



THE COMMONWEALTH OF MASSACHUSETTS

Department of Industrial Accidents

600 Washington Street
Boston, Massachusetts 02111

JANE SWIFT
Governor

ANGELO R. BUONOPANE
Director
Department of Labor and Workforce Development

THOMAS J. GRIFFIN III
Commissioner

CIRCULAR LETTER NO. 305

OFFICE OF EDUCATION AND VOCATIONAL REHABILITATION

TO: ALL INTERESTED PERSONS SERVING AS LEGAL REPRESENTATIVES TO PARTIES IN PROCEEDINGS BEFORE THE INDUSTRIAL ACCIDENT BOARD

RE: OEVR CONSENT TO LUMP SUM SETTLEMENTS

DATE: May 24, 2001

Please be advised that 452 Code Mass.Reg. § 4.10 states "where an injured employee who has been deemed suitable for vocational rehabilitation services by" the Office of Education and Vocational Rehabilitation (OEVR) "and has not completed an appropriate rehabilitation program requests the consent of OEVR to a proposed lump sum settlement, a letter must be submitted to the Director of OEVR at least two weeks prior to the lump sum conference." The letter is to include the employee's name, DIA board number, date and region of lump sum conference, and reason why a review for consent is being requested.

In considering a grant of consent to settle, OEVR will continue to be guided by its mission of promoting the restoration of injured employees to suitable employment.

This requirement, along with other pertinent information, has been previously publicized by this office in the attached memorandum (first issued on February 1, 1993 and subsequently re-issued August 24, 1994, and again with amendments, on May 24, 2001).

If the insurer has agreed to provide further vocational rehabilitation services, pursuant to an Individualized Written Rehabilitation Plan (IWRP), this agreement should also be incorporated in the lump sum settlement papers, by reference in the narrative of the settlement document. Please note that, regardless of whether an employee intends to pursue vocational rehabilitation services or not, any alleged waiver by the employee of such rights directly contravenes the statute and should not appear on any documentation relative to a lump sum agreement. G.L. c. 152, § 48(2).

So that OEVR may be able to service all parties effectively and professionally, every effort will be made to adhere to these requirements.

Current information regarding the status of lump sum suitability determinations and departmental records of liens can be obtained by contacting the Disability Analyst supervisor at (617) 727-4900 x 268.



MEMORANDUM

TO: ALL INTERESTED PARTIES
FROM: ROBERT DEMETRIO, OEVR DIRECTOR
DATE: May 24, 2001

Procedure For Lump Sum INTERACTION WITH OEVR (Form 116B)

PART A

When an employee has been deemed suitable by the Office of Education and Vocational Rehabilitation (OEVR), s/he is considered eligible for services and **WILL NEED CONSENT (form 116B, addendum to lump sum approval)** from the Director of OEVR to lump sum the case. See G.L. c. 152, §§ 48(3), 30G; 452 Code Mass. Regs. § 4.10.

Please submit a letter at least **2 weeks** prior to the lump sum conference that includes the following information:

1. The employee's name;
2. The Department board number;
3. The date of lump sum conference;
4. The region of lump sum conference;
5. The reason(s) as to why a review for consent is being requested.
(To state that your client simply wants to settle is not sufficient).

See 452 Code Mass. Regs. § 4.10.

The Director of OEVR determines if a consent is warranted on a case by case basis.

NOTE: You can confirm the employee's vocational rehabilitation status with the Disability Analyst at OEVR prior to the lump sum conference.

PART B

A written consent from OEVR is **NOT** required as a condition precedent to the lump sum agreement if any one of the following five apply:

1. No determination has been made with respect to the employee's suitability for vocational rehabilitation, pursuant to G.L.c. 152, § 30G;
2. The employee has been found **not suitable** by OEVR, pursuant to G.L.c. 152, § 30G;
3. The employee has returned to continuous employment for a period of six or more months, pursuant to G.L. c. 152, § 48(3);
4. The employee has completed an approved individualized vocational rehabilitation plan (IWRP), pursuant to G.L. c. 152, § 48(3);
5. If the lump sum settlement has been reached with no liability established.

IF PART A above applies, you must have the signature of the OEVR Director on the form 116B or you must obtain an order or decision from an administrative judge or administrative law judge. See G.L. c. 152, § 48(3).

If PART B above applies, you need only check the proper box on the form 116B, confirmed by OEVR, and then execute the document as indicated. See G.L. c. 152, §§ 48(3), 30G. Thereafter, the employee may seek vocational rehabilitation within two (2) years of the perfection of the lump sum settlement. See G.L. c. 152, § 48(2).

PART C

In settling the case, "said agreement shall not redeem liability for the payment of medical benefits or vocational rehabilitation benefits with respect to such injury." G.L. c. 152, § 48(2).

"Any employee who receives an amount in violation of this paragraph shall have the right to re-open his or her claim for compensation." G.L. c. 152, § 48(3) (i.e., without OEVR consent).

FORM 116B MUST BE EXECUTED FOR THE LUMP SUM PAPERS TO BE COMPLETE ONLY FOR INJURIES AFTER NOVEMBER 1, 1986.



DIA Board #
(If Known):

ADDENDUM TO LUMP SUM SETTLEMENT AGREEMENT
PURSUANT TO M.G.L. c. 398 § 75 OF THE ACTS OF 1991,
EFFECTIVE DECEMBER 24, 1991 - VOCATIONAL REHABILITATION STATUS

Employee Name: _____ Board #: _____

PART A

Written consent of the Office of Education and Vocational Rehabilitation is not required as a condition precedent to the validity of the lump sum agreement where:

PLEASE CHECK ONE:

- No determination has been made with respect to the employee's suitability for vocational rehabilitation pursuant to G.L. c. 152, § 30G.
- The employee has been found unsuitable by the Office of Education and Vocational Rehabilitation for vocational rehabilitation pursuant to G.L. c. 152, § 30G.
- The employee has returned to continuous employment for a period of six months or more.
- The employee has completed an approved rehabilitation plan.

Signed this _____ day of _____ 20__.

SIGNATURE

ADDRESS

CLAIMANT

CLAIMANT'S COUNSEL

INSURER'S COUNSEL

PART B

Where the employee has been found suitable for vocational rehabilitation services pursuant to G.L. c. 152, § 30G and has not returned to continuous employment for a period of six or more months or completed an approved rehabilitation plan, the Office of Education and Vocational Rehabilitation may nevertheless consent in writing to the lump sum, or an administrative judge or administrative law judge, by order or decision may authorize such agreement. G.L. c. 152, § 48 (3). "Any employee who receives a [lump sum] amount in violation of [§ 48(3)] shall have the right to re-open his or her claim for compensation." Id.

PART C

Please note that when liability is established, a lump sum agreement shall not redeem liability for the payment of medical benefits or vocational rehabilitation benefits with respect to such injury. An employee may seek vocational rehabilitation within two (2) years of perfection of the lump sum settlement. G.L. c. 152, § 48 (2).

Consented to: _____ Date: _____

Office of Education and Vocational Rehabilitation

OEVR Comments: _____

Order/Decision: _____
Administrative Judge/Administrative Law Judge