

Adjudicator



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Gary DiCeglio Leads Industrial Commission Of Ohio As New Chairman

Governor Ted Strickland appointed Gary DiCeglio as the new Industrial Commission chairperson in July 2007.

"It is an honor to be selected as the chairperson for the Industrial Commission of Ohio," DiCeglio said. "I am looking forward to embracing the challenges this position will bring while continuing to provide a quality service to the people of Ohio."

Through a lifelong dedication to worker safety issues, DiCeglio brings a wealth of workers' compensation experience to his role as chairperson. He is the employee member of the Commission and his term expires in June 2013.

Originally from Akron, Ohio, DiCeglio began working at Goodyear Tire and Rubber Company after he graduated from high school.

After seeing industrial jobs decline in Akron, DiCeglio decided to attend college.

Throughout his education, DiCeglio followed in his grandfather's footsteps and worked as an industrial pipe fitter with Goodyear Tire and Rubber Company. His grandfather worked the same job for Goodrich Corporation.

He earned a bachelor's degree in economics from the University of Akron in 1988. In 1992, he received his law degree after graduating cum laude from the University of Akron School of Law.

After law school, DiCeglio began a private law practice, focusing on workers' compensation matters.

As he continued to work for the Goodyear Tire and Rubber Company, DiCeglio became a Division Chairman with the United Rubber Workers, a labor union for workers employed by rubber manufacturers.

When the United Rubber Workers merged with the United Steelworkers in the 1990s, DiCeglio worked to improve its members' wages and benefits as a lobbyist in Washington D.C.

In 1998, DiCeglio joined the Ohio AFL-CIO, the largest federation of unions in the United States, as the Director of Compensation and Safety. In this position, DiCeglio focused on worker safety issues, establishing Ohio's prescription drug discount card program and raising the state minimum wage.

DiCeglio also played an important role in crafting Senate Bill 7, which made numerous changes to the workers' compensation law in Ohio.

As the new IC chairperson, DiCeglio already has several improvement plans in the works to improve the agency.

"I'd like to find ways to accelerate the hearing process for permanent total disability claims and look at ways to improve the scheduling of hearings throughout the state," he said.

"If we can fix the scheduling problems, then we can overcome the challenges that come with the large amount of continuances that come through the IC," he said.

DiCeglio also wants to implement telephone and video conference technology to conduct hearings in the future.

"We spent all this money on the technology to do these things, so it only makes sense to utilize it," he said.

DiCeglio resides in Blacklick, Ohio and enjoys spending time with his three grandchildren and visiting his daughters, Julie, 30, and Michelle, 28.



Gary DiCeglio was named the new chairperson of the Industrial Commission in July 2007.

Joe Montgomery Selected As Deputy Inspector General



Joe Montgomery began his new position of Deputy Inspector General in September.

Joe Montgomery, the first deputy inspector general for the Industrial Commission of Ohio and the Bureau of Workers' Compensation, began his duties in September 2007.

As the deputy inspector general assigned to the IC and the BWC, Joe will investigate wrongful acts or omissions committed by IC and BWC officers and employees. He has the same powers and duties regarding matters concerning the IC and

the BWC as those of the inspector general.

"Accountability is paramount to building confidence with employers and injured workers who journey through the Industrial Commission hearing process," said Industrial Commission Chairperson Gary DiCeglio.

Montgomery is originally from Wintersville, Ohio. He attended Mount Union College and earned an associate degree from the Jefferson Technical College.

He has served as a village police officer and has retired from the Ohio State Highway Patrol.

Montgomery has served as a deputy inspector general since 2003 was named Investigator of the Year in 2005.

"Deputy Inspector General Montgomery will use his knowledge and talents to provide proper oversight and enforcement over our agency and his presence will usher in a new era of ethics and accountability," DiCeglio said.

During an investigation, the deputy inspector general may question any IC or BWC employee, and any person transacting business with the IC, the BWC, the BWC board of directors, the BWC administrator and the IC Commissioners. The deputy inspector general also can investigate the audit committee, the actuarial committee and the investment committee at the BWC.

In addition, he may inspect and copy any books, records or papers in the possession of those persons or entities while taking care to preserve the confidentiality of information in those records, which the law makes confidential.

Mike Travis Appointed New Chief Ombudsperson



Mike Travis assumed the position of Chief Ombudsperson in September of 2007.

The Industrial Commission Nominating Council (ICNC) recently announced the appointment of Michael Travis as the chief ombudsperson for the Ohio Bureau of Workers' Compensation (BWC) and the Ohio Industrial Commission.

"Mike has a deep understanding of the workers' comp system and an expertise in assisting both injured workers and employers," said IC Chairman Gary

DiCeglio. "His vast experience with the adjudication process will undoubtedly be beneficial in this new role."

