

STATE OF HAWAII

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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February 5, 2010

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor and Public Employment

Date: February 5, 2010

Time: 9:30 a.m.

Place: Conference Room 309, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

Testimony in OPPOSITION

to

H.B. 2493 – Relating to Vocational Rehabilitation

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2493 proposes to amend Section 386-25, Hawaii Revised Statutes (“HRS”), by expanding the duties of the vocational rehabilitation (“VR”) unit and providers of VR services. This proposal:

- Provides for adoption of a VR Fee Schedule;
- Establishes time limitations for provision of VR services;
- Suspends VR services if an injured worker suffers an intervening medical condition which renders the injured worker totally disabled and until the injured worker is cleared to return to work;
- Allows employers to terminate temporary total disability benefits when the employee is able to return to his usual and customary work and is enrolled in a plan that has not been approved by the director; and
- Allows any party to request a review of the VR program if it is determined that no progress is being made to establish a viable VR plan and requires the VR unit to respond to this request within thirty days.

II. CURRENT LAW

Under Section 386-25, HRS, a permanently disabled employee who is unable to return to his or her regular job, but can be vocationally rehabilitated, is eligible for VR services to be paid for by the employer. The injured employee may select his or her own certified provider of VR services without employer involvement. The self-insured employer or insurance carrier pays for VR services and may challenge the employee's right to VR services. The injured employee is also entitled to collect temporary total disability ("TTD") payments from the employer while enrolled in a VR program.

III. HOUSE BILL

The Department of Labor and Industrial Relations ("Department") strongly opposes this bill for the following reasons:

1. Section 386-25(b), HRS, currently allows an injured worker to be referred for VR services if they suffer a permanent disability. This proposal only allows direct placement services to an injured worker who has permanent work restrictions, but no permanent disability. The Department is concerned that this proposal does not consider the extent of the permanent work restrictions. If the restrictions are severe, then direct placement may not be feasible and may not result in a return to work. This proposed change would also deny the injured worker's right to level two of the return to work process (determining if modified work or other work with the same employer represents suitable gainful employment). Furthermore, if the injured worker is already in a training plan when it is determined that he does not have any permanent disability, it would be a waste of time and money to put him directly into a direct placement program.
2. The proposed change in Section 386-25(b)(1), HRS, requires the VR unit to order the injured employee, providers of VR services, or the employer to comply with this section. The current VR Administrative Rules in Sections 12-14-9, 12-14-26, and 12-14-29 already allow the director to modify, suspend, or terminate a VR plan or program due to lack of progress or compliance. The Department believes that these current VR rules are adequate and the proposed changes, therefore, unnecessary.
3. The change in Section 386-25(b)(3), HRS, requires adoption of a fee schedule for VR providers. The VR unit, with only one employee, lacks the time, personnel, and resources to establish and maintain a fee schedule, and to resolve resulting bill disputes.
4. The change in Section 386-25(c), HRS, proposes that the VR unit assign a VR counselor to the injured employee if the injured employee does not select a VR

provider within thirty days of notice of their right to VR. Hawaii Administrative Rule Section 12-14-23(c) already addresses this issue and the change is therefore deemed unnecessary by the Department.

5. The change in Section 386-25(e), HRS, proposes time frames for adjustments to disability, conducting labor market research, submitting a VR plan, and allowing one extension to submit a VR plan. The Department opposes the time frames because each claimant experiences and adapts to their disability differently, and it is not reasonable to establish a mandatory 30-day timeframe, or any timeframe for that matter, for adjustment to disability counseling. Other factors, such as the severity of the disability, age, and a person's disposition, will impact the injured employee's adjustment and ability to return to work. Given the current economy, the increase in unemployment, and the scarcity of finding work in the current labor market, it is also not reasonable to allow only 30 additional days to conduct labor market research. Similarly, 120 days after the initial evaluation may not be sufficient time to provide counseling, review transferable skills, do adequate labor market surveys, research training programs, identify vocational goals, and prepare and submit a VR plan. This short timeframe could result in more VR plans failing and having to start the process over again, resulting in more time and costs to the employer.
6. The change in Section 386-25(i), HRS, eliminates the director's ability to approve a plan that does not meet all the requirements in this section. Stripping the director of the flexibility to approve plans with minor technical problems which this proposal will do will draw out the VR process and increase the cost of VR as plans will need to be revised and resubmitted.
7. The change in Section 386-25(k), HRS, requires an employee with an approved plan who is determined to be able to return to work to be directly placed after he is released to full duty or upon completion of the plan. The Department opposes this change for the same reasons cited in paragraph one above.
8. The change in Section 386-25(l), HRS, proposes that temporary total disability (TTD) payments shall be terminated if the injured employee, who is enrolled in a VR plan that has not been approved by the director, is determined to be able to return to their usual and customary employment. The employer shall give at least two weeks notice of TTD termination in accordance with Section 386-31(b) and VR services shall cease on the date that the employee is cleared for full duty and a closing report is submitted by the VR counselor within fourteen days. The Department does not agree with this proposal. Although the injured employee may be released to full duty, he may be in VR because he may not have a job to go back to. VR services are there to help an injured worker find suitable gainful

employment. By terminating his TTD and VR, the purpose of VR is compromised. In other instances, VR may close but the injured employee is still disabled and not released to full duty. In these cases, TTD should continue and TTD should not be terminated solely because VR is closed.

9. The change in Section 386-25(r), HRS, proposes that any party may request a review of the VR program if it is determined that no progress is being made to establish a viable VR plan. The VR unit shall respond to the request within thirty days and shall issue a directive to the VR provider. The Department opposes this proposal because the sole VR specialist in the VR unit has neither the time, personnel, or resources to complete a file review within 30 days. The review requires the specialist to request progress reports from the VR provider before conducting the review. This delay as well as the procedural requirements and lack of manpower are contributing factors why the 30-day review requirement cannot be met.
10. Due to the mandatory reduction in force of State employees, the current VR Unit in the Department consists of one VR Specialist. This proposed bill would add the following additional duties and responsibilities to the VR unit:
 - A. To order the injured employee, providers of rehabilitation services, or the employer, based upon a written request that demonstrates delay or untimely responses, to comply with Section 386-25, HRS.
 - B. To adopt a fee schedule for providers of VR services.
 - C. To monitor time limits for VR reports (30 days for counseling, 30 additional days for labor market surveys, 90 additional days for a plan).
 - D. To assign a counselor on the injured employee's behalf if the injured employee does not select a VR provider within thirty days of notice of the right of referral to VR.
 - E. To review the injured employee's VR program if it is determined that no progress is being made to establish a viable VR plan and to respond within thirty days and to issue a directive to the VR provider.
11. Additional staff of a minimum of six VR Specialists (one in each Neighbor Island Office and two in Honolulu), one Supervisor, and one clerk will be required to administer the changes required in this bill. If this bill is to be enacted, the

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February 5, 2010
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Department asks that an additional \$308,000 be appropriated annually to fund the salaries of the additional personnel.

For the reasons cited above, the Department strongly opposes this measure.

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

**TESTIMONY OF ILWU LOCAL 142 RE:
SB 2608 RE: VOCATIONAL REHABILITATION**

Hearing: Friday, February 5, 2010

Time: 9:30 a.m.

