04, and section 65-05.1-06.1 of
3 the North Dakota Century Code, relating to workers' compensation vocational rehabilitation.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 4 of section 65-05.1-01 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 4. The first appropriate option among the following, calculated to return the employee
8 to substantial gainful employment, must be chosen for the employee:
- 9 a. Return to the same position.
 - 10 b. Return to the same occupation, any employer.
 - 11 c. Return to a modified position.
 - 12 d. Return to a modified or alternative occupation, any employer.
 - 13 e. Return to an occupation ~~in~~ within the local job pool of the locale in which the
14 claimant was living at the date of injury or of the employee's current address
15 which is suited to the employee's education, experience, and marketable
16 skills.
 - 17 f. Return to an occupation in the statewide job pool which is suited to the
18 employee's education, experience, and marketable skills.
 - 19 g. On-the-job training.
 - 20 h. Short-term retraining of fifty-two weeks or less.
 - 21 i. Long-term retraining of one hundred four weeks or less.
 - 22 j. Self-employment.

23 **SECTION 2. AMENDMENT.** Subsection 3 of section 65-05.1-02.1 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 1 3. The vocational consultant's report is due within sixty days from the ~~initial referral~~
2 ~~for rehabilitation~~ date the vocational assessment is performed under this chapter.
3 However, where the vocational consultant determines that short-term or long-term
4 training options must be evaluated because higher priority options are not viable,
5 the final report is due within ninety days of the ~~initial~~ vocational assessment to
6 allow the employee to assist in formulating the choice among the qualified training
7 programs.

8 **SECTION 3. AMENDMENT.** Subsections 4 and 6 of section 65-05.1-04 of the North
9 Dakota Century Code are amended and reenacted as follows:

10 **65-05.1-04. Injured employee responsibility.**

- 11 4. If the first appropriate rehabilitation option under subsection 4 of section
12 65-05.1-01 is return to the same, modified, or alternative occupation, or return to
13 an occupation that is suited to the employee's education, experience, and
14 marketable skills, or on-the-job training, the employee is responsible to make a
15 good faith work trial or work search. If the employee fails to perform a good faith
16 work trial ~~or work search, the finding of nondisability or partial disability is res~~
17 ~~judicata, and the bureau may not reinstate temporary total pay additional~~ disability
18 benefits ~~or recalculate an award of partial disability benefits in the absence of a~~
19 ~~significant change in medical condition attributable to the work injury. The bureau~~
20 ~~shall recalculate the partial disability award, however, if the employee returns, in~~
21 ~~good faith, to gainful employment unless the employee meets the criteria for~~
22 ~~reapplying for benefits required under subsection 2 of section 65-05-08.~~ If the
23 employee meets the burden of proving that the employee made a good faith work
24 trial or work search and that the work trial or work search was unsuccessful due to
25 the injury, the bureau shall reevaluate the employee's vocational rehabilitation
26 claim. ~~A good faith work search that does not result in placement is not, in itself,~~
27 ~~sufficient grounds to prove the work injury caused the inability to acquire gainful~~
28 ~~employment. The employee shall show that the injury significantly impacts the~~
29 ~~employee's ability to successfully compete for gainful employment in that the injury~~
30 ~~leads employers to favor those without limitations over the employee.~~

1 6. If, without good cause, the injured employee ~~fails to perform a good faith work trial~~
2 ~~in a return to the same, modified, or alternative occupation, or in an on the job~~
3 ~~training program, or~~ fails to make a good faith work search in return to work
4 utilizing the employee's transferable skills, the employee is in noncompliance with
5 vocational rehabilitation. A good faith work search that does not result in
6 placement is not, in itself, sufficient grounds to prove the work injury caused the
7 inability to acquire gainful employment. The employee shall show that the injury
8 significantly impacts the employee's ability to successfully compete for gainful
9 employment in that the injury leads employers to favor those without limitations
10 over the employee. If, without good cause, the injured employee fails to attend
11 specific vocational testing, remedial, or other vocational services determined
12 necessary by the bureau or the rehabilitation consultant, the employee is in
13 noncompliance with vocational rehabilitation. If, without good cause, the injured
14 employee fails to attend a scheduled medical or vocational assessment, fails to
15 communicate or cooperate with the vocational consultant, or fails to attend a
16 specific qualified rehabilitation program within ten days from the date the
17 rehabilitation program commences, the employee is in noncompliance with
18 vocational rehabilitation. If, without good cause, the employee discontinues a ~~job~~
19 ~~the employee is performing, or a~~ training program in which the employee is
20 enrolled, the employee is in noncompliance with vocational rehabilitation. If at any
21 time the employee is noncompliant without good cause, subsequent efforts by the
22 employee to come into compliance with vocational rehabilitation are not
23 considered successful compliance until the employee has successfully returned to
24 the job or training program for a period of ~~sixty~~ thirty days. In all cases of
25 noncompliance by the employee, the bureau, by administrative order, shall
26 discontinue ~~lost time~~ disability and vocational rehabilitation benefits. If, after
27 issuance of the bureau order becomes final, the period of noncompliance
28 continues for ~~sixty~~ thirty days, or a second instance of noncompliance occurs
29 without good cause, the bureau ~~has no further jurisdiction in awarding~~ may not pay
30 any further ~~temporary total disability, temporary partial disability, permanent total~~

disability; or vocational rehabilitation benefits, regardless of whether the employee sustained a significant change in medical condition due to the work injury.

