

OHIO INDUSTRIAL COMMISSION

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AUDIO TRANSCRIPT
JUNE 3, 2020

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Michele M. Snyder
Professional Reporter

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APPEARANCES:

Chairman Jim Hughes
Commissioner Jodie M. Taylor
Commissioner Karen L. Gilmor
Executive Director Tim Adams
Director of Adjudication Tom Connor

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P R O C E E D I N G S

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JIM HUGHES: Good morning. This is Chairman Jim Hughes. This is a special meeting of the Ohio Industrial Commission. Before calling meeting to order, it is June 3rd, 2020. My time shows 10:01.

I call this meeting to order. This meeting is being conducted telephonically and is being streamed from the Ohio Industrial Commission's YouTube channel. The link to listen to our meeting is available on our public website.

Additionally, this hearing is being held in accordance with Section 12 of the Emergency Legislation Amended Substitute House Bill 197, signed by Governor Mike DeWine, is effective March 27th, 2020. On April 15th, 2020, the Commission met and approved the following motion: To add applications for determination or percentage of permanent partial disability or increase of permanent partial disability commonly referred to as C-92 Hearings to allow matters to be heard during the current declared state of emergency. The topic of this meeting, June 3rd, 2020, is limited to additional hearings.

1 So those hearings are already allowed to proceed as
2 during the current state of emergency as declared by
3 Governor Mike DeWine. During this meeting, it's
4 important that prior to speaking, each person will
5 introduce themselves by stating their name and title.
6 That is so the record accurately reflects the
7 proceeding and the public is properly informed of
8 what happened. I now ask our Executive Director, Tim
9 Adams, call the roll. Mr. Adams?

10 TIM ADAMS: This is Tim Adams, Executive
11 Director of the Ohio Industrial Commission. As I
12 call your name, please restate your name and affirm
13 your presence. Commissioner Gilmor.

14 KAREN GILMOR: Karen Gilmor, present.

15 TIM ADAMS: Commissioner Taylor.

16 JODI TAYLOR: Commissioner Jodi Taylor,
17 present.

18 TIM ADAMS: Chairman Hughes.

19 JIM HUGHES: Chairman Jim Hughes,
20 present.

21 This is Chairman Hughes. Let the record
22 show that everyone is present. Before we begin our
23 discussion, I want to note for the record that we
24 have several letters regarding what the topic of
25 today's hearing is. First of all, we have a letter

1 from Jen Thrasher, Director of Boards and
2 Commissions, dated May 21st, 2020, in support of the
3 topic of today's hearing. We also have a letter from
4 the Ohio Association of Justice signed by Troy Duffy
5 dated May 23rd, 2020, in support of what we are doing
6 today on the topic.

7 In addition, we have a letter from
8 Phil Fulton dated May 21st, 2020, in support of what
9 we're doing here. In addition, we have a letter from
10 Frank Delucia dated May 26th, 2020, in support of
11 what we're doing, and just recently received a letter
12 from Ohio Bar Association from Scott Lundgren, Esq,
13 in support of scanning the docket.

14 With that in mind, I will then now ask
15 to call upon Tom Connor, our Director of
16 Adjudication, to present the issue before the
17 Commissioners, please.

18 TOM CONNOR: This is Tom Connor,
19 Director of Adjudication. Mr. Chairman, members of
20 the Commission, as you are aware and as was just
21 outlined, these are unprecedented times, and over the
22 past couple of months the Commission has
23 taken -- made two, good attempts at dealing with the
24 situation by permitting telephone hearings starting
25 with limited issues.

1 Those issues that would be intended to
2 provide a wage replacement or allow a claim so that
3 wage replacement could be appropriate if it was
4 illegally entitled to. Those hearings have
5 proceeded, not without hiccups, but by and large,
6 it's been very impressive how both our hearing
7 officers have dealt with the situation, as well as,
8 the outside representatives, both CPA's and
9 attorneys.

