

Recent Changes in the Law Regarding Termination of Rehabilitation Services: An In-Depth Look at the *Halvorson* Decision

By Elizabeth Chambers-Brown
ebrown@brownandcarlson.com

Once in a while you may have a claim where it appears the goals of rehabilitation have been met, but the QRC declines to close rehabilitation services. It is important to know that just because a QRC is recommending continued rehabilitation services doesn't mean that an employee is entitled to continued rehabilitation services under the Workers' Compensation Act. Rehabilitation has a specific purpose, and once the goals of the Rehabilitation Plan have been met, rehabilitation should close.

A recent decision at the Workers' Compensation Court of Appeals has cast some uncertainty on when and how you can terminate rehabilitation services, even though the goals of rehabilitation appear to have been met. *Halvorson v. B&F Fastener Supply*, slip. op. (W.C.C.A. May 9, 2016). In the interest of managing your costs when it comes to rehabilitation services, it is worth taking a closer look at this decision and how it may impact disputes over entitlement to rehabilitation.

What is the Purpose of Rehabilitation?

As a starting point, it is important to understand the purpose of rehabilitation services. According to Minn. Stat. § 176.102, Subd. 1(b). "Rehabilitation is intended to restore the injured employee so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability." Though medical management is often a significant part of rehabilitation services, it is not the sole purpose of rehabilitation. The central purpose of rehabilitation is vocational - to restore an injured worker to suitable, gainful employment.

Who is Eligible for Rehabilitation?

In order to be eligible for rehabilitation services, an injured employee must be deemed a "qualified employee." *Holliday v. REM-Minnesota, Inc.*, 2003 WL 1736646 (Minn. W.C.C.A. Mar.14, 2003). The definition of a "qualified employee" is set forth in Minn. R. 5220.0100, Subp. 22, which provides as follows:

"Qualified employee" means an employee who, because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior injury or disability:

1. is permanently precluded or is likely to be permanently precluded from engaging in the employee's usual and customary occupation or from

- engaging in the job the employee held at the time of injury;
2. cannot reasonably be expected to return to suitable gainful employment with the date-of-injury employer; and
3. can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services, considering the treating physician's opinion of the employee's work ability.

If these criteria must be met in order for an employee to be eligible for rehabilitation services, it seems to logically follow that the converse is also true. If an employee does not meet these criteria, the employee is not eligible for rehabilitation services. However, that was not the case in the W.C.C.A.'s Halvorson decision.

The Halvorson Decision

To give you a little factual background, Julie Halvorson sustained injuries as a result of an incident at work on March 9, 2007, involving a fall. The Employer and Insurer admitted the injury and paid temporary total disability, temporary partial disability, medical treatment expenses and rehabilitation benefits. As a result of her injuries, a Rehabilitation Plan was implemented to help the Employee return to suitable and gainful employment. Ms. Halvorson was never able to return to work for the Employer following her 2007 injury, due to her restrictions.

After exhausting her temporary total disability benefits, Ms. Halvorson found part-time work in the fast food industry. She worked at Arby's for almost three years and at Popeyes, where she worked for almost a year before she was terminated for poor attendance. In November 2014, she began working part-time at McDonald's on a part-time basis and continued working there through the date of the hearing. The job was physically suitable, and Ms. Halvorson indicated that she loved her job and had no intention of leaving the position.

The Employer and Insurer filed a Rehabilitation Request to terminate rehabilitation services on the basis Ms. Halvorson was no longer a "qualified employee." They asserted that her job at McDonald's was suitable gainful employment and therefore the goals of rehabilitation had been met. However, the QRC refused to close rehabilitation, and the Employee objected to termination of the Rehabilitation Plan.

Following a hearing before Judge Bradley Behr, Judge Behr determined that Ms. Halvorson was no longer eligible for rehabilitation services because her part-time job at McDonald's represented suitable gainful employment. The Compensation Judge approved the Employer and Insurer's request to terminate rehabilitation services, and the Employee appealed.

The Workers' Compensation Court of Appeals reversed Judge Behr's decision. The W.C.C.A. determined that an employer and insurer cannot terminate rehabilitation services on the basis that the employee has returned to suitable gainful employment. They determined an employee's eligibility for rehabilitation services is only relevant at the onset of rehabilitation services and cannot be used as a basis to close rehabilitation after it has been in place for some time.