Place: State Capitol, Room 309

Chair Rhoads, Vice Chair Yamashita, Members of the Committee:

Thank you for the opportunity to present testimony regarding **HB 2493**. We **oppose** this ill-conceived bill.

At a time when imaginative and independent vocational counseling rehabilitation is most urgently needed by those without work, HB 2493 is an unfortunate attempt by some employers to stifle their exercise of independent vocational judgment and to make these independent professionals subservient to arbitrary guidelines. The bill also undercuts some of the best and most constructive features of the existing vocational rehabilitation process by trying to regiment vocational counseling based on arbitrary, preconceived time tables.

There are numerous substantial reasons for opposing HB 2493 but among the most salient are: 1) it betrays ignorance of existing law, 2) it unnecessarily seeks to adopt features already a part of the existing statute, 3) it creates restrictions that will harm vocational rehabilitation efforts, and 4) it is arbitrarily regimental in its approach, stifling independent professional judgment and rewarding uncreative bureaucratic action.

The proposed amendment to Section 386-25(b) HRS which would limit vocational services for employees with no permanent disability who still have permanent work restrictions to direct placement services is not well-considered. First, the concept of the amendment is inherently contradictory. If an employee has permanent work restrictions, this constitutes a degree of permanent disability, so it is highly unlikely that an employee with no permanent disability would actually have no permanent work restrictions. Moreover, if an employee truly had no permanent disability, i.e. was not impaired by her industrial injury, she would have no need for vocational rehabilitation because she could continue performing her original job. If the job were eliminated purely for bonafide economic reasons, the employee would seek unemployment insurance benefits, not workers' compensation.

The provision in subsection 386-25(l) HRS for terminating temporary total disability if an employee enrolled in an unapproved vocational rehabilitation but is capable of resuming his usual and customary work, or the provision in sub-section 386-25 (k) that requires direct job placement if the injured worker can return to his usual and customary employment are both completely unnecessary. Section 386-31(b) HRS on temporary total disability already provides that temporary total disability can be terminated if the employee is able to resume work. If the employee did in fact return to work, the employee's vocational rehabilitation plan would not continue but would be closed as a successful placement of a rehabilitated employee. HAR 12-14-6 specifically contemplates ending vocational rehabilitation services when a program is completed, as it would be when the employee returns to work. The new language proposed later in subsection 386-25(l) on lines 4-8 of page 12 of the bill is in fact current departmental practice, and it serves no useful purpose to reiterate what is already well-known and established.

Amendments proposed to new subsection (r) that any party may seek review of a vocational rehabilitation plan if they are dissatisfied with current progress or in subsection (b)(1) giving the vocational rehabilitation unit authority to order parties to comply with written requests are already allowed by existing law, regulation, and practice. The VR unit can already modify, suspend or terminate a vocational rehabilitation plan under HAR 12-14-9. The vocational rehabilitation unit does now, in actual practice, conduct reviews of situations where a party is aggrieved about the implementation or non-implementation of vocational rehabilitation plans and orders compliance with justifiable requests for written responses or other necessary action. Authority for such reviews exists in the current Section 386-25(h). Thus, it is disturbing to see HB2493 suggest that the vocational rehabilitation unit is not being responsive and that this bill is proposed to make these actions happen, when such actions do in fact already occur routinely.

While the above-referenced proposals might be discounted as efforts by isolated employers or insurers who are not well informed about current law, regulation and practice, the attempt to straight jacket rehabilitation efforts into proscribed time tables is wholly unworkable. If an employee has not reached maximum medical stability it is impossible to have physical and psychological limitations defined in 30 days after the selection of the vocational provider as proposed in subsection 386-25(d)(1)(E) HRS (p. 4). Likewise, one cannot arbitrarily require that all adjustment to disability be achieved in 30 days; all labor market surveys and functional capacity evaluations done in 30 additional days; and all vocational rehabilitation plans done in 90 further days, with only one 45 day extension allowable. Section 386-25(e) HRS (pp. 5-6).

An initial evaluation report must already be submitted within 45 days of referral under HAR 12-14-4. This initial evaluation must encompass an assessment of employee's medical status, primary and secondary disabilities, non-work injury disabilities, physical and psychological limitations; a job analysis of current employment; assessment of ability to return to usual and customary employment and participate in vocational rehabilitation; and an overall statement of feasibility to furnishing vocational

rehabilitation services. Progress reports must also be submitted at 30 day intervals pursuant to HAR 12-14-4.1.

The mere allegation that all of these functions can be standardized to this degree reflects profound ignorance of the complex interaction between medical and psychological impairment and how the restoration of physical and mental function in an occupational context actually occurs. It also seems highly unaware about the mind-numbing diversity of problems a vocational counselor must confront and solve in performing rehabilitation.

Subsection 386-25(i) HRS takes the even more unprecedented step of mandating that any "intervening medical condition, related or unrelated to the industrial claim, that renders the claimant again temporarily totally disabled" must suspend a vocational program "pending the employee's clearance to return to work". (p. 10) This crude generalization actually has the potential to penalize employers and insurers tremendously. When an individual already is unable to work or to find work and is therefore in vocational rehabilitation, some meaningful rehabilitation activity, like education, training or job search or planning often can still occur while the employee is temporarily totally disabled. It is completely illogical to stop the constructive activities that can occur to prepare an employee to resume work because they are temporarily totally disabled. To stop these activities simply prolongs disability and increases the Employer's and Insurer's costs. The Subsection 386-25(i) HRS proposal is thus counterproductive on its face.

The real work of vocational rehabilitation in the a horrendous economic environment requires great skill, discipline, perseverance, and imagination. Successful rehabilitation cannot be achieved by the kind of external mandates and rigid deadlines this bill proposes. Hawaii is actually quite fortunate to have a dedicated core of honest vocational rehabilitation professionals who strive to counsel injured workers efficiently and objectively toward achieving gainful employment in the interest of the multiple stakeholders of our workers' compensation system. While we are sympathetic to any efforts to achieve a more economical means of restoring industrial injury victims to productivity, H.B. 2493 simply is not an appropriate means of attaining those objectives, and we urge that the bill be defeated.

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

Friday, February 5, 2010
9:30 a.m.

H.B. 2493

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 45% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **supports** H.B. 2493, **with amendments**. This bill expands the duties of the rehabilitation unit and providers of rehabilitation services. Additionally, it allows employers to terminate temporary total disability benefits when the employee is able to return to work and is enrolled in a non-approved plan.

This bill will ensure that injured workers are provided with vocational rehabilitation services consistent with industry standards and with the existing requirements under Chapter 14, Title 12, Hawaii Administrative Rules. The language in this bill also requires providers to adhere to existing timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

Hawaii Insurers Council supports this measure with the following amendments:

1. Amend Page 1. line 17 to read:

"restrictions ***due to the work injury***, the injured employee shall be allowed only direct"

2. On page 2, line 10, insert after "section":
“. Benefits or payment of fees shall be suspended until compliance with the order or penalties may be assessed under 386-97.5.”
3. On page 3, line 2, insert after "providers":
"and a billing dispute process;"
4. On page 10, line 21, replace "shall default" with "may opt."

