

Meeting Minutes

April 3, 2014
11:00 A.M.

TYPE OF MEETING Commission Meeting

ATTENDEES Chairman Thomas H. Bainbridge
Commissioner Jodie M. Taylor
Commissioner Karen L. Gillmor
Tom Connor, Executive Director
Rachael Rentas-Black, Chief Legal Counsel
Debbie Fodey, Administrative Assistant
Kimberly Ferkany, Administrative Assistant
Genevieve Hoffman, Administrative Assistant
Greg Hickman, Administrative Assistant
Keith Carpenter, Administrative Assistant

CALL TO ORDER

The meeting was called to order by Chairman Bainbridge.

ACTION BY

Mr. Connor called the roll.

ROLL CALL

Commissioner Gillmor	Present
Commissioner Taylor	Present
Chairman Bainbridge	Present

OLD BUSINESS

Chairman Bainbridge moved to approve the January 23, 2014 Meeting Minutes. Commissioner Gillmor indicated that there were errors in the draft minutes. The aforementioned minutes have not yet been finalized and the Commission members agreed to vote on the above minutes at the next Commission meeting. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Connor called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

NEW BUSINESS

- A. Draft HO Policy Memo G5—Guidelines for PTD Tentative Orders
- B. Final Version OAC 4121-3-34—Permanent Total Disability
- C. Telephone Hearing Request Guidelines
- D. R12-1-03—Continuance Resolution
- E. Draft HO Memo Policy O3—Staff Hearing Officers Review of Settlements
- F. Draft HO Memo Policy R7—Use of Audiovisual Evidence

DISCUSSION

Mr. Connor discussed Draft Policy Memo G5—Guidelines for PTD Tentative Orders. Two “draft” versions of the aforementioned policy were presented. Mr. Connor noted that the Rules Advisory Group (hereinafter “RAG”) feels that the guidelines are final. Memo Draft 2 was discussed. RAG suggested that requirements listed in paragraphs A, B, C, and D all be met (if applicable) when Permanent and Total Disability (hereinafter “PTD”) tentative orders are granted, rather than using A, B, C with an exception.

Commissioner Taylor addressed a concern with the language, “if it exists,” set forth in the Memo Draft 2, specifically paragraphs C and D. Commissioner Gillmor recommended that the acronyms for IC, PT, and PTI be spelled out and that semi-

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colons replace commas between the paragraphs. Commissioner Gillmor also suggested that the margin should be shifted to the left starting at the word “[R]emember.” Commissioner Taylor asked if the word “or” should be placed between paragraphs “C” and “D”. Ms. Rentas-Black noted that using the word “or” would suggest that only one scenario needs to be satisfied in order to be eligible for a Tentative Order

Mr. Connor discussed the change “if it exists.” Commissioner Gillmor recommended moving the phrase “if it exists” to the beginning of paragraphs “C” and “D”. Commissioner Taylor also recommended spelling out “PTTENT.”

MOTION

Chairman Bainbridge moved to approve, as amended, Memo G5—Guidelines for PTD Tentative Orders, Draft 2. These amendments include the following: 1) moving the language “if it exists” to the beginning of paragraphs “C” and “D”, 2) replacing commas with semi-colons in between paragraphs, 3) realigning the margins in the final paragraph, 4) spelling out all the acronyms within the memo. Commissioner Gillmor seconded the motion.

ACTION BY

Mr. Connor called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

DISCUSSION

The next item discussed was OAC 4121-3-34—Permanent Total Disability. Mr. Connor noted that the only change RAG suggested was on page 5, which discusses objections to the PTD tentative order. Commissioner Gillmor noted that the language in paragraph 6(a)(i) at the bottom of page 5 of the aforementioned rule should be revised to state “award of permanent *and* total disability.”

Mr. Connor noted that, if no one objects to the award of PTD, then the Tentative Order becomes final. With the rule change, parties can later object to the start date or

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allocation of the award. Mr. Connor also noted that the IC wants awards of PTD to be solid and we do not want to upset tentative orders of PTD.

