

HCR 105

**REQUESTING THE AUDITOR TO
CONDUCT AN AUDIT OF THE
VOCATIONAL REHABILITATION UNIT
IN THE DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS, DISABILITY
COMPENSATION UNIT.**

LAB, FIN

HCR105



Submit Testimony

Measure Title: REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE VOCATIONAL REHABILITATION UNIT IN THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, DISABILITY COMPENSATION UNIT.

Report Title: State Auditor

Description:

Companion:

Package: None

Current Referral: LAB, FIN

Introducer(s): JOHANSON, HOLT

<u>Sort by Date</u>		Status Text
3/9/2017	H	To be offered.
3/10/2017	H	Offered
3/13/2017	H	Referred to LAB, FIN, referral sheet 29
3/17/2017	H	Resolution scheduled to be heard by LAB on Tuesday, 03-21-17 10:40AM in conference room 309.

HOUSE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE VOCATIONAL
REHABILITATION UNIT IN THE DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS, DISABILITY COMPENSATION UNIT.

1 WHEREAS, vocational rehabilitation is a critical aspect of
2 Hawaii's workers' compensation system and vital to the system's
3 overriding objectives of adequately compensating the injured
4 worker and restoring the worker as fully as possible to that
5 level of economic earnings and as quickly as is possible to
6 gainful employment if the worker becomes disabled; and
7

8 WHEREAS, vocational rehabilitation has historically been a
9 successful and valued part of the State's commitment to the
10 restoration process, which assists the individual worker, the
11 employer, and the community as a whole; and
12

13 WHEREAS, statistical evidence gathered by vocational
14 rehabilitation professionals attests to the continuing success
15 of vocational rehabilitation as a means of returning injured
16 workers to the workforce; and
17

18 WHEREAS, statistical evidence demonstrates that in 2015, an
19 average 59.6% of injured workers returned to work through a
20 vocational rehabilitation plan while in 2016, the average rose
21 to 65.4%; and
22

23 WHEREAS, many responsible individuals and stakeholders in
24 the existing workers' compensation system have voiced legitimate
25 concerns that the program is currently administered in a
26 different manner than in the previous three and a half decades,
27 and that is contrary to the original intent of the system as
28 expressed in section 386-25(a), Hawaii Revised Statutes; and
29



1 WHEREAS, criticism has been voiced that, in one case, the
2 mutual agreement between the parties to send an injured worker
3 to San Bernadino, California, for heavy equipment training was
4 prudent and economical because no such training was offered in
5 Hawaii and doing so would return the injured worker to gainful
6 employment in an expeditious manner; however, the Vocational
7 Rehabilitation Unit rejected the agreement as well as the
8 supportive decision of the Department of Labor and Industrial
9 Relations' hearing officer and chief hearings officer;
10 accordingly, the worker found it necessary to appeal her case to
11 the Labor and Industrial Relations Appeals Board, which then
12 approved a settlement that reinstated the mutually agreed upon
13 training; and
14

15 WHEREAS, the Vocational Rehabilitation Unit's recent
16 denials of initial evaluation reports that are not submitted
17 within the normal forty-five day period have led to the
18 arbitrary closures of otherwise viable vocational rehabilitation
19 cases, with the option of further referral to other counselors,
20 even though failures to comply with the forty-five day limit are
21 due to factors beyond the counselors' control, such as the need
22 to secure medical information from physicians about the injured
23 workers' physical or psychological limitations and requests by
24 physicians to conduct functional capacity testing before
25 providing the medical information on physical limitations; and
26

27 WHEREAS, such further referral is duplicative and costly
28 and undertaken without rational basis, is unnecessarily
29 expensive for employers and insurance carriers, and disruptive
30 to sound relationships that claimants have formed with their
31 original vocational counselors; and
32

33 WHEREAS, criticism has also been voiced that the Vocational
34 Rehabilitation Unit is currently administered in a manner that
35 is punitive and retaliatory toward counselors who are advised of
36 the department's authority to revoke their certification or
37 registration under section 12-14-19, Hawaii Administrative
38 Rules; and
39

40 WHEREAS, the unwarranted references to section 12-14-19,
41 Hawaii Administrative Rules, is intimidating, hostile, and
42 contrary to the cooperative relationships that should be



H.C.R. NO. 105

1 fostered within the Vocational Rehabilitation Unit and the
 2 professionals that it regulates, and may even represent, in some
 3 cases, retaliation against the vocational counselors' exercise
 4 of their First Amendment constitutional rights to participate in
 5 the legislative and regulatory process by petitioning their
 6 government and the Department of Labor and Industrial Relations
 7 for statutory and regulatory changes, as well as their exercise
 8 of independent professional judgment as licensed professionals,
 9 and their advocacy for appropriate vocational rehabilitation
 10 plans on the part of clients they represent; and

11
 12 WHEREAS, no vocational rehabilitation counselor should have
 13 to suffer any detriment or retaliation as the result of the
 14 counselor's lawful exercise of the counselor's First Amendment
 15 rights to participate in the legislative process or to engage in
 16 discussions and debates regarding the adoption of administrative
 17 rules, because such detriment or retaliation is antithetical to
 18 the essential traditions of American democratic government; now,
 19 therefore,

20
 21 BE IT RESOLVED by the House of Representatives of the
 22 Twenty-ninth Legislature of the State of Hawaii, Regular Session
 23 of 2017, the Senate concurring, that the Auditor is requested to
 24 audit the performance, during calendar years 2015 and 2016, of
 25 the Vocational Rehabilitation Unit of the Disability
 26 Compensation Division of the Department of Labor and Industrial
 27 Relations; and

28
 29 BE IT FURTHER RESOLVED that the Auditor is requested to
 30 include in the audit, assessments of whether the Vocational
 31 Rehabilitation Unit;

- 32
 33 (1) Has data on the success and efficacy of the vocational
 34 rehabilitation efforts of the providers that it
 35 regulates;
 36
 37 (2) Has any sufficient and statistically valid data to
 38 reach meaningful conclusions about the efficacy of the
 39 providers that it regulates;



H.C.R. NO. 105

- 1 (3) Engages in a practice of closing vocational
2 rehabilitation cases, because of noncompliance with
3 the forty-five day deadline for submitting initial
4 evaluations, and then permitting the cases to be
5 assigned to other counselors; provided that the
6 Auditor is requested to determine whether the
7 practice:
8
9 (A) Is a recurring one;
10
11 (B) Results in an unnecessary delay of vocational
12 rehabilitation services;
13
14 (C) Results in the termination of vocational
15 services; and
16
17 (D) Is noticed by employers, insurance carriers,
18 injured workers, injured worker advocates and
19 counsel, and the vocational rehabilitation
20 counselors;
21
22 (4) Treats counselors who have lawfully advocated changes
23 in legislation and administrative rules in an adverse
24 and discriminatory manner. The Legislature requests
25 that this evaluation be conducted by first identifying
26 counselors who opposed the Department of Labor and
27 Industrial Relations' attempt to establish alternative
28 methods of compensating counselors based upon the
29 Department's criteria of vocational success; and
30
31 (5) Deliberately misclassifies the success or failure of
32 vocational rehabilitation plans in order to further
33 the Department's previous but now abandoned goal of
34 establishing a new system of compensation; and
35


36 BE IT FURTHER RESOLVED that the Auditor is requested to
37 submit a report of any findings and recommendations, including
38 any proposed legislation, to the Legislature not later than
39 twenty days prior to the convening of the Regular Session of
40 2018; and



H.C.R. NO. 105

1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the Auditor and the
3 Director of Labor and Industrial Relations.
4
5
6

OFFERED BY:




MAR 09 2017



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dllr.director@hawaii.gov

March 21, 2017

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.C.R. No. 105 Requesting the Auditor to Conduct an Audit of the Vocational Rehabilitation Unit in the Department of Labor & Industrial Relations, Disability Compensation Unit

I. OVERVIEW OF PROPOSED HOUSE CONCURRENT RESOLUTION

HCR 105 requests the State Auditor to audit the performance, during calendar years 2015 and 2016, of the Vocational Rehabilitation Unit in DLIR's Disability Compensation Division (DCD). The audit would include assessing the types of data used to determine success and efficacy of the program and providers, closing cases due to non-compliance with a forty-five day deadline to submit initial evaluations, determining if counselors were treated in an adverse and discriminatory manner, and determining if the successes or failures of vocational rehabilitation plans were deliberately misclassified. The State Auditor is requested to submit a report on its findings and recommendations no later than twenty days prior to the convening of the Regular Session of 2018.

II. CURRENT LAW

Section 386-25, Hawaii Revised Statutes, states that the purpose of vocational rehabilitation is to restore an injured workers' earning capacity as nearly close as possible to the level at which they were earning at the time of injury and return the worker to suitable gainful employment in the active labor market as quickly as possible and in a cost effective manner. The statute also identifies duties and responsibilities of the Vocational Rehabilitation Unit. Section 386-71.5, HRS,

establishes the Unit in the Department of Labor & Industrial Relations, Disability Compensation Division.