Thank you for the opportunity to testify.

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair

Rep. Kyle T. Yamashita, Vice Chair

Rep. Henry J.C. Aquino

Rep. Mark M.
Nakashima

Rep. Karen Leinani Awana

Rep. Scott K. Saiki

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Rep. Joseph M. Souki

Rep. Gilbert S.C. Keith-
Agaran

Rep. Roy M. Takumi

Rep. Marilyn B. Lee

Rep. Kymberly Marcos
Pine

Chair Rhoads, Vice Chair Yamashita, and members of the Committee, my name is Rene Pua Akimoto, and I represent Hawaiian Airlines.

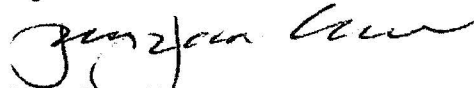
Support for H.B. 2493

We believe the Vocational Rehabilitation system will be much improved by H.B. 2493, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you must review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in H.B. 2493 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

Thank you for the opportunity to testify. I request that you pass HB2493.

Signed



Rene Pua Akimoto



HAWAII INJURED WORKERS ALLIANCE
715 SOUTH KING STREET SUITE #410
HONOLULU, HAWAII 96813

February 5, 2010

The Twenty-Fifth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

H.B. 2493 expands duties of the rehabilitation unit and providers of rehabilitation services. Allows employer to terminate temporary total disability benefits when the employee is able to return to work and is enrolled in a non-approved plan.

The Hawaii Injured Workers Alliance strongly REJECTS this measure.

H.B. 2493 will have a detrimental impact on the injured workers journey to recovery.

Vocational rehabilitation is to insure that injured workers become a part of the working community in a productive manner.

We believe this bill will be a negative step for injured workers in the State of Hawaii.

Your REJECTION of this bill would be greatly appreciated.

George M. Waialeale
Executive Director
Hawaii Injured Workers Alliance
383-0436

Testimony in OPPOSITION of HB 2493

February 5, 2010

To: Representative Karl Rhoads, Chair, House Labor & Public Employment Committee
Representative Kyle Yamashita, Vice Chair, House Labor & Public Employment Committee

Dear Honorable Committee Chairs & Members:

My name is Debbie Kawamoto and I am a former injured worker, who has personally gone through and has survived the arduous and complicated worker's compensation system in Hawaii. I happen to also now be working for Vocational Management Consultants, Inc. as a Vocational Tech, assisting 5 Vocational Rehabilitation Counselors and the many injured workers they are currently working with. I also serve as Secretary, for the Hawaii Injured Workers Alliance (HIWA), an organization that is working toward making productive and much needed changes to the worker's compensation system, to provide various assistance to the injured worker to help them return to gainful employment in a timely manner.

I am writing this testimony to request that you "**DO NOT SUPPORT HB 2493**", as it will only create even further hardship for the injured worker, who is trying to return to and once again become a productive and contributing member of our society, which is the ultimate goal of the Vocational Rehabilitation process.

Why I believe HB 2493 should NOT be passed:

1) The injured workers that are receiving VR assistance come from various occupations and their respective injuries and disabilities can vary in severity. Therefore, they require different timeframes for medical testing, completion of a functional capacity evaluation, general healing & recovery, and adjustment to disability. All injuries whether physical or psychological in nature, require time. Regardless of what kind of injury or impairment, the injured worker needs this proper time to heal, in order to actively and productively participate in the requirements of the vocational rehabilitation program. During the healing process, due to no fault of their own, individuals may sometimes experience setbacks that may further delay the vocational rehab process. The healing and recovery process is unique to the individual and therefore, to **require unreasonable timelines** such as outlined in SB 2608 (see reference below), for the injured worker, **simply does not make sense.**

- Pg 5 – Line 19 – 30 Days to allow for any adjustment to disability
- Pg 5 – Line 20 – 30 Additional days to conduct a functional capacity evaluation

2) The primary and ultimate goal of vocational rehabilitation is to help the injured worker once again become a productive contributing member of society. **At a time when the State of Hawaii is already in a budget crisis, the last thing any of your constituents, would want is for more injured workers to be out of work and to rely on public assistance and further increase the burdens onto the tax payers of Hawaii. If HB 2493 is passed, it will surely prevent and/or delay many injured workers from returning to the workforce and allowing the burden to continue.**

Thank you for allowing me to provide testimony to your committee. Please pay close attention to the testimonies of the injured workers, and the vocational rehabilitation counselors, attorneys and doctors who work daily with the injured workers and the struggles of the Work Comp system, as they will be the ones most heavily impacted by your decision/vote.

Debbie Kawamoto
Vocational Tech - Vocational Management Consultants, Inc.
Secretary - HIWA

February 4, 2010

State Senate
The Twenty-Fifth Legislature

Committee on Labor
Representative Karl Rhodes, Chair
Representative Kyle Yamashita, Vice Chair
and Members of the Committee on Labor
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Relating to: HB 2493, Relating to Vocational Rehabilitation

Dear Representative Rhodes and members of the Committee:

I strongly urge you to **OPPOSE HB 2493 Relating to Vocational Rehabilitation.**

My name is Patti Inoue and I am a member of the Hawaii Injured Workers Alliance. It is a group of individuals that are concerned about the welfare of injured workers. I am also a licensed, practicing vocational rehabilitation counselor that services injured workers in the State of Hawaii. I am currently employed with Vocational Management Consultants and have worked in the vocational rehabilitation field for 8 years.

The proposed bill appears to impose unrealistic restrictions upon the vocational rehabilitation process. Our role as vocational rehabilitation counselors is to assist persons who have been injured on the job return back to work. We strive to do our best at working with our clients to assist them to return back to work and become productive citizens in our state. The system is such that there is no fault placed on the injured worker or employer but the intent is to assist the injured worker back to work. The suggested changes to the administrative rules would appear to punish the injured worker for something that may not have been their fault but they are asked to possibly return back to work in a lesser paying position through the direct placement process. For many injured workers, because of their injury, they must now try to obtain employment in a different direction than what they were previously working in. Without the possibility of training options, they may not be able to return back to the workforce because of their limitations.

It would also appear that by passing this bill, the Disability Compensation Division would need to expand their staffing levels in order to enforce the recommended changes. As it currently stands, there is only one staff person in the department. That one person would not be able to review and monitor all that is being requested in the proposed changes. This would mean additional funding needed to support this bill.

I urge you to **not support this bill** in that a lot of the recommended changes would in fact hurt the injured worker by placing undue timeframes and restrictions on what they would be able to work in.

Thank you for the opportunity to address this committee.

Patti Inoue

Date

My address and phone number is:

Patti Inoue
715 S. King Street, #410
Honolulu, HI 96813
538-8733

KESSNER UMEBAYASHI
BAIN & MATSUNAGA
ATTORNEYS AT LAW
A LAW CORPORATION

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February 3, 2010

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Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair
Committee on Labor and Public Employment
House of Representatives, 25th Legislature
State of Hawaii
Regular Session of 2010
Room 422, State Capitol Building
Honolulu, HI 96813

Re: H.B. 2493
Hearing: February 5, 2010 at 9:30 a.m.

