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WORKMEN'S COMPENSATION COMMISSION

BIENNIAL REPORT

July 1, 1966 through June 30, 1968



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STATE OF MINNESOTA

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STATE OF MINNESOTA
WORKMEN'S COMPENSATION COMMISSION
SAINT PAUL 55101

IN REPLY REFER TO

January 3, 1969

Governor Harold LeVander
State of Minnesota
State Capitol
St. Paul, Minnesota 55101

and

Members of State Legislature
State Capitol
St. Paul, Minnesota 55101

Gentlemen:

The Workmen's Compensation Commission is privileged to present this report explaining the functions of the Workmen's Compensation Commission, its needs, as well as providing statistical information on the operations of the Workmen's Compensation Law during the biennium period July 1, 1966 through June 30, 1968.

We have also included recommended legislation for your consideration.

Respectfully submitted,

WORKMEN'S COMPENSATION COMMISSION

W. J. Schaefer

Lawrence F. Koll

James F. Parnish

Commissioners

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STATE OF MINNESOTA



TABLE OF CONTENTS

Functions of the Workmen's Compensation Commission	page 1
Personnel, Physical Facility, Furniture and Equipment Needs of the Commission	page 14
Statistical Information	page 23
Recommended Legislation	page 33

FUNCTIONS OF THE WORKMEN'S COMPENSATION COMMISSION

Minn. Stat. 176.265 provides that the Commission shall observe in detail the operations of the Minnesota Workmen's Compensation Law throughout the State and shall make a report to each session of the legislature concerning the operation of the Workmen's Compensation Law and propose such changes as it deems advisable to improve the law.

The Workmen's Compensation Commission of Minnesota is composed of three commissioners, who are attorneys. The present members of the commission are:

Mr. James Pomush, appointed July 1, 1963
Mr. Cyril H. Schaefer, appointed April 14, 1967
Mr. Laurence Koll, appointed September 15, 1967

Their normal duties and responsibilities are to:

- (1) Supervise the administration of the Workmen's Compensation Law pursuant to Minn. Stat. 176.251; insure prompt and full payment of compensation benefits to injured employees and their dependents, which presently involves the distribution of an estimated \$43,000,000 in yearly benefits; to keep fully informed of the nature and extent of all compensable injuries, their resultant disabilities, and the rights of employees and their dependents to compensation under Minn. Stat. 176.231, Subd. 6.
- (2) Exercise appellate jurisdiction pursuant to Minn. Stat. 176.421, 176.431 and 176.441, by reviewing findings of fact and conclusions of law made by workmen's compensation referees and in connection therewith may reverse, affirm or modify the findings or determination appealed from, or take any other action in the interest of justice. Further appeal from Commission decisions is directly to the Minnesota Supreme Court by Writ of Certiorari. As factfinders, the judgment of the Commission will not be reversed by the Supreme Court unless manifestly contrary to the evidence.
- (3) Prescribe Rules of Practice before the Workmen's Compensation Commission pursuant to Minn. Stat. 176.669, Subd. 2, as well as rules and regulations necessary in the operation of the Special Compensation Fund, pursuant to Minn. Stat. 176.131, Subd. 9, and necessary rules for change of physicians, pursuant to Minn. Stat. 176.135, Subd. 2.
- (4) Consider and issue its orders concerning:
 - (a) Petitions for rehearing and to vacate awards pursuant to Minn. Stat. 176.461.
 - (b) Petitions to vacate stipulations for settlement pursuant to Minn. Stat. 176.521, Subd. 3.

- (c) Petitions for lump sum payments pursuant to Minn. Stat. 176.165.
- (d) Petitions for autopsy of employee pursuant to Minn. Stat. 176.155, Subd. 4.
- (e) Stipulations for settlement pursuant to Minn. Stat. 176.521.
- (f) Determination of reasonable attorney fees pursuant to Minn. Stat. 176.081 and 176.511, Subd. 3.
- (g) Determination of insurer's proportionate share of attorney fees and costs payable to an employee in third party liability cases pursuant to Minn. Stat. 176.061, Subd. 6, and 176.215, Subd. 3.
- (h) Authorization to be self-insured for workmen's compensation benefits pursuant to Minn. Stat. 176.181, Subd. 2.
- (i) Authorization concerning separate risk insurers pursuant to Minn. Stat. 176.181, Subd. 2.
- (j) Determination of actual and necessary disbursements pursuant to Minn. Stat. 176.511, Subd. 2.
- (k) Impositions of penalties as provided by Minn. Stat. 176.225, 176.221, Subds. 3, 5 and 6.
- (l) Suspension of compensation benefits pursuant to Minn. Stat. 176.155, Subd. 3.
- (m) Appointment of neutral physicians, pursuant to Minn. Stat. 176.155 (2).
- (5) Make and keep records of service of papers, notices, awards and orders of the commission
- (6) Issue subpoenas authorized by Minn. Stat. 176.351.
- (7) Prescribe forms for use in making reports to the Commission pursuant to Minn. Stat. 176.231, Subd. 5.
- (8) Determine liability of State of Minnesota, which is self-insured, in claims by state employees for workmen's compensation benefits pursuant to Minn. Stat. 176.541 and 176.571, and in connection therewith make original findings of fact and order payment of benefits to state employees estimated at \$839,000 annually.
- (9) Direct the distribution of the Special Compensation Fund, pursuant to Minn. Stat. 176.131, Subd. 10, including disbursements for purposes of reimbursing insurers under the Second Injury Law, Minn. Stat. 176.131.
- (10) Refer to the Division of Vocational Rehabilitation or other rehabilitation agency, certain cases involving permanent disability and other cases involving indefinite and continuous disability in excess of 26 weeks, pursuant to Minn. Stat. 176.101, Subd. 8.
- (11) Authorize free transcripts on appeal for individuals who cannot afford them, pursuant to Minn. Stat. 176.421, Subd. 4.

As a quasi-judicial body and in the exercise of its appellate jurisdiction, the Commission makes determinations involving highly complex and technical factual, medical and legal issues, requiring a high order of original and creative legal endeavor for their resolution which involve, on occasion, claims by dependents and employees worth up to \$500,000.

DIRECTOR AND CHIEF ATTORNEY

The director and Chief Attorney, Division of Workmen's Compensation, is responsible to the Workmen's Compensation Commission for the operations of the Commission. He is the supervisor of, and responsible for, a legal staff composed of ten referees and nine trial attorneys, together with ten court reporters. He also supervises the supporting clerical and stenographic help necessary for the administration of the Workmen's Compensation Law, including the personnel in the Auditing, Research and Statistics, Filing, Docket, State Compensation Revolving Fund and Special Compensation Fund sections. Therefore, he is responsible to the Commission for directing approximately 63 employees.

He is an experienced trial attorney who is thoroughly familiar with all phases of administering the Workmen's Compensation Law. The legal work that he is typically involved in is highly complex and difficult and involves questions that are unique and which require a high order of original and creative legal endeavor for their resolution. On a regular basis he is required to advise corporate and private citizens on the legal aspects of various provisions of the Workmen's Compensation Law.