DLIR's Vocational Rehabilitation Unit consists of just one staff member to administer the program, which manages an average of 760 claims per month. In 1997 the Department lost thirteen (13) professional and clerical staff positions in the Vocational Rehabilitation Unit on Oahu and the Neighbor Islands due to a Reduction in Force (RIF). Attempts to restore professional and clerical positions to the Unit have been unsuccessful to date.

III. COMMENTS ON THE HOUSE CONCURRENT RESOLUTION

The Department offers comments on this resolution.

In 2016, DLIR assembled the Workers' Compensation Working Group (Working Group) as directed by H.C.R. 168 HD2 SD1 (SLH, 2015) to assess workers' compensation issues. The Working Group was presented with an overview of the findings of DCD's business process optimization analysis and case management system. Act 119 (State Budget) of the 2015 Legislature appropriated general funds for this purpose and the Gartner Group performed the study that included vocational rehabilitation.

The Working Group invited the participation of vocational rehabilitation counselors and met with counselors and other stakeholders regarding the vocational rehabilitation program. Under a multi-year modernization effort, substantial improvements to the Department's ability to oversee and track VR outcomes are anticipated. In addition, there is already research underway to explore alternative approaches used in other states to determine if a more effective program could produce better results for Hawaii's workers. DLIR is concerned that an audit is premature and may delay reforms.

LAURIE H. HAMANO, M. Ed., CRC, MHC
President, Rehabilitation Specialist, TFT-Alg

KIRSTEN H. YONAMINE, M. Ed., CRC, MHC
Vice President, Rehab. Specialist, TFT-Alg

VOCATIONAL MANAGEMENT
CONSULTANTS, INC.

BEVERLY TOKUMINE, M. Ed., CRC, MHC
Senior/Rehabilitation Specialist, TFT-Alg

March 20, 2017

Committee on Labor & Public Employment

Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capital
415 S. Beretania Street

Relating to: HCR 105 Requesting the Auditor to Conduct an Audit of the Vocational Rehabilitation Unit in the Department of Labor and Industrial Relations, Disability Compensation Unit

In Support of HCR 105

Dear Chairman Johanson, Vice Chair Holt, and Members of the Committee:

My name is Kirsten Harada Yonamine. I am a vocational rehabilitation counselor who has been in practice for over 20 years. I assist injured workers in their return to work process and am part of a very small community of service providers. I do support HCR 105 and the proposed audit as recently I have seen what I feel is inappropriate decision making by the Vocational Rehabilitation Unit.

Personally I have had my placement statistic changed for one case from a success to a fail despite my client returning back to work in a position that offered higher wages. I had a plan that was approved by the carrier but denied by the unit only to have a plan resubmitted for the same goal and successfully completed with placement back to work. In another case a plan was denied and while awaiting hearing was told to close the case. I was not given due process to have the plan denial heard and more recently had a client that was on medical suspension due to an aggravation, closed.

I have also had my license to practice vocational rehabilitation threatened with suspension or termination by the Dept. of Labor's Vocational Rehabilitation Unit for insignificant and unavoidable failures to comply with time deadlines that were never or seldom enforced previously.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, I give my full support to an audit of the Unit and ask that you please pass HRC 105. My clients and employers have been impacted by the current actions of the Unit and an audit would help to confirm issues raised and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for considering my testimony.

Sincerely,



Kirsten Harada Yonamine, M.Ed., CRC, LMHC

Vice President of Vocational Management Consultants

Member of International Association of Rehabilitation Professionals in Private Sector

My address and phone number is:

715 S. King Street, Suite 410

Honolulu, HI 96813

Phone: 538-8733

House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chair
Daniel Holt, Vice Chair
Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capitol
415 S. Beretania Street

Re: HCR 105, Requesting the Auditor to Conduct an Audit of the
Vocational Rehabilitation Unit in the Department of
Labor and Industrial Relations, Disability Compensation Unit

Chairman Johanson, Vice Chair Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is **ALAN S. OGAWA**. I have worked as a vocational rehabilitation counselor for **41** years and I respectfully support this request for an audit.

I have experienced many of the problems addressed by this resolution. I have had initial evaluation reports which I have been able to complete within the normal 45 day time period because medical information was unavailable through no fault of my own. Despite explaining this circumstance, I have been ordered to close by file by the Vocational Rehabilitation Unit of the Department of Labor and Industrial Relations and ordered to close my file and cease working as a counselor.

I have also had my license to practice vocational rehabilitation threatened with suspension or termination by the Dept. of Labor's Vocational Rehabilitation Unit for insignificant and unavoidable failures to comply with time deadlines that were never or seldom enforced previously.

I have had approximately **5** cases where my professional judgment as a counselor has been questioned in the vocational eligibility or vocational rehabilitation plan I drafted not approved by the Vocational Rehabilitation Unit, but reversed by hearings officers, unnecessarily delaying the progress of these cases, which could not be worked on while they were being administratively reviewed.

I have been concerned that my public support resisting or supporting changes in vocational rehabilitation laws, regulations and practices has made be vulnerable to negative treatment by the Vocational Rehabilitation Unit because of by lawful advocacy.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, I give my full support to an audit of the Unit and ask that you please pass HRC 105. My clients and employers are also not well served by the current actions of the Unit and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for considering my testimony.

The Twenty-Ninth Legislature
Regular Session of 2017

HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair
State Capitol, Conference Room 309
Tuesday, March 21, 2017; 10:40 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON HCR 105
REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE
VOCATIONAL REHABILITATION UNIT IN THE DEPARTMENT OF LABOR**

The ILWU Local 142 supports HCR 105, which requests the auditor to conduct an audit of the vocational rehabilitation unit in the department of labor and industrial relations in the Disability Compensation Division.

Chapter 386 HRS relates to the workers' compensation law in Hawaii. Section 386-25 HRS states the purposes of vocational rehabilitation as follows:

“The purposes of vocational rehabilitation are to restore an injured worker’s earning 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.

HCR 105 contains references that criticizes the way the workers’ compensation vocational rehabilitation unit has been functioning. An audit report would provide much valuable information and probably some recommendations regarding improvements, that would help the vocational rehabilitation unit function more effectively.

Since implementation of the workers’ compensation program is one of the more adversarial programs in the department, the Auditor would probably bring a more balanced perspective in its analysis and suggestions. This would certainly be constructive, as it relates to the department’s responsibilities to restore the “earning capacity” of injured workers, and to return the injured worker to gainful employment “as quickly as possible in a cost-effective manner”.

Such a study would also look at efficiency, and help to determine whether the Department’s Disability Compensation Division is best marshalling the resources that it does have, or would additional resources be necessary to comply with the requirements of section 386-25 HRS.

The ILWU urges passage of HCR 105. Thank you for the opportunity to share our views on this important matter.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 20, 2017 11:19 AM
To: LABtestimony
Cc: moore4640@hawaiiantel.net
Subject: *Submitted testimony for HCR105 on Mar 21, 2017 10:40AM*

HCR105

Submitted on: 3/20/2017

Testimony for LAB on Mar 21, 2017 10:40AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Douglas Moore	Hawaii Injured Workers Association	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 20, 2017 4:51 AM
To: LABtestimony
Cc: timothy.mcnulty@mauilaw.net
Subject: Submitted testimony for HCR105 on Mar 21, 2017 10:40AM

HCR105

Submitted on: 3/20/2017

Testimony for LAB on Mar 21, 2017 10:40AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Timothy McNulty	Individual	Support	No

Comments: I have practice Workers Compensation in Hawaii for over 30 years. In the last couple of years the Vocational Rehab unit at the Department of Labor has been deconstructing Hawaii's vocational rehabilitation law and its intent. VR plans are being denied even when the Employer doesn't object. If a VR counselor speaks out against an adverse decision by the VR branch, his/her VR claimant is swapped to another VR counselor. What's that all about? An audit is sorely needed.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chair
Daniel Holt, Vice Chair
Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capitol
415 S. Beretania Street

Re: HCR 105, Requesting the Auditor to Conduct an Audit of the
Vocational Rehabilitation Unit in the Department of
Labor and Industrial Relations, Disability Compensation Unit

Chairman Johanson, Vice Chair Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is Kristi Kinsella, M.S.Ed, CRC. I have worked as a vocational rehabilitation counselor for one year and I respectfully support this request for an audit.