Dear Committee Members:

On behalf of Kessner Umebayashi Bain & Matsunaga, I am writing to express our support for House Bill 2493 and to ask that the members of the Committee on Labor and Public Employment vote in favor of passing this bill.

Our firm specializes in workers' compensation litigation and our attorneys collectively have over 120 years of experience in this line of work. We support the beneficent purpose of the Hawaii workers' compensation law but are concerned that the vocational rehabilitation provisions in workers' compensation can result in unnecessary delay in bringing claims to a reasonable closure and can be the subject of abuse by unmotivated workers. We have experienced workers' compensation claims where the vocational rehabilitation process continued for over one year without the establishment of a vocational rehabilitation plan to return the injured worker to gainful employment. The amended provisions of H.B. 2493 address this problem by establishing finite time periods to accomplish the purpose of vocational rehabilitation.

The proposed amendments also address the problem where temporary total disability benefits continue after it has been medically determined that the injured worker can return to usual and customary employment and also appropriately limits vocational rehabilitation services to direct placement for employees who are able to return to their usual jobs.

Finally, the proposed amendment also provides for oversight by the Disability Compensation Division of cases where there is legitimate concern that progress is not being made toward a vocational rehabilitation plan by establishing a reasonable time frame for the Vocational Rehabilitation Unit to respond to requests regarding the lack of progress in establishment of a vocational rehabilitation plan.

KESSNER UMEBAYASHI
BAIN & MATSUNAGA
ATTORNEYS AT LAW
A LAW CORPORATION

Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair
Re: H. B. 2493
February 3, 2010
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In closing, we encourage the members of the Committee on Labor and Public Employment to recognize that unreasonable delay and unnecessary costs in the vocational rehabilitation process are borne by all citizens in Hawaii and that the proposed amendment is a reasoned approach to ensuring that vocational rehabilitation is accomplished in a time and cost efficient manner.

Thank you for considering our support of H.B. 2493.

Very truly yours,

KESSNER UMEBAYASHI
BAIN & MATSUNAGA



ROBERT C. KESSNER



HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

Rep. Henry J.C. Aquino	Rep. Mark M. Nakashima
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Rep. Faye P. Hanohano	Rep. Joseph M. Souki
Rep. Gilbert S.C. Keith-Agaran	Rep. Roy M. Takumi
Rep. Marilyn B. Lee	Rep. Kymberly Marcos Pine

NOTICE OF HEARING

DATE: Friday, February 5, 2010
TIME: 9:30 A.M.
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

Testimony of Milia Leong on behalf of John Mullen & Co., Inc.

Support for H.B. No. 2493, Relating to Vocational Rehabilitation

Representative Karl Rhoads, Chair, Representative Kyle T. Yamashita, Vice Chair, and Committee members, my name is Milia Leong, Workers' Compensation Claim Manager for John Mullen & Co., Inc., a Hawaii based claim administrator for insurance and captive carriers, as well as self-insured employers. We handle on average over 2000 workers' compensation claims yearly and I oversee the majority of the claims which involve vocational rehabilitation (VR). Although I do support the concept, and acknowledge the successes seen in VR over the last 16 years of my career, I believe the system can be improved by H.B. 2493.

HRS 386-25 (a) Vocational Rehabilitation states in part "The purposes of vocational rehabilitation are to restore an injured worker's earning capacity as nearly as possible to that level which the worker was earning at the time of the injury and to **return the injured worker to suitable work in the active labor force as quickly as possible in a cost-effective manner.**"

Our primary concerns are that the VR Counselors fees are not regulated by the Department of Labor (DOL) via a fee schedule or a billing dispute process, nor is there a specified time frame with respect to submission of a "plan." This has created loop holes for prolonged VR programs, which in our experience, benefit no one but the counselor involved. By extending the VR program, prior to submission of a plan, a VR counselor may continue to charge the Employer at any rate, with no maximum allowance, for an unspecified duration of time, thus creating abuse of the system for those providers who choose to take advantage.

John Mullen & Company

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It is widely acknowledged in the Workers' Compensation industry, that the longer an injured worker is out of the labor force, the less chance there is that a worker will ever return to gainful employment. Thus, the lack of specified time frames for submission of a plan, only serve as a disadvantage to the injured worker. With the proposed changes outlined in H.B. 2493, the worker will be entitled to a period of up to 240 days (8 months), from the date they are notified of their eligibility rights, to select a counselor of their choosing and assist in submission of a valid "plan." This generous 240 day time frame does not include the time and cost of the plan itself.

The proposed changes to 386-25 are primarily time specific, and in no way take away benefits from those who are deemed eligible for VR services pursuant to 386-25 (b). When injured workers are released to return to full duty, it is proposed benefits be suspended. This goes back to the very issue of fairness amongst the injured workers, wherein all workers shall be treated equally and pursuant to the law, and not based on that of circumstance.

As with all other providers under Chapter 386, it should allow the Director to impose penalties pursuant to 386-97.5 for those that do not comply.

John Mullen & Co., Inc. supports this measure in with the following amendments:

1. Page 3, line 2 "and a billing dispute process."

These changes clearly serve to benefit the injured worker and therefore we urge you to pass H.B. 2493.

Thank you for this opportunity to testify.

John Mullen & Company

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HOUSE OF REPRESENTATIVE
THE TWENTY-FIFTH LEGISLATURE
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COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair

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Rep. Karen Leinani Awana	Rep. Scott F. Saiki
Rep. Faye P. Hanohano	Rep. Joseph M. Souki
Rep. Gilbert S. C. Keith-Agaran	Rep. Roy M. Takumi
Rep. Marilyn B. Lee	Rep. Kymberly Marcos-Pine

NOTICE OF HEARING

DATE : Friday, February 5, 2010
TIME: 9:30 a.m.
PLACE: Conference room 309
State Capitol
415 South Beretania Street

Support of H.B. # 2493, Relating to Vocational Rehabilitation.

Representative Karl Rhoads, Chair, Representative Kyle T. Yamashita, Vice Chair and Committee members, my name is Gail Matsushima, and I represent John Mullen & Co. a Hawaii - based claim administrator for insurance and captive carriers, as well as self-insured employers.

I am in support for H.B. 2493

We believe the Vocational Rehabilitation system will be much improved by H.B.2493, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you must review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in H.B. 2493 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

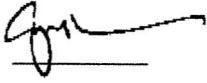
Thank you for the opportunity to testify. I request that you pass HB2493..

Signed

Hawaii Insurers Council
February 4, 2010

Page 2

LBR
S.B. 2608

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HOUSE OF REPRESENTATIVE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

Rep. Henry J.C. Acquino	Rep. Mark M. Nakashima
Rep. Karen Leinani Awana	Rep. Scott F. Saiki
Rep. Faye P. Hanohano	Rep. Joseph M. Souki
Rep. Gilbert S. C. Keith-Agaran	Rep. Roy M. Takumi
Rep. Marilyn B. Lee	Rep. Kymberly Marcos-Pine

NOTICE OF HEARING

DATE : Friday, February 5, 2010
TIME: 9:30 a.m.
PLACE: Conference room 309
State Capitol
415 South Beretania Street

Support of H.B. # 2493, Relating to Vocational Rehabilitation.