The W.C.C.A.'s decision has been appealed to the MN Supreme Court. Oral Arguments were heard on December 6, 2016, and we are presently waiting on the MN Supreme Court's Decision.

When Can You Terminate Rehabilitation Services?

The Halvorson decision is quite puzzling and may leave you wondering, if I can't close rehabilitation based on the fact that the employee has returned to work and goals of rehabilitation have been met - when can I close rehabilitation? However,

both the Workers' Compensation Act and the Rules regarding rehabilitation do provide additional grounds for terminating rehabilitation services.

For example, Minn. R. 5220.0510, Subp.5 provides a mechanism for requesting closure of rehabilitation services before the Rehabilitation Plan has been completed. The rule provides:

At any time, the insurer or employee may request the closure or suspension of rehabilitation services by filing a Rehabilitation Request for assistance with the commissioner. The commissioner or a compensation judge may close or suspend rehabilitation services for good cause, including, but not limited to:

1. A new or continuing physical limitation that significantly interferes with the implementation of the plan;
2. The employee's performance indicates that the employee is unlikely to successfully complete the plan;
3. The employee is not participating effectively in the implementation of the plan; or
4. The employee is not likely to benefit from further rehabilitation services.

Likewise, Minn. Stat. §176.102, Subd.8 allows for termination of rehabilitation if there is good cause. Good cause may be found where:

1. A physical impairment does not allow the employee to pursue the rehabilitation plan;
2. The employee's performance level indicates the plan will not be successfully completed;
3. An employee does not cooperate with the plan;
4. That the plan or its administration is substantially inadequate to achieve the rehabilitation plan objectives;
5. That the employee is not likely to benefit from further rehabilitation services..."

One problem with the Halvorson decision, is that the W.C.C.A. seems to suggest that Minn. R. 5220.0510, Subp. 5 and Minn. Stat. §176.102, Subd. 8 are the **only** statutory mechanisms in place for terminating rehabilitation services. This very narrow reading of the statute ignores the fact that there are other grounds for terminating rehabilitation in the Workers' Compensation Act and the Rules. For this reason, the Halvorson decision was appealed and is currently pending at the MN Supreme Court.

Recent Proposed Legislative Changes

Perhaps in direct response to the Halvorson decision, the Office of Administrative Hearings has proposed a legislative change to Minn. Stat. §176.102, Subd. 8. If the proposed amendment is adopted by the legislature, the law will specifically include an employee's return to suitable, gainful employment as grounds for terminating rehabilitation services. So while there is still some uncertainty how the MN Supreme Court will rule on the Halvorson decision, this case should not dissuade you from terminating rehabilitation if you feel the goals of rehabilitation have been met.

Don't rely solely on your QRC to tell you when rehabilitation should end. Many QRC's will continue to provide rehabilitation services long after the Employee is no longer eligible under the guise that the employee can still benefit from additional medical management. But medical management is not the purpose of rehabilitation services - the goal is a vocational one.

If you have any questions or concerns about how rehabilitation services are being handled on a claim or whether you have grounds to terminate rehabilitation services, please contact me or any of the attorneys at Brown & Carlson to review your concerns and advise you on what your options are for managing your rehabilitation costs.

Click on [Halvorson](#) to see the full W.C.C.A. Decision

Brown & Carlson, P.A., 5411 Circle Down Avenue, Suite 100, Minneapolis, MN 55416

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JULIE D. HALVORSON, Employee/Appellant, v. B&F FASTENER SUPPLY and SELECTIVE INS. GROUP, Employer-Insurer/Respondents.

WORKERS' COMPENSATION COURT OF APPEALS
MAY 9, 2016

No. WC15-5869

REHABILITATION - DISCONTINUANCE; STATUTES CONSTRUED - MINN. STAT. § 176.102, subd. 8; RULES CONSTRUED - MINN. R. 5220.0510. While the definition of whether an employee is a "qualified employee" for rehabilitation services is central to the inception of rehabilitation services, that concept is not relevant to the discontinuation of rehabilitation services, which is governed instead by the provisions of Minn. Stat. §176.102, subd. 8, and Minn.R. 5220.0510. Where the parties expressly limited the issue before the judge to whether the employee was a "qualified employee," a finding that she was not does not support the discontinuance of rehabilitation.