The Director and Chief Attorney of the division is also responsible to the Commission for analyzing and processing applications for self-insurance privileges under Minn. Stat. 176.181, Subd. 2, Workmen's Compensation Law. He is responsible for evaluating the reported personal injuries, liabilities and financial status of approximately 125 self-insurers annually, and determines with the Commission the adequacy of securities and surety bonds, if any, deposited with the State Treasurer to guarantee payment of claims.

REFEREES

The Workmen's Compensation Referees preside at formal hearings pursuant to Minn. Stat. 176.381, Subd. 1, to determine the benefits that an injured employee or a dependent widow is entitled to receive under the terms and provisions of the Minnesota Workmen's Compensation Law. He is required to make his findings and determination on the basis of the record. His normal duties are to:

- (1) Administer oaths and affirmations, pursuant to Minn. Stat. 176.351, Subd. 1.
- (2) Issue subpoenas authorized by law, pursuant to Minn. Stat. 176.351, Subd. 2.
- (3) Rule upon offers of proof and receive relevant evidence.
- (4) Take or cause the taking of depositions whenever the ends of justice will be served thereby.
- (5) Regulate the course of the hearing.
- (6) Hold pre-trial conferences for the settlement or simplification of the issues with consent of the parties.
- (7) Dispose of procedural requests or similar matters.
- (8) Question witnesses if necessary or desirable.
- (9) Consider the facts in the record and arguments and contentions made or questions involved.
- (10) Determine credibility and make findings of fact and conclusions of law.
- (11) Make initial findings and determinations on basis of reliable, probative and substantial evidence in the record.
- (12) Take any actions authorized by the Workmen's Compensation Law, including, but not limited to, the following:
 - (a) Appointment of a neutral physician at the expense of the employer and insurer, to assist in making findings and determination (Minn. Stat. 176.391, Subd. 2);
 - (b) Issue orders requiring autopsies (Minn. Stat 176.155, Subd. 4);
 - (c) Make additional investigations on his own initiative, pursuant to Minn. Stat. 176.391, Subd. 1.

He is required to analyze and evaluate evidence; to interpret laws, rules and regulations and legal precedent; to write clearly statements of fact and law, recommendations and orders; to secure facts from individuals through observation and interviews under difficult conditions; to preside and control formal hearings; to

make independent decisions involving substantial rights; to be objective and free from influence; and to be a person of judicial temperament and poise.

As an experienced attorney he has the knowledge and experience necessary to determine the complex issues involved in workmen's compensation proceedings.

ATTORNEY III

The Commission presently employs five Senior Trial Attorneys (Attorney III's), pursuant to Minn. Stat. 176.261 and 176.541. An Attorney III is an experienced trial attorney who generally has a minimum of three years trial experience at the Commission. He has a thorough understanding and knowledge of the Workmen's Compensation Law. He is regularly involved in trial work at the Referee level, on appeal to the Commission, and also on appeal to the Supreme Court of Minnesota. As a Senior Trial Attorney, he consistently confronts highly complex and technical legal issues, involving questions of fact and law. He initiates litigation for the express purpose of establishing legal and administrative precedent to insure full payment of benefits to employees and their dependents, pursuant to Minn. Stat. 176.251. He is involved in cases that are usually contested by highly competent trial attorneys in private practice. In many cases, precedents can be susceptible to conflicting interpretations or may be non-existent.

Two Senior Trial Attorneys are responsible for defending the State of Minnesota as the employer in claims brought by state employees under the provisions of the Minnesota Workmen's Compensation Law, pursuant to Minn. Stat. 176.541, Subd. 2. They are defense trial attorneys and are responsible for defending claims made against the State of Minnesota before the Referee, on appeal to the Commission, and also on appeal to the Supreme Court of Minnesota. They are responsible for giving legal advice and legal opinions to all state departments concerning the applications of the Workmen's Compensation Law. They are solely responsible for settling disputed claims, and determining whether the amount of the settlement is fair and reasonable. They are solely responsible for properly drafting the stipulation for settlement agreements.

They protect the State of Minnesota's interest in third party civil actions and

sible in thoroughly knowing the issues involved, the law applicable and in determining whether or not there is a proper basis for settlement and, if so, whether or not the amount of money is sufficient to warrant a settlement. He negotiates directly with the employee or the dependents, or the insurance carrier, in trying to improve the terms of any settlement which he feels is not fair. He directly advises the employee or his dependents of their legal rights and, on occasion, will advise the employee or dependents that a settlement agreement is not in his best interest and will either disapprove or recommend disapproval of the proposed settlement.

He determines employers' and insurers' proportionate share of attorneys fees and costs in third party recoveries and future obligations of employers and insurers in cases where a third party is responsible for the personal injury pursuant to Minn. Stat. 176.061, Subd. 6, and issues his order based thereon.

He issues his Orders for Change of Physicians, Orders for Retraining, Orders for Lump Sum Settlements, Orders Determining Employer's and Insurer's Proportionate Share of Attorneys Fees in connection with Third Party Recoveries, Orders for Attorneys Fees and Awards Based upon Stipulations.

This attorney regularly initiates litigation for the express purpose of establishing legal and administrative precedent to insure full payment of benefits to employees and their dependents, pursuant to Minn. Stat. 176.251 and will try cases that are highly complex, requiring extensive legal research. He occasionally acts as spokesman for the Commission in advising groups of citizens concerning the Workmen's Compensation Law. He advises private attorneys with regard to the law and procedures.

This attorney is responsible to the Commission for analyzing and processing applications for separate risk privileges under Minn. Stat. 176.181, Subd. 2. He is responsible for evaluating all applications to determine if the requested separate risk is, in fact, a distinct operation at a different location of the employer.

ATTORNEY II

The Commission presently employs four Attorney II's, pursuant to Minn. Stat. 176.261. These are trial attorneys who are primarily engaged in offering legal advice and services to injured employees or their dependents. They represent injured employees or their dependents on a regular basis before the Referee, on appeal to the Commission, and also on appeal to the Supreme Court of Minnesota. The legal or factual issues involved in contested cases occasionally are highly complex and technical and are generally defended by highly skilled private attorneys hired by private insurance companies. Legal precedents are frequently conflicting or non-existing. These attorneys occasionally initiate litigation for the express purpose of establishing legal and administrative precedent to insure full payment of benefits to employees and their dependents pursuant to Minn. Stat. 176.251.

The monetary value of cases litigated is substantial. A trial attorney representing a widow may recover benefits valued at \$25,750. A successful claim for permanent total disability benefits may be valued at \$500,000, depending on the employee's age and future medical requirements.

The litigation involved usually requires the attorney to obtain and present

expert testimony. The attorneys are solely responsible to their clients. An adverse decision forever bars the employee or dependent in making the same or similar claim for benefits. In any case settled by stipulation and agreement, our trial attorneys are solely responsible to their clients in preparing the settlement.

Our attorneys are the only classified Civil Service attorneys employed by the State of Minnesota who argue before the Supreme Court of Minnesota. These attorneys eventually will become referees who will render decisions in cases involving hundreds of thousands of dollars. Their intensive specialized trial experience especially qualifies them for this responsibility.

