

Adjudicator



The Industrial Commission of Ohio
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Spring Hearing Officer Training Held Maumee Bay

Industrial Commission (IC) of Ohio hearing officers gathered at Maumee Bay State Park in May for a series of informational sessions that educated the staff about policy changes and various other issues.

After opening remarks by Chairperson Bill Thompson and Commissioners Pat Gannon and Kevin Abrams, over 250 people listened to a presentation about traumatic head and brain injuries by Dr. W. Jerry Mysiw from the Ohio State University.

Dr. Mysiw said there were around 500,000 new traumatic brain injuries in the United States each year.

Bureau of Workers' Compensation Administrator/CEO William E. Mabe presented an overview of the bureau and presented its agenda for the current year.

Mabe said that his agenda details revenue enhancements, expense reductions and service improvements. It is his goal to put an estimated \$424 million on the BWC bottom line by the end of 2006.

Following that presentation, Stephanie Krznarich, associate director of the Ohio Lawyers Assistance Program informed the audience about substance abuse, chemical dependency and mental health concerns in the legal profession.

Chairman Thompson and Commissioners Abrams and Gannon then spoke regarding current issues before the Commission.

Geoffrey Stern, an attorney with Kegler, Brown, Hill & Ritter law

firm in Columbus, gave a presentation about professionalism and suggested ways that lawyers could improve the public's perception of their profession.

Rachel Jaffy, an attorney at the law firm Stewart Jaffy and Associates, gave an update on Supreme Court case law and Appellate Court case law regarding workers' compensation issues.



IC hearing officers and outside representatives participate in the first day of the statewide hearing officer meeting.

IC Legal Counsel Paul Walker, Hearing Officer Trainer Rick Tilton and Director of Hearing Services Tom Connor gave an update on IC policies, rules, procedures, new legislation, and changes.

In addition to regional training sessions which hearing officers go through twice a year, the Commission hosts at least one statewide meeting annually.

This portion of the hearing officer's annual statewide training was open to outside parties.

The Ohio Supreme Court Commission on Continuing Legal Education approved the seminar for 6.25 hours of CLE credit.

117 IC hearing officers also attended a second day of training where they discussed internal issues.

This portion of the seminar involved staff presentations on medical issues, electronic signatures on hearing orders, issues impacting the hearing process, Senate Bill 7, breakout sessions on hearing officer worksheets, and a question and answer session with the commissioners.

Note from the Chairman

The Industrial Commission of Ohio has made tremendous strides in improving our services to the injured workers and employers in the state of Ohio.

Consider this edition of the Adjudicator a brief summary of the important activities taking place at the Industrial Commission.

On May 8-9, the Industrial Commission held a very productive Statewide Hearing Officer Meeting at Maumee Bay State Park.

This annual event allows us to train all of our hearing officers simultaneously.

This year we had medical and legal professionals from the private sector and our legal managers teach our staff about a variety of issues that will help us serve you better. Topics included case law updates, common workplace injuries, a presentation by BWC CEO William Mabe and the changes that Senate Bill 7 will bring to our agency.

Overall, the event was immensely successful and feedback was very positive.

Although autumn is still months away, it is time for the Industrial Commission to begin planning the Workers' Compensation Universities, which will take place in September and October. Please mark your calendar with the dates and locations so you can learn from our experts and gather the information needed to run a secure, cost-effective workers' compensation program. Information regarding the Workers' Compensation Universities can be found on the BWC's Web site at www.ohiobwc.com.



Chairman Bill Thompson

The Industrial Commission strives to better serve all parties involved in Ohio's workers' compensation system.

As always, we are interested in your feedback. Please contact us with any suggestions you have to improve your interaction with the Industrial Commission.

Industrial Commission Announces New Enhancements for I.C.O.N.

In an effort to make our Industrial Commission Online Network (I.C.O.N.) more user-friendly, the Industrial Commission is announcing several new enhancements to ICON.

The method of accessing ICON remains the same and the new enhancements will make the network usage effortless and helpful.

"The Industrial Commission has worked diligently to improve the Industrial Commission Online Network," said Chairperson Bill Thompson. "I think these changes will really enhance the ICON experience for our customers."