Determined by:

Deborah K. Sundquist, Judge
Patricia J. Milun, Chief Judge
David A. Stofferahn, Judge

Compensation Judge: Bradley J. Behr

Attorneys: Timothy J. McCoy, McCoy, Peterson, & Jorstad, Ltd., Minneapolis, Minnesota, for the Appellant. Elizabeth Chambers-Brown, Brown & Carlson, P.A., Minneapolis, Minnesota, for the Respondents.

Reversed.

OPINION

DEBORAH K. SUNDQUIST, Judge

BACKGROUND

The employee, Julie Halvorson, age 51, obtained a GED certificate and later attended some post-secondary classes without completing a degree or certificate program. Prior to starting work with the employer, B&F Fastener Supply, she worked in unskilled entry-level jobs in restaurants, a bakery, and in performing assembly work. Her job for the employer also involved assembly work.

On March 9, 2007, the employee injured her right elbow, both knees, cervical spine, low back and left hip, and sustained a partial tear of the left hamstring, while working for the employer, B&F Fastener Supply, at an average weekly wage of \$390.89. The employee's job involved machine operation, set-up and repair, and included repetitive lifting, bending and standing. Her fringe benefit package included health insurance, vacation, and an optional 401K program. She was unable to return to work with the employer following the injury.

The employee underwent surgical repair of her left hamstring tear on February 6, 2008. She underwent a discectomy and fusion at C5-6 for a cervical disc herniation.

The employee was permanently precluded from engaging in the job she held at the time of her work injury. The insurer paid temporary total disability compensation, which ended on May 26, 2009. The employee did not work again until January 13, 2010, when she found part-time work at Arby's within her restrictions, which at that time limited her to 20 hours per week at a 20 pound lifting limit. In 2013, the employee was terminated by Arby's, and then found work at a Popeye's restaurant. The employer and insurer have paid temporary partial disability compensation during the employee's post-injury employment.

Dr. Byron C. Holth provided the employee's primary health care since 2007. In November 2013, Dr. Holth approved light-duty work for up to 30 hours per week. The employee thereafter worked about 30 hours per week, but experienced increased low back pain. Dr. Holth's assessment was of worsening lumbar radicular symptoms.

In February 2014, Dr. Holth expressed concern over the employee's ability to return to work full time, although this had been her goal. Dr. Holth felt that the employee might be close to MMI and might be limited to working 30 hours per week on a permanent basis. That same month, the employee's QRC noted that the employee loved her job at Popeye's restaurant, and had discussed the possibility of a management position there, but that this would require her to work full time. She anticipated closing the rehabilitation file in the next few months.

In June 2014, the employee reported worsened back pain radiating into the right buttock which was bad enough that she felt unable to work. Dr. Holth took her off work and recommended an epidural injection. On August 15, 2014, he released the employee to work only every other day. In September 2014, Dr. Holth referred the employee to see Dr. Hanson at the Midwest Spine Institute for an opinion regarding the advisability of surgery.

On October 14, 2014, the QRC noted that the employee had been terminated by Popeye's. Formal job search development was deferred pending the employee's appointment with Dr. Hanson. After evaluating the employee, Dr. Hanson recommended a laminectomy. The employee underwent a right lumbar micro laminectomy at L3 on November 14, 2014.

The employee interviewed with McDonald's restaurants on November 18, 2014, shortly after her surgery, and was offered a job doing food prep work. She began working part time at McDonald's on November 23, 2014.

On January 15, 2015, the QRC prepared a rehabilitation plan amendment to continue services for 12 weeks and then reevaluate, noting that the employee was still recovering from surgery and her permanent restrictions were as yet unknown.

On January 21, 2015, the employee saw Dr. Holth and reported that she was very tired after four hours of work. Dr. Holth restricted her to work four hours per day "for now and likely permanently," with no bending, twisting, or lifting over 15 pounds. In February 2015, Dr. Holth referred the employee to MAPS for pain management. In his chart note of February 12, 2015, Dr. Holth wrote that the employee's lifting and bending restrictions would be permanent and that she would stay at a 20-hour work week permanently.