Representative Karl Rhoads, Chair, Representative Kyle T. Yamashita, Vice Chair and Committee members, my name is Esther Okada, and I represent John Mullen & Co. a Hawaii - based claim administrator for insurance and captive carriers, as well as self-insured employers. I am in support for H.B. 2493

We believe the Vocational Rehabilitation system will be much improved by H.B.2493, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you must review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in H.B. 2493 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

Thank you for the opportunity to testify. I request that you pass HB2493..

Signed



HOUSE OF REPRESENTATIVE
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REGULAR SESSION OF 2010

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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NOTICE OF HEARING

DATE : Friday, February 5, 2010
TIME: 9:30 a.m.
PLACE: Conference room 309
State Capitol
415 South Beretania Street

Support of H.B. # 2493, Relating to Vocational Rehabilitation.

Representative Karl Rhoads, Chair, Representative Kyle T. Yamashita, Vice Chair and Committee members, my name is Ruby Kihara, and I represent John Mullen & Co. a Hawaii - based claim administrator for insurance and captive carriers, as well as self-insured employers.

I am in support for H.B. 2493

We believe the Vocational Rehabilitation system will be much improved by H.B.2493, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you must review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in H.B. 2493 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

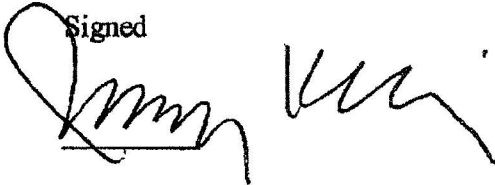
Hawaii Insurers Council
February 4, 2010

Page 2

LBR
S.B. 2608

Thank you for the opportunity to testify. I request that you pass HB2493..

Signed

A handwritten signature in black ink, appearing to be "John Mullen", written over a horizontal line.

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair

Rep. Kyle T. Yamashita, Vice Chair

Rep. Henry J.C. Aquino	Rep. Mark M. Nakashima
Rep. Karen Leinani Awana	Rep. Scott K. Saiki
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Rep. Gilbert S.C. Keith-Agaran	Rep. Roy M. Takumi
Rep. Marilyn B. Lee	Rep. Kymberly Marcos Pine

NOTICE OF HEARING

DATE: Friday, February 5, 2010

TIME: 9:30 A.M.

PLACE: Conference Room 309

State Capitol

415 South Beretania Street

Testimony of Sidney Wong.

Support for H.B. No. 2493, Relating to Vocational Rehabilitation

Chair Rhoads, Vice Chair Yamashita, and members of the Committee, my name is Sidney Wong and I am an attorney in private practice with the law firm of Wong & Oshima. I have represented employers and insurance carriers in the area of Workers' Compensation law for over 28 years. Many of the cases in which I have been retained involved vocational rehabilitation.

I support H.B. No. 2493 with amendments.

HRS 386-25 (a) Vocational Rehabilitation states in part "The purposes of vocational rehabilitation are to restore an injured worker's earning capacity as nearly as possible to that level which the worker was earning at the time of the injury and to return the injured worker to suitable work in the active labor force as quickly as possible in a cost-effective manner."

While the purpose of HRS 386-25 is clear, implementation and completion of vocational rehabilitation efforts are not always clear or timely. The amendments set forth in H.B. No. 2493 provide a workable and reasonable timeline for vocational rehabilitation efforts by adding the elements of: 1) accountability; 2) consistency and predictability in the delivery of services; 3) clearer standards for services; and 4) measurable criteria to evaluate the utility and effectiveness of vocational rehabilitation services. These qualities serve to create a more understandable and effective vocational rehabilitation process for all.

Presently, in the absence of specific timetables and deadlines, delays may occur for various reasons or excuses. Failure to create deadlines or specific time periods for completion of actions required in the initial evaluation stage of the vocational rehabilitation process only serves to delay the vocational rehabilitation process. H.B. No. 2493 provides these deadlines for necessary actions to efficiently complete the initial evaluation of an injured worker's vocational rehabilitation status, and, to minimize the occasions and cases of delay. These delays are of no value to either injured workers or employers.

H.B. No. 2493 does not deprive or take away an injured worker's right to vocational rehabilitation efforts, but rather serves to improve and make more effective the present process.

I also support this measure with the following amendments:

1. Page 3, line 2 "and a billing dispute process."

In closing, H.B. No. 2493 with amendments will better serve to accomplish the purposes of HRS 386-25. Implementation of these changes will benefit the injured workers and all involved in the vocational rehabilitation process.

I urge this Honorable Committee to support and pass H.B. No. 2493 with amendments.

Thank you for this opportunity to testify.

HOUSE

TWENTY-FIFTH LEGISLATURE 2010

HOUSE LABOR & PUBLIC EMPLOYMENT COMMITTEE

CHAIR: SENATOR KARL RHOADS

VICE CHAIR: SENATOR KYLE T. YAMASHITA

Date: Hearing 2/5/10 at 9:30 a.m., Room 309

House Bill 2493

In Opposition to HB 2493

Honorable Committee Members,

My name is Percy Wong. I have practiced as a rehabilitation counselor in Hawaii since 2000 and am currently employed with Vocational Management Consultants, Inc..

Our mission in regard to the rehabilitation of injured workers is to provide services that will help them return to suitable gainful employment and be a contributing member of our community.

I Do Not Support HB 2493. HB 2493 will create further hardship for injured workers and undermine their rights.

“The purposes of vocational rehabilitation (386-25) are to restore an injured worker’s earnings capacity as nearly as possible to that level that the worker was earning at the time of injury and to return the injured worker to suitable gainful employment in the active labor force as quickly as possible in a cost effective manner.”

Regarding proposed addition to only allow direct placement service for an injured employee who has been determined not to have a permanent disability, yet suffers from permanent work restrictions, this proposed amendment denies the injured worker the opportunity to access often needed training and/or education to restore his or her earning capacity as nearly as possible to the wage of injury, i.e., gainful employment.

Regarding acceptance of physical or psychological limitations from another physician other than the employee’s treating physician if such information is not provided with 30 days of selection of a provider, this should be subject to review and approval of the injured worker’s treating physician and not be considered valid until approved.

Regarding 30 days to allow any adjustments to disability, this is purely an arbitrary time frame not supported by any empirical evidence. As any experienced rehabilitation professional, medical practitioner or mental health professional will attest, the profound effects of physical injuries coupled with the psychological impact that these injuries have on an injured worker’s livelihood, family life and self-image defy precise measures of

estimation as to adjustment to disability. Allowing 30 days for this process to be completed is unrealistic and deprives the injured worker of the time necessary to confront the reality of his disability and its effects on his life, as well as, those close to him.

Regarding the allowance of only one extension to a rehabilitation plan not to exceed 45 days, occasionally delays are encountered in a plan often brought about by medical or personal emergencies, or educational issues, e.g., unavailability of classes, administrative delays. All of these are outside the control of the injured worker, so to penalize the worker would be unfair to him/her.