Through ICON, injured workers, employers, and their representatives and BWC have been able to access hearing orders, notices, and all other documents filed in their claim. They have also been able to bring specific documents to the attention of the hearing officer by placing them in an electronic hearing folder.

ICON has created a paperless hearing process that has allowed customers to: permit multiple customers to access all documents simultaneously; permit customers to electronically identify documents for the electronic hearing folder; decrease travel expenses related to file review; and lower paper and related printing costs and provide better file integrity.

The most exciting new feature on ICON is the addition of video guides that demonstrate how to use the ICON system.

Our guide to ICON is designed to help the user understand when and how they can use ICON and to provide assistance in navigating its many features.

Because injured workers, employers, and representatives each use ICON in a slightly different way, the video guides have been organized by user type.

The video is divided into chapters that allow users to choose from which area of ICON they want to learn.

New and future improvements to the ICON system are as follows:

- A pop-up safeguard to verify user has submitted appeal.
- Fax numbers will soon be added to the claim information page.
- A future enhancement will allow users 1,000 characters instead of 500 when typing the reason for appeal.
- Toll-free helpdesk number has been added to all applications.
- "Print-friendly" screen created to make printing documents easier.
- ICON available 24 hours a day except 6:30-8:30 pm Monday through Friday and 12:00 am-12:00pm on Sunday for system maintenance.
- Addition of a non-attorney check box when filing appeals.

If you have questions about the ICON system, please refer to our Guide to ICON on our Web site or contact the IC Information Technology Help Desk at 614-644-6595 or toll-free 877-218-4810 during regular business hours.

Electronic Signatures on Hearing Orders to Be Launched Statewide

Starting this summer, injured workers, representatives and employers are going to see electronic signatures on hearing orders when they view documents received in the mail or on the Industrial Commission Online Network (ICON).

The program was implemented in April in the Columbus region and a statewide rollout is expected by mid-summer.

"The electronic signatures will be just as valid as handwritten signatures," said Chairperson Bill Thompson. "This is an exciting new enhancement that will increase accuracy and efficiency for our agency."

The electronic signature text will appear at the bottom of the order

after the order is signed. The text will read "Electronically Signed" followed by the hearing officer's name.

The electronic signatures will benefit the Industrial Commission in a variety of ways.

By signing hearing orders electronically, traveling hearing officers will be able to sign orders from any district office.

By using a computer to scan and index the documents, instead of a human, the possibility of error is dramatically decreased. This enhancement allows the commission to bypass manually scanning and indexing approximately 800 documents per day.

Helpful Tips for Submitting Documents to the Industrial Commission

When submitting documents related to your workers' compensation hearing, the Industrial Commission offers the following tips to ensure that the documents we receive are readable and placed in the correct electronic claim file.

- Ensure the claim number is on each document. Please print it in black ink in the upper right hand corner.
- Do not highlight items on documents because they might appear completely black after scanning. Try drawing black ink circles or arrows pointing towards the appropriate area.
- Please submit documents on white 8.5x11 paper. Do not use legal size, colored paper or colored ink.
- Submit documents without tabs as tabs will not fit through the scanners.
- To help eliminate duplicate copies of documents in the electronic file, do not submit multiple copies of the same document to both BWC and the IC because the agencies exchange images.
- Make sure submitted documents are legible.
- The Industrial Commission is attempting to automate form recognition. Therefore, forms that you submit should be obtained from IC offices, from our Web site or are exact replicas of our forms.
- Please submit documents for hearings as early as possible rather than at the hearing.

Industrial Commission Preparing for Fall Workers' Compensation Universities

Industrial Commission staff members are busy preparing for the upcoming sessions of the Workers' Compensation University series. At WCU, IC and BWC experts will help all of the partners in Ohio's workers' compensation system gather information needed to run a safe, cost-effective workers' compensation program.

The event gives the Industrial Commission time to discuss compensation issues with employers, injured workers and their representatives.

During a breakout session, Industrial Commission representatives will present an informational session designed to give employers, injured workers, and their representatives a look into the processes of the Industrial Commission.