The employer and insurer filed a Rehabilitation Request on February 26, 2015, seeking termination of the employee's rehabilitation services and alleging that she was no longer a "qualified employee" under Minn. R. 5220.0100, subp. 22, because she had attained suitable gainful employment.

The employer and insurer also asserted that there was "good cause" to terminate rehabilitation services under Minn. R. 5220.0510, subp. 5, and the employee was unlikely to benefit from further rehabilitation services.

The employee was seen at MAPS on March 19, 2015, by Dr. David M. Schultz. Her chief complaint was of multilevel body pain on the right radiating to her arms and legs with numbness in the fingers and legs. It was noted that the lumbar surgery in 2014 had not improved her lumbar or leg pain. Dr. Schultz recommended physical therapy, a TENS unit, injections and medications. He also requested a repeat MRI scan.

The repeat MRI study, done on March 20, 2015, showed bulging at L4-5 causing lateral recess narrowing. There was a mass effect on the left L5 nerve root. Moderate foraminal narrowing at L4-5 on the left was thought to possibly affect the left L4 nerve root. There was mild foraminal narrowing at L3-4. The employee was seen to be post-laminotomy on the right at L3-4.

On March 25, 2015, the QRC noted that while Dr. Holth had made the employee's restrictions permanent, the doctor had stated this could change if there was improvement from her treatment at MAPS. The employee was still working up to 20 hours per week at McDonald's and felt the job was a good fit.

Following an administrative conference, a Decision and Order was issued on April 8, 2015, denying the employer and insurer's request for termination of rehabilitation services. The employer and insurer filed a request for formal hearing on May 1, 2015.

In June 2015, the QRC noted that a lumbar injection a month previously had given the employee significant pain improvement for about three weeks, after which her symptoms had returned. The MAPS nurse practitioner had recommended medial branch blocks to see if the employee was a candidate for radiofrequency ablation. The goal at MAPS was to get the employee's pain under better control and increase her physical activities. On July 2, 2015, Dr. Holth continued the employee at 20 hours per week, but noted that the goal was now to increase her back to 30 hours per week if the anticipated radiofrequency ablations were successful.

A hearing was held before Compensation Judge Bradley J. Behr on July 8, 2015, on the employer and insurer's request to discontinue rehabilitation services. The issue before the compensation judge was whether the employee was a qualified employee for rehabilitation services and whether she had returned to suitable gainful employment such that she would be precluded from receiving ongoing rehabilitation services. The issue of whether there was good cause to terminate rehabilitation services under Minn. R. 5220.0510, subd. 5, as the employee is unlikely to benefit from further rehabilitation services was withdrawn by the employer and insurer.

The employee testified that she loves her job at McDonald's, and that the work is within her restrictions. She presently earns \$8.00 an hour and expects her income to increase slightly with a raise. She testified that she plans to continue working at McDonald's even if her doctor changes her restrictions to allow her to work 30 hours per week. She testified that she receives Social Security Disability Income (SSDI) and is limited from earning income greater than \$1,000.00 a month as anything above that would jeopardize her SSDI benefits. She stated that getting SSDI did not affect her desire to work full time because she hoped to make more income working at McDonald's full time as a part of the management team.

The QRC testified that the ultimate goal of the vocational rehabilitation she had been providing was a return to full-time employment. She acknowledged that rehabilitation services to date had focused primarily on medical management and had not involved active job placement efforts, but that if Dr. Holth increased the employee's hours, she would try to assist the employee in exploring the possibility of a management position in the fast food industry. Both the employee and her QRC acknowledged that a management position at McDonald's would require the employee to work more than 40 hours per week. The QRC testified that the employee's current job at McDonald's was within the employee's physical restrictions and skills, but testified that the job at McDonald's was not suitable gainful employment because it provides an economic status that is significantly below that which she had on the date of injury.

The compensation judge ordered discontinuance of rehabilitation services, having found that the McDonald's job constituted suitable gainful employment and that the employee was not a qualified employee pursuant to Minn. R. 5220.0100, subp. 22.^[1] The employee appeals.

