

Meeting Minutes

August 27, 2014
10:30 A.M.

TYPE OF MEETING Commission Meeting

ATTENDEES Chairman Thomas H. Bainbridge
Commissioner Jodie M. Taylor
Commissioner Karen L. Gillmor
Tim Adams, Executive Director
Rachael T. Rentas-Black, Chief Legal Counsel
Tom Connor, Director of Hearing Services
Debbie Fodey, Administrative Assistant
Kim 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. Adams called the roll.

ROLL CALL

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| Commissioner Gillmor | Present |
| Commissioner Taylor | Present |
| Chairman Bainbridge | Present |

OLD BUSINESS

Chairman Bainbridge moved to approve the May 19, 2014 Meeting Minutes. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

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| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

MOTION

Chairman Bainbridge moved to approve the June 17, 2014 Meeting Minutes. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

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| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

NEW BUSINESS

DISCUSSION

Hearing Officer Manual Memo 01 "Settlement - Finality, Abatement and Withdrawal"

Chairman Bainbridge asked if there was any discussion needed on this policy. Commissioner Gillmor asked if the Bureau of Workers' Compensation (BWC) had seen the draft of the policy with the recommended changes and, if so, whether the BWC had any opinion on the recommended changes. Mr. Connor noted that the BWC is a part of the Rules Advisory Group (RAG), which had reviewed the policy and requested that the Commission modify the policy to provide guidance on what constitutes good cause to withdraw from a settlement when the injured worker dies during the 30-day cooling off

period set out in R.C. 4123.65(C). Specifically, Mr. Connor reported that the group suggested that the policy address whether the death of the injured worker provides “good cause” to void the settlement since Hearing Officers have been handling the situation differently. Mr. Connor stated that R.C. 4123.65 was amended in 2006 to provide the parties the ability to void the settlement for “good cause” in those situations where the injured worker passes during the cooling off period. Commissioner Taylor asked how the hearing officers are handling this language in R.C. 4123.65. Mr. Connor responded that one hearing officer, in particular, has been interpreting the statute to permit the voiding of a settlement agreement based solely upon the injured worker’s death. Commissioner Taylor asked if all the members of RAG were present during the discussions regarding the suggested changes to this policy and had agreed to the changes. Mr. Connor responded in the affirmative. Commissioner Taylor also inquired whether the change in the policy would encourage parties to create pretextual reasons to void a settlement. Mr. Connor responded in the negative. Chairman Bainbridge then asked the other Commissioners if they wanted to vote on each policy on the agenda individually or as a group, to which the Members responded that they preferred to rule on the policies individually. Mr. Connor recommended that the effective date for the policy be September 8, 2014, to coincide with the Statewide Hearing Officers’ Meeting.

MOTION

Chairman Bainbridge moved to approve the draft Hearing Officer Manual Memo 01 with effective date of September 8, 2014. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

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| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

DISCUSSION

Hearing Officer Manual Memo Q1 “Adjustments in Average or Full Weekly Wage”

Chairman Bainbridge presented for discussion Hearing Officer Manual Memo Q1. Mr. Connor reported that the last sentence of the policy is new language which will require Hearing Officers to state in their orders whether prior compensation is to be adjusted when the Average or Full Weekly Wage is adjusted. Mr. Connor noted that the BWC and self-insuring employers will not adjust past compensation if the order does not

explicitly order that adjustment. Chairman Bainbridge asked if the proposed draft was presented to RAG for review. Mr. Connor indicated that it was. Commissioner Gillmor recommended that the second paragraph of the policy be changed to read, "...originally set by formal hearing before the Industrial Commission" instead of "by District Hearing Officer." Commissioner Gillmor also asked that the policy state "Bureau of Workers' Compensation" instead of "BWC" and that the policy state "self-insuring employer" and not "self-insured." Chairman Bainbridge asked if there were any other changes needed to the policy. Commissioner Taylor requested that the case citations included in the policy be corrected pursuant to the Supreme Court of Ohio "Writing Manual."

MOTION

Chairman Bainbridge moved to approve Hearing Officer Manual Memo Q1, with the changes recommended by Commissioner Gillmor, with the effective date of September 8, 2014. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

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| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

MOTION

Chairman Bainbridge moved to make citation corrections to Hearing Officer Manual Memo Q1 as recommended by Commissioner Taylor. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

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| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

DISCUSSIONHearing Officer Manual Memo G5 “Guidelines for Permanent Total Disability Tentative Grant Orders”

Mr. Connor presented the draft memo and explained that proposed paragraph A would combine current paragraphs A and B and proposed paragraph B would combine current paragraphs C and D. Mr. Connor further stated that proposed paragraph C is new language directing Hearing Officers to issue a PTD tentative order if all the evidence supports that the same condition(s) render the injured worker permanently and totally disabled. Mr. Connor also noted that we have hearing officers that will deny a PTD tentative order if any condition is not at maximum medical improvement (MMI).

MOTION

Chairman Bainbridge moved to approve as indicated on the draft Memo G5 with effective date of September 8, 2014.

