

# Adjudicator



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## WCU Improvements Breed Success

It's only eight years old, but Workers' Compensation University (WCU) continues to dramatically improve each year.

WCU's are free educational conferences offered by the Bureau of Workers' Compensation (BWC), in cooperation with the Industrial Commission of Ohio (IC). They allow IC staff the opportunity to hand out literature and answer questions about Industrial Commission processes, policies and resources.

In 2008, WCU's made a stop in six different Ohio cities in September. They visited Cincinnati, Toledo, Akron, Columbus, Cleveland, and Dayton.

The success of this year's WCU's is thanks, in part, to improvements made by BWC to the registration process.

In the past, all WCU attendees had to check in on-site to receive a name badge and bar code so they could be tracked to get continuing education credits for each class. But this year, BWC created an option for attendees to print off their registration confirmation page and barcode from home, so when they arrived on-site they could head straight to class. This led to decreased lines at registration and less waiting for the customer.

Another improvement made this year was moving the evaluation process online. Previously, attendees filled out evaluations on paper and handed them in at the WCU. Then, BWC staff would have to manually key in the evaluations to give the customer credit for



*Arlisa Belcher, administrative assistant in the Columbus Regional office, answers questions from Ohio employers.*

attending, in turn allowing them to download their appropriate Certificate of Attendance.

This year, attendees simply went to the registration Web site 48 hours after the event, entered their email address, and completed the evaluations for the classes they attended. Then, the certificates they qualified for appeared at the bottom of the screen for download.

Some other notable WCU accomplishments this year:

- Reached the goal of 5,000 attendees
- Reduced the budget from the previous year
- On a scale of 1-10 (10 being most likely), post-event

evaluations averaged an 8.23 when attendees were asked the question: "How likely are you to attend future WCU's?"

Next year, BWC hopes to add a printable confirmation page to its list of improvements. It takes the better part of a year to plan WCU's, and approximately 40 staff to put on each one. But BWC planners say the public relations aspect alone makes it worth all the hard work.

"I love getting to meet our customers and hear their thoughts and concerns first hand," said WCU Organizer Ryan Rekstis. "It definitely feels good when you talk to a customer and they are going away with a better understanding of the workers' comp. system and the role they play in it."

## The Discovery Channel Has Nothing On Maumee Bay!



*Doctor David J. Hart speaks at the Maumee Bay Hearing Officer Training.*

They may have thought they were watching the Discovery Channel at the 2008 Statewide Hearing Officer Meeting after Dr. David Hart took the stage.

He showed graphic pictures of bloody spinal surgeries, and then spoke about new spinal surgeries that are less invasive, less bloody and lead to faster recovery times.

"I ask other doctors if they would want these surgeries done to them," Hart said,

pointing to a photo where a patient's spine is fully exposed. "Why would they want this when there is a better way?"

Hart then demonstrated the new surgeries using actual surgery video and computer animation to illustrate his techniques. It was all part of a series of training sessions for IC hearing officers at Maumee Bay State Park near Toledo. The sessions are designed to educate them about policy changes, medical procedures and legislative policies.

IC hearing officers conduct hearings on disputed workers' compensation claims, determine violations of specific safety requirements, and determine if an injured worker is permanently and temporarily disabled due to a work-related injury or occupational disease. Three governor-appointed bi-partisan Commissioners lead the Industrial Commission; each serves a six-year term.

Because Dr. Hart's presentation was filled with a litany of medical verbiage, Hart frequently showed short, comedic videos to lighten things up. He showed video from his favorite rock band, System of a Down, during a concert, violently head banging their way through one of their songs.

"I think these guys will probably have spinal problems later in life," said Hart, who works as the Director of Spinal Neurosurgery at Case Western Reserve University.

After Hart's presentation, Megan Robertson explained how the Ohio Lawyers Assistance Program (OLAP) provides confidential help to lawyers, judges and law students suffering from substance abuse, addiction or mental illness.

"We are seeing more and more incidents of depression among Ohio's lawyers, and they often wait too long to seek help," said Robertson.

After lunch, updates on legislation and new IC policies and procedures were provided, and then Chairman Gary DiCeglio and Commissioners Bill Thompson and Kevin Abrams took questions from the audience.

Perhaps the best quote of the day came from Attorney Jonathan Goodman.

"If workers' compensation law is the Beatles, then providing a case law update is like Ringo Starr," Goodman said. "Is it the most entertaining? No. Is it necessary? Yes."

While it may not be the Discovery Channel, from the Beatles to bloody spinal surgery video, you might call this year's Statewide Hearing Officer Meeting an audio-visual journey of discovery.

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## Outstanding Legal Leader Directs the Industrial Commission



*The IC's new Executive Director Christa Deegan.*

She has over 20 years experience in legal leadership with extensive experience in ethics, EEOC and civil rights cases, workers' compensation and unemployment compensation issues.

A diverse background makes Christa Deegan a perfect fit for the Industrial Commission of Ohio's Executive Director position. Her first day on the job was July 21.

Ms. Deegan came to the IC from the law firm of Kravitz, Brown and Dortch in Columbus, where she served as trial and appellate counsel for federal and state criminal defendants. She's worked as an Assistant US Attorney for the US Justice Department, an Assistant County Prosecutor for Cuyahoga County, and as Supervising General Counsel for the US Homeland Security Department's Transportation Security Administration (TSA).

During the course of her career, she has received numerous law enforcement commendations and awards of extraordinary performance. She graduated from the Ohio State University and Capital University's School of Law.

# Supreme Court Case Updates

## ***Injured worker is not barred from TTD when he is already disabled when terminated from employment***

In *ex rel. Reitter Stucco, Inc. v. Indus. Comm.*, 117 Ohio St. 3d 71, 2008-