The chief ombudsperson serves a six-year term and is an independent advocate for Ohio's workers' compensation system. The ICNC is an independent council of business, labor and public representatives appointed by Ohio's governor.

Travis, a lawyer, has several years of workers' compensation experience.

He has served as BWC's litigation manager; director of legal operations, and was director of legal and hearing services for the IC. In addition, Travis teaches college courses in business law, employment law, insurance and alternative dispute resolution.

The Ombuds Office is independent, reporting to neither BWC nor the IC. It answers complaints and general inquiries about the Ohio workers' compensation system for customers who may not understand nor be satisfied with the actions taken by BWC or the IC.

Travis earned his law degree from Thomas M. Cooley College of Law and his bachelor's degree from Kent State University. He lives in Powell with his wife Nancy and two children. He succeeds the previous Ombudsperson, David Bush, who passed away in June.

Supreme Court Case Summaries

State ex rel. Gross v. Industrial Commission

In this case, a worker was injured by a pressurized deep fryer, and was fired for disobeying written safety rules and repeated verbal warnings. The Supreme Court upheld the Commission's determination that the injured worker should be denied TTD because his violation of workplace safety rules constituted voluntary abandonment of his employment. The decision in *Gross I* was viewed to expand the voluntary abandonment doctrine and to potentially encroach on the no-fault nature of workers' compensation laws. On reconsideration, in *Gross II*, the Court held that, "if an employee's departure from the workplace 'is causally related to his injury,' it is not voluntary and should not preclude the employee's eligibility for TTD." The Court ultimately found that the employer's letter, firing the injured worker, established that his termination was related to his injury because it expressly stated that the termination was the result of the accident that caused the worker's injuries; and so, his employment was terminated involuntarily. The Court stated that, "reference to deliberate, willful, or wanton behavior in *Gross I* was intended to describe his behavior that violated work rules and that provided grounds for his termination. That language was not intended to set a new standard for voluntary abandonment."

State ex rel. Honda of America v. Industrial Commission

In this case, the injured worker began receiving TTD in 1991. In 2003, she opened a shop with insurance money from the death of her husband. Her employer hired a private investigator that discovered and videotaped the injured worker at the shop performing store-related work, such as talking on the phone and using the cash register. At one point the private investigator also entered the store on the pretense of being a customer, and the injured worker provided assistance by showing products and answering questions. The employer had the surveillance tapes reviewed by a doctor, who concluded that the injured worker's activities contradicted the capabilities stated by the doctor the commission relied on in awarding her TTD. The employer's doctor did not, however, find that her activities were inconsistent with her claim that she could not return to her former position with Honda. An SHO denied the employer's motion to discontinue the injured worker's TTD after finding there was no evidence that she could return to her job at Honda, and that she was not paid for her work at the shop. The SHO also applied the two part test from *State ex rel. Ford Motor Co. v. Indus. Comm.*, to determine that the taped activities were minimal and did not generate business income directly. The Court found no evidence that the injured worker could return to her job at Honda, and that her activities at her shop were minimal and were geared more towards promoting the goodwill of the business. The Supreme Court concluded the Commission did not abuse its discretion in finding that the injured worker did not engage in activities inconsistent with her TTD award.

New Hearing Officer Manual Policies

The Industrial Commission amended two hearing officer manual policies, C3 and R2, and added four new hearing officer manual policies, effective May 7, 2007:

Memo A5 - Substantial Aggravation

Hearing Officers must ensure that an order is clear as to which standard of aggravation is being applied in a claim. Therefore, in claims with dates of injury or disability on or after October 11, 2006, the hearing officer should state that the claim is either allowed or disallowed for substantial aggravation of a pre-existing condition. Obviously, if the issue is abatement of a substantially aggravated condition, that should be stated as well, and only applied to dates of injury or disability on or after October 11, 2006.

Further, when allowing a claim for substantial aggravation of a pre-existing condition, the hearing officer must cite in the order evidence which documents the substantial aggravation by objective diagnostic findings, objective clinical findings, or objective test results.

Memo C3 - Jurisdiction over the Issue of Maximum Medical Improvement

In order for a Hearing Officer to proceed on the issue of Maximum Medical Improvement (MMI), it is necessary that Temporary Total Disability be an issue in the claim.

The measuring date to determine jurisdiction on the issue of MMI is the date on which the motion or request was filed seeking a finding of MMI. A Hearing Officer has the ability to proceed on the issue of MMI when a claimant is: (1) on TTD compensation at the time a party files a request that the claimant be found to have reached MMI, and/or (2) when the claimant is on TTD compensation at the time of the hearing on the issue of MMI.