STANDARD OF REVIEW

On appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (2014). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of evidence or not reasonably supported by the evidence as a whole." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

"Rehabilitation is intended to restore the injured employee so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability." Minn. Stat. § 176.102, subd. 1(b). In order for a plan of rehabilitation to be implemented, an injured employee must be deemed a "qualified employee." The employer and insurer sought termination of rehabilitation services arguing that the employee's job at McDonald's constituted suitable gainful employment and that she was not a "qualified employee." The employer and insurer argued that the rules governing this limited issue are Minn. R. 5220.0100, subps. 22 and 34. Subpart 22 of the rule provides as follows:

Subp. 22. Qualified employee. "Qualified employee" means an employee who, because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior injury or disability:

A. is permanently precluded or is likely to be permanently precluded from engaging in the employee's usual and customary occupation or from engaging in the job the employee held at the time of injury;

B. cannot reasonably be expected to return to suitable gainful employment with the date-of-injury employer; and

C. can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services, considering the treating physician's opinion of the employee's work ability.

The compensation found that the employee's job at McDonald's was suitable, and that the employee was accordingly not a qualified employee for rehabilitation services.

The employee makes essentially two arguments on appeal. First, the employee argues that the compensation judge erred as a matter of law by concluding that the employee's job constituted suitable gainful employment. Second, that the compensation judge committed an error of law in expanding the issues to include an issue that had been withdrawn.

1. Suitability of post injury employment

The specifics are a bit unclear in the employee's brief but it would appear that the employee's argument is primarily based on a contention that the disparity in wages and benefits is simply too great to support the judge's finding.

There are a number of cases cited dealing with what constitutes suitable gainful employment in the context of retraining requests or as pertinent to the old IC/ERC distinction. However, none of these cases deal with the question in the context of termination of rehabilitation services. The employee discusses the two cases that the compensation judge cited in support of his determination, Adams v. Marvin Windows, 52 W.C.D. 585 (W.C.C.A. 1995), summarily aff'd, 535 N.W.2d 858 (Minn. 1995), and Holliday v. REM-Minn., Inc., slip op. (W.C.C.A. Mar. 14, 2003). In both cases, this court affirmed findings by a compensation judge that an employee was not entitled to rehabilitation services where there was evidence that the employee had returned to suitable gainful employment. The employee argues that both of these cases actually should be deemed to support her position, as the employee in each had returned to work which was not only physically suitable for the employee's restrictions but which paid as much or more than the date of injury employment. The employer and insurer cite Dvorak v. Lutheran Home, slip op. (W.C.C.A. Dec. 9, 1998), which was not cited by the compensation judge, but which they contend more closely fits the current factual situation than Adams and Holliday.

These cases can be distinguished from the facts here. In all three cases cited, the employee sought to "initiate" rehabilitation or seek additional rehabilitation in which being a "qualified employee" or working a "suitable job" is relevant. These cases did not involve the "termination" of rehabilitation benefits which is the case here. Accordingly, we must consider the plain language of the statute and the rules governing vocational rehabilitation, in order to determine what constitutes a basis for termination as opposed to implementation.

2. Expansion of the issues and application of an incorrect standard when terminating rehabilitation benefits.

As her second argument on appeal, the employee contends that the compensation judge applied an improper standard or, in the alternative, expanded the issue from the issues stipulated at the hearing.

In their Request for Formal Hearing, the employer and insurer alleged both that the employee was not a qualified employee for rehabilitation services, and that she was unlikely to benefit from further rehabilitation services. The parties agreed at the opening of the hearing, however, that the sole issues before the compensation judge were whether the employee is a qualified employee for rehabilitation services and whether she had returned to suitable gainful employment such that she would be precluded from receiving ongoing rehabilitation services.^[2] The employer and insurer withdrew the argument that she was unlikely to benefit from further rehabilitation services.

In his memorandum, the compensation judge noted that "while she has not attained her pre-injury wage, there was no persuasive evidence to suggest the additional rehabilitation services are likely to enable her to obtain a higher paying position." The employee contends that this

statement, together with the specifics of certain findings,^[3] indicate that the compensation judge expanded the issues to include whether the employee was likely to benefit from rehabilitation, despite that issue having been taken off the table at the hearing.