Workers' Compensation Universities – Fall 2006

City	Venue	Date
Cincinnati	Duke Energy Center	Sept. 7
Toledo	SeaGate Convention Centre	Sept. 13
Akron	John S. Knight Center	Sept. 19
Columbus	Columbus Convention Center	Sept. 21
Cleveland	Cleveland Convention Center	Sept. 26
Dayton	Dayton Convention Center	Sept. 28
Cambridge	Pritchard Laughlin Civic Center	Oct. 3
Portsmouth	Shawnee State Park	Oct. 6

New Regional Managers

Cincinnati Staff Hearing Officer Jerry Klett was selected to assume the responsibilities of Cincinnati Regional Manager.

Canton Staff Hearing Officer Debra Lynch was selected to assume the responsibilities of Akron Regional Manager.

New Staff Appointments

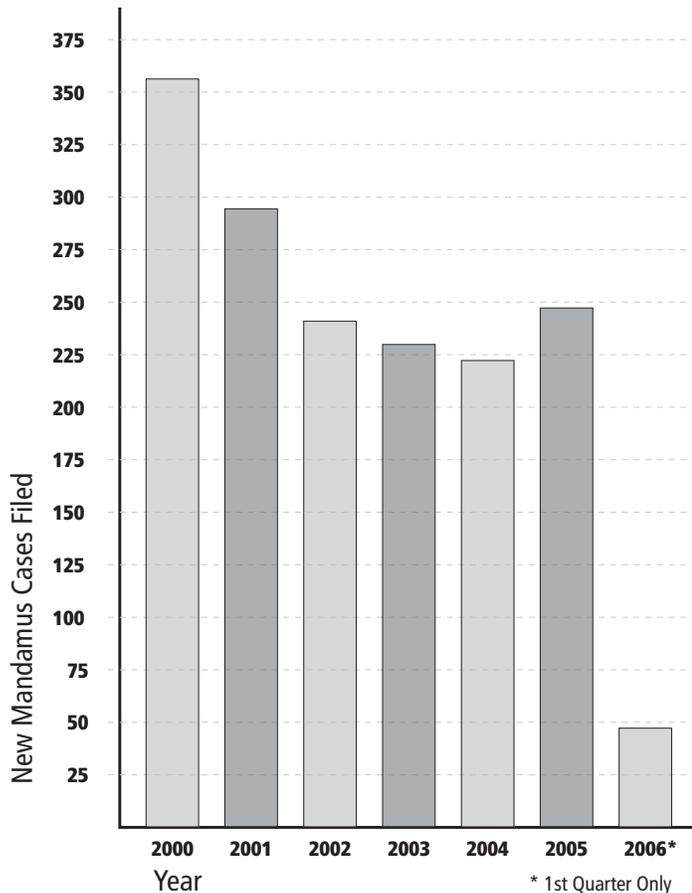
Tim Adams is the new Executive Director of the Commission. Tim has served as the IC manager of Legislation and Customer Service, acting manager of Communications, and most recently Director of Non-Adjudicatory Operations.

Janet Lucktenberg is now the Director of Non-Adjudicatory Operations. Janet has most recently served as manager of the Communications department, and will continue oversight of that department in her new role.

Industrial Commission Announces Court Case Statistics

Since 2000, the Industrial Commission of Ohio has seen nearly a 30 percent decrease in mandamus filings from the Franklin County Court of Appeals.

In 2002, there were 240 new filings reported for mandamus cases filed in the Franklin County Court of Appeals. This represents approximately an 18 percent decrease in new filings compared to 295 new filings in 2001.



New Mandamus Cases Filed in the Franklin County Court of Appeals - Commission Orders

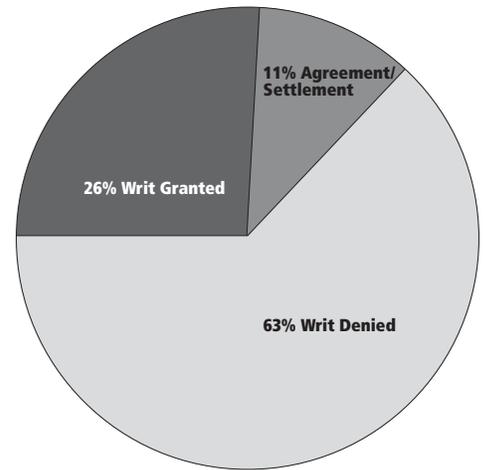
The numbers continued to drop in 2003 from 2002. During 2003, there were 229 new mandamus cases filed in the Franklin County Court of Appeals, which represents a 5 percent decrease in new filings compared to 2002.