Regarding removing the rights of the director to approve a plan that is in the best interest of the employee; contains reasonable assurances that the employee will be placed in suitable gainful employment; and has been approved by the employee;..., this appears to further erode the rights of the injured worker, as well as, the authority of the director to exercise his or her judgment and appeal to the spirit of the laws related to rehabilitation. For these reasons, this omission should be rejected.

In reference to the cost effectiveness of vocational rehabilitation services for the injured worker, please note that case statistics provided by the Department of Labor for the year 2008 indicate that a total of 1019 clients were provided vocational rehabilitation services at a total cost of \$4,893,345, or an average of \$4,802 per case (*Ref. Workers' Compensation Data Book 2008, State of Hawaii DLIR*) Recognizing that as a result of vocational rehabilitation, a previously unproductive worker has been returned to the work place and is actively contributing to the community in terms of goods and services, as well as, financially, i.e., taxes, the cost is nominal. Otherwise, this same person often utilizes other public assistance services, unemployment benefits, food stamps, etc., and continues to use taxpayer dollars.

Finally, regarding the discontinuation of temporary total disability benefits should an injured worker already be enrolled in vocational rehabilitation services and determined to be able to return back to usual and customary work. After a lengthy absence from work, the injured worker should be entitled to vocational assistance back to their usual and customary work with a follow up period to determine that the position is still vocationally appropriate for the worker due to possible implementation of changes in job duties or issues on the job that might impact their ability to return to their original job, as is provided under existing law.

I respectfully urge you to consider these points when reviewing this proposed bill. Thank you for your time and consideration.

Sincerely,

Percy Wong, M.Ed., CRC, LMHC

Vocational Management Consultants

HOUSE

TWENTY-FIFTH LEGISLATURE 2010

House Labor & Public Employment Committee

CHAIR: Representative Karl Rhoads

VICE CHAIR: Representative Kyle Yamashita

Date: Hearing 2/5/10

House Bill 2493

In Opposition to HB 2493

My name is Laurie Hamano. I am a vocational rehabilitation counselor for the private sector for the past 25 years. My company is Vocational Management Consultants, Inc. We have been in business since 1995. VMC also works with the Federal Government with the Veterans Administration as well. We are opposing the passing of Senate Bill 2608. In overview of the bill, there appears to be arbitrary changes in the time lines that appear to be attempts at reducing the injured workers benefits. It is not clear as to what the changes are based upon.

- 1) In the first change that is being recommended on line 14-18 on the bill, it speaks about the injured workers who have "permanent work restrictions" but "no permanent disability". This would only allow for the injured worker to be placed in "only direct placement services". As a counselor we have faced situation when the injured worker eventually receives such an indication that there is no permanent disability however, they are provided with permanent limitations that preclude the worker from their usual and customary work that deems them eligible for the vocational rehabilitation services. To eliminate the ability to train without knowing the injured workers situation and basing it purely that there is "no permanent disability" would be unfair.
- 2) The next recommendation on page 2 discussed additional duties and responsibilities for the Rehabilitation Unit. Please note here that there is only one person (Diane Oshiro) who makes up this Unit. She no longer has a clerical worker to help her. The concern would be whether the Unit could handle any additional responsibilities or duties in the law given the budget crunch.
- 3) On page 3, the injured worker should they not select a provider within 30 days, the unit shall assign a counselor on the injured workers behalf. The concern here is that the injured workers are not notified of their "right" to a vocational rehabilitation counselor and would not even know that they have that right to choose. There would be need for the injured workers to be informed at the beginning of the claim by the employers of their rights to medical care, vocational rehabilitation and temporary total disability benefits. Many injured workers indicate that they did not have any idea that vocational rehabilitation services were available to them until informed by their attorneys.

- 4) On page 4, there was an addition of "work capabilities" to "(A) Current medical status". The limitations are noted in (E) "Physical or psychological limitations or both". There is no need to add the work capabilities to (A).
- 5) Under E) the portion of the statement "a reasonable amount of time" is taken out. "Within thirty days of the injured worker's selection of a provider" information from another physician shall be accepted." This addition would be satisfactory if approved by the treating physician.
- 6) On page 5, the provider for service would have "thirty days to allow for any adjustments to disability such as : Shock, Denial, Acceptance and Accommodation". Copies of the Adjustment to Disability " An Outline of Stages and Counseling Strategies" are available on request. This article describing the breath of stages that the injured worker would be going through while in vocational rehabilitation counseling. Thirty days for such counseling would be difficult at best. Please note that this synopsis was taken from two articles by Hanoeh Livneh from the Journal of Rehabilitation as an example of what would be required in the counseling of the adjustment of disabilities as well as the first page of "Understanding Psychological Adjustment to Disability: An American Perspective" is available on their website. These documents remind us that Adjustment to Disabilities is not a "24 hour virus" that would be completely cured in 24 hours or a week. The levels of depression that we as counselors must deal with are serious and significant by the time the injured worker becomes involved in the counseling. There are similarities with dealing with grief such as losing a spouse, and mother or a father. I would like to see anyone who has dealt with such grief to "be over and done with it" in thirty days.
- 7) The next addition is on page 6 (3) regarding 90 days to prepare and submit a vocational rehabilitation plan inclusive of only one extension. All of the extensions now are supported by the justification (i.e. documentation from the school or the injured workers doctor report). Ninety days would be sufficient IF the counselor has all the pieces of information required by the law to provide the document but this is not always possible.
- 8) The next addition is "using transferable skills by way of direct placement" in the Level III. My interpretation is that this says that the counselor is to use the injured workers transferable skills in a direct placement plan. However, once this is done, this would eliminate the injured worker from receiving the training option should the injured worker not find suitable and gainful employment via their transferable skills. In my last 25 years, the first use of their transferable skills are determined via the transferable skills analysis to determine if they are qualified to work in other type of work that is AVAILABLE in the labor market. Many times their limitations preclude that they cannot use their transferable skills in other jobs. If the counselor uses the direct placement plan and there are no jobs available for the worker, then the injured worker would not have the option to consider training into another field that is more viable.
- 9) Regarding (7) currently, VMC adds the contingency plan into the rehabilitation plan for direct placement should the injured worker not be able to complete their training. This however is an agreement with the carrier prior to this being placed into the plan.
- 10) The elimination of the director's ability to approve plans that are in the "best interest of the employee" as well as the "reasonable assurances that the employee will be placed in

suitable gainful employment” gives the unit even less capability of approving plans that don’t fit in every requirement. As in every injured worker that has gone through the vocational rehabilitation program, the counselors cannot “pigeon-hole” or cookie-cutter” them as they all have different strengths, background, education, experiences and limitations that they come with. As an example, I have assisted injured workers using self-employment and have found that opportunity to fit this category of “best interest of the employee” and brought the injured worker to successful closure.