Commissioner Taylor noted that the procedure that applies to objections of the start date or allocation should expire within a certain time period and it should not be open-ended. Commissioner Gillmor indicated she agreed with Commissioner Taylor. Commissioner Taylor also stated that it would be odd for there not to be a time frame on this objection since the Commission's jurisdiction is limited and the PTD rule provides for various time limitations. Chairman Bainbridge asked if 30 days—14 days for tentative PTD orders and 30 days for other motions (to run concurrent) was acceptable or whether the commission preferred 21 days. Commissioner Taylor indicated 30 days was acceptable. Commissioner Gillmor proposed adding the following language: "A party may file a written request to change the start date or allocation of an award of permanent and total disability compensation within thirty days of the receipt of the tentative order adjudicating the merits of an application for compensation for permanent total and disability."

Mr. Connor noted that Ms. Rentas-Black will have to make the aforementioned changes to the PTD rule and that it will need to go through the Joint Committee on Agency Rule Review (hereinafter "JCARR"). Commissioner Taylor inquired if the policy could be changed prior to going to JCARR. Ms. Rentas-Black indicated that the policy cannot be changed until the PTD rule goes through JCARR, and also noted that there is a Common Sense Initiative issue involved (hereinafter "CSI"). Commissioner Gillmor noted that the word "issue" should be changed with "award", which would make it clearer. Mr. Connor noted that we will have more meetings regarding said process. Ms. Rentas-Black indicated that once JCARR approves the changes, the rule will be brought back for final file.

MOTION

Chairman Bainbridge moved to approve, for original filing as amended, Ohio Adm. Code 4121-3-34—Permanent Total Disability. The amendments include the following: page number 5, paragraph 6(a)(i), of the rule, to read "*** *thirty* days after the date of receipt, the tentative order shall become final with regard to the *award* of permanent total *and* disability compensation * * *", along with "[a] party may file a written request to change the start date or allocation of an award of permanent and total disability compensation within thirty days of the receipt of the tentative order adjudicating the merits of an application for compensation for permanent and total disability." Commissioner Taylor seconded the motion.

ACTION BY

Mr. Connor called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

DISCUSSION

The Telephone Hearing Request Guidelines were discussed. Mr. Connor indicated that the guidelines require that a request for a telephone hearing must be filed five business days prior to the hearing and must be copied to all parties and their representatives. Commissioner Gillmor proposed changes to paragraph number four—fifth line: “* * * will notify the parties *and their representatives* * * * *prior to the hearing.*” Commissioner Taylor noted that she would like the opposing party to be able to object in paragraph 3. Commission Gillmor noted that the opposing party may have a good reason to not want a telephone hearing. Commissioner Taylor recommended two days to object to the telephone hearing and noted that the Hearing Administrator will have three days to notify the parties of his or her decision. Commissioner Gillmor indicated that the 48 hour requirement would be fine. Mr. Connor noted that he would add it. Commissioner Taylor indicated that this is an important issue to Hearing Officers and inquired if it could be corrected prior to regional training. Commissioner Gillmor noted that “must” or “shall” ought to be used as part of the language. Mr. Connor indicated that the following language will be added to paragraphs 4 and 5 of the Telephone Hearing Request Guidelines: “[A]ny objection to the request to participate by phone shall be filed within forty-eight hours of receipt of the request.”

MOTION

Chairman Bainbridge moved, as amended, that the Telephone Hearing Request Guidelines be approved with the noted corrections as discussed above and with the effective date being April 4, 2014. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Connor called the roll.

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ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

DISCUSSION

Changes to Resolution R12-1-03—"Continuance" were discussed. Ms. Rentas-Black indicated that the references in the resolution to the definition of "due diligence" under paragraphs (B) and (C) were deleted and replaced with a reference to paragraph (D). Commissioner Gillmor noted that paragraphs (B)(4) and (B)(6) should also reference paragraph "D". Commissioner Gillmor inquired about the effective date of the aforementioned resolution. Ms. Rentas-Black indicated that the effective date is today, April 3, 2014.