10 At the last meeting it was determined
11 that the C-92 docket should be added in, and at that
12 time there was an outstanding bind that had somewhere
13 between 3,500 and 4,000 pending C-92s that were going
14 to require hearing.

15 That authorization was given, and across
16 the state we began to conduct the hearings on the
17 C-92 dockets. That volume has now been reduced to
18 around 1,400 pending C-92s, and that has made it
19 where, at the last meeting, the permitted issues
20 comprised about 57 percent of the issues out there
21 that were awaiting hearing.

22 That percentage is now down to 50
23 percent. So it's about a 50/50 situation where the
24 permitted issues take up that much volume, and the
25 issues that are coming to hearing that are not

1 currently permitted to be docketed take up about half
2 of the volume as well.

3 That has resulted in a situation where
4 we have the ability to conduct additional hearings.
5 And that is my recommendation, quite frankly, is to
6 now open up all issues for hearing.

7 My recommendation is we continue to
8 conduct them the way we're conducting them. It's
9 telephonic hearing, only two per hour.

10 The logistics of getting parties on and
11 off of calls make it so that we cannot conduct the
12 same number of hearings telephonically as we would
13 have in person. And so, it's the two per hour, six
14 per hour when we talk about the C-92 docket, and the
15 Recon dockets at the SHO level on C-92s for the same
16 reason I said, it's just a matter of juggling people
17 in and out of the hearings. It takes some time and
18 impacts the number of hearings as we go forward.

19 With that aside, it was mentioned the
20 letters came in in support of taking this action.
21 I will tell you that I discussed this matter with
22 Matt Tyack, the Assembly President within the
23 Industrial Commission. And he was fully supportive
24 of adding the additional issues, so long as the
25 volume of hearings per hour wasn't changing so that

1 the hearing officers have appropriate time to juggle
2 the logistics, adding the remaining issues and
3 allowing those to go to docket, he was fully
4 supportive of.

5 With that, I'll be happy to answer any
6 questions you may have.

7 JIM HUGHES: This is Jim Hughes,
8 Chairman. Thank you, Mr. Connor. Before I ask the
9 Commission any questions of you, I would be remiss if
10 I didn't state also that the stakeholders, many who
11 are on the nominating committee, have been contacted
12 regarding this in the business community, both sides,
13 labor, et cetera, Tim Berg and others, and they're
14 all supportive of what we're doing here today.
15 I want to make sure that was mentioned.

16 With that, I will ask fellow
17 Commissioners if they have any questions of Director
18 Tom Connor, Adjudication. Commissioner --

19 JODIE TAYLOR: This is --

20 JIM HUGHES: I'm sorry. Commissioner
21 Jodie Taylor, do you have a question of Director
22 Tom Connor?

23 JODIE TAYLOR: I do. This is
24 Commissioner Jodie Taylor. Tom, how many hours are
25 hearing officers doing per day, and how many are they

1 averaging per week? I know it's different from
2 region to region, but could you, kind of, just give
3 me an idea of their weekly load.

4 TOM CONNOR: Yes, their -- Oh, I'm
5 sorry. It's Tom Conner, Director of Adjudication.
6 Pursuant to the previous instruction, what is
7 docketed per day is, six hours with two per hour when
8 they're getting a docket. It does vary by region.
9 Currently we have some vacancies that haven't been
10 filled that were required.

11 So what happens is, in Cincinnati,
12 Dayton region, for instance, the hearing officers are
13 spending a little more time in hearings.
14 And Cleveland is in about the same boat as are some
15 of the other regions.

16 So in those regions they are doing
17 generally three days of dockets, six hours a day, two
18 per hour, with obviously some continuances mixed in.
19 The other ones it is normally, slightly less or has
20 been normally, slightly less.