I have experienced many of the problems addressed by this resolution. I have had my license to practice vocational rehabilitation threatened with suspension or termination by the Dept. of Labor's Vocational Rehabilitation Unit upon my submission of the initial evaluation. Once this evaluation is received, a request for a vocational rehabilitation plan within a certain time frame is received with a citation of the director's ability to suspend or terminate certification. The time provided to conduct vocational exploration with the client, conduct necessary research, draft the rehabilitation plan, and review with all appropriate parties varies. This deadline is approximately four months and does not allow counselors to provide the time necessary to each client as this can vary depending on factors such as personal and medical needs, physician approval, and time necessary to conduct adequate vocational research. I have had to request an extension for one client and no response had ever been received.

I have been concerned that my public support resisting or supporting changes in vocational rehabilitation laws, regulations and practices has made me vulnerable to negative treatment by the Vocational Rehabilitation Unit because of my lawful advocacy.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, I give my full support to an audit of the Unit and ask that you please pass HCR 105. My clients and employers are also not well served by the current actions of the Unit and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division to rectify these problems. Thank you very much for considering my testimony.

House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chair
Daniel Holt, Vice Chair
Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capitol
415 S. Beretania Street

Re: HCR 105, Requesting the Auditor to Conduct an Audit of the
Vocational Rehabilitation Unit in the Department of
Labor and Industrial Relations, Disability Compensation Unit

Chairman Johanson, Vice Chair Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is Adam Yonamine. I have worked as a member of the clerical staff in a vocational rehabilitation office for 12 years and I respectfully support this request for an audit. Thank you very much for considering my testimony.

House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chair
Daniel Holt, Vice Chair
Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capitol
415 S. Beretania Street

Re: HCR 105, Requesting the Auditor to Conduct an Audit of the
Vocational Rehabilitation Unit in the Department of
Labor and Industrial Relations, Disability Compensation Unit

Chairman Johanson, Vice Chair Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is Lanelle Yamane, MS, CRC, LMHC. I have worked as a vocational rehabilitation counselor for ten years and I respectfully support this request for an audit.

I have experienced many of the problems addressed by this resolution. I have had initial evaluation reports which I have not been able to complete within the normal 45 day time period because medical information was unavailable through no fault of my own. Despite explaining this circumstance, I have seen no understanding or flexibility by the Vocational Rehabilitation Unit of the Department of Labor and Industrial Relations and “scolded” in a very unprofessional tone.

I have also had my registration to practice vocational rehabilitation threatened with suspension or termination by the Dept. of Labor’s Vocational Rehabilitation Unit for what is perceived to be failure to comply with time deadlines. My inability to comply with time deadlines was unavoidable as my action was contingent upon the action of another party and I explained the circumstances.

At least 7 injured workers I have worked with within the past year had their VR case closed by the Vocational Rehabilitation Unit without clearly stated reasons and without effort to communicate about what the Unit sees wrong with the VR program. The abrupt closer often times has detrimental financial and emotional effects on the injured workers that I serve. The counselor-client relationship that I establish with each client has often been a source of great support and then becomes abruptly severed.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, I give my full support to an audit of the Unit and ask that you please pass HRC 105. My clients and employers are not well served by the current actions of the Unit and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for considering my testimony.

Janelle S. Yarrance

Case Management Works – Hawaii, Inc.

March 20, 2017

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair

Rep. Daniel Holt, Vice Chair

NOTICE OF HEARING

DATE: Tuesday, March 21, 2017
TIME: 10:40 AM
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

Aloha,

My name is Tony Hunstiger. I have been working as a vocational rehabilitation (VR) counselor in the State of Hawaii since 1997. I have clients throughout the State.

I am writing in strong support of HCR 105.

During the past few years, since the introduction of new staff at the VR Unit, policies and determinations generated by the VR Unit tend to defy law and logic.

Deadlines for the submission of VR plans tied to a threat of revocation of counselor registration appeared. I wrote to Ms. Delphina Guerrero asking for an explanation. I included a slide from Director Chu Takayama's presentation stating, "No deadline for submission of VR Plan."

I received no explanation. I wrote again, and I wrote to Ms. Jo Ann Vidinhar with the same question. To date, I have not received an explanation.

Here are two cases where the decision of the VR Unit has been harmful to the injured worker:

Case Number One

This man worked since high school for over thirty (30) years as an electrical lineman. He earned almost \$50 an hour and he received union benefits. He could not return to work with the local electric company, the only employer on the island that hired linemen. As he was over fifty (50) years old, a return to school or training to learn a new profession was not feasible. Direct job placement would not result in a restoration of his income.

At the time the VR plan was submitted he had collaborated with the Hawaii Small Business Development Center and he had completed a Go Farm Hawaii course where he began growing produce on a property he owned. These agencies assisted him to develop a reasonable business plan to become a self-employed farmer. This VR plan had the potential to restore his income.

Ms. Guerro, clerk at the VR Unit, set an arbitrary deadline for a VR plan. When we requested more time to develop the self-employment VR plan, Ms. Guerro responded, "A viable VR plan does not include self-

employment." That statement was contrary to what it says in statute. HRS §386-1 states: "Suitable gainful employment" means employment *or self-employment* [italics added] within the geographical area where the employee resides..."

Although this employee obviously had no other path to return to gainful employment and the law allows the director of DLIR to approve a VR plan if it is in the best interest of the employee, Ms. Guerro denied the VR plan and at the same time she terminated VR services. No alternate employment goal was recommended. No specific practical reasons were given for the denial. Instead, VR services ended.

With the closure of VR services, Temporary Total Disability benefits ended; he was forced to settle his workers compensation case.

Case Number Two

Ms. Chenoa Quintero worked as a Massage Therapist at Aulani Disney Resort and Spa. She injured her hand at work. VR services were initiated.

She was released by her doctor to return to part-time sedentary work. Ms. Quintero felt she could work full time. She went back to her doctor to discuss this.

On 11/01/16, the day she obtained a release to full time work from her doctor, she received a notice from Ms. Guerro at the VR Unit that VR services were terminated. The reason given was that Ms. Quintero was not released to full time employment.

Many of my clients are released to part-time work only. Their eligibility for VR services was never in doubt. They participate in VR services.

Ms. Quintero requested reconsideration. Although she submitted the doctor's release to full time employment with the reconsideration request, Ms. Guerro blindly stated, "no new information was submitted". She referred Ms. Quintero to a hearing.

Discussions with the employer about return to alternate work ended with the termination of VR. The carrier terminated Ms. Quintero's weekly TTD benefit checks. They refused to approve needed medical treatment.

Ms. Quintero received the hearings decision last week. She was awarded unpaid TTD. VR services were re-instated.

Had the VR Unit been operating properly, Ms. Quintero would not have been subjected to months without the benefits Hawaii law entitles her to have.

I urge you to please approve and support this resolution.

Thank you for the opportunity to testify.

Submitted by,

Tony Hunstiger

Tony Hunstiger, M.Ed., CRC, LMHC
(808) 380-7024

Vocational Rehabilitation Plan

Requirements:

1. Undefined or vague
2. Allow claimants to choose their own VR counselor
3. Automatically approve VR plans

VR-TTD:

1. Before approved plan
2. Make difficult to stop, even if can return to usual and customary employment

Time:

1. No deadline for submission of VR Plan
2. Undefined length of VR plan

Costs:

1. Open ended cost
2. Undefined cost
3. Self-employment start up costs and no previous experience

CURRENT VOCATIONAL REHABILITATION PROCESS

DLIR's Workers' Compensation Working Group
November 9, 2016

Page 17



THE LAW OFFICE OF GORDON KIM

Executive Centre, Suite 1705
1088 Bishop Street
Honolulu, Hawaii 96813

☎ Phone: (808) 536-1717
Fax: (808) 536-1717

March 20, 2017

HRC 105 - Testimony

I believe a audit of the Vocational Rehab Div. ("VR") needs to be investigated for the following reasons:

1. The new head of the VR Div. has **no** background in handling VR cases. Case in point, in a VR dispute she ruled my client was not entitled to VR based on a D.C.D. Decision's Finding of Fact and Conclusions of Law, rather than the **Decision and Order** which was the D.C.D. ruling allowing VR for my client. I spoke to her and a letter was sent to her the same day. She said she would review the letter before ruling, but her ruling came out the afternoon of same day the letter was sent. Her ignorance of the law led to an Appeal, increasing the litigation cost and wasted D.C.D. and L.A.B time and expense. I requested a meeting with the Director several times on the matter, which was ignored. I also spoke to the former VR head, who was very competent, and was told the current VR head was learning on the job.
2. I have heard from other claimant attorneys, and VR counselors who have run into similar problems with the VR Div. head ignoring the law on entitlement to VR.
3. Because the current VR Div. is driving up litigation cost and time for claimants, D.C.D. and L.A.B., and ruining claimants' lives because of ignorance or bias, a audit would seem reasonable to see if the VR Div. is functioning as the legislature intended. To continue to allow the VR Div. to function "as is" would be a waste of State funds, paying for a program that is not working.