The employer and insurer respond that it is hardly an unfair expansion of the issues for the compensation judge to make findings on these points where the employee's attorney elicited testimony intended to show that rehabilitation services would assist the employee, both through medical management and, potentially, in obtaining an economic status closer to that she had at the time of injury, should her restrictions improve after ablation. The employer and insurer further argue that the judge properly found under the evidence that the employee's work for McDonald's was suitable.

We conclude that the compensation judge improperly expanded the issues, but more importantly, applied an incorrect standard in his order terminating rehabilitation benefits. The issues before him were whether the employee was a "qualified employee for rehabilitation services" pursuant to Minn. R. 5220.0100, subp. 22, and whether she had returned to suitable gainful employment such that she would be precluded from receiving ongoing rehabilitation services.^[4] Minn. R. 5220.0100, subp. 22, is found within the "definition" section of the rules governing vocational rehabilitation. In other words, there is no specific rule that allows termination of vocational rehabilitation under this section. Minn. R. 5220.0130 requires that an employee be a "qualified employee" before rehabilitation is "implemented." This section provides no mechanism to terminate rehabilitation if an employee is not a "qualified employee." There are rules governing the termination of vocational rehabilitation, but those rules were not at issue before the compensation judge. Both Minn. R. 5220.0510, subp. 5, and Minn. Stat. § 176.102, subd. 8, provide the mechanism for terminating vocational rehabilitation.

Minn. R. 5220.0510, subp. 5 provides:

At any time, the insurer or employee may request the closure or suspension of rehabilitation services by filing a rehabilitation request for assistance with the commissioner. The commissioner or a compensation judge may close or suspend rehabilitation services for good cause, including, but not limited to:

- A. a new or continuing physical limitation that significantly interferes with the implementation of the plan;
- B. the employee's performance indicates that the employee is unlikely to successfully complete the plan;
- C. the employee is not participating effectively in the implementation of the plan; or
- D. the employee is not likely to benefit from further rehabilitation services.

The statute also provides the mechanism to terminate rehabilitation benefits. Minn. Stat. § 176.102, subd. 8, states:

Upon request to the commissioner or compensation judge by the employer, the insurer, or employee, or upon the commissioner's own request, the plan may be suspended, terminated, or altered upon a showing of good cause, including:

- (a) a physical impairment that does not allow the employee to pursue the rehabilitation plan;

- (b) the employee's performance level indicates the plan will not be successfully completed;
- (c) an employee does not cooperate with a plan;
- (d) that the plan or its administration is substantially inadequate to achieve the rehabilitation plan objectives;
- (e) that the employee is not likely to benefit from further rehabilitation services

None of the elements under Minn. Stat. § 176.102 or Minn. R. 5220.0510 were raised at the hearing. The only issues before the compensation judge were whether the employee was a "qualified employee" and whether her job at McDonald's was sustained gainful employment. These issues provided no basis to terminate rehabilitation benefits. Because the statute and rules specifically governing termination of the employee's rehabilitation were not properly before the compensation judge, we must reverse.

[1] Finding 16.

[2] Transcript at 6.

[3] The findings the employee cites as objectionable are findings 12, 13, 14, 15, and 16. In finding 12, the judge found that Dr. Holth had restricted the employee to 20 hours per week, and was hoping that ablation procedures might make it possible to increase her to 30 hours; but that Dr. Holth had not indicated that she would be able to work more than 30 hours per week. In finding 13, the judge noted the employee's testimony that she loved her job at McDonald's and did not intend to seek other work. Finding 14 noted that the evidence demonstrated that the QRC had not provided job leads or contacted McDonald's about increased pay or hours. Finding 15 found that the preponderance of the evidence indicated that managerial food service positions required an ability to work more than 30 hours per week, more than the employee has ever been released to work since the injury. Finally, finding 16 determined that the McDonald's job was suitable employment and the employee was not a "qualified employee" for purposes of eligibility for rehabilitation services pursuant to Minn. R. 5220.0100. subp. 22.

[4] Transcript at 6.