

**OPINION  
66-494**

May 11, 1966 (OPINION)

Mr. E. Odin Sjaastad

Chairman

Workmen's Compensation Bureau

RE: Workmens' Compensation - Medical Evaluations - Cost

This is in response to your letter in which you make reference to section 65-02-14 and 65-05-07 of the North Dakota Century Code. You then state that injured employees whose liability has been accepted by the Workmen's Compensation Bureau are oftentimes recommended by the physician for rehabilitation. You also state that under the foregoing sections of law the Bureau pays the necessary costs of vocational rehabilitation. You also state that there are times when it is necessary to have a medical evaluation placed upon the claimants before they can be guided into the proper course or training for rehabilitation. Such medical evaluation is normally done by the Medical Rehabilitation Center at the University of North Dakota in Grand Forks, North Dakota.

You then ask for an opinion whether or not Title No. 65 and section 65-02-14 and section 65-05-07 of the North Dakota Century Code specifically authorize the commissioners to make payments for the costs of medical evaluations as distinguished from vocational rehabilitation costs.

Basically the Bureau has, as any other agency, department or governmental body, only such authority as is granted to it by law or necessarily implied therefrom. The Bureau as a governmental agency is engaged in the business of providing workmen's compensation coverage for employees in this state and administering the program thereunder. In addition to this, it is an administrative agency performing, amongst other things, the function of administering the workmen's compensation law in this state, under which program it acts as a quasi-judicial body. As such, it is more than a mere business enterprise. It does more than act merely as an insurance company. In many states a separate agency determines the validity and the amount of compensation, whereas in this state the Bureau performs both functions. In effect, it wears "two hats" - one for the insurance feature and one for the adjudication of claims.

The statutes involved must be construed in line with the functions of the Bureau. Section 65-02-14 of the North Dakota Century Code provides as follows:

BUREAU TO AID IN REHABILITATING PERSONS INJURED IN EMPLOYMENT.  
The bureau shall cooperate with such federal department or agency as shall be charged with vocational education and vocational rehabilitation to the ends that persons injured in

the course of employment may be restored to industry and that industrial cripples may obtain training, education, and employment. An allowance for dependents of not to exceed twenty-five dollars per week for a maximum of seventy-two weeks may be paid from the fund during the rehabilitation period."

Section 65-05-07 of the North Dakota Century Code provides as follows:

INJURED EMPLOYEE GIVEN MEDICAL AND HOSPITAL SERVICE REQUIRED - FURNISHED ARTIFICIAL LIMBS AND APPLIANCES FOR REHABILITATION. Immediately after an injury sustained by an employee and during the resulting period of disability, the fund shall furnish to the employee such medical, surgical, and hospital service and supplies as the nature of the injury may require. If the injury causes permanent partial disability, the fund, in addition to the specific benefits provided, may furnish such artificial limbs, glasses, braces, or appliances or provide such course of study, training, or education as in the judgement of the bureau may be necessary to rehabilitate such injured employee."

Section 65-02-14 of the North Dakota Century Code is a general statute which provides that the Bureau may allow and pay within the limits prescribed the dependency awards and also directs that the Bureau cooperate with other agencies interested in vocational rehabilitation of persons injured in course of employment. The Legislature, which represents the "stockholders", must have been fully aware of the general need and benefit to its employees by providing for rehabilitation of those who were injured in course of employment. We must also assume that the Legislature realized that the cost involved would bring about comparable benefits to industry as a whole. We must also assume that the Legislature concluded that the cost must be borne by industry as the injury occurred in said field.

As to section 65-05-07, in addition to requiring the Bureau to furnish certain artificial appliances the Bureau is authorized to determine whether or not the injured employee should receive courses of study, training or education to rehabilitate such employee. In allowing the additional benefit of training and education, the Legislature apparently took into consideration the matter discussed earlier herein on dependency allowances under the rehabilitation program.

In determining whether or not the employee shall receive additional training or education, the Bureau must exercise sound judgment. To arrive at a sound judgment certain medical evidence becomes a necessity. The medical evidence and evaluation is in a specialized area which requires special knowledge and skill which is normally and generally not possessed by the individual commissioners of the Bureau, unless they also have had special training in said field.

It becomes clear that such additional assistance must be obtained from person qualified to make the medical examination and evaluation. The cost of such examination and evaluation must be borne by someone. The claimant or injured person cannot afford such costs.

If such examinations and evaluations are ordered by the Bureau and are needed to assist in making sound judgment as to the employee's ability to materially benefit from a program of study, education and training, then there is sufficient implied authority to make this expenditure. The Bureau would have no authority to expend money for an evaluation for the benefit of some other group, association or person, unless the Bureau itself were to use such medical examination and evaluation to make its judgment thereon. This necessarily implies that the Bureau could share the costs of such examination and evaluation on the same basis.

In direct response to your question, it is our opinion that under the provisions of section 65-02-14 and section 65-05-07 of the North Dakota Century Code there is sufficient authority for the Bureau to make the expenditures for medical examinations and evaluations for the purposes stated herein.

HELGI JOHANNESON

Attorney General