Very truly yours,
THE LAW OFFICE OF GORDON KIM

holt1 - Joyleanne

From: Marcia Berkowitz <mberkowitz@vocationoptions.com>
Sent: Monday, March 20, 2017 9:20 AM
To: LABtestimony
Subject: RE: Committee on Labor & Public Employment -Testimony In Support of HCR 105
Tuesday, March 21, 2017

Please let me know if there are any problems, I do want my testimony heard on HCR 105.

Below--thanks

To: Committee on Labor & Public Employment
HEARING: Tuesday, March 21, 2017

I am in support of HCR 105.

Marcia Berkowitz, CRC, LMHC
P.O Box 2
Kahului, Hi 96733

From: Marcia Berkowitz [mailto:mberkowitz@vocationoptions.com]
Sent: Monday, March 20, 2017 9:08 AM
To: 'LABtestimony'
Subject: RE: Committee on Labor & Public Employment -Testimony In Support of HB 105 Tuesday, March 21, 2017

HCR 105 being heard tomorrow.

From: holt1 - Joyleanne [mailto:holt1@capitol.hawaii.gov] On Behalf Of LABtestimony
Sent: Monday, March 20, 2017 7:57 AM
To: 'Marcia Berkowitz' <mberkowitz@vocationoptions.com>; LABtestimony <labtestimony@capitol.hawaii.gov>
Subject: RE: Committee on Labor & Public Employment -Testimony In Support of HB 105 Tuesday, March 21, 2017

Aloha Marcia,

Are you referring to SB 1105 SD2 HD1?

Mahalo,
Joyleanne Leialohalani D. Santos, Committee Clerk
Office of Representative Daniel Holt
District 29 – Kalihi, Pālama, Iwilei, Chinatown
State Capitol, Room 319
415 South Beretania Street
Honolulu, HI 96813
Office: 808.586.6180
Fax: 808.586.6189
E-mail: holt1@capitol.hawaii.gov

From: Marcia Berkowitz [<mailto:mberkowitz@vocationoptions.com>]

Sent: Monday, March 20, 2017 6:01 AM

To: LABtestimony <labtestimony@capitol.hawaii.gov>

Subject: Committee on Labor & Public Employment -Testimony In Support of HB 105 Tuesday, March 21, 2017

To: Committee on Labor & Public Employment

HEARING: Tuesday, March 21, 2017

I am in support of HB 105.

Marcia Berkowitz, CRC, LMHC

P.O Box 2

Kahului, HI 96733

House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chair
Daniel Holt, Vice Chair
Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capitol
415 S. Beretania Street

Re: HCR 105, Requesting the Auditor to Conduct an Audit of the
Vocational Rehabilitation Unit in the Department of
Labor and Industrial Relations, Disability Compensation Unit

Chairman Johanson, Vice Chair Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is Lily Miyahira. I have worked for a vocational rehabilitation company for the past 20 years and I respectfully support this request for an audit.

Working alongside the Counselors and Clients, I have experienced many of the problems addressed by this resolution. I see the impact as a result of the initial evaluation reports not being able to be completed within the normal 45 day time period because medical information was unavailable through no fault of the Counselor. Despite these explanations and circumstances, the Counselors, I have been ordered to close Client's VR case and cease working on the case by the Vocational Rehabilitation Unit of the Department of Labor and Industrial Relations.

The Counselors have also been put on notice that their license to practice vocational rehabilitation could be threatened with suspension or termination by the Dept. of Labor's Vocational Rehabilitation Unit for insignificant and unavoidable failures to comply with time deadlines that were never or seldom enforced previously.

I have seen numerous cases where the Counselor has been questioned about the vocational eligibility or vocational rehabilitation plans drafted and not approved by the Vocational Rehabilitation Unit, but reversed by hearings officers, unnecessarily delaying the progress of these cases, which could have been worked on while they were being administratively reviewed.

I have been concerned that my public support resisting or supporting changes in vocational rehabilitation laws, regulations and practices has made me vulnerable to

negative treatment by the Vocational Rehabilitation Unit because of by lawful advocacy.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, I give my full support to an audit of the Unit and ask that you please pass HRC 105. My clients and employers are also not well served by the current actions of the Unit and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for considering my testimony.

House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chair
Daniel Holt, Vice Chair
Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capitol
415 S. Beretania Street

Re: HCR 105, Requesting the Auditor to Conduct an Audit of the
Vocational Rehabilitation Unit in the Department of
Labor and Industrial Relations, Disability Compensation Unit

Chairman Johanson, Vice Chair Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is Beverly Tokumine, M. Ed., CRC. I have worked as a vocational rehabilitation counselor for 14 years, but in the Vocational Rehabilitation industry for 32 years. I respectfully support this request for an audit.

I have experienced many of the problems addressed by this resolution. I have had initial evaluation reports which I have not been able to complete within the normal 45 day time period because medical information was unavailable through no fault of my own. Despite explaining this circumstance, I have been ordered to close by file by the Vocational Rehabilitation Unit of the Department of Labor and Industrial Relations and ordered to close my file and cease working as a counselor.

I have also had my license to practice vocational rehabilitation threatened with suspension or termination by the Dept. of Labor's Vocational Rehabilitation Unit for insignificant and unavoidable failures to comply with time deadlines that were never or seldom enforced previously.

I have had approximately 6-7 cases where my professional judgment as a counselor has been questioned in the vocational eligibility or vocational rehabilitation plan I drafted not approved by the Vocational Rehabilitation Unit, but reversed by hearings officers, unnecessarily delaying the progress of these cases, which could not be worked on while they were being administratively reviewed. Several cases have requested and awaiting a hearing date.

I have been concerned that my public support resisting or supporting changes in vocational rehabilitation laws, regulations and practices has made me vulnerable to

negative treatment by the Vocational Rehabilitation Unit because of by lawful advocacy.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, I give my full support to an audit of the Unit and ask that you please pass HRC 105. My clients and employers are also not well served by the current actions of the Unit and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for considering my testimony.

Respectfully Submitted by,

Beverly Tokumine, M. Ed., CRC

cc: File

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 20, 2017 10:59 AM
To: LABtestimony
Cc: lhamano@vmchawaii.com
Subject: Submitted testimony for HCR105 on Mar 21, 2017 10:40AM

HCR105

Submitted on: 3/20/2017

Testimony for LAB on Mar 21, 2017 10:40AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
laurie hamano	Individual	Support	No

Comments: This is strong support for the resolution HCR 105. The resolution is asking for the legislature to have an audit of the Department of Labor Disability Compensation Division regarding the recent decisions that has had negative impact on the injured workers. Your support of this resolution is greatly appreciated.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

HOUSE OF REPRESENTATIVES
TWENTY-NINETH LEGISLATURE,
REGULAR SESSION 2017

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chair

Daniel Holt, Vice Chair

Hearing: Tuesday, March 21, 2017

Time: 10:40 a.m.

Place: Room 309, State Capitol
415 S. Beretania Street

TESTIMONY IN SUPPORT OF HCR 105, REQUESTING THE AUDITOR TO CONDUCT
AN AUDIT OF THE VOCATIONAL REHABILITATION UNIT IN DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS, DISABILITY COMPENSATION UNIT

Chair Johanson, Vice Chair Holt, and Members of the Committee on Labor and Public Employment:

Thank you for affording me the opportunity to present testimony in support of House Concurrent Resolution 105.

Vocational rehabilitation services have been afforded under Section 386-25 HRS for more than four decades. These services are intended to help individuals with serious injuries either resume work with their original employers in new or modified jobs, find work with new employers if their original employers cannot accommodate them, or to be retrained for new careers. Many claimants with non-serious injuries recover quickly without permanent disability and return to their original employment quickly and uneventfully. In these circumstances, vocational rehabilitation is not necessary at all.

However, where there may or will be permanent impairment that interferes with the resumption of employment on an employee's former job, vocational rehabilitation is of inestimable value in restoring the injured worker as nearly as possible and as quickly as possible to his or her former level of employment. Moreover, where most aspects of the workers compensation system involve disputes over coverage of claims, payment of temporary or permanent disability or disfigurement, vocational rehabilitation is unique in that it is the one component of the system which can be both creative and restorative.

Counselors help persons adjust to their new disabilities and overcome barriers toward becoming productive individuals once again. Stated differently, vocational rehabilitation is an investment in human capital that helps to reclaim lives that would otherwise be unproductive or less productive. While vocational counselors are not mental health experts, they often lend a friendly and sympathetic ear to those who have sustained industrial accidents, and provide

the kind of human encouragement and reassurance that helps the injured worker persevere in the face of adversity, dispel self doubt, and overcome obstacles to reemployment.

In roughly the past year or year and a half, a drastic change has occurred in the administration of the Vocational Rehabilitation Unit. There has been increased interference with the exercise of independent professional judgment by counselors and the counselors have been directly threatened with suspension or termination of their licensure by reference to Hawaii Administrative Rule 12-14-21 when they have made judgments or failed to act in a fashion the VR Unit deems appropriate.