SECTION 4. AMENDMENT. Section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.1. Rehabilitation award.

1. Within sixty days of ~~receipt of~~ receiving the final vocational consultant's report, the bureau shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to ~~lost time~~ disability and vocational rehabilitation services.
2. If the appropriate priority option is short-term or long-term training, the vocational rehabilitation award must be within the following terms:
 - a. For the employee's lost time, and in lieu of further ~~temporary total, temporary partial, and permanent total~~ disability benefits, the bureau shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the employee was receiving, or was entitled to receive, prior to the award.
 - b. The rehabilitation allowance must include an additional twenty-five percent when it is necessary for the employee to maintain two households, when it is necessary for the employee to maintain two households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the bureau by rule.
 - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the bureau. Catastrophic injury includes:
 - (1) Paraplegia, ~~quadraplegia;~~ quadriplegia; severe closed head injury; total blindness; in both eyes; or amputation of an arm proximal to the wrist or a leg proximal to the ankle, caused by the compensable injury,

1 which renders an employee permanently and totally disabled without
2 further vocational retraining assistance; or

3 (2) Those employees the bureau so designates, in its sole discretion,
4 provided that the bureau finds the employee to be permanently and
5 totally disabled without further vocational retraining assistance. There
6 is no appeal from a bureau decision to designate, or fail to designate,
7 an employee as catastrophically injured under this subsection.

8 d. The rehabilitation award must include the cost of books, tuition, fees, and
9 equipment, tools, or supplies required by the educational institution. The
10 award may not exceed the cost of attending a public college or university in
11 the state in which the employee resides, provided an equivalent program
12 exists in the public college or university.

13 e. ~~The rehabilitation allowance may be paid only during such time as the~~
14 ~~employee faithfully pursues vocational retraining. The rehabilitation~~
15 ~~allowance may be suspended during such time as the employee is not~~
16 ~~faithfully pursuing the training program, or has failed academically. If the~~
17 ~~work injury itself precludes the employee from continuing training, the~~
18 ~~employee remains eligible to receive disability benefits.~~

19 ~~f. In the event~~ f. If the employee successfully concludes the rehabilitation
20 program, the bureau may make, in its sole discretion, additional awards for
21 actual relocation expenses to move the household to the locale where the
22 claimant has actually located work.

23 ~~g. f.~~ f. ~~In the event~~ If the employee successfully concludes the rehabilitation
24 program, the bureau may make, in its sole discretion, an additional award, not
25 to exceed two months disability benefit, to assist the employee with work
26 search.

27 ~~h. g.~~ g. If the employee successfully concludes the rehabilitation program, the
28 employee is not eligible for further vocational retraining or total disability
29 benefits unless the employee establishes a significant change in medical
30 condition attributable to the work injury which precludes the employee from
31 performing the work for which the employee was trained, or any other work

for which the employee is suited. The bureau may waive this section in cases of catastrophic injury defined by subdivision c of subsection 2.

~~h.~~ h. If the employee successfully concludes the rehabilitation program, the employee remains eligible to receive partial disability benefits, as follows:

(1) Beginning the date at which the employee completes retraining, until the employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining, as measured by the average wage in the employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the bureau, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the employee completes retraining. The benefit continues until the employee acquires substantial gainful employment, ~~but in no case may exceed one year in duration.~~

(2) Beginning the date at which the employee acquires substantial gainful employment ~~in the field for which the employee was trained, or in a related occupation, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining.~~

(3) ~~Beginning the date at which the employee acquires substantial gainful employment in an occupation unrelated to the employee's training,~~ the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's weekly wages before the injury, and the employee's wage-earning capacity after retraining, as determined under paragraph 1 of this subdivision, or the employee's actual postinjury wage earnings, whichever is higher.

- 1 4. If the appropriate priority option is on-the-job training, the bureau shall pay the
2 employee a ~~lost-time~~ disability benefit throughout the duration of the on-the-job
3 training program. Upon completion of the training program, the bureau shall
4 determine whether the employee is eligible to receive partial disability benefits
5 pursuant to section 65-05-10. In addition, the bureau, when appropriate, shall
6 make an additional award for actual relocation expenses to move the household to
7 the locale where the claimant has actually located work.