

OPINION  
67-354

August 23, 1967 (OPINION)

Mrs. Agnes Geelan

Chairman

Workmen's Compensation Bureau

RE: Workmens Compensation - Records - Confidential

This is in response to your letter in which you state the following:

In the course of the bureau's activities, it becomes necessary from time to time for the bureau to refer certain claimants to the vocational rehabilitation agency. This is done in accordance with section 65-02-14 of the North Dakota Century Code. When such a referral is made, the vocational rehabilitation agency requests and needs certain pertinent medical information from the claims folder. This information is needed by the vocational rehabilitation agency for the purposes of background and evaluation.

Although chapter 65-05 of the North Dakota Century Code is silent with respect to the confidential nature of the claims folder, it has been the practice of the bureau in the past to obtain a release from the claimant. The only mention made of the status of medical evidence in the claims folder is in section 65-05-30."

You then request an opinion as to whether or not it is necessary for the bureau to obtain a release from the claimant or the doctor prior to releasing pertinent information from the claims folder to a vocational rehabilitation agency.

Section 65-02-14 of the North Dakota Century Code, in part, provides as follows:

65-02-14. 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. \* \* \*."

It is observed that this statutory provision not only authorizes but directs the bureau to cooperate with the federal department or agency charged with vocational education and rehabilitation programs. It further appears that the term "federal department or agency" is a descriptive term rather than a term attempting to limit the cooperation only to federal agencies or departments. It is our understanding that all recognized vocational rehabilitation agencies are either of the federal government variety or the state variety. We are, in this respect, limiting the opinion to such agencies. We

are not concerned with purely private vocational or rehabilitation agencies.

Section 65-05-30 of the North Dakota Century Code provides as follows:

"FILING OF CLAIM CONSTITUTES CONSENT TO USE OF INFORMATION RECEIVED BY DOCTOR. The filing of a claim with the bureau shall constitute a consent to the use by the bureau, in any proceeding by it or to which it is a party in any court, of any information which was received by any doctor in the course of any examination or treatment of the claimant for injury or disease concerning which a claim has been filed. The filing of such claim shall authorize a doctor to disclose any such information to the bureau or to its representative."

The term "in any proceeding by it" (bureau) is sufficiently broad enough to include any authorized proceeding or activity by the bureau. Because the bureau is charged with a duty and responsibility of making efforts to restore injured persons, any proceeding the bureau has to accomplish this would come within the term "any proceeding by it." We must assume that the injured person (claimant) also is desirous of improving his status through training and education and thereby improve his economic status in employment. We do not envision such activities as being against the wishes of the claimant.

On the basis of the foregoing, it is our opinion that the workmen's compensation bureau may release and furnish to a recognized vocational rehabilitation agency pertinent information from the claimant's claim folder without first obtaining the release from the claimant.

It also appears quite obvious that any recognized rehabilitation agency, before it is able to make any responsible judgment or suggestion, must be informed of the physical and mental capabilities of the individual concerned. Consequently, the information in question is considered vital to such agency.

While we have concluded that you have the legal authority to release this information to the agency without first obtaining approval from the claimant, in certain instances, if in the judgment of the bureau it would be more beneficial to the claimant not to disclose the name, the bureau could in such instances provide the information to the agency without disclosing the name. After the agency has determined what aid it can provide for the claimant, and if the claimant is willing to "enroll" in the program, the name could be furnished.

HELGI JOHANNESON

Attorney General