Raising this criticism of the VR Unit and requesting an audit does not mean that the VR Unit should not provide neutral and impartial oversight of the work of counselors. Where there is not timely movement of cases, or where proper professional or regulatory standards are not observed, this remains a useful departmental function.

However, the sad truth is that the unit is not carrying out this function but is engaged in arbitrary and capricious decision making that is constantly being reversed by the Disability Compensation Division Hearing's Officers themselves or by stipulation of the parties.

This includes the following examples:

1. A counselor cannot meet the 45 day deadline for an initial evaluation of a claim because she cannot obtain medical limitations from physicians who want a functional capacity test done by a physical therapist. Because the initial evaluation report cannot be filed on time, the vocational rehabilitation case is closed with the option for the injured worker to retain another counselor. The result is so irrational that the parties stipulate to reverse rather than waste time at an administrative hearing that is completely unnecessary.
2. The parties request the VR Unit to approve mainland heavy equipment testing in California because this training is not available in Hawaii for approximately six month's time. The VR Unit refuses to approve the plan for mainland training. At a hearing on the disapproval of the plan the hearings officer states he approves of the plan, but the plan is denied. After the hearing, the parties ask both the hearings officer who said he would approve the plan and the chief hearings officer why the plan was disapproved by decision. Neither of these men knows why and are surprised to learn the decision was unfavorable. The parties appeal and reverse the disapproval of the plan by stipulation.
3. One of the injured workers I represent was hired at an \$18.00/hour job, but one that is beyond the scope of his vocational rehabilitation plan, which trained him to be a medical coder. The VR Unit classifies this rehabilitation as a failure in its decision and statistics. I appeal the plan and secure an agreement from opposing counsel to reverse that finding.

These kinds of actions disrupt the formation of positive relationships between counselors and the injured workers because their relationship is abruptly terminated. They delay the timely provision of continuous counseling and disrupt the momentum toward creating meaningful strategies to return to work and provoke uncertainty and confusion.

Counselors cannot perform their intended function because they are arbitrarily removed from cases and threatened with suspension or loss of their licenses when their discharge is often the result of factor beyond their control. Instead of being supported in their work and receiving assistance to solve problems that arise so that cases can constructively be expedited their professional judgment is repeatedly challenged, not in a constructive and collaborative fashion but by intimidation.

These actions are not only wasteful, frustrating and discouraging to injured workers, but they are costly to insurance carriers. The carriers pay for the original vocational rehabilitation with one counselor then face an unnecessary assignment of a second counselor. The delay in vocational rehabilitation causes additional payments of temporary total disability. The erratic decision making creates unnecessary litigation and makes claims more expensive to administer because of the extra attorneys' fees that are generated to litigate these claims and the extra administrative time expended to administer files.

This positive and constructive feature of our Workers' Compensation statute has been seriously compromised by the counterproductive of the administration of this program by the current Vocational Rehabilitation Unit, and legislative action is necessary to audit and address these difficulties. Past attempts to work the Disability Compensation Unit have been unsuccessful in redressing this problem. We therefore respectfully urge that HCR 105 be enacted.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 20, 2017 12:11 PM
To: LABtestimony
Cc: crobq7@gmail.com
Subject: Submitted testimony for HCR105 on Mar 21, 2017 10:40AM

HCR105

Submitted on: 3/20/2017

Testimony for LAB on Mar 21, 2017 10:40AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Chenoa	Individual	Support	No

Comments: I was directly affected by the VR's unit decision to end my VR services. This decision was incorrect. It took nearly five months to have it reversed by the hearing branch. Because the VR unit must make better determinations, I strongly support the resolution for auditing. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

WAYNE H. MUKAIDA

Attorney at Law

888 MILILANI STREET, PH 2
HONOLULU, HAWAII 96813

TEL & FAX: (808) 531-8899

March 20, 2017

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair

Re: H.C.R.105, Requesting Audit of Vocational Rehabilitation Unit
Hearing: March 21, 2017, 1:40 a.m.

Chairman, and members of the Committee:

I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers. I strongly support H.C.R.105, Requesting Audit of Vocational Rehabilitation Unit in the Department of Labor and Industrial Relations, Disability Compensation Unit.

Next to medical care, Vocational Rehabilitation benefits are often the most valuable workers' compensation benefit. If a person is unable to return to his or her job because of physical limitations, the assistance of a professional vocational rehabilitation counselor is essential in most cases.

I. HRS §386-25(b) is being ignored.

HRS §386-25(b) requires that the VR Unit "shall include appropriate professional staff."

A. The VR Unit is not adequately staffed. A number of years ago, the VR Unit was staffed by about 14 individuals who monitored VR for the entire State. The VR Unit was decimated and is now staffed by only 1 individual. The extensive duties of the VR Unit enumerated in HRS §386-25 are too great for a single individual to fulfill.

B. Questions exist whether the VR Unit has the statutorily required "appropriate professional staff." VR counselors are required to have extensive training, are required to undergo testing and certification, and are considered professionals. The VR Unit should be investigated to see whether is complying with

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

March 20, 2017

Page Two

the requirement of "appropriate professional staff" if it is comprised of an uncertified person.

Disagreements about services in any field will arise. However, the VR Unit has a single administrative individual performing ad hoc rule making, monitoring, judging, and certification. The VR Unit is acting as a legislature, police officer, judge and jury, and therefore is in an inherently conflicted position, and a denial of due process is the result.

II. The VR Unit is not complying with administrative law.

The Administrative Procedure Act, HRS Chapter 91, requires that before a rule of broad application can be applied, an agency must go through rule making procedure. The VR Unit is requiring that all VR plans must be completed within 120 days, with a 60 day follow up period after job placement. Those 2 time period requirements have never been through the rule making process required by HRS Chapter 91 and yet are being applied to terminate benefits to injured workers.

III. The VR Unit inconsistently asserts its "jurisdiction."

The DCD is comprised of several units. When a case is before another unit, the VR Unit might decide not to exercise its "jurisdiction." For example, if a case is before the hearings unit, the VR Unit might decide it will not act because it does not have "jurisdiction." This results in extended delays.

DCD decisions can be appealed to the Labor and Industrial Relations Appeals Board. At times, during the pendency of an appeal, the VR Unit may act on a case, or it may inconsistently decide on another VR matter that it does not have jurisdiction and refuse to act. It may take the LIRAB over 2 years to issue a decision, and therefore, a VR issue may be delayed for that period.

IV. Alternative dispute resolution.

When the VR Unit was staffed by more than 1 individual, the development of an individual's VR plan could include informal conferences with the VR Unit. These

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

March 20, 2017

Page Three

conferences served as an informal dispute resolution mechanism. The VR Unit is not structured or staffed for any ADR process. Instead, HRS § 386-25 requires a very awkward and wasteful procedure:

- (a) a party must file an objection;
- (b) the VR Unit issues a determination;
- (c) a party must request a reconsideration within 10 days;
- (d) if the 10 day period is not met, the determination is final;
- (e) if the 10 day period is met, the VR Unit must file a reconsideration determination (which is almost denied almost as a matter of course);
- (f) a party must request a hearing within 10 days;
- (g) if the 10 day period is not met, the reconsideration determination is final;
- (h) if the 10 day period is met, a hearing is set before the Hearings Section;
- (i) the Hearings Section may take months to schedule a hearing;
- (j) after a hearing, the Hearings Section has up to 60 days to issue a decision (it typically takes the full 60 days; it is not clear what happens if the 60 day period is not met);
- (k) If either party disagrees with the decision, the case can be heard by the LIRAB;
- (l) The LIRAB's calendar is full and it may take 2 years for a decision to be heard; and
- (m) If either party disagrees with the LIRAB decision, the matter can be appealed to the appellate court.

The unfortunate result is that if an initial determination by the VR Unit is against the injured worker, that worker will never receive his or her desperately needed

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

March 20, 2017

Page Four

workers' compensation benefit because virtually no one can afford to put their life on hold to go through the process.

V. CONCLUSION.

Please move H.C.R.105 towards passage.

Thank you for considering my testimony.

WAYNE H. MUKAIDA

HCR 105

Late Testimony

LATE

LATE

House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chair
Daniel Holt, Vice Chair
Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capitol
415 S. Beretania Street

LATE

Re: HCR 105, Requesting the Auditor to Conduct an Audit of the
Vocational Rehabilitation Unit in the Department of
Labor and Industrial Relations, Disability Compensation Unit

Chairman Johanson, Vice Chair Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is Daniel Chur, Esq. I have worked as an attorney handling workers' compensation cases for over 36 years and I respectfully support this request for an audit.