COURT REPORTERS

There are ten Court Reporters employed by the Commission. Their duties are:

(1) To make a verbatim record in stenotype or shorthand notes of all hearings before Referees of the Commission; and (2) to transcribe those records when requested and, in the event of appeal, for use at the Commission level and before the Supreme Court of Minnesota (See Minn. Stat. 176.421, Subd. 5). These Court Reporters record and transcribe a considerable amount of expert medical testimony, involving highly technical medical terminology. This testimony is usually given very rapidly, requiring a high degree of mental concentration. Each reporter is also required to do the secretarial work of the referee to whom he is assigned, including the taking and transcribing of the referee's Findings and Determination, together with the referee's memorandum, which usually includes legal citations of applicable cases.

AUDIT SECTION

The Audit Section of the Commission has four employees who are primarily engaged in auditing all personal injury files involving lost time or permanent disability to insure that all injured employees and dependents have been properly compensated pursuant to Minn. Stat. 176.251 and 176.265. The Audit Section has one additional employee who is primarily engaged in auditing all files to insure proper payments to

the Special Compensation Fund, pursuant to Minn. Stat. 176.13, Subd. 10. Because of their acquired knowledge of the law and auditing procedures, the personnel of this section will annually procure payments by insurance carriers and self-insured employers worth approximately \$400,000 in additional benefits to employees and their dependents, which were due under the provisions of the Workmen's Compensation Act but which would not have otherwise been paid. In the fiscal year ending June 30, 1967, they computed, assessed and received payments of \$165,542, for the benefit of the Special Compensation Fund. This section assessed and recovered \$2,010 in penalties for late payments by insurance carriers and self-insured employers, and is very effective in obtaining prompt and full payment of compensation to employees and their dependents.

FILING SECTION

The Filing Section annually receives approximately 64,000 First Report of Injuries and deaths, as well as an estimated 1,000,000 medical reports, letters, receipts for payment, and other communications. This section has ten employees. Three are primarily engaged in typing and in the set-up of new files, and in connection therewith the preparation of master cards, cross-references, and numbering of all files. Two employees maintain an index and cross-index of all injuries and deaths reported to the Commission.

There are three employees who are primarily responsible in filing all communications received, as well as locating the appropriate file for all communications addressed to Commission personnel. One employee is primarily responsible for filing medical reports, findings and x-rays and other communications pertaining to employees exposed to the hazards of silicosis or asbestosis as provided by Minn. Stat. 176.667. One employee is the chief of the section who supervises the other employees, as well as personal handling of all files and correspondence.

STATISTICAL SECTION

The Statistical Section provides statistical information based upon an analysis of inactive and closed compensation cases, pursuant to Minn. Stat. 176.265. The analysis discloses the distribution of approximately \$43,000,000 in compensation benefits paid annually by medical payments, payments for temporary disability, benefits for permanent disabilities, and retraining benefits.

The analysis includes basic information on the number of cases and costs of compensation during the year, and delineates more specialized information relating to age, sex, type of injury and member of body permanently impaired. These statistics provide guidelines and draw attention to trends which may be of concern in considering public welfare. Today's technological advances in many fields, including radiation and air pollution, indicates a continuing need for statistical information. The supervisor of this section is also responsible for all legal mathematical calculations in computing present values of lump sum payments, pursuant to Minn. Stat. 176.165 and 176.171, as well as determining employer/insurer's proportionate share of attorneys fees and costs in third party recoveries, pursuant to Minn. Stat. 176.061, Subd. 6, and future benefit liability of the employers and insurers.

ENFORCEMENT SECTION

Another employee of the Commission is responsible for certifying to the Attorney General those employers who fail to insure payment of compensation benefits pursuant to Minn. Stat. 176.181, Subd. 3, for appropriate legal action. This employee also is responsible for notifying employers of their obligation to obtain workmen's compensation coverage upon notification of cancellation of coverage by private insurance companies pursuant to Minn. Stat. 176.185, and for receiving and filing all notices of cancellation of workmen's compensation insurance policies pursuant to Minn. Stat. 176.185.

DOCKET SECTION

The Docket Section has two employees who process all petitions, objections, motions and other papers filed with the Commission in contested cases and makes proper service upon the necessary parties. Between 125 and 150 disputed matters are filed monthly and set for hearing before a Referee.

This section has the responsibility of keeping minutes regarding the disposition of all matters brought before the Commission, including, but not limited to:

- (1) Employee or dependent claim petitions
- (2) Petitions to vacate prior awards and orders
- (3) Answers to Petitions
- (4) Replies to answers
- (5) Objections to Notices of Discontinuance
- (6) Orders for Pre-trial
- (7) Orders referring for hearing
- (8) Findings and Determination
- (9) Awards based on stipulations
- (10) Notices of appeal from Decision of Referee to Commission.
- (11) Decisions of Commission on Appeal
- (12) Petitions for Retraining
- (13) Consent to Retraining
- (14) Orders for Autopsy
- (15) Orders Appointing Neutral Physicians
- (16) Writs of Certiorari to Supreme Court
- (17) Decisions of Supreme Court
- (18) Mandates from Supreme Court
- (19) Notices of Substitution of Attorneys

STATE COMPENSATION REVOLVING FUND

The State Compensation Revolving Fund was established pursuant to Minn. Stat. 176.591 to facilitate the discharge by the state of its obligations as a self-insured employer under the Workmen's Compensation Law. Pursuant to Minn. Stat. 176.601, the fund is used for the following payments:

- (1) Annual cost to the Commission of administering the Workmen's Compensation Law in relation to state employees.
- (2) Necessary expense which the Commission or the Attorney General incurs in investigating and defending a claim against the state for compensation.
- (3) Awards of compensation, and the expenses of other benefits paid to a state employee or his dependents.

Approximately \$800,000 is paid in workmen's compensation benefits to state em-

ployees and their dependents each year. The salaries of two defense attorneys, one senior stenographer, one dictaphone operator and one clerk typist are paid out of this fund.

SPECIAL COMPENSATION FUND

The Second Injury Law was established pursuant to Minn. Stat. 176.131, to encourage the hiring of physically impaired employees. Payments due under this law are made from the Special Compensation Fund which is obtained from the following sources:

- (1) Payments by employers/insurers equal to two (2) per cent (formerly 6%) of the amount of compensation paid for permanent partial disability.
(Note: \$338,391 was computed, assessed and collected for the biennium July 1, 1966 - June 30, 1968.)
- (2) Payments by employers/insurers, pursuant to Minn. Stat. 176.221, Subds. 3 and 5, for failure to commence payment of compensation benefits within time limitation provided by Minn. Stat. 176.221.
(Note: \$6,496.70 in penalties for late payments were assessed and collected for the biennium July 1, 1966 - June 30, 1968.)
- (3) Payments by employers/insurers in those fatal cases where there are no persons entitled to at least \$500 in monetary benefits pursuant to Minn. Stat. 176.131, Subd. 10 (1).
(Note: \$17,300 was assessed and collected for the biennium July 1, 1966 - June 30, 1968).

The salaries of two attorneys from the Attorney Generals Office, one legal stenographer and two clerks are presently paid out of the fund money to cover the expense in administering the Second Injury Law (Minn. Stat. 176.131).