MOTION

Chairman Bainbridge moved that the effective date of R12-1-03—Amended Continuance Resolution be April 3, 2014. Chairman Bainbridge further moved that the aforementioned resolution be approved with the noted corrections indicated in red (first and last pages of draft resolution) and that paragraphs (B)(4), (B)(6), (C)(4) will reference paragraph "D". Commissioner Taylor seconded the motion.

ACTION BY

Mr. Connor called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

DISCUSSION

Draft HO Memo Policy O3—Staff Hearing Officers Review of Settlements was discussed. Mr. Connor indicated that the SHOs had some suggestions, which have been noted in red in paragraph 2 on the provided memo. Mr. Connor also noted that RAG was fine with said changes. Commissioner Gillmor asked if it was appropriate to cite the agency's guidance on the Unauthorized Practice of Law (hereinafter "UPL"). As written, the proposed policy merely refers to "previous guidance given on the issue"

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without specifically identifying the guidance. Mr. Connor indicated that the guidance comes from case law and a series of interoffice memos. Commissioner Taylor indicated that maybe the Commission should look at creating a resolution and make sure that the guidance is in one neat, compact area. Commissioner Taylor also asked if it was enough to cite memos. Mr. Connor noted memos have guidance. Commissioner Gillmor asked if there is one memo we could cite to that indicates a non-lawyer cannot sign settlements. Mr. Connor indicated that the Comp. Management case did not say exactly what UPL was, and that the Commission had to make policies. Commissioner Taylor added “as set forth by resolutions and guidelines that the IC has promulgated.” Mr. Connor asked if we can put in a specific memo to cite to. Commissioner Taylor indicated that she does not like citing to a memo. Chairman Bainbridge indicated that citing to a case would give some guidance/authority. Commissioner Taylor indicated that we can study this—policy should follow guidance. Mr. Connor noted that there is a reluctance to make this policy too formal. Commissioner Taylor indicated that we put it into a policy instead of a resolution. Mr. Connor noted that this is a contentious issue—the more formal, the more problematic. Commissioner Taylor asked if this would be good enough for the Supreme Court. Mr. Connor indicated that there are three dated memos. Chairman Bainbridge noted that we can keep the resolution as it is without citation to a document. Commissioner Taylor indicated that Commissioner Gillmor was right—the Commission resolution should cite to a specific policy. Commissioner Gillmor suggested adding “code” following “Admin” and deleting “Rule” in paragraph one. Commissioner Taylor also suggested changing “should” to “shall” in paragraph two on the second page of the memo.

MOTION

Chairman Bainbridge moved to approve Draft HO Memo Policy O3—Staff Hearing Officers Review of Settlements with the following changes: 1) in paragraph one use “code” and eliminate “rule”; 2) paragraph two use “shall” and eliminate “should.” The effective date of the aforementioned policy will be April 4, 2014. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Connor called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

DISCUSSION

The last item discussed on the agenda was the Draft HO Memo Policy R7—Use of Audiovisual Evidence. Mr. Connor indicated that, under the current policy, a hearing officer can only put a claim at the end of the docket when a party fails to timely file a request for additional time to present audiovisual evidence at hearing, and that this is not a negative consequence for doing so. With this change, an opposing party can get a continuance, but it is not mandatory. Commissioner Taylor indicated that employers do not always request additional time to present audiovisual evidence because they are unsure whether the evidence is relevant until after testimonial evidence has been presented at hearing. Commissioner Gillmor noted that she approved of the aforementioned policy.

MOTION

Chairman Bainbridge moved to approve the aforementioned memo as presented with changes in red, effective April 4, 2014. Commissioner Gillmor seconded the motion.

ACTION BY

Mr. Connor called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

ADJOURNMENT

Chairman Bainbridge moved to adjourn. Commissioner Gillmor seconded the motion.

ACTION BY

Mr. Connor called the roll.

ROLL CALL

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Commissioner Taylor	Yes
Chairman Bainbridge	Yes

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Respectfully submitted,



Tom Connor
Executive Director