I have experienced many of the problems addressed by this resolution. I have seen vocational rehabilitation counselors' initial evaluation reports beyond the normal 45 day time period because medical information was unavailable through no fault of the vocational rehabilitation counselor. Despite explaining this circumstance, the vocational rehabilitation counselor was then ordered to close the file by the Vocational Rehabilitation Unit of the Department of Labor and Industrial Relations and further ordered the counselor to close the file and cease working as a counselor on the claim.

I have also witnessed the vocational rehabilitation counselor's license to practice vocational rehabilitation threatened with suspension or termination by the Department of Labor's Vocational Rehabilitation Unit for insignificant and unavoidable failures to comply with arbitrary and capricious unilaterally set time deadlines.

I have had approximately 10 cases in the past year alone where the vocational rehabilitation counselor's professional judgment has been questioned in the vocational rehabilitation eligibility or vocational rehabilitation plan drafted and not approved by the Vocational Rehabilitation Unit, but later reversed by hearings officers. This unnecessarily delayed the progress of these cases, which could not progress while they were awaiting administrative review.

I have also seen the Vocational Rehabilitation Unit close further vocational rehabilitation services to injured workers when medical treatment and the worker's

physical condition were pending determination or clarification rather than temporarily suspending vocational rehabilitation services while said determination or clarification was pending. The unjustified closure rather than temporary suspension of vocational rehabilitation services resulted in unnecessary and detrimental effects upon the injured worker and adversely affected his/her rights and benefits under Chapter 386, HRS.

I am further concerned that various vocational rehabilitation counselors' public support resisting or supporting changes in vocational rehabilitation laws, regulations and practices has made them vulnerable to negative treatment by the Vocational Rehabilitation Unit because of their lawful advocacy.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, I give my full support to an audit of the Unit and ask that you please pass HRC 105. Injured workers and employers are also not well served by the current actions of the Unit and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for considering my testimony.



DANIEL E. CHUR
Workers' Compensation Attorney

LIONEL D. MEYER
ATTORNEY AT LAW - A LAW CORPORATION
591 KINOOLE ST. - HILO, HAWAII 96720 - TELEPHONE (808) 935-0028

LATE

House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

LATE

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chairman
Daniel Holt, Vice Chairman
Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capitol
415 S. Beretania Street

LATE

Re: HCR 105, Requesting the Auditor to Conduct an Audit of the Vocational Rehabilitation Unit in the Department of Labor and Industrial Relations, Disability Compensation Unit

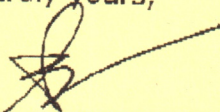
Chairman Johanson, Vice Chairman Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is Lionel D. Meyer, Esq. I have worked as an attorney in the State of Hawaii for 41 years. I respectfully support this request for an audit because many of my injured worker clients and I have experienced many of the problems addressed by this resolution, including but not limited to premature closures of my clients' vocational rehabilitation cases.

Because of the seriously inappropriate decision-making by the Vocational Rehabilitation Unit of the Department of Labor in Honolulu, I give my full support to an audit of the Unit and ask that you please pass HRC 105 as my clients as well as employers are also not well served by the current actions of the Unit, and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division rectify these problems.

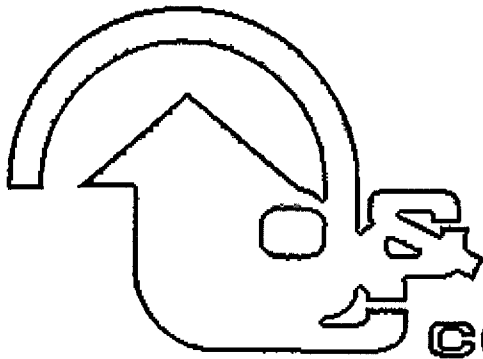
Thank you very much for considering my testimony.

Very truly yours,



LIONEL D. MEYER, ESQ.

LDM:bm



O. Gary Whitney, M.Ed., CRC, LMHC

2618 Waialani Avenue
Honolulu, Hawaii 96817

Phone: (808) 595-7673 • Fax: (808) 595-4349

email: whitneychong@gmail.com

vocational consultants

Via Fax: 586-6189

Page 1 of 2

HCR 105: Requesting the Auditor to conduct an audit of the Vocational Rehabilitation Unit in the Department of Labor and Industrial Relations, Disability Compensation Unit

Committee on Labor and Public Employment

Aaron Ling Johanson, Chair

Daniel Holt, Vice Chair

Hearing: Tuesday, March 21, 2017

Time: 10:40 a.m.

Place: Conference Room 309

State Capitol

415 S. Beretania Street

LATE

LATE

Testimony of O. Gary Whitney, M.Ed., CRC, NBCC, LMHC

LATE

Chairman Johanson, Vice Chair Holt, Members of the Committee:

I am testifying in SUPPORT HCR 105 – Requesting an audit of the Vocational Rehabilitation Unit

I have worked as a certified vocational rehabilitation counselor practicing in Hawaii for the past thirty-five years. My primary target population are injured workers.

Vocational rehabilitation is a complex service with many participants such as the injured worker, attending physician, employer, and insurance carrier.

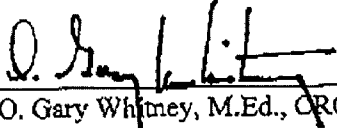
In my years of providing vocational rehabilitation services to injured workers I have not found a major problem in submitting an Initial Evaluation in 45 days. However, the few times that it has taken longer than 45 days it was primarily due to the length of time required to obtain physical work restrictions from the attending physician and/or the insurance carrier did not provide the medical file in a timely manner.

To place a penalty upon the injured worker is not warranted.

I have had on one occasion in 35 years, per attached letter dated April 22, 2016, my license to practice vocational rehabilitation threatened with revocation of my certification by the Dept. of Labor Vocational Rehabilitation Unit, pursuant to Section 12-14-21, HAR (see attached correspondence and response).

I also have a profound concern regarding the narrow definition of vocational rehabilitation success which has been instituted by the Vocational Rehabilitation Unit, DLIR, in the last two years. Now the only definition of success of vocational rehabilitation is if the injured worker has secured employment before closure of their vocational rehabilitation program. For 33 years we could report that a vocational rehabilitation program was successful if the client was working or vocationally independent (client had a sound understanding of his/her injury and subsequent handicap, he/she had identified an appropriate occupation to pursue, and he/she had the means and skill to obtain identified occupation) at time of closure. There are a myriad of reasons why an injured worker may settle their Workers' Compensation claim with the insurance company before they return to work; it is not logical to interpret this as a failed vocational rehabilitation effort. In fact, it may actually be a manifestation of a successful vocational rehabilitation effort where the injured worker has confidence in their independence and resourcefulness.

Respectfully submitted,



O. Gary Whitney, M.Ed., CRC, NBCC, LMHC

March 20, 2017

Date

Attachments (6 pages)

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DISABILITY COMPENSATION DIVISION
830 PUNCHBOWL STREET, ROOM 209
P.O. BOX 3769
HONOLULU, HAWAII 96812-3769
April 22, 2016

Date of Injury: 06/13/2011
Case No.: 2-11-09205

Claimant:

SANDRA LYNN DE SOTO
99-023 KALALOA ST APT 2-B
AIEA HI 96701

Claimant Representative:

LAURENCE D SCOTT ESQ
1001 DILLINGHAM BLVD STE 205
HONOLULU HI 96817

Insurance Carrier:

LIBERTY MUTUAL INS
ATTN KEVIN KHUONG
P O BOX 30608
HONOLULU HI 96820

Employer Representative:

LEIGHTON K OSHIMA ESQ
841 BISHOP STREET SUITE 1600
HONOLULU HI 96813

Provider:

G&C VOCATIONAL CONSULTANTS
O GARY WHITNEY
2618 WAOLANI AVENUE
HONOLULU HI 96817

Pursuant to Section 12-14-21, HAR, the vocational rehabilitation file with the above provider is closed.

The provider's letter dated 4/16/2016 fails the requirements of Section 386-25(a)(d), HRS, the information presented does not justify the reopening of this vocational rehabilitation file.

Delphina Guerrero
Vocational Rehabilitation Unit

It is the policy of the Department of Labor and Industrial Relations that no person shall on the basis of race, color, sex, marital status, religion, creed, ethnic origin, national origin, age, disability, ancestry, arrest/court record, sexual orientation, and National Guard participation be subjected to discrimination, excluded from participation, or denied the benefits of the department's services, programs, activities, or employment.