The following table discloses the receipts and disbursements of the Special Compensation Fund for the years 1966-67 and 1967-68:

<u>1966-67</u>	
2% and 6% assessments	\$172,848.36
Penalties and fines	4,300.69
Fatal cases	12,800.00
Refunds (administrative)	<u>61.20</u>
Total Receipts	190,010.25
Disbursed during fiscal year	136,213.57
For Awards	121,884.79
Expenses	12,286.62
Refunds	2,042.16
Net Increase in Fund	<u>\$ 53,796.68</u>

<u>1967-68</u>	
2% and 6% assessments	\$165,542.99
Penalties and fines	2,196.01
Fatal cases	4,500.00
Refund (administrative)	<u>-44.47</u>
Total Receipts	172,194.53
Disbursed during fiscal year	225,026.51
For Awards	184,556.86
Expenses	38,103.91
Refunds	2,365.74
Net Decrease in Fund	<u>\$-52,831.98</u>

PHYSICAL FACILITIES

The Workmen's Compensation Commission maintains three offices as follows:

Main office - 110 State Office Building
St. Paul, Minnesota

Minneapolis office - 415 Produce Bank Building
Minneapolis, Minnesota

Duluth office - 620 Board of Trade Building
Duluth, Minnesota

The Minneapolis office is staffed by two trial attorneys and two secretaries. This office contains three hearing rooms and is the principal place in scheduling formal hearings.

The Duluth office is staffed by one Referee, one Attorney, one Court Reporter, and one legal secretary. The Commission moved to this office in July, 1967. It is a substantial improvement over the prior space in the Ojibway Building.

The St. Paul office is the main office of the Commission.

PERSONNEL, PHYSICAL FACILITY, FURNITURE
AND EQUIPMENT NEEDS OF THE COMMISSION

The physical facilities, furniture and equipment of the Workmen's Compensation Commission of Minnesota have not been upgraded since the Commission was created by Laws of 1921, Chap. 81 and Chap. 82.

The physical facilities of the St. Paul Office are outmoded and do not meet acceptable standards of working and operating conditions. The appearance is repugnant to the public it serves.

MAIN HEARING ROOM

The main hearing room of this Commission is located at 120 State Office Building. It is the room used for formal hearings before a Referee in disputed cases. It is the room where litigants are given 'their day in court.' Medical and other witnesses are sworn under oath in this room prior to taking the witness stand for purposes of giving their testimony.

The appearance of the main hearing room to the public it serves is poor. It is in dire need of remodeling to present a judicial atmosphere in keeping with the quiet dignity necessary to the proper administration of justice. It is presently equipped with old and mismatched furniture. The ventilation is exceptionally poor on hot days. The acoustics permit a high noise level which strains the nerves of all parties at a hearing. The atmosphere is cold and shoddy and does not lend itself to respect for the Court.

It is the recommendation of the Commission that this hearing room be extensively remodeled with new furnishings to present a judicial atmosphere with proper acoustics and adequate ventilation.

It is the recommendation of the Commission that the hearing room be remodeled to allow its use for hearings on appeal before the Commission.

PRIVATE OFFICE SPACE

The private office space in the main office is similarly outmoded. It is likewise in dire need of upgrading. The noise level is high and disrupting. Carpeting and drapes are recommended throughout to alleviate this problem. Desks, chairs, bookcases and tables are ancient and mismatched and not suitable furnishings upon which to work. Some of the better furnishings have recently been acquired free from Surplus Property - rejects from other departments within state government. The Commission recommends the replacement of all desks, bookcases, chairs by new coordinated furniture similar to the furnishings customarily found in attorney offices and for the Commissioners comparable with furnishings customarily found in judiciary offices.

The reception room and main corridors are likewise in need of upgrading. New chairs are needed for the public use. A new desk and chair is recommended for the receptionist. New color schemes for the walls and coordinated carpeting for the main corridors are necessary to improve the image of the Commission to the public and to alleviate the noise problem that presently tends to disrupt the orderly and efficient working functions of the Commission staff of attorneys, especially on days scheduled for pre-trial conferences when up to 60 private attorneys will come and go.

GENERAL OFFICE AREA

It is the recommendation of the Commission that the upgrading of the Commission include the general office area. A new filing system is essential for the Commission to efficiently handle the mass of material it is required by law to process. New office space is necessary to provide each of our Referees a place of privacy to do the research, prepare the Findings and Determination, and handle their work in an efficient and orderly manner. The Commission recommends 12 new offices, together with furnishings customarily found in judiciary positions. It is also the recommendation of the Commission that additional space be provided for these offices as the present space occupied by the referees in the basement of the State Office Building is unsuitable. It is located next to the Shipping and Receiving Room of the State

Office Building and as such is extremely noisy and poorly ventilated. It is our recommendation that new desks, tables and chairs be provided on a coordinated basis to improve efficiency and appearance. One old worn out chair recently collapsed, causing a serious personal injury to one of our employees a result of which has to date cost the State of Minnesota approximately \$1,300 in workmen's compensation benefits.

LEGAL LIBRARY

The legal library of the Workmen's Compensation Commission is likewise outmoded. Its purposes is to accommodate the twenty attorneys, plus three Commissioners, in researching the law, obtaining medical information, as well as practice and procedure. Issues litigated before the Commission involve all fields of law, including, but not limited to, insurance law, contract law, administrative law, equity, evidence, etc. The Commissioners, referees, and attorneys are on a regular basis involved in highly complex and technical issues requiring a high order of original and creative legal endeavor for their resolution.

The present library is inadequate and the Commission recommends the purchase of Corpus Juris Secundum, Davis on Administrative Law, Northwestern Digest, Lawyers Medical Cyclopedia, Wigmore on Evidence and Proof of Facts. The Lawyer's Medical Cyclopedia and Proof of Facts we feel are necessary. The others are highly desirable.

MINNEAPOLIS BRANCH OFFICE

The Minneapolis branch office of the Workmen's Compensation Commission is presently located at 415 Produce Bank Building. It is situated in quarters not in keeping with its physical requirements. It has three large hearing rooms, while it needs two large and three small hearing rooms. It has three large rooms occupied by two trial attorneys and one boiler inspector while it needs three smaller rooms for private offices and conference - library room. The present hearing rooms are

used in conducting formal hearings before a Referee in disputed cases. These are the rooms where litigants are given their 'day in court.' Medical and other witnesses are sworn under oath in these rooms prior to taking the witness stand for purposes of giving their testimony. The appearance of the rooms to the public it serves is poor. They do not provide a suitable judicial atmosphere in keeping with the quiet dignity that the dispensing of justice so rightly deserves. One hearing room has a noisy mechanical air conditioning unit which completely destroys any judicial serenity when it is operating. One hearing room fronts on a highly busy and noisy street. All hearing rooms have exposed ducts in the high ceilings.

The furnishings in the Minneapolis office, including the hearing rooms, are mismatched and old.

Two of the chairs have recently collapsed, causing a claimant and a medical doctor to fall to the floor.

The Commission recommends that the Minneapolis office be relocated to new quarters. The present lease terminates June 30, 1969. We further recommend that completely new furnishings be provided in the new quarters.

