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July 30, 2019

Steve Peters, Chair
Administrator
Wisconsin Worker's Compensation Division
201 E. Washington Ave.
Madison WI 53702

via email only

re: Proposal to the WCAC

Dear Mr. Peters:

Would you please be so kind as to present the following proposal to the Worker's Compensation Advisory Council at its next meeting.

In contested retraining training claims, it is necessary, under sec 102.61, Stats., to show that the injured worker "is entitled to and is receiving instruction under 29 USC 701-797b, as administered by the state in which the employee resides..." Because there is no evidentiary rule allowing the admission of DVR records into evidence, without the accompanying testimony from a DVR employee to authenticate their records, it is almost always necessary to require/subpoena the DVR counselor to travel to, attend, and testify at hearing. DVR counselors almost universally loath having to give up half a day (plus) of their regularly scheduled work to attend these worker's compensation hearings.

Therefore, I propose that a statute or rule be developed to allow the admission of DVR records into evidence, without requiring the presence of a DVR counselor to authenticate the file. This could likely be accomplished by simply adding such a notation to s. 102.17(1)(d)(1.), to-wit:

1. The contents of certified ***Division of Vocational Rehabilitation records***, medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists, physician assistants, advanced practice nurse prescribers, and chiropractors licensed in and practicing in this state, and of certified reports by experts concerning loss of earning capacity under s. 102.44 (2) and (3), presented by a party for compensation constitute prima facie evidence as to the matter contained in those reports, subject to any rules and limitations the division prescribes.

Thank you very much for your kind consideration of this request.

Sincerely,

John B. Edmondson

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