

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 445

7 S.P. 156

In Senate, February 1, 1983

8 Referred to the Committee on Labor, sent down for concurrence and
9 ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

10 Presented by Senator Hayes of Penobscot.

Cosponsors: Representative Norton of Biddeford and Representative Tuttle of Sanford.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Allow Evidence and Testimony
18 From Vocational Experts.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 39 MRSA §93, sub-§3, as amended by PL 1979, c.
23 109, is further amended to read:

24 3. Proceedings before Workers' Compensation Com-
25 mission. In all proceedings before the Workers' Com-
26 pensation Commission, all forms of discovery avail-
27 able in civil actions in the Superior Court under the
28 Maine Rules of Civil Procedure, as amended, shall be
29 available to any of the parties in the proceedings
30 except that a Workers' Compensation Commission Com-
31 missioner, rather than a Superior Court Justice,
32 shall rule on all objections; and a Workers' Compen-
33 sation Commission Commissioner is empowered to
34 enforce this subsection in the same manner and to the

1 same extent as a Superior Court Justice may enforce
2 compliance with the Maine Rules of Civil Procedure,
3 as amended, with regard to discovery, except that the
4 commissioner shall not have the power of contempt.

5 Prior to the award of the 3rd period of up to 52
6 weeks of vocational rehabilitation as provided by
7 section 52, the employer shall have the right of dis-
8 covery and subpoena power in regard to all persons,
9 including any private or public agent, to determine
10 the suitability of ~~such~~ the employee for ~~such~~ that
11 further rehabilitation.

12 Signed statements by a medical doctor or osteopathic
13 physician relating to medical questions, by a psy-
14 chologist relating to psychological questions ~~or~~, by
15 a chiropractor relating to chiropractic questions, or
16 by a vocational expert relating to vocational or
17 labor market questions, shall be admissible in work-
18 ers' compensation hearings before the Workers' Com-
19 pensation Commission, providing that notice of that
20 testimony to be used is given and service of a copy
21 of the letter or report is made on the opposing coun-
22 sel 14 days before the scheduled hearing to enable
23 that counsel to depose or subpoena and cross-examine
24 that medical doctor, osteopathic physician, psychol-
25 ogist ~~or~~, chiropractor or vocational expert if he so
26 chooses.

27 STATEMENT OF FACT

28 This bill clarifies an ambiguity contained in the
29 current law and practice of Workers' Compensation
30 Commission as it relates the to the reports and
31 testimonies of vocational experts. The Supreme Judi-
32 cial Court has stated that in order for an employee
33 who is partially physically disabled to continue to
34 receive benefits for total incapacity, the employee
35 must prove that there is no reasonably stable labor
36 market in his geographical vicinity for someone with
37 his limited skill. In order to meet that burden of
38 proof, some employees have attempted to introduce
39 evidence from vocational experts who have conducted

1 labor market surveys to determine the availability of
2 restricted work opportunities for employees. While
3 some commissioners have allowed such testimony,
4 others have not. This conflict between commissioners
5 creates an inequity among similarly situated employ-
6 ees, depending on where they happen to reside. The
7 testimony of a vocational expert can often be of
8 tremendous benefit to a commissioner in assessing
9 what job opportunities are available to an employee
10 within his geographical vicinity.

11 This bill also specifically allows the introduc-
12 tion of vocational experts' reports as they relate to
13 the employability of particular individuals. Because
14 the statute clearly defines those reports which are
15 currently admissible, some commissioners have taken
16 the position that since the statute does not specifi-
17 cally allow for the introduction of reports from
18 vocational rehabilitation experts, such reports are
19 not admissible. Quite often, when a vocational reha-
20 bilitation expert has developed a long-term relation-
21 ship with a particular employee, that expert will
22 have great insight into the employee's physical
23 capacities, motivation and ability to perform certain
24 kinds of work. That is precisely the kind of infor-
25 mation which workers' compensation commissioners
26 should have in order to accurately assess an
27 employee's work capacity and resulting disability.
28 This bill insures that such reports are admissible.

29

1839011083