

876—4.50(85) Vocational training, education, and supplies.

4.50(1) Purpose. The purpose of this rule is to establish the procedures for issuing decisions on applications for vocational training, education, and supplies provided for in Iowa Code section 85.70(2).

4.50(2) Definitions. The following definitions apply to this rule:

“Application for vocational training and education hearing” or *“application”* means a contested case proceeding filed with the division of workers’ compensation contesting the results of an evaluation and determination or contesting or requesting the termination of a vocational training and education program.

“Evaluation and determination” means an assessment conducted by the department of workforce development to determine if the employee would benefit from a vocational training and education program offered through an area community college to allow the employee to return to the workforce.

“Request for vocational training and education” or *“request”* means a written request for an evaluation and determination of whether an employee is entitled to vocational training, education, and supplies.

“Vocational training and education” shall include general educational development programs for employees who have not graduated from high school or obtained a general education diploma, and career and technical education programs that provide instruction in the areas of agriculture, family and consumer sciences, health occupations, business, industrial technology, and marketing, offered through an area community college that will allow the employee to return to the workforce.

4.50(3) Application for vocational training and education.

a. An application shall:

- (1) Only concern the issue of vocational training, education, and supplies;
- (2) Be filed on the form provided by the division of workers’ compensation;
- (3) State the reasons for the application;
- (4) Be served on the other party;
- (5) Contain a proof of service on the other party; and
- (6) Specify whether a telephone or in-person hearing is requested.

b. An application for vocational training and education must be filed in WCES unless a party has been granted a waiver of the mandatory use of WCES, in which case the party shall file the application for vocational training and education with the division of workers’ compensation. Applicant(s) must serve a copy of this form on the appellee(s) by certified mail, return receipt requested, or by personal service as in civil actions in accordance with rule 876—4.7(86,17A) and mail a copy to the attorney of record for the appellee(s), if known, in accordance with rule 876—4.13(86).

4.50(4) Fee. No filing fee is due. See paragraph 4.8(2)“*a.*”

4.50(5) Request for vocational education and training. Prior to filing an application, the employee shall complete a request on a form supplied by the department of workforce development and submit the completed form to the department of workforce development asking for an evaluation and determination. The employee, employer, or insurance carrier may contest the results of the evaluation and determination by filing an application with the division of workers’ compensation.

4.50(6) Proper application. An application may not be filed under this rule until:

a. An evaluation and determination has been made by the department of workforce development; and
b. There has been a finding by the division of workers’ compensation or the employer or the employer’s insurance carrier or both and the employee agree that the employee has sustained an injury to the shoulder resulting in a permanent partial disability for which compensation is payable under Iowa Code section 85.34(2)“*n,*” and the employee cannot return to gainful employment because of such disability.

4.50(7) Notice of hearing. The workers’ compensation commissioner shall notify the parties by electronic mail, ordinary mail, or facsimile of the time, place, and nature of the hearing. No notice will be made until a proper application is received by the workers’ compensation commissioner. The notice shall specify whether the hearing will be held by telephone or in person.

4.50(8) Evidence. Any written evidence to be used by the employer, the employer’s insurance carrier, or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of hearing. Written evidence shall be limited to 50 pages per party.

4.50(9) *Motion to change hearing type.* A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The workers' compensation commissioner will make no rulings on motions.

4.50(10) *Briefs.* Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to five pages.

4.50(11) *Hearing.* The hearing will be held either by telephone or in person in Des Moines, Iowa. If the party filing the application does not request an in-person hearing in the application, the other parties may request an in-person hearing. The hearing will be recorded electronically. Copies of the recording will be provided to the parties. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing. A transcript shall be provided by the appealing party pursuant to Iowa Code section 86.24(4) and a copy of the transcript shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner, unless the parties submit an agreed-upon transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid by the party that disputes the accuracy of the transcript, pursuant to Iowa Code section 86.19(1).

4.50(12) *Represented party.* A party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and the employer's insurance carrier shall be treated as one party unless their interests appear to be in conflict, and a representative of either the employer or the employer's insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

4.50(13) *Decision.* A decision will be issued within 30 working days of receipt of a proper application.

This rule is intended to implement Iowa Code sections 17A.12, 85.70(2), and 86.17.

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