21 The other thing to let you know is that
22 the volume of referrals, just kind of getting ready
23 for what has been coming, initially, when we started
24 down this path in April, really kind of surprising to
25 me is the volume of referrals for hearing remain

1 pretty constant early on. But now we have been
2 seeing the decline, so we're in a situation between
3 the drop off and referrals from BWC.

4 The average back in February was about
5 220 issues per day. That is down to about 180.

6 So there has been about an 18 percent decrease in
7 that. And then, because of the reduced hearings,
8 there's also a reduced volume of ICON filings.

9 So the volume is down precipitously, which is, going
10 forward, they're struggling in some cases to find
11 issues out there to even build the dockets that are
12 currently scheduled.

13 JODIE TAYLOR: Okay. This is
14 Commissioner Jodie Taylor. Thank you, Tom. I have
15 one more question regarding the decline in the -- I
16 guess, do we expect that trend to continue, or are we
17 getting any indication that that might increase in
18 the future?

19 TOM CONNOR: This is Tom Connor,
20 Director of Adjudication. I am not getting any
21 indication that there is some pent-up, for lack of a
22 better word, demand going on. Do I think there is a
23 situation where, you know, obviously our sister
24 agency, BWC, is confronting the same issues we are?

25 But there's also -- this goes without

1 saying -- fewer people are working in this situation
2 right now. So I'm guessing there are fewer injuries.
3 So do I expect it as society climbs out of this,
4 might some of that volume come back? I think I would
5 expect that to happen over time, but I don't have any
6 reason to expect it to happen in the immediate
7 future.

8 This summer, I am not expecting a huge
9 influx of volume as we move forward through these
10 months.

11 JIM HUGHES: This is Jim Hughes,
12 Chairman. Thank you. Commissioner Taylor, do you
13 have a followup on that?

14 JODIE TAYLOR: I do. This is
15 Commissioner Taylor. Tom, I understand the
16 timeframe, et cetera, are suspended or held in some
17 kind of abeyance, or whatever, but are we still
18 meeting our 107 timeframes and scheduling these
19 within the timeframe and getting in the hearing
20 timely and getting our orders out timely? Are we
21 still complying with those timeframes?

22 TOM CONNOR: This is Tom Conner,
23 Director of Adjudication. For those hearings that we
24 are conducting, the answer is yes. But as we open
25 this up -- there's two concerns as we open things up

1 that are just part of -- I think in the first meeting
2 that question was asked, and it was asked of me, "Do
3 I anticipate a 107 compliance decline as we go
4 through telephone hearings?" And I said, "Yes," at
5 the time, "Because we can't conduct as many
6 hearings." When you will see -- because 107
7 Compliance is calculated when we issue orders, what
8 happens is, if we have a situation where we're not
9 conducting hearings on certain issues, we don't see
10 the impact of that until we actually start conducting
11 the hearings on those issues.

12 We issue the order and then we calculate
13 whether we met the 107 timeframes, and that's when
14 the impact is seen. So with the issues opening up,
15 if that is the decision today, what I would expect in
16 coming reports is to see it decline in 107
17 Compliance, because then we will start docketing
18 claims that were referred to us, for instance, in the
19 end of March, on issues that we haven't been hearing.

20 So we're going to have to work through
21 those for a period of time. So right now, yes, is
22 the answer. We are in compliance. I would expect a
23 decline as we start to conduct hearings on these
24 claims that have been sitting for a little while.

25 The other thing on that is, that created

1 another worry if the Commissioners decide to go this
2 way, what we wanted to make sure is that we didn't
3 then just only docket the old claims so that some of
4 the priority issues that have already been identified
5 by the Commission was within certain -- waiting for
6 these other hearings.

7 So, kind of, the plan for us going
8 forward is to continue to manually -- I know this
9 goes into the weeds a little bit -- but continue to
10 manually docket those issues that have been
11 identified as priority that would go on an allowance
12 or appeal docket.