DULUTH BRANCH OFFICE

The Duluth branch office of the Workmen's Compensation Commission moved to new quarters in July, 1967. Arrangements have recently been made to upgrade the Duluth hearing room to minimum judicial standards. The furnishings of the private offices, however, are outmoded and not in keeping with minimal requirements. We recommend new desks, tables, chairs and bookcases for this office. The office also is badly in need of a copy machine to efficiently carry out its responsibilities. A new electric typewriter is needed. The legal steno has purchased and uses her own electric typewriter because of the inadequacy of the typewriter furnished by the state.

ADDITIONAL EMPLOYEE NEEDS

The present complement of the Workmen's Compensation Commission is composed of approximately 63 employees. The following is a break-down of the Commission per-

sonnel, showing their job function and the lines of authority within the Commission.

WORKMEN'S COMPENSATION COMMISSION	Koll, Laurence Pomush, James Schaefer, Cyril	Commissioner Commissioner Commissioner
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DIVISION OF WORKMEN'S COMPENSATION	Otto, James	Director and Chief Attorney
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I. Judicial Section

Referees

Humm, Robert	Workmen's Compensation Referee	St. Paul Office
Boyes, Lawrence	"	Duluth Office
Dinner, Bernard	"	St. Paul Office
Haskell, Frank	"	"
Held, Samuel	"	"
Hottinger, George	"	"
Hynes, Terence	"	"
Lilligren, John	"	"
Parker, John	"	"
Reischel, Charles	"	"

Reporters

Macheledt, Donald A.	Hearings Reporter II	Duluth Office
Andert, Joseph	"	St. Paul Office
Davis, Florence	"	"
Flaherty, Mary	"	"
Midkiff, Herbert	"	"
Mott, Kathleen	"	"
Morehouse, Robert	"	"
Otteson, Rose Mary	"	"
Owens, Ruth	"	"
Schiltz, Ione	"	"

II. Legal Advice and Representation Section

Compensation Counsel

Gallagher, Daniel	Attorney III	St. Paul Office
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Senior Trial Attorneys

Combs, John	Attorney III	Minneapolis Office
Walsh, Thomas	"	"
Keeler, John	"	St. Paul Office
Kurtz, George	"	"

Trial Attorneys

Helling, Kenneth	Attorney II	Duluth Office
Adel, Raymond	"	St. Paul Office
Gard, Leigh	"	"
Erickson, Ron	"	"

Special Compensation Fund Attorney

Romine, John	Special Asst. Atty. Gen.	St. Paul Office
Ehlmann, Winston	"	"

Stenographers

Decker, Joann	Legal Stenographer	St. Paul Office
Miller, Betty	"	"
Neilson, Marion	"	"
McRae, Priscilla	"	Minneapolis Office
Thorson, Mildred	"	Duluth Office

III. Office Services Section

Schlotfeldt, Hugh	Office Supervisor	St. Paul Office
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Clerical

	<u>Title</u>	<u>Assignment</u>
Paipal, Adele	Dictaphone Operator	Legal Section
Sabanjo, Marilyn	Legal Stenographer	"
Roller, Thelma	"	Comm. Malone
Gardner, Jesse	Clerk Stenographer	Spec. Fund, Auditing
Scherff, Carol	"	Minneapolis Office
Friedl, Mary L.	Clerk Typist	Ins. Enforcement
Luke, Rosabel	"	Occupational Disease
Orr, Marcella	"	Legal Section
Talty, Myrel	"	"

Auditing

Chadima, Betty	Senior Clerk	Unit Supervisor
Schaubach, Anne	"	"
Brunk, Theresa	Clerk II	"
Gatten, Clare	"	"
Scherbel, Lillian	"	"

Filing

Hunt, Mabel	Senior Clerk	Unit Supervisor
Philippi, Karen	Clerk Typist	"
Eineberger, Peggy	"	"
Jacoby, Anita	"	"
Wiberg, Hortense	Clerk I	"
Riopel, Susanne	"	"
Roodell, Frances	"	"
Kzaley, Teresa	"	"
Brunner, Rhonda	"	"

Docket

Glassing, Judy	Senior Clerk	Unit Supervisor
Hilde, Hazel	Clerk Typist	"

State Compensation

Bemlott, Lucille	Senior Stenographer	Unit Supervisor
Whitethorn, Mary	Dictaphone Operator	"
Campbell, Betty	Clerk Typist	"

Statistical

Schlotfeldt, Hugh	Research Analyst	Unit Supervisor
McNaught, Frieda	Clerk I	"

Note: Vacancy in Statistics (Tabulating Machine Operator). This position is to be reclassified.

This complement is not adequate to perform the necessary services in an efficient manner.

AUDITING

The Auditing Section of the Commission is in need of two additional audit clerks. As previously indicated, the Commission is responsible under Minn. Stat. 176.251 to insure full payment of compensation benefits to injured employees and their dependents and in connection therewith, under Minn. Stat. 176.231 (6), the responsibility to keep fully informed of all compensable injuries and their resultant disability. The Commission utilizes the auditing section to comply with this law. The auditing section will determine, compute and request payments of benefits worth approximately \$400,000 in apparent underpayments to injured employees and their dependents. It determines whether penalties are due for failure to pay benefits within the statutory time. It demands medical reports indicating extent of disabilities. The present staff is unable to fully comply with the law requiring the Commission to insure full payment of benefits. They have approximately 19,000 pending files that have not been audited since January, 1962, and 19,000 employee's rights have not been fully protected. These files are becoming so old that private insurance carriers are destroying their records. Adequate personnel in the audit section would not only insure prompt and full payment of benefits to injured employees and their dependents, but would assist in reducing filing space requirements.

STATISTICAL

The complement of the statistical section of the Commission is inadequate to provide any statistics beyond the minimum essential information necessary in reporting to the legislature. It does not have the capability of providing comprehensive analysis of the personal injuries reported to the Commission. Other states, including Wisconsin and New York, apparently have this capability. A study is presently being made by the Department of Administration to determine the feasibility of elec-

tronic data processing application to our files and the data contained therein.

We recommend that contingency funds be provided to implement electronic data processing procedures at such time as this study discloses its feasibility and is recommended by the Department of Administration. We recommend one additional employee be hired to continue our ability to review all closed cases and to provide minimum statistical information. Without one additional employee it is doubtful that this section will keep up with the number of cases closed.

FILING

On July 3, 1968, the Department of Administration approved a contract with Sperry Rand Corporation for a preliminary study of our existing active or current files and records by a professional Records Analyst to determine the causes of the inefficiencies of the present filing and retrieving systems and related record keeping procedures. Upon completion of this study, expected October 15, 1968, the Commission will be given proposed recommendations and cost estimates.

We recommend that funds be provided to implement recommended proposed new equipment when approved by the Department of Administration and the Commission.

A new filing system must be authorized to properly handle the great volume of paper required to be filed each day. As an alternative to a new filing system we recommend two additional Clerk positions be established to alleviate the daily crises due to sickness, vacation, excessive volume and special requests, and to enable us to handle the increasing volume of paper to be filed and retrieved.