When terminating ongoing TTD compensation due to the issue of MMI, TTD compensation should be paid through the date of the hearing which is terminating the compensation.

Where the claimant was neither on TTD at the time of the request to find MMI, nor at the time of hearing on that issue, the Hearing Officer shall not proceed on the issue of MMI.

New Hearing Officer Manual Polices Continued

Memo C5 - Temporary Total Disability/Treatment Due to Psychological Conditions

Pursuant to Industrial Commission Resolution, in order to have a psychiatric/psychological condition allowed in a claim, the evidence in support of that condition must come from a psychiatrist, psychologist, licensed professional clinical counselor, or independent social worker. However, evidence in support of treatment/disability due to psychological conditions may be submitted by a psychologist, a medical doctor, or doctor of osteopathy.

Memo R2 - Commission Hearings: Court Reporters

Parties wishing to have a court reporter present for any Industrial Commission (IC) hearing shall notify the Hearing Administrator at least seven (7) days prior to hearing. Such party shall indicate the amount of extra time, if any, that the party expects the hearing to take.

If a party brings a court reporter to a hearing without prior notice to the IC, the Hearing Officer shall inquire as to the amount of extra time which may be necessary to complete the hearing. The Hearing Officer must decide whether to proceed as scheduled, hold the hearing at the end of the hour or at the end of the docket, or reset the hearing with appropriate hearing time. A Hearing Officer should not delay other scheduled hearings in order to proceed with a lengthy surprise court reporter hearing.

The Hearing Officer shall instruct the party bringing the court reporter to a hearing to file a single copy of the transcript with the claim file. Such party is not obligated to provide a copy to the other side. If the other side desires a copy of the transcript, such copy may be made from the transcript submitted to the file.

Memo S13 - Scheduling IC and BWC Employees, Relatives, and Significant Others for Hearing

It is important for the Industrial Commission (IC) to avoid the appearance of a conflict of interest or impropriety when scheduling an IC or Bureau of Workers' Compensation (BWC) employee, employee relative, or person with a significant relationship to the employee for hearing.

In order to avoid any conflict, all claims for a current or former IC or BWC employee, IC or BWC current or former employee relative, or individual with a significant relationship to a current or former IC or BWC employee will be scheduled for hearing in an office outside of the IC or BWC employee's region. Such individuals will be scheduled for hearing in the next closest regional office adjoining the region in which he or she is employed.

Memo S14 - Dual Causation

The concept of dual causation does not apply to disability determinations. When adjudicating issues of Temporary Total Disability or Permanent Total Disability, the allowed conditions in the claim must be the disabling condition(s). Other non-allowed conditions may be present, but if those conditions contribute to the disability in a way that the allowed conditions are not independently

disabling, then disability compensation is not proper.

However, dual causation does apply to the allowance of claims in both injury and occupational disease situations, as well as the allowance of additional conditions in those claims. The standard for these issues is whether the work related hazard is a proximate cause of the condition(s). If so, it does not matter that other hazards might also be proximate causes of the condition(s). A common example of this is occupational disease cases involving lung conditions where the injured worker is also a smoker. So long as the work related hazard is a proximate cause of the diagnosis, then the claim may be allowed despite the fact that smoking also is a proximate cause of the diagnosis.

The Industrial Commission amended a hearing officer manual policy, effective November 2, 2006:

Memo K1 - Allowance - Dismissal Order v. Merits

(A) In allowance determinations, once the parties have discussed the merits at issue, the allowance should be either allowed or denied. The published order should contain express allowance or denial language. Decisions may not, in order to comply with O.R.C. 4123.511, be held for additional evidence to be submitted after the hearing.

When allowing a claim, the hearing officer shall provide a written description of the diagnosis or condition which is being allowed in the claim. In addition, the name of the physician authoring the report and the date of the report shall be included. The Hearing Officer shall not include the ICD-9-CM code for the condition(s) being allowed in his or her order.

(B) Should a party which appealed an order of the Administrator or a District Hearing Officer request dismissal of that appeal prior to hearing, the Hearing Officer shall grant the requested dismissal. If the request for dismissal is made after a discussion of the merits of the appeal, the Hearing Officers must deny dismissal of the appeal.

If a party who has filed an application, motion, or other request for action in a claim wants to dismiss that request, that party may do so prior to an initial hearing on the merits. Once a discussion of the merits has occurred, regardless of whether at the District Hearing Officer or Staff Hearing Officer level, the request can no longer be dismissed.

In allowance determinations, do not use terms such as "dismissed with prejudice" or "dismissed without prejudice" in your orders.