13 So what will happen is, if someone is
14 waiting for temporary total or an allowance of claim,
15 that will get manually docketed and then our
16 automatic docketing system can then fill in some of
17 these other issues around those priority issues.

18 And we'll watch that for a week or two
19 to see if then we can let automatic docketing do all
20 the docketing again, or we have to continue to do
21 this. It should be noted that of the issues that
22 haven't been getting docketing, 76 percent of them
23 are treatment issues.

24 So while there are certainly other
25 issues that are significant and talked about, that

1 will be the lion's share of what's out there.

2 So that is the approach. If that's what the
3 Commission decides to do today, that will be the
4 approach that we would take.

5 JIM HUGHES: This is Jim Hughes,
6 Chairman. Commissioner Jodie Taylor, do you have any
7 followup?

8 JODIE TAYLOR: This is Commissioner
9 Jodie Taylor. No, I do not. Thank you, Mr. Connor.

10 JIM HUGHES: This is Jim Hughes,
11 Chairman of the Commission. I ask Commissioner,
12 Dr. Karen Gilmor if she has any questions of
13 Tom Connor, Director of Adjudication?

14 KAREN GILMOR: No questions,
15 Mr. Chairman. Thank you.

16 JIM HUGHES: This is Jim Hughes,
17 Chairman. Thank you Commissioner, Dr. Karen Gilmor.
18 With that, is there any other discussion on this
19 matter? Hearing none, this is Chairman Jim Hughes.
20 Do I have a motion?

21 JODIE TAYLOR: This is Commissioner
22 Jodie Taylor. I will make a motion. I hereby move
23 that the Industrial Commission conduct telephone
24 hearings on all issues for adjudication until
25 otherwise directed by the Commissioners effective

1 immediately, June 3rd, 2020.

2 JIM HUGHES: This is Jim Hughes,
3 Chairman of the Commission. Is there a second to
4 that motion? I will second that motion.

5 Karen Gilmor: This is
6 Commissioner -- Oh, okay.

7 JIM HUGHES: Chairman of Commission,
8 Dr. Karen Gilmor, would you like to second that
9 motion?

10 KAREN GILMOR: No, that's fine. If you
11 want to, go ahead.

12 JIM HUGHES: This is Jim Hughes,
13 Chairman of Commission. I am going to let the ladies
14 second that. So I will have Dr. Karen Gilmor second
15 that motion. At this point in time, I am going to
16 ask the Executive Director, Tim Adams, to call the
17 roll, please.

18 TIM ADAMS: This is Tim Adams, Executive
19 Director of the Industrial Commission. As I call
20 your name, restate your name and your vote.
21 Commissioner Gilmor?

22 KAREN GILMOR: Karen Gilmore, yes.

23 TIM ADAMS: Commissioner Taylor?

24 JODIE TAYLOR: Commissioner Jodie
25 Taylor, yes.

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TIM ADAMS: Chairman Hughes?

JIM HUGHES: This is Chairman Jim Hughes, yes.

This is Chairman Jim Hughes. The motion has passed unanimously, so we will start that proceeding as soon as practical to have those other issues done. This is the only matter that is before the Commission of Special Meeting.

So with that, I will gavel this meeting to a close and thank all the parties for this. The time is, according to the Chairman's watch, 10:19. At this point in time this meeting is closed.

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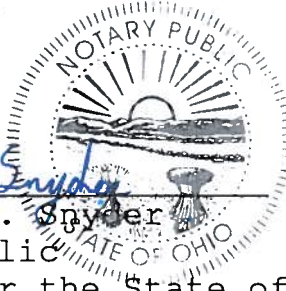
(Whereupon, the special meeting was concluded at 10:19 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true, correct and complete written transcript of the audiotaped proceedings in the matter, reduced by me into stenotypy, to the best of my ability, and transcribed from my stenographic notes on the June 23, 2021.


Michele Snyder
Michele M. Snyder
Notary Public
In and for the State of Ohio
My commission expires
February 2, 2026