- 11) Suspension of injured workers while in plan if they have any intervening medical issues is already being done via standard practice. This does not need to be placed in statute.
- 12) Documentation for the cost and the items to be purchased are provided in the plans now. Receipts are also provided. The living expense forms are for that purpose to include the receipts or the vendors invoices. This is standard practice. This would be ideal to be placed in the administrative rules rather than statute.
- 13) Page 10 recommendation notes that the injured worker should he be released to his usual and customary employment while in an approved plan could be in a training plan. He or she should be allowed to decide whether to complete their training as they have spent the time and energy learning a new skill. This is unusual and does not occur often.
- 14) The recommendation on page 11 from line 7-17 note that the injured worker would lose his benefits once released to his usual and customary employment. Past practice has been to allow the injured worker to be assisted through the transition of returning to work in his usual and customary position as there might have been changes to the position not noted. This would allow the injured worker the transition to ease back into work. This easement back to work has been helpful to those who are attempting to return to their usual and customary position. Some of the injured workers who returned might find the work too arduous for their current abilities.
- 15) On page 12, line 4-8 the VR counselors have noted that the TTD payments have ceased when the cases are closed. However, this has not been for all cases depending on their medical status and the settlement practices. Once again this would not be appropriate to place this in the statutes.
- 16) On page 13, line 14-21 it is the understanding of this counselor that this request could be made at any time by the carriers. This counselor also requests that the VR counselor also has the same right to ask for the carrier to cooperate with the counselor as they work with the injured worker to design a viable and reasonable rehabilitation plan. At this time, the carriers/employers can continue to object to plans *no matter what is devised* and submitted causing more delays and anguish on the part of the injured worker. Hearings then continue to add delays to the progress of these cases.

In final discussion and review of the Vocational Rehabilitation Statutes 12-14-4, cost per case from the Data Book completed by Department of Labor, indicate the vocational rehabilitation payments by industry were: 1232 cases/cost \$5,063,253.00 in 2005 and the average per case was \$4109.78. In 2008, from the Data Book there were 1019 cases (213 cases less 3 years later in 2008) and the cost for Vocational Rehabilitation was \$4,893,345.00. Average cost per case is \$4802.10. In looking at the total (medical/other services) cost in 2008 was \$245,762,853.00, vocational rehabilitation benefits were deemed to be 1.9% of this entire total.

The number of cases each year have continued to decline as there clearly appears to be more cost shifting where injured workers move out of the system to the Welfare system, Social Security Disability system, and other medical systems. **In the State in 2008, the number of reported cases was 24, 542.** When these injured workers move out of this system, we as citizens and taxpayers end up paying for these injured workers outside of the Workers Compensation system and away from the insurance companies whom I pay Workers Compensation premiums to take care of my employees.

Thank you for the opportunity to comment on this bill and their recommendations. Again, due to the above comments and review the undersigned opposed SB 2608.

Sincerely,

Laurie H. Hamano, M.Ed. CRC, LMHC

President of Vocational Management Consultants, Inc.

Hawaii Injured Workers Alliance –Current Member andTreasurer

International Association of Rehab Professionals – Current Member

Chamber of Commerce of Hawaii Current Member

**TESTIMONY TO
HOUSE LABOR COMMITTEE
2010**

Representative Karl Rhoads - Chair, House Labor & Public Employment Committee

Representative Kyle Yamashita - Vice-Chair, House Labor & Public Employment Committee

Date: Hearing 2/5/10

House Bill 2493

In Opposition to HB 2493

Honorable Committee Members,

I am Beverly Tokumine, a vocational rehabilitation counselor employed at Vocational Management Consultants, Inc. Our company handles vocational rehabilitation cases with the State of Hawaii and the Federal Government with the Veterans Administration. I am writing to stated we oppose passing of House Bill 2493.

The purpose of vocational rehabilitation is to help injured workers become productive, contributing members of our community and HB 2493 does not support this. We do not want injured workers to rely on public assistance and increase the burden on the tax payers of Hawaii. I strongly encourage you to reject this bill. Thank you for the opportunity to address this committee in regard to HB 2493.

In regards to the 30 days to allow any adjustments to disability, this is not realistic. As an experienced rehabilitation professional, medical practitioner or mental health professional will attest, the profound effects of physical injuries coupled with the psychological impact that these injuries have on an injured worker's livelihood, family life and self-image defy precise measures of estimation as to adjustment to disability. Allowing 30 days for this process to be completed is unrealistic and deprives the injured worker of the time necessary to confront the reality of his disability and its effects on his life.

In regards to allowance of only one extension to a rehabilitation plan not to exceed 45 days, occasionally delays are encountered in a plan often brought about by medical or personal emergencies, or educational issues, e.g., unavailability of classes, administrative delays. All of these are outside the control of the injured worker; this would be unfair to the injured worker.

In regards to the removing the rights of the director to approve a plan that is in the best interest of the employee. This contains reasonable assurances that the employee will be placed in suitable gainful employment. This proposal appears to further erode the rights of the injured

Tokumine, Beverly

Page 2

worker, as well as, remove the director's ability to exercise his or her judgment and appeal to the spirit of the laws related to rehabilitation. For these reasons, this omission should be rejected.

Thank you for the opportunity to comment on this bill and their recommendations.

Sincerely,

Beverly Tokumine, M.Ed. CRC, LMHC
Rehabilitation Specialist
Vocational Management Consultants
715 S. King Street, Suite 410
Honolulu, HI 96813
808-538-8733

HENDERSON GALLAGHER & KANE

HARVEY E. HENDERSON, JR.
J. PATRICK GALLAGHER
JOELLE SEGAWA KANE
LYNN B.K. COSTALES
JACQUELINE W.S. AMAI
LEAH M. REYES

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JEFFREY Y. HIGASHI
MERIDETH Q. MCENTIRE
ERIN MACDONALD
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JON S. JACOBS

jamaid@hawaiiattlaw.com

February 4, 2010

Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair
Committee on Labor & Public Employment

Re: Hearing on February 5, 2010, at 9:30 a.m.
Support for H.B. 2493, Relating to Vocational Rehabilitation

My name is Jacqueline W.S. Amal. I am a licensed attorney in Hawaii and have been practicing in the area of workers' compensation insurance defense since 1994. I strongly support H.B. 2493, Relating to Vocational Rehabilitation, which holds vocational rehabilitation counselors more accountable and provides greatly needed options in situations where the vocational rehabilitation case is not progressing, an employee returns to work, or an employee is enrolled in a non-approved vocational rehabilitation plan.

In addition to establishing a claimant's right to vocational rehabilitation services, the present § 386-25, HRS, as amended, generally states the responsibilities and requirements of the vocational rehabilitation counselor and defines the authority of the Director of Labor and Industrial Relations, through the Vocational Rehabilitation Branch, to monitor the process and intervene as necessary. While seemingly detailed, the statute is actually vague with its time frames, e.g. "reasonable time," and does not provide guidelines on what may be done when a claimant or vocational rehabilitation counselor are not compliant with the statutory requirements. The present statute also does not address circumstances that are commonly encountered in practice, such as a claimant or counselor being unresponsive or uncooperative, lack of any progress, significant delay in submitting a plan, an unreasonable or unrealistic vocational goal and/or plan, and a claimant being noncompliant with a plan.

H.B. 2493 proposes change that is necessary, but fair to both claimants and employers. By holding counselors more accountable, claimants are assured of receiving services on a timely basis and their case will continue to move forward, meaning they continue to progress towards the ultimate goal of this system which is to return them to suitable gainful employment. Minimizing the opportunities to languish in the system will minimize the exposure to litigation between the parties. With more specific time frames and remedies available to employers, there is a greater degree of control over the associated costs and the monitoring of the vocational rehabilitation case is less adversarial.