This policy does not affect the Hearing Officers' responsibility to determine if the action involves agreement as to handicap relief or unenforceable prior waiver of right to compensation.

NOTE: O.R.C. 4123.343, O.R.C. 4123.54, O.R.C. 4123.80

New Hearing Officer Manual Polices Continued

The Industrial Commission added one hearing officer manual policy, effective May 10, 2006:

Memo C4 - Salary Continuation

Numerous questions and concerns have been raised as to how hearing officers should handle Salary Continuation and what impact salary continuation has on the payment of temporary total disability compensation. Following is a variety of circumstances with a discussion of how hearing officers should handle those circumstances:

Wage Agreements . Salary Continuation is not the same thing as a wage agreement. Wage agreements are provided for in OAC 4123-5-20.

Finding of Temporary Total Disability and Rate of Payment. Generally, when hearing officers are aware that an injured worker received wages over a period of temporary total disability, the hearing officer should state that TTD is paid less wages received. Also, hearing officers should include in their orders a statement that the injured worker was temporarily and totally disabled despite the fact that salary continuation may have been paid by the employer. However, to the extent that temporary total disability compensation would exceed the net pay received by the injured worker through salary continuation, that amount should be paid in temporary total disability to the injured worker, so that the injured worker receives the same net amount of money as they would if they had been paid only temporary total disability compensation. The net amount should be measured against 72% of the FWW for the first 12 weeks of disability, and 66 2/3% of the AWW thereafter. For example, if the injured worker is disabled from the time of injury, and the employer pays salary continuation for six weeks, the net amount of salary continuation should be measured against 72% of the FWW, and six weeks of TTD should then be paid at 72% of the FWW.

Termination of Benefits/MMI . Hearing officers do not have jurisdiction to terminate salary continuation benefits. In addition, hearing officers do not have jurisdiction to make a declaration of maximum medical improvement in claims where temporary total disability compensation is not being paid or requested. However, salary continuation benefits may be discontinued by either the employer or the injured worker at any time without any regard to the requirements of ORC Section 4123.56.

Waiting Period for Permanent Partial Disability. ORC 4123.57 requires that an injured worker wait forty-weeks from the last payment of compensation under ORC 4123.56, or forty weeks from the date of injury. If the employer pays salary continuation at a rate high enough to prevent BWC from paying temporary total disability

benefits, then no benefits under ORC 4123.56 would have been paid so the injured worker need only wait forty-weeks from the date of injury to apply for permanent partial disability benefits.

Application of Crabtree/Russell to Salary Continuation. As earlier stated, hearing officers do not have jurisdiction to terminate salary continuation benefits. However, where an ongoing period of disability has been established but temporary total disability benefits are not being paid due to salary continuation benefits being paid by the employer, should the salary continuation benefits cease, temporary total disability benefits commence or be ordered to commence, and a request come in from the employer to declare the injured worker MMI, Russell applies in that the period of disability shall be deemed continuous and not a new period of disability. Thus, a termination due to MMI should take place at the date of hearing.

VSSR Awards. If a VSSR award is made in a claim where salary continuation was paid for some period of time, the VSSR award should be applied to the amount of TTD compensation that would have been paid had salary continuation not been paid.

The Industrial Commission amended a hearing officer manual policy, effective January 27, 2005:

Memo R6 - Interpreters for the Hearing Impaired or for Foreign Language

The services of interpreters will be secured for hearings or for medical exams involving individuals who could not communicate otherwise during the hearing or medical exam due to deafness or to a foreign language barrier. Interpreters are scheduled by the Office of Customer Service in those instances where the Industrial Commission finds such services necessary. A separate request must be submitted for each hearing where an interpreter is required.

Injured workers should be informed of their right to have an interpreter present. When a Hearing Officer or medical examiner does not know in advance of the need for interpretive services, the matter shall be reset and an interpreter shall be scheduled to enable the person to effectively communicate.

The interpreters will submit a C-19 form for payment to the Office of Customer Service. The interpreting coordinator shall then submit the C19 form to Provider Affairs for payment from the Surplus Fund. Approval signature from the requestor is required for proper processing.

NOTE: Industrial Commission/BWC Joint Resolution, No. R88-1-200 (September 28, 1988)

New Hearing Officers

Angela Dobbins	Cincinnati
Carma Callender	Mansfield
Michael Strong	Cincinnati
John Tomassi	Cincinnati
Daniel White	Canton
Colin McCafferty	Mansfield

New Staff Appointments

Former Industrial Commission Chairperson Patrick Gannon is the new Executive Director of the Industrial Commission.

Tim Adams has been appointed Director of Non-Adjudicatory Operations of the Commission. Tim has served as the IC Manager of Legislation and Customer Service, Executive Director and Manager of Communications.