WORKERS' COMPENSATION
dir.workcomp@hawaii.gov

TEMPORARY DISABILITY INSURANCE
dir.tempdisabilityins@hawaii.gov

PREPAID HEALTHCARE
dir.prepaidhealthcare@hawaii.gov

Equal Opportunity Employer/Program
Auxiliary aids and services are available upon request to individuals with disabilities.
TTY/TTD Dial 711 and then ask for (808) 536-3366

WCRP21

03 PAGE

O GARY WHITNEY

808-595-4349

03/20/2017 18:35

- (9) Charging or attempting to charge an employee for services authorized by the carrier or self-insured employer;
- (10) Conviction in any court for any offense involving moral turpitude, in which case the record of the conviction constitutes conclusive evidence;
- (11) Repeated acts of gross misconduct in the provision of vocational rehabilitation services;
- (12) Repeated acts that involve conflicts of interest;
- (13) Declaration of mental incompetence by a court of competent jurisdiction;
- (14) Failure to comply with any state or federal laws relating to employment practices; or
- (15) Failure to provide vocational rehabilitation services as required by the employee during the length of the program and or as prescribed in the vocational rehabilitation plan.

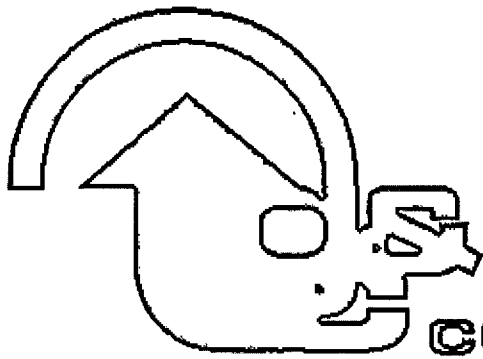
The provider or specialist may request for reconsideration and hearing of the director's determination as provided by section 12-14-48. [Eff. 1/28/85; am 4/12/93] (Auth: HRS §386-72) (Imp: HRS §386-25)

→ **§12-14-21 Enforcement of standards.** The director shall enforce sections 12-14-20 and 12-14-22. Failure to comply with these sections may result in one or a combination of the following:

- (1) A written warning from the director;
- (2) Requirement of hours of training in the area of deficiency, with no new cases to be assigned to the specialist until proof of completion of training is received by the director;
- (3) Revocation of a specialist's registration under this chapter; or
- (4) Revocation of a provider's certification under this chapter pursuant to section 12-14-19. [Eff. 1/28/85; am 4/12/93] (Auth: HRS §386-72) (Imp: HRS §386-25)

§12-14-22 Registration maintenance standards.

- (a) Specialists shall meet the requirements of this section.
- (b) Specialists shall obtain a minimum of sixty hours of formal training directly related to vocational rehabilitation every three years at an accredited institution or 20 hours for each year registration is granted in any of the following areas:
 - (1) Counseling;
 - (2) Placement of the disabled;
 - (3) Tests and measurements;
 - (4) Practices and principles of vocational rehabilitation;
 - (5) Psychosocial aspects of disability;
 - (6) Medical aspects of disability; or



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vocational consultants

May 12, 2016

Ms. Joann A Vidinhar
Administrator
Department of Labor and Industrial Relations
Disability Compensation Division
830 Punchbowl Street, Rm. 209
Honolulu, HI 96813

Employee: DeSoto, Sandra
Employer: Aloha Pacific FCU
Date/Inj.: 06/13/2011
WC#: 2-11-09205
Claim#: WC648-A08643

Dear Ms. Vidinhar:

I am requesting a joint meeting with you and Ms. Delphina Guerrero to clarify what circumstances would allow for temporary closure of a client's vocational rehabilitation program and its reopening.

The case in question was closed on January 11, 2016, subject to and conditioned upon future commencement and reopening should her medical condition, symptoms, and physical restrictions improve to the extent that she can reasonably obtain such suitable gainful and regular employment in the normal labor market, which is highly likely. The reasons for closing the case temporarily are as follows:

Dr. Stephen Miyasato indicated that Ms. DeSoto is not ready to participate in a functional capacity evaluation which would establish her permanent physical work restrictions at this time. He stated that he will re-assess her readiness on June 1, 2016.

Vocationally, Ms. DeSoto has an abundance of sedentary transferable work skills which positions her well within the financial industry. She has expressed a desire to return to work within a collector or related position (service representative and clerical support). Her labor market efforts review that collector and related positions are reasonably available within our local labor market.

Her job hunting and job interview skills were assessed and determined to be excellent.

Re: DeSoto, Sandra
Claim#: WC648-A08643
May 12, 2016
Page 2

Ms. DeSoto's adjustment to disability can be viewed as in the accommodation stage. She is primarily focused on improving her medical status and returning to work. She has also increased her activity levels which allows her to complete all of her household chores and activities of daily living.

Ms. DeSoto and this counselor, in four months, had identified her career goal, completed labor market research which supported her identified work goal, had assessed her adjustment to disability as good, and determined that her job hunting and job interview skills were excellent. The only issue outstanding was her permanent physical work restrictions which Dr. Stephen Miyasato indicated would be addressed on June 1, 2016. As a result of Ms. DeSoto's progress within her vocational rehabilitation program and the fact that we did not have any physical work restrictions, this counselor could not identify any further services until her physical work restrictions were established sometime in June 2016. Therefore, I requested a temporary closure of her vocational rehabilitation plan.

On March 3, 2016 this counselor received correspondence from Ms. DeSoto's attorney (Larry Scott, Esq.) requesting re-referral of Ms. DeSoto for vocational rehabilitation due to Dr. Stephen Miyasato on February 23, 2016 outlining Ms. DeSoto's temporary modified physical capacities as a sedentary-light (up to 15 pounds) four hours per day three days per week. This is important because it cleared the way for us to develop a part time administrative assistant volunteer setting which would greatly help Ms. DeSoto transition back into the competitive labor force.

This counselor submitted Ms. DeSoto's Employment Selection Form (WCRP-23) on March 17, 2016 with a letter informing the carrier, Liberty Mutual Insurance Co., their adjuster Mr. Kevin Khuong, and their attorney Ms. Darlene Itomura, Esq., informing them if you have concerns regarding Ms. DeSoto's eligibility for vocational rehabilitation services you must submit a challenge of eligibility to the Disability Compensation Division within ten days of this letter. If there is no challenge within the 10 day period I will proceed with vocational services. There was no challenge of Ms. DeSoto's eligibility for vocational rehabilitation services so this counselor proceeded with Ms. DeSoto's vocational rehabilitation program.

This counselor submitted Ms. DeSoto's Initial Evaluation with her Vocational Rehabilitation Enrollment Form (WCRP-25(d)) on April 18, 2016. I received a decision from DCD on April 22, 2016 stating that the provider's letter date April 16, 2016 fails the requirements of Section 386-25 (a) (d), HRS, the information presented does not justify the reopening of this vocational rehabilitation file.

Section 386-25 (a):

The purposes of vocational rehabilitation are to restore an injured worker's earnings capacity as nearly as possible to the 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.

Re: DeSoto, Sandra
Claim#: WC648-A08643
May 12, 2016
Page 3

1. The facts are that Ms. DeSoto is still receiving TTD benefits for medical reasons, had not had her permanent physical work restrictions established, had not been released by her physician to return to work, and would not have these issues addressed until June 2016. How can vocational rehabilitation be blamed for not quickly as possible returning her to suitable gainful employment?
2. Ms. DeSoto had identified Level III employment which would restore her earnings capacity as nearly as possible to the level that she was earning at the time of injury and this counselor was planning to submit a direct placement vocational rehabilitation plan within weeks after her physical work restrictions have been established in June 2016. This would meet the required standards as quickly as possible in a cost-effective manner.
3. Ms. DeSoto has been out of the labor market for approximately four and a half years; therefore, with Dr. Miyasato's February 23, 2016 temporary modified physical work restrictions of allowing Ms. DeSoto to participate in a volunteer effort justified additional vocational rehabilitation services to develop a volunteer site which would greatly help her transition back into the competitive labor force.

Section 386-25 (d):

A provider shall submit an initial evaluation report of the employee to the employer and the director within forty-five days of the date of referral or selection. The evaluation shall determine whether the employee requires vocational rehabilitation services to return to suitable gainful employment, identify the necessary services, and state whether the provider can provide these services.

1. Ms. DeSoto's first selection for vocational rehabilitation was August 11, 2015 and the Initial Evaluation was submitted on September 7, 2015, a four week period. This counselor temporarily closed Ms. DeSoto's vocational rehabilitation program on January 11, 2016.
2. Ms. DeSoto's second selection for vocational rehabilitation was March 17, 2016 and the initial evaluation was submitted on April 18, 2016, a four week period. This counselor outlined the services as developing a part time sedentary-light volunteer site by May 17, 2016.

Therefore, this counselor requests clarification of why Ms. DeSoto's vocational rehabilitation program was denied.

Re: DeSoto, Sandra
Claim#: WC648-A08643
May 12, 2016
Page 4

In addition DCD threatened this counselor with disciplinary action by citing Section 12-14-21, HAR – Enforcement of Standards which I believe in this case is a misuse of Section 12-14-21, as well as heavy handed.