In 2004, the number of cases dropped slightly from the previous year. There were 224 new filings reported for mandamus cases filed in the Franklin County Court of Appeals, which was a 2 percent decrease from 2003.

During last year, there were 248 new mandamus filings in the appeals court. New mandamus filings increased 11 percent between 2004 and 2005. During the first three months of 2006, there were 49 new mandamus cases filed.

In 2005, 63 percent of the Court of Appeals mandamus outcomes

resulted in the affirmation of the Commission order. In 26 percent of the cases, the Commission order was not affirmed. An agreement/settlement was reached in 22 cases, representing approximately 11 percent of all cases.



Franklin County Court of Appeals - 2005 Outcomes

Generally, when an agreement was reached, the claim was returned to the Commission for further proceedings.

When the number of agreements/settlements are factored out of the equation, 71 percent of 2005 Commission orders were found not to be an abuse of discretion, and 29 percent of the orders were found to be an abuse of discretion, generally resulting in a limited writ.

From 2002-2005, when the number of agreements/settlements are factored out of the equation, statistics show that an average of 72 percent of Commission orders were found not to be an abuse of discretion.

Ohio Supreme Court

Since 2001, the Industrial Commission of Ohio has seen a 25 percent decrease in mandamus appeals filed from the Franklin County Court of Appeals to the Supreme Court of Ohio.

In 2001, there were 79 mandamus appeals filed in the Ohio Supreme Court. In 2002, the number of appeals dropped to 71. The cases then dropped to 50 in 2003 and remained relatively constant with 52 in 2004. In 2005, there was a slight increase with 59 new mandamus appeals filed in the state's highest court.

In 2005, the results of mandamus cases considered by the Ohio Supreme Court reveal that 36 percent of the Commission orders were affirmed. The court did not affirm the Commission orders in 7 percent of the cases in 2005. A settlement or dismissal via a mediation conference resulted in 57 percent of the cases.

When the number of settled/dismissed cases are factored out, 84 percent of Industrial Commission orders were affirmed by the Supreme Court in 2005.

From 2002-2005, when agreements/settlements are factored out, statistics show that an average of 74 percent of Commission orders were affirmed.

New Hearing Officer Manual Policies

Since May 2005, the Industrial Commission added two policies to the hearing officer manual.

Memo E7 was effective May 23, 2005 and pertains to "Processing C-92 Applications when Allowance Question Is in Court"

The second new policy is Memo C4, effective May 10, 2006. Memo C4 pertains to "Salary Continuation."

Complete text of the updated Hearing Officer Manual can be viewed online or printed from the IC's Web site at www.ohioic.com.

Processing C-92 Applications when Allowance Question Is in Court

The Industrial Commission shall not process a C-92 Application during the pendency of the original allowance in Court under Ohio Revised Code 4123.512.

If a question of an additional allowance is in Court, there is jurisdiction to hear a C-92 as it relates to the original conditions allowed in the claim that are not being contested in Court.

The Industrial Commission interprets the term "pending" to include the period of time when an appeal to Court may have been dismissed pursuant to Civil Rule 41(A).

NOTE: 1962 O.A.G. No. 2794 and O.R.C. 4123.512(H)

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:

1. **Wage Agreements.** Salary Continuation is not the same thing as a wage agreement. Wage agreements are provided for in OAC 4123-5-20.
2. **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.
3. **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.
4. **Waiting Period for Permanent Partial Disability.** ORC 4123.57 requires that an injured worker wait 40 weeks from the last payment of compensation under ORC 4123.56, or 40 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 40 weeks from the date of injury to apply for permanent partial disability benefits.
5. **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.
6. **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.