SECRETARIAL HELP

The Office Supervisors of the Commission spend a considerable amount of time each day finding and assigning employees to jobs other than their primary responsibilities. This is due to absence of regular employees due to vacations and sickness. The Commission is understaffed and does not have the manpower contingency necessary to accommodate such absences without a daily breakdown in some function of the Com-

mission. The critical area involves secretarial help. We recommend two additional secretaries be added to the staff.

DULUTH OFFICE

The Duluth office is badly in need of one clerk typist. The federal government, through its New Careers Program in Duluth, will provide one clerk typist with no expense to the State of Minnesota for the first year of her employment and training and will provide half her salary during the second year.

The Commission has tentatively committed itself to accept one clerk typist. The expected cost to the State of Minnesota for a two-year period will be approximately \$1,896. We recommend that this amount of money be provided.

STATISTICAL INFORMATION

Biennium ending

June 30, 1968

LEGISLATIVE REFERENCE LIBRARY
STATE OF MINNESOTA

DOCKET SECTION REPORT ON DISPOSITION OF
MATTERS BROUGHT BEFORE THE COMMISSION

Biennial period Ending June 30, 1968

	Fiscal 1966	Fiscal 1967	Total
NUMBER OF CASES FILED FOR HEARING	1,627	1,523	3,150
Claim Petitions Filed	1,474	1,361	2,835
Objections to Discontinuance	23	22	45
Petitions for Retraining	60	70	130
Reinstatements of Claim Petitions previously stricken from Calendar of Contested Cases (Estimated)	70	70	140
TOTAL CASES ASSIGNED TO REFEREES for Findings of Fact and Determination	1,246	1,293	2,539
DECISIONS OF REFEREES	1,611	1,467	3,078
Awards on Merit	474	459	933
Awards on Stipulation	551	492	1,043
Disallowances, Dismissals and Stricken	586	516	1,102
AWARDS OF COMMISSION ON STIPULATION	840	730	1,570
Where Claim Petitions were Filed	333	153	586
Where no Claim Petition was Filed	507	477	984
DISMISSALS OR STRICKEN BY THE COMMISSION	49	17	66
RETRAINING AWARDS OF COMMISSION ON CONSENT	55	28	83
APPEALS			
Filed with the Commission	141	161	302
Set before the Commission	155	169	324
Decisions of Commission on Appeal (Includes Awards on Stipulation)	178	134	312
HEARINGS BEFORE THE COMMISSION ON MOTIONS	66	66	132
DECISIONS OF COMMISSION ON MOTIONS	27	33	60
DECISIONS OF COMMISSION ON PETITION TO VACATE	17	20	37
CASES APPEALED TO THE SUPREME COURT	30	24	54

STATE COMPENSATION REVOLVING FUND SECTION

\$800,605.95 was paid in workmen's compensation benefits to or on behalf of state employees or their dependents during the year ending June 30, 1968. This compares to the \$770,460.18 that was paid in the previous year and shows an increase in expenditure of \$30,145.77 from the fund in the past year largely due to the increase in the compensation rate to \$60 a week maximum effective September, 1967.

AWARDS TO STATE EMPLOYEES FROM THE STATE COMPENSATION REVOLVING FUND FOR THE BIENNIAL PERIOD ENDING JUNE 30, 1968

Awards to State Employees	7/1/66 to 6/30/67	7/1/67 to 6/30/68	Total
Findings and Awards	307	336	643
Awards Based on Stipulation	10	16	26
Miscellaneous Orders	51	40	91
Total Awards	368	392	760

STATE OF MINNESOTA
WORKMEN'S COMPENSATION COST PER \$100.00 PAYROLL

Fiscal Year Ended	Total State of Minnesota Payroll	Total W.C. Cost including Admin. Expenses	Cost per \$100 Payroll
1961	\$96,104,508.87	\$483,950.41	\$ 0.504
1962	102,000,487.40	602,377.66	0.591
1963	109,181,111.77	442,949.18	0.406
1964	116,494,887.78	887,818.45	0.762
1965	132,450,561.00	743,691.65	0.562
1966	147,108,097.13	765,942.70	0.521
1967	160,027,998.44	770,460.18	0.482
1968	194,731,733.14	800,605.95	0.411

WORKMEN'S COMPENSATION COMMISSION
PERSONAL INJURY REPORTS FILED 1961-1968

FISCAL YEAR ENDING JUNE 30	TOTAL REPORTS*	FATAL	LOST TIME INJURIES		NO LOST TIME*	INJURIES STATE EMPLOYEES
			LESS THAN ONE WEEK	MORE THAN ONE WEEK		
1961	49,567	264	13,462	16,105	17,855	1,881
1962	52,182	263	12,921	16,771	20,224	2,003
1963	52,503	323	13,322	16,856	20,014	1,988
1964	52,022	226	13,256	16,773	19,590	2,177
1965	52,008	272	13,070	17,260	19,222	2,184
1966	56,246	306	13,671	17,895	21,921	2,456
1967	64,243	256	16,643	17,563	27,407	2,374
1968	64,465	251	15,857	17,372	28,657	2,328

* Does not include no lost time injuries reported to Commission on 3 x 5 cards estimated to be an additional 52,000 each year.

COMPENSATION BENEFITS PAID DURING PRESENT AND PAST BIENNIA
 CASES CLOSED DURING THE BIENNIUM ENDING JUNE 30, 1914-1968 INCLUSIVE

BIENNIAL PERIODS ENDING JUNE 30	CASES	COMPENSATION	AVERAGE COMPENSATION PER CASE
TOTALS			
1913-1914	2,468	\$ 160,420	\$ 65.00
1914-1916	10,300	830,916	80.67
1916-1918	14,038	1,213,869	86.47
1918-1920	21,040	2,246,164	106.76
1920-1922	21,753	2,894,904	133.08
1922-1924	28,770	3,649,842	126.86
1924-1926	32,187	5,261,677	163.47
1926-1928	32,411	5,234,734	161.51
1928-1930	30,644	4,932,876	160.97
1930-1932	26,799	5,717,516	213.35
1932-1934	21,358	4,839,755	226.60
1934-1936	22,863	4,746,507	207.61
1936-1938	24,846	4,888,080	196.74
1938-1940	23,196	4,697,999	202.53
1940-1942	23,794	4,673,411	196.41
1942-1944	28,104	6,117,469	217.67
1944-1946	31,139	7,281,410	233.84
1946-1948	35,210	8,934,347	253.74
1948-1950	30,879	10,531,626	341.06
1950-1952	30,477	12,172,259	399.39
1952-1954	29,437	14,511,618	492.97
1954-1956	28,489	16,675,243	585.32
1956-1958	30,328	19,876,130	655.37
1958-1960	30,960	24,327,382	785.76
1960-1962	30,597	26,778,303	875.19
1962-1964	30,838	27,943,136	906.12
1964-1966	30,067	30,400,163	1,011.08
1966-1968 (Estimated)	32,828	31,911,751	972.08

