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# RECENT UPDATE RE: TERMINATION OF REHABILITATION SERVICES: AN IN-DEPTH REVIEW OF THE SUPREME COURT *HALVORSON* DECISION

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[Halvorson v. B&F Fastener Supply Decision](#)

### Supreme Court Update Termination of Rehabilitation Services

In May 2016, the Workers' Compensation Court of Appeals (WCCA) issued a decision in *Halvorson v. B&F Fastener Supply*, slip. op. (W.C.C.A. May 9, 2016). The issue concerned a request to terminate/close rehabilitation services. In *Halvorson*, the QRC declined to close rehabilitation services and the employer and insurer filed a Rehabilitation Request to close services. The WCCA held that the statute and administrative rules addressing a workers' compensation claimant's initial eligibility for rehabilitation services do not provide an independent mechanism for employer/insurer to terminate rehabilitation services. Therefore, the definition of a "qualified employee" as set forth in Minnesota Rule 5220.0100, Subp. 22, is not the mechanism to utilize to terminate rehabilitation services, but is only used to determine initially whether an employee is a "qualified employee" and is eligible for rehabilitation services at the outset.

#### 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 Popeye's,

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 WCCA 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.

On September 20, 2017, the Supreme Court of Minnesota issued a decision on the Halvorson matter. (901 N.W.2d 425, September 20, 2017). The holding indicates that the statute and administrative rules addressing the workers' compensation claimant's initial eligibility for rehabilitation services do not provide an independent mechanism for an employer/insurer to terminate rehabilitation services. A request to suspend, terminate or alter a Rehabilitation Plan must be based upon a showing of "good cause."

The Supreme Court cited Minn. Stat. § 176.102, Subd. 8(a). The statute states as follows:

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

1. A physical impairment that does not allow the employee to pursue the Rehabilitation Plan;
2. The employee's performance level indicates that 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 objective; or
5. The employee is not likely to benefit from further rehabilitation services.

In *Halvorson*, the employer/insurer argued that pursuant to Minn. Stat. § 176.102, Subd. 6(a), the Commissioner or the Compensation Judge shall make determinations regarding rehabilitation issues not necessarily a part of the plan, including, but not limited to, determination whether an employee is eligible for further rehabilitation. The Supreme Court stated that this rule applied only to new plans, which had been submitted following a rehabilitation consultation, and not to plans already in existence. By failing to raise the "good cause" argument at the hearing, the employer/insurer waived the argument for appeal purposes.

Further, the Supreme Court also discussed that Minnesota Rule 5220.0100, Subp. 22 defines a "qualified employee" as an employee who, because of the effects of the work-related injury/disease, whether or not combined with the effects of a prior injury or disability: A) is permanently precluded or likely to be permanently precluded from engaging in the employee's usual and customary employment at the time of injury; B) cannot reasonably be expected to return to gainful employment at 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 Supreme Court held that this rule makes no mention whatsoever of the modification or termination of any rehabilitation plan and therefore, provides no basis for terminating rehabilitation services.

## When Can You Termination Rehabilitation Services?

The *Halvorson* decision means that citing the eligibility rules is no longer sufficient to terminate rehabilitation services. Minn. Stat. § 176.102, Subd. 8(a) provides the appropriate mechanism to terminate rehabilitation services, and we must now rely on this statute when attempting to terminate a rehabilitation plan. Specifically, one must show that "good cause" exists to end vocational rehabilitation. Although "good cause" is not necessarily limited to those five categories set forth within the statute, additional facts may reveal other avenues for termination of vocational rehabilitation benefits.

Minnesota Rule 5220.0510, Subp. 5 also provides a mechanism for closing the rehabilitation plan prior to completion. Under this rule, either the employee or the insurer may request that rehabilitation services be suspended or terminated for good cause, including, but not limited to:

- a. A new 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; and
- d. The Employee is not likely to benefit from further rehabilitation services.

At a minimum, any attempt to terminate vocational rehabilitation services must address the "good cause" standard in order to have a chance of success, rather than relying on the argument that the employee is no longer a "qualified employee," which can only be raised at the outset of a request for rehabilitation services.

The Supreme Court's determination in *Halvorson* means that we must argue that "good cause" exists in order to terminate rehabilitation benefits.

[Click here to review the full Supreme Court Decision.](#)

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.

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