I respectfully request your favorable consideration of H.B. 2493. Thank you for this opportunity to present this testimony.

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

Rep. Henry J.C. Aquino	Rep. Mark M. Nakashima
Rep. Karen Leinani Awana	Rep. Scott K. Saiki
Rep. Faye P. Hanohano	Rep. Joseph M. Souki
Rep. Gilbert S.C. Keith-Agaran	Rep. Roy M. Takumi
Rep. Marilyn B. Lee	Rep. Kymberly Marcos Pine

H.B. 2493

Representative Karl Rhoads, Chair, Representative Kyle T. Yamashita, Vice Chair, and Committee members, my name is Elizabeth Moore. I am a licensed adjuster in the state of Hawaii and admitted to the Hawaii State Bar.

I support H.B. 2493.

I believe the Vocational Rehabilitation system will be much improved by S.B. 2608, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you will review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in H.B. 2493 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment. The passing of this bill will further provide a structure for the all parties to adhere so as to minimize any confusion and costs.

This will further have a trickling effect that will help the small businesses in Hawaii. By providing a structure and decision making forum, it will allow vocational rehabilitation services to be provided in an efficient manner, thereby resulting in a decrease in the cost of the service and the expense of this type of claim. Subsequently, a reduction in the cost of a claim will result in lower workers compensation costs for businesses, allowing businesses to put that money to better use in this frail economy.

Thank you for the opportunity to testify. I request that you pass H.B. 2493.

Signed



Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair
Committee on Labor & Public Employment



Brenda Shiroma, HR Coordinator
P. O. Box 30100
Honolulu, Hawaii 96820-0100

Friday, February 5, 2010

Support for H.B. No. 2493, Relating to Vocational Rehabilitation

I am currently employed at a medical facility located in Honolulu. For the past 4 years, part of my responsibilities is to process workers' compensation claims for the company. I strongly support H. B. No. 2493, Relating to Vocational Rehabilitation, which would much improve the power of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

This bill will limit the abuse of vocational rehabilitation in the State of Hawaii, therefore saving money for everyone. In these tough economic times, the government can help by making bills less subject to interpretation. Tightening of the laws surrounding service providers will be beneficial to the injured worker. Requiring rehabilitation providers to adhere to reasonable timelines and protocols will only help facilitate the employee's return to meaningful and gainful employment.

In closing, I strongly support and ask the committee to pass H. B. No. 2493, Relating to Vocational Rehabilitation. Thank you for this opportunity to testify.

yamashita3-Mark

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2010 1:43 PM
To: LABtestimony
Cc: ggdietcoke@hotmail.com
Subject: Testimony for HB2493 on 2/5/2010 9:30:00 AM

Testimony for LAB 2/5/2010 9:30:00 AM HB2493

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: gary f gallagher
Organization: Individual
Address: 388 puuikena dr honolulu,hawaii
Phone: 808 3775335
E-mail: ggdietcoke@hotmail.com
Submitted on: 2/4/2010

Comments:
REPRESENTATIVE KARL RHOADS
CHAIRMAN

REPRESENTATIVE KYLE T. YAMASHITA
VICE CHAIRMAN

HONORABLE COMMITTEE MEMBERS,

MY NAME IS GARY GALLAGHER AND I HAVE BEEN A PROVIDER OF VOCATIONAL REHABILITATION SERVICES IN HAWAII FOR OVER THIRTY YEARS.

I AM OPPOSED TO HB NO 2493.

THE PROPOSED CHANGES MAY;

1. HINDER INJURED WORKERS RETURN TO WORK AND ARE DETRIMENTAL, BOTH IN INTENT AND IN PRACTICE, TO THE VOCATIONAL REHABILITATION REGULATION AS THE CHANGES ARE GEARED TO REDUCE INJURED WORKERS AND THE DISABLED RIGHTS AND BENEFITS.
2. SUCCESSFUL VOCATIONAL REHABILITATION IS A COMPLEX MULTIFACETED PROCESS AND CAN NOT BE REDUCED TO A SIMPLE "COOKIE CUTTER" APPROACH. EACH "DISABLED" INJURED WORKER AND THEIR SITUATIONS ARE UNIQUE AND VOCATIONAL SOLUTIONS MUST BE INDIVIDUALLY CRAFTED SO THAT THE INJURED WORKER CAN RETURN TO WORK AS SOON A POSSIBLE WITH DUE CONSIDERATION TO THEIR CURRENT PHYSICAL AND PSYCHOLOGICAL CAPABILITIES AND LIMITATIONS AND THEIR COMPLETE VOCATIONAL PROFILE.
3. THE PROPOSED CHANGES PLACE ADDITIONAL RESPONSIBILITIES AND WORK LOAD ON THE DEPARTMENT OF LABOR DISABILITY COMPENSATION DIVISION AT A TIME WHEN THERE HAVE BEEN SIGNIFICANT CUT BACKS WITH THIS AGENCY.

CREATING A MORE ADVERSARIAL ATMOSPHERE IN VOCATIONAL REHABILITATION IS NOT THE WAY TO GO.

4. THE PROPOSED CHANGES WILL BE COUNTER PRODUCTIVE, POSSIBLY INCREASE WORKERS COMPENSATION COSTS, DILUTE DISABLED INJURED WORKERS BENEFITS AND CHOICES AND THREATEN TO GUT THE SUBSTANCE OF A HIGHLY SUCCESSFUL VOCATIONAL REHABILITATION REGULATION/INJURED WORKER BENEFIT.

yamashita3-Mark

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2010 2:07 PM
To: LABtestimony
Cc: dkegler@cmw-hawaii.com
Subject: Testimony for HB2493 on 2/5/2010 9:30:00 AM

Testimony for LAB 2/5/2010 9:30:00 AM HB2493

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Donald L. Kegler, M.Ed., C.R.C., C.D.M.S., L.M.H.C
Organization: Case Management Works-Hawaii, Inc.
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Phone: 808-528-1155
E-mail: dkegler@cmw-hawaii.com
Submitted on: 2/4/2010

Comments:
Honorable Committee Members:

My name is DON Kegler and I have been a provider of Vocational Rehabilitation services in Hawaii since 1979.

I AM OPPOSED TO HB 2493.

I believe the proposed changes, if enacted, will:

Hinder Injured Workers in their return to work and that the changes are detrimental, both in intent and in practice, to the Vocational Rehabilitation Regulation, as the changes are geared to reduce Injured Workers' rights and benefits.

Successful Vocational Rehabilitation is a complex process and cannot be reduced to a simple "cookie cutter" approach. Each "disabled" Injured Worker and their situations are unique and vocational solutions must be individually crafted so that the Injured Worker can return to work as soon as possible, with due consideration to their current physical and psychological capabilities and limitations, and their complete vocational profile.

The proposed changes place additional responsibilities and work load on the Department of Labor Disability Compensation Division at a time when there have been significant cut backs with this agency.

I believe that creating a more adversarial atmosphere in Vocational Rehabilitation will place an unnecessary burden on the Injured Worker, the Vocational Rehabilitation Counselor, and the Department of Labor. I strongly recommend that the proposed changes contained in HB 2493 NOT be approved.