NUMBER OF CASES BY NATURE OF INJURY

SHOWING BENEFITS PAID AND LOSSES SUSTAINED

CASES CLOSED DURING THE BIENNIAL PERIOD ENDING JUNE 30, 1968

NATURE OF INJURY	NUMBER OF CASES	COMPENSATION	AVERAGE	MEDICAL	DAY LOSS	WAGE LOSS
TOTALS	32,828	\$31,911,751	\$972.00	\$14,100,056	10,291,472	\$16,468,412
BRUISES	3,950	1,794,343	454.00	1,054,236	593,236	1,316,395
BURNS	1,101	799,995	727.00	588,346	256,904	373,136
CONCUSSIONS	254	326,739	1,286.00	188,933	100,086	155,145
CUTS	5,140	3,890,727	757.00	1,365,773	1,002,071	840,353
DISLOCATIONS	227	248,732	1,096.00	104,637	84,028	110,369
FRACTURES	5,913	7,865,820	1,330.00	2,895,454	2,598,524	3,860,216
SPRAINS	14,527	13,292,503	915.00	7,150,988	4,037,239	7,915,216
OCCUPATIONAL DISEASES	1,228	1,339,443	1,091.00	496,546	490,060	616,706
MISCELLANEOUS	488	2,353,449	4,823.00	272,143	1,129,225	764,951

NUMBER OF CASES BY MAJOR INJURY CAUSE

SHOWING BENEFITS PAID AND LOSSES SUSTAINED

CASES CLOSED DURING THE BIENNIAL PERIOD ENDING JUNE 30, 1968

MAJOR CAUSE	NUMBER OF CASES	COMPENSATION	AVERAGE	MEDICAL	DAY LOSS	WAGE LOSS
TOTALS	32,828	\$31,911,751	\$ 972.00	\$14,100,056	10,291,473	\$16,468,412
MACHINERY	3,801	4,050,071	1,066.00	1,293,212	1,106,174	1,318,459
VEHICLES	3,469	4,497,826	1,297.00	1,725,469	1,533,461	2,124,767
ELECTRICAL - FIRES	1,168	1,039,547	890.00	632,071	350,207	407,783
OCCUPATIONAL	1,231	1,345,957	1,093.00	501,099	491,063	617,914
FALLS	8,419	8,669,542	1,030.00	3,953,788	2,714,501	4,872,304
STEPPING ON-STRIKING	1,016	487,725	480.00	329,836	152,639	325,120
FALLING OBJECTS	1,514	1,451,738	959.00	586,818	472,961	820,997
HANDLING OBJECTS	10,296	8,393,937	815.00	4,508,648	2,601,884	5,098,881
HAND TOOLS	921	496,092	539.00	202,164	148,603	263,090
ANIMALS	166	104,248	628.00	53,823	29,513	80,996
MISCELLANEOUS	827	1,375,068	1,663.00	330,128	690,467	538,101

NUMBER OF COMPENSABLE CASES BY EXTENT OF DISABILITY
 SHOWING BENEFITS PAID AND LOSSES SUSTAINED
 CASES CLOSED DURING BIENNIAL PERIOD ENDING JUNE 30, 1968

EXTENT OF DISABILITY	NUMBER OF CASES	COMPENSATION	AVERAGE	MEDICAL	DAY LOSS	WAGE LOSS
TOTALS	32,828	\$31,911,751	\$972	\$14,100,056	10,291,473	\$16,468,412
FATAL	397	4,088,088	10,297	277,222	2,382,000	---
PERMANENT TOTAL	164	2,718,909	16,579	665,774	984,000	---
PERMANENT PARTIAL	8,489	18,458,188	2,174	7,515,418	5,849,166	7,845,134
TEMPORARY TOTAL	23,769	6,646,566	280	5,658,643	1,096,307	8,623,278

DISTRIBUTION OF CASES BY AGE AND SEX

CASES CLOSED DURING THE BIENNIAL PERIOD ENDING JUNE 30, 1968

AGE GROUPS	TOTAL	MALE	FEMALE
TOTALS	32,828	27,778	5,050
Age Not Given	3,418	2,975	443
0-9 Years	3	3	-
10 Years	1	1	-
11 Years	2	2	-
12 Years	2	2	-
13 Years	2	1	1
14 Years	12	10	2
15 Years	22	19	3
16 Years	139	116	23
17 Years	251	219	32
18 Years	513	451	62
19 Years	618	515	103
20 Years	599	518	81
21-25 Years	3,038	2,665	363
26-30 Years	2,787	2,516	271
31-35 Years	2,811	2,495	316
36-40 Years	3,187	2,687	500
41-45 Years	3,325	2,776	549
46-50 Years	3,532	2,891	641
51-55 Years	3,297	2,683	614
56-60 Years	2,748	2,190	558
61-65 Years	1,580	1,290	290
66-70 Years	608	467	141
71-75 Years	232	184	48
76-80 Years	83	78	5
81-85 Years	23	19	4
Over 85 Years	5	5	-

MEMBER OF BODY PERMANENTLY IMPAIRED SHOWING NUMBER BY PERCENT OF LOSS

CASES CLOSED DURING THE BIENNIAL PERIOD ENDING JUNE 30, 1968

MEMBER OF BODY	TOTAL	PER CENT OF LOSS OF USE									
		1-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-90	91-100
TOTALS	8,489	1,975	3,401	1,393	539	322	420	104	108	32	195
Body, General	7	0	3	3	1	0	0	0	0	0	0
Back	2,339	632	1,238	365	79	18	6	1	0	0	0
Eye	146	53	28	15	2	3	5	2	6	3	29
Ear	35	7	8	1	7	0	5	3	2	0	2
Disfigurement	6	3	2	0	0	0	1	0	0	0	0
Arm	714	207	335	108	30	14	9	4	3	1	2
Hand and Wrist	401	98	190	68	15	12	3	2	3	1	9
Hand	274	85	102	44	16	9	8	4	1	1	4
Fingers	2,661	400	637	468	283	225	337	77	84	21	129
Leg	964	281	483	135	31	13	9	2	3	0	7
Foot and Ankle	323	77	131	64	26	9	8	4	1	0	3
Foot	168	47	71	32	14	3	1	0	0	0	0
Toes	129	23	25	21	12	11	19	3	4	4	7
Two or More Major Members	321	61	146	69	23	4	9	2	0	1	3

RECOMMENDED LEGISLATION

I. Minn. Stat 176.231, Subd. 3, should be amended to give the Workmen's Compensation Commission the authority to obtain from the State Department of Education, Division of Vocational Rehabilitation, such facts which the latter has in its possession which may be relevant or material in determining an injured employee's entitlement to workmen's compensation benefits for continuing total disability.

Minn. Stat. 176.101, Subd. 8, requires the Commission to refer to the Division of Vocational Rehabilitation, Department of Education, or other public or private, properly accredited agency, employees who have had an injury which will or is likely to produce continuous disability in excess of 26 weeks to determine if retraining for a new occupation would significantly reduce or remove any reduction in employability. This subdivision further provides that the employer shall pay any usual or reasonable expenses and charges for such evaluation. It has been the policy of the Division of Vocational Rehabilitation for many years not to make their records and information available to the Commission in cases in which the employee is not retrainable. They apparently consider their information not subject to disclosure under the provisions of Minn. Stat. 122.33 and pursuant to a recent opinion of the Attorney General.

The unavailability of the evaluations and medical reports in the Division of Vocational Rehabilitation's files is not in the best interest of justice and frequently obscures facts which may be relevant to the determination of issues in workmen's compensation proceedings.