DISCUSSION

Commissioner Taylor indicated that she was not entirely comfortable with the proposed draft and asked if this is more of a training concern. Furthermore, Commissioner Taylor noted that Memo G5 was just amended on April 4, 2014 and that the hearing officers have not had an opportunity to reflect on the memo. Mr. Connor indicated that we could train to reflect the content of proposed paragraph C. Ms. Rentas-Black stated that the training could be incorporated into the Statewide Hearing Officers’ Meeting. Commissioner Taylor noted that we are changing the policy because one hearing officer is misinterpreting the policy. Commissioner Gillmor agreed with Commissioner Taylor and recommended training since the problem involves so few Hearing Officers.

Chairman Bainbridge asked if the Members wished to table the matter. Commissioners Taylor and Gillmor indicated that they would like to table the matter for now. Commissioner Taylor requested that this matter be discussed at the annual Statewide Hearing Officers’ Meeting. Mr. Connor noted that this is not an adjudication issue. Commissioner Gillmor indicated that we could always bring the issue up again. Chairman Bainbridge noted that his motion was not seconded. Ms. Rentas-Black stated that the motion did not pass.

DISCUSSIONHearing Officer Manual Memo I3 “Last Payment of Compensation - Date on Face of Warrant or Date of Last Transfer”

Chairman Bainbridge inquired whether Memo I3 was also sent to RAG. Ms. Rentas-Black indicated that Memo I3 was presented to RAG. Mr. Connor stated that the draft memo addresses those cases in which the BWC does not issue a check but, instead, transfers funds to a card or a bank account. Commissioner Taylor indicated that she had a similar issue in which the BWC transferred funds directly to a hospital.

MOTION

Chairman Bainbridge moved to approve the draft Memo I3 with an effective date of September 8, 2014. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

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| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

DISCUSSION

OAC 4123-5-18 "Medical proof required for payment of compensation."

The BWC requested that staff bring the above rule to the Commission's attention to get an idea of how the Members interpret the rule's requirement that the payment of compensation must be supported "by a report of a physician duly licensed to render" treatment. Mr. Connor noted that licensed nurse practitioners and physician's assistants examine injured workers and then a supervisory physician reviews their reports and certifies temporary total disability on a C-84 or Medco-14 form. Mr. Connor stated that if the Members believe that this review process satisfies the rule, then there is no problem to be addressed. If, however, the Members believe that the physician's certification of temporary total disability must be based upon their own examination of the injured worker, then injured workers will not be entitled to compensation during any period in which they have only been examined by a licensed nurse practitioner or physician's assistant. Commissioner Taylor asked how the BWC was currently handling this situation. Mr. Connor indicated that the BWC is not paying compensation during those periods. Commissioner Taylor asked what the Commission can do to address this issue. Mr. Connor inquired whether the Members would consider allowing licensed nurse practitioners and physician's assistants to certify disability or whether the Members believe that a supervisory agreement with a physician satisfies the requirement in the rule. Chairman Bainbridge asked if the BWC wants the Commission to act on this inquiry by way of a motion or to merely discuss the matter. Mr. Connor

indicated that the BWC wanted to know the Members' opinion on it. Commissioner Taylor stated that she believes that the supervisory agreements satisfy the rule if there is proof that the reviewing doctor did in fact review the examination notes of the licensed nurse practitioner or physician's assistant. Chairman Bainbridge agreed with Commissioner Taylor. Commissioner Taylor inquired whether the members of RAG feel that the supervisory agreements satisfy the rule. Mr. Connor indicated "yes". Commissioner Gillmor noted that she would like to discuss this with others—because the interpretation of the rule could have big implications. Chairman Bainbridge asked that staff present this matter at the next Commission meeting.

DISCUSSION

IC-2 PTD Application

Mr. Connor reported that a question arose at the last RAG meeting regarding the proposed language in the new IC-2 that informs injured workers that, if they indicate they only want one claim considered, they cannot later request that additional claims be considered. Commissioner Taylor asked who presented this. Mr. Connor indicated that the Ohio Association of Justice brought it up. Chairman Bainbridge noted that there are a couple of apostrophe errors in the proposed IC-2. Mr. Connor noted that RAG is fine with the PTD application and also indicated that Dr. Welsh added some language in the medical history section. Commissioner Gillmor noted that she has several changes and asked if it would be better to talk through it or to present it via memo. Chairman Bainbridge indicated that he would prefer a memo. Commissioner Taylor asked if the memo could be ready soon. Commissioner Taylor would like the IC-2 to be available for presentation at the Statewide Hearing Officers' Meeting. Commissioner Gillmor indicated that she could have it ready today. Chairman Bainbridge indicated that the Members would need to have another meeting to vote on the final application. He requested that the Members attempt to meet next week. Commissioner Taylor indicated that she has a few changes also and will send an email with her changes.

MOTION

Chairman Bainbridge moved to table voting on the approval of the IC-2 PTD application. Commissioner Taylor seconded the motion.

DISCUSSION

Public Hearing Date for PTD rule:

Ms. Rentas-Black reported that the PTD rule must be set for a public hearing in order to formally file the PTD rule with the LSC and JCARR.

MOTION

Chairman Bainbridge moved that the Commission hold a public hearing on proposed rule 4121-3-34 on September 29, 2014 at 1:00 p.m. in Room 1 on L-2 at 30 West Spring Street, Columbus, Ohio. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

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| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

ADJOURNMENT

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

ACTION BY

Mr. Adams called the roll.

ROLL CALL

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| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

Respectfully submitted,



Tim Adams
Executive Director