Respectfully submitted,

O. Gary Whitney, M.Ed., CRC, LMHC
Vocational Rehabilitation Counselor

Attachment

cc: Kevin Khuong, Liberty Mutual Insurance Co.
Larry Scott, Esq.
Darlene Itomura, Esq.
DLIR-DCD

Carrie Noborikawa
1275 Ala Alii Street
Honolulu, HI 96818



To Whom It May Concern:

I am an injured worker. My case is now 10 years old. For the last decade, my life has been hell to deal with. On 3/9/2007 I flipped out my knee cap and injured my back as an F&B manager. I was fortunate to have a counselor, Laurie Hamano to help me through this entire process. We hit many road blocks with my case and one being with DCD regarding an extension on my VR plan.

Through Work Comp, I was enrolled in at Hawaii Medical College to become a certified biller. I went through the program and received straight A's and ultimately had to take a test to become certified with AAPC. We were allowed to take 2 exams. However, the exam my class took was the last exam of year in 2014. Not knowing the next exam would be on materials for 2015 which required new books and over 500 changes within the medical billing coding. Laurie and I requested an extension for this. We meet with the director of education at HMC, which they admitted they failed to notify us of this prior to my enrollment.

My timeline should have ended in April of 2015. As mentioned, we approached DCD for an extension and failed to hear back from them within the 20 day criteria. Laura Hamano called after the 20 days to find out it was not approved. I'm not sure who she spoke with, but witnessed the call. Because the carrier sent in an objection letter, it was deemed "not approved". Laurie had to fight for this, as we were not notified. Thus, through HRA statues meant my case was approved per the timeframe. My new deadline was extended to the Feb of 2016.

In the meantime, the carrier stopped my checks from PPD to be paid out of a fund for my settlement. All the while, I attended more classes and prepared to take the 2015 exam. I sat through 3 additional classes, purchased all new materials on my own. The cost was over \$700, which was never reimbursed by the carrier. I took the exam on September 27, 2015. And passed. Out of a class of 12 students, only 2 of us are certified with AAPC. I found a job and started on January 4, 2016. I have been employed as full time Billing Specialist and still need to take time off to attend hearings at the Department of Labor.

My case is filled with many unnecessary delays. I have had adjusters disappear due to illness, and go for periods of up to 6 months of no income. I also had one adjuster ignore our request for testing and acknowledgement that prevented me from repairing a torn labrum for over a year. So when I use the words, "I am an injured worker" I now need to include "I am a victim". My life has been scrutinized under a microscope. The attorney representing the carrier inundates (and quite simply, blasts us) with letters to no avail.

At the end, the delays from DCD added more stress and further taking away any human factor to the situation. This entire experience was not pleasant, and without VR counselor's like Laurie Hamano, I know for a fact that I would not have survived the last 10 years. The indecision and lack of notification in a timely manner as well as disregard for the HRA statues with DCD, makes any case a toss-up and causes more delays and stress all us as injured workers.

Please remember, we are individuals with families and lives that we are forced to put on pause for a timeframe that seems without end. I am now a productive worker that is still being victimized by the

carrier, which is ridiculous and without rationale. DCD and the Department of Labor should remember this and be fair with due diligence and recognize injured workers who want to move ahead and not lose a decade of life because of the process.

Mahalo for taking the time to hear my concerns.

Sincerely,

Carrie Noborikawa

LATE

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LATE

LATE

March 20, 2017

State of Hawaii
Hawaii Legislature
House of Representatives

RE: HCR105

Dear Legislators,

I am an attorney with about 30 years in the representation of injured workers, representing the Claimants. I support the Resolution.

Prior to 2-3 years ago, the Decisions made by the VR Unit tended to be rather predictable. I may not have liked the Decisions, but at least there was some consistency. The Department of Labor mostly upheld the VR Unit Decisions, if I appealed the VR Unit Decisions to the DCD for a hearing.

The recent VR Unit Decisions in the past 2-3 years have been unpredictable, not based upon any law I can find and sometimes wacky. The strange VR unit Decisions have not always been unfavorable to the Claimant and in one case I was amazed that the VR Unit Decision allowed not just a new VR Plan, but also said the Claimant could restart the VR process with a different VR Counselor. This was even though the Claimant did not have any real complaints against the VR Counselor.

In the same case, the VR Unit closed down the VR educational plan even though the parties had agreed to the VR Plan. The VR unit erroneously interpreted a recently enacted VR law in HRS CHAPTER 386. I had to go to the DCD for a hearing, at which time the DCD reversed the VR Unit and allowed the VR Plan to continue.

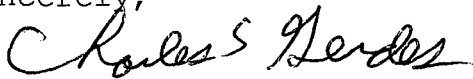
In another case, just decided, the VR Unit stopped the VR

Plan educational plan even though the Claimant had completed most of his training. The Claimant had to stop his training due to a short illness. The VR Unit used his short illness as an excuse to stop his VR training entirely, not just temporarily. Again, I had to go to the DCD to have a hearing. The DCD reversed the VR Unit.

I have heard complaints about the current VR Unit from both sides, Employers (and insurers) and from the Claimants. The VR Counselors have also been complaining. When ALL sides and participants in Hawaii's Vocational Rehabilitation system are complaining, it is time to find out why.

The VR unit's strange Decisions have cost everyone money, including the STATE OF HAWAII, which was one of the parties to the first example mentioned. Did the VR Unit have any training? Any background in Vocational Rehabilitation?

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Gerdes".

Charles S. Gerdes

LATE

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**State of Hawaii House of Representatives Twenty-Ninth Legislature Regular Session of 2017
Testimony in Support for HCR 105: Requesting the Auditor to conduct an audit of the Vocational
Rehabilitation Unit in the Department of Labor and Industrial Relations, Disability Compensation Unit**

Date: March 21, 2017, 10:40AM Scheduled Hearing

To: Committee on Labor and Public Employment
Hon. Representative Aaron Ling Johanson
Hon. Representative. Daniel Holt

From: Donna "Sweetie" Kuehu

Re: HCR 105, Requesting an audit of the vocational rehabilitation unit of the DOLIR

Aloha Honorable Representative Chair and Committee Members,

I support HCR 105 which would provide for the Auditor to conduct an audit on the Vocational Rehabilitation Unit of the Department of Labor and Industrial Relations (DOLIR), Disability Compensation Unit. I am an injured worker who has gone through the pain and suffering of a workplace injury/illness, and I have experienced the compounded effect of the pain and suffering of the workers' compensation process at the State DOLIR. The need for an assessment of whether the Department is upholding the intent of HRS 386 in its entirety, and in this particular proceeding the section of 386-25(a) is probably long over-due. The idea that vocational rehabilitation counselors are being scrutinized is another new low for this Department. An injured worker that has to file a workplace injury claim has a difficult time even finding a physician willing to assist them because of the mishandlings of the HRS 386 at the DOLIR. Lawyers are equally difficult to obtain since most of them represent the Employers in this town, and are also treated poorly. A Vocational Rehabilitation Counselor is necessary for an injured workers' recovery to health, wellness and return to work. The State should be supporting these professionals because of the service they provide to Hawaii's labor force, which is why I ask that this committee provide the support for HCR 105 for an audit of the DOLIR Vocational Rehabilitation Unit.

Sincerely,
Sweetie Kuehu

House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

LATE

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Aaron Ling Johanson, Chair
Daniel Holt, Vice Chair
Hearing: Tuesday, March 21, 2017
Time: 10:40 a.m.
Place: Conference Room 309
State Capitol
415 S. Beretania Street

LATE

LATE

Re: HCR 105, Requesting the Auditor to Conduct an Audit of the Vocational Rehabilitation Unit in the Department of Labor and Industrial Relations, Disability Compensation Unit

Chairman Johanson, Vice Chair Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is Donald Kegler. I have worked as a vocational rehabilitation counselor for thirty-six years and I respectfully support this request for an audit.

I have experienced many of the problems addressed by this resolution. I have had initial evaluation reports which I have been unable to complete within the normal 45 day time period because medical information was unavailable from the treating physician through no fault of my own. Despite explaining this circumstance, I have been ordered to close my file by the Vocational Rehabilitation Unit of the Department of Labor and Industrial Relations and ordered to close my file and cease working the injured worker as a counselor.

I have also had my license to practice vocational rehabilitation threatened with suspension or termination by the Dept. of Labor's Vocational Rehabilitation Unit for insignificant and unavoidable failures to comply with time deadlines that were never or seldom enforced previously.

I have been concerned that my public support resisting or supporting changes in vocational rehabilitation laws, regulations and practices has made me vulnerable to negative treatment by the Vocational Rehabilitation Unit because of my lawful advocacy.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, I give my full support to an audit of the Unit and ask that you please pass HRC 105. My clients and employers are also not well served by the current actions of the Unit and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for considering my testimony.

Donald L. Kegler, M.Ed., CRC, CCM, CDMS, LMHC