The Commission strongly recommends that the proposed amendment of the Joint Advisory Committee on Workmen's Compensation, relating to this matter be adopted by the legislature. The substantive portion of their recommended law reads as follows:

'Where an employee of the state Department of Education, Division of Vocational Rehabilitation, has special knowledge relating to the nature and extent of any injury or disability of an employee, or any other facts which may be relevant or material to the determination of any issue of

fact or law with respect to the compensation claim by the employee, he shall report to the Commission all such facts within 10 days after he has received a written request for such information.'

II. The legislature also should amend Minn. Stat. 176.101, Subd. 8, by adding the following underlined words in the following sentence contained therein:

'If the evaluating agency certified to the Commission that a period of retraining will significantly reduce or prevent the decrease in employability resulting from the injury, and if the Workmen's Compensation Commission determines the retraining is necessary and makes an order for such compensation, the employer shall pay up to 104 weeks of additional compensation during the actual period of retraining according to the schedule of compensation for temporary total disability.'

As the law presently reads, the employer is required to pay benefits upon certification by the evaluating agency to the Commission that a period of retraining will significantly reduce or prevent the decrease in employability, resulting from disability. The Commission has no authority to resolve disputed claims for retraining, and neither the employee nor the employer and insurer have a right to contest the determination of the evaluating agency in workmen's compensation proceedings. The lack of a formal hearing before the evaluating agency makes its certification a very serious constitutional question with respect to whether or not due process of law has been observed. This issue is pending on appeal to the Commission at the present time.

The Commission strongly recommends that the proposed amendment of the Governor's Joint Advisory Committee to Minn. Stat. 176.101, Subd. 8, pertaining to the above be enacted by the legislature.

III. The legislature also should amend Minn. Stat., Chapter 176, to change the title of 'Referee' to 'Compensation Judge' and to authorize the Revisor of Statutes to change the statutory provisions relating to workmen's compensation that refer to the title 'Referee' to 'Compensation Judge.' The Workmen's Compensation Referees preside at formal hearings to determine the benefits, if any, that an injured employee or a dependent widow is entitled to receive under the terms and provisions of the Minnesota Workmen's Compensation Law. The foregoing job description of our Referees indicates the heavy responsibility of the position. They are involved in daily determinations involving highly complex factual, medical and legal issues requiring a

high order of creative legal endeavor for their resolution which involve, on occasion, claims by dependents worth \$25,750, and claims by injured employees worth up to \$500,000. Approximately \$43,000,000 is paid annually in workmen's compensation benefits and a substantial part of this amount is after formal hearings before a Referee of the Workmen's Compensation Commission. The injured claimant or dependent in contested compensation cases is entitled to an improved judicial atmosphere in the formal hearings involving these substantial claims.

The Commission strongly recommends that the proposed amendment to the Governor's Joint Advisory Committee to change the Referee's title to 'Compensation Judge' be enacted by the legislature.

IV. Minn. Stat. 176.131, Subd. 4, should also be amended to read as follows:

'If the employee's pre-existing physical impairment has been caused by a personal injury for which medical reports, showing the impairment have been filed with the Commission and for which a monetary benefit in excess of medical expense has been paid under Chapter 176, the employee shall be deemed to be registered.'

The word 'compensation' is presently defined by statute and by the courts to include all benefits provided by this chapter on account of injury or death (Minn. Stat. 176.011, Subd. 8). This has been interpreted by the Minnesota Supreme Court to include the payment of medical expenses. If a personal injury resulted in payment of medical expense benefits, but did not result in any benefits for temporary or permanent partial disability, it would be highly unlikely that the provisions of the second injury reimbursement section would ever be applicable. For example, there would not be a substantially greater disability as a result of any second injury, and it is inconceivable that a second injury would not have happened except for the pre-existing injury.

The Commission recommends that the proposed amendment of the Governor's Joint Advisory Committee with respect to the change in the above law be enacted by the legislature.

V. Legislation should also be enacted to amend Minn. Stat. 176.061, Subds. 5 and 6, to read as follows:

'Subd. 5. Where an injury or death for which compensation is payable is caused under circumstances which created a legal liability for damages on the part of a party other than the employer, that party being then insured or self-insured in accordance with this chapter, and the provisions of subdivisions 1, 2, 3, and 4 do not apply, or the party other than the employer is not then insured or self-insured as provided by this chapter, legal proceedings may be taken by the employee or his dependents against the other party to recover damages, notwithstanding the payment by the employer or his liability to pay compensation. If the action against such other party is brought by the injured employee or his dependents and a judgment is obtained and paid or settlement is made with the other party, the employer may deduct from the compensation payable by him the amount actually received by the employee or dependents in accordance with Subd. 6. If the action is not diligently prosecuted or if the court deems it advisable in order to protect the interests of the employer, upon application the court may grant the employer the right to intervene in any such action for the prosecution thereof. If the injured employee or his dependents agree to receive compensation from the employer or institute proceedings to recover the same or accept from the employer any payment on account of such compensation, the employer is subrogated to the rights of the employee or his dependents. This employer may maintain an action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the dependents or in the name of the employer against such other party for the recovery of damages. If the action is not diligently prosecuted by the employer or the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or his dependents the right to intervene in the action for the prosecution thereof. The proceeds of such action or settlement thereof shall be paid in accordance with subdivision 6. Such party is not liable to any person other than the employee or his dependents for any damages resulting from the injury or death.

'Subd. 6. The proceeds of all actions for damages or settlement thereof under Minnesota Statutes 176.061, received by the injured employee or his dependents or by the employer as provided by Subd. 5, shall be divided as follows:

- a. After deducting the reasonable cost of collection, including but not limited to attorneys fees and burial expense in excess of the statutory liability, then
- b. One-third of the remainder shall in any event be paid to the injured employee or his dependents, without being subject to any right of subrogation.
- c. Out of the balance remaining, the employer shall be reimbursed for all compensation paid under Minn. Stat. 176.
- d. Any balance remaining shall be paid to the employee or his dependents, and shall be a credit to employer for any compensation which employer is obligated to pay, but has not paid, and for any compensation that such employer shall be obligated to make in the future.

There shall be no reimbursement or credit to employer for interest or penalties.'

This legislation is imperative because the present manner of determining employers and insurer's proportionate share of attorneys fees and costs in third party re-

coveries is extremely complicated and involves a considerable amount of legal mathematical calculations which is not understood by the majority of claim managers, or attorneys involved on a regular basis in the application of this law. Under the present law in many cases there is little incentive for an employee or a dependent to participate in a third party civil action where there is poor liability or the extent of damages is such that the employee would gain nothing for his efforts. With the proposed change there would be substantial incentive to injured employees and their dependents in initiating civil action if they would know beforehand that they would participate in the third party recovery. The employer-insurer would be able to close files that under the present law are required to be kept open indefinitely because liability, in many cases, is on a continuing percentage basis of future benefit liability under the present law. Finally, computations would be simplified and administrative handling of such cases by the Workmen's Compensation Commission, would be expedited.

It is the feeling of the Commission that the proposed amendment of the Governor's Joint Advisory Committee on Workmen's Compensation with respect to this matter be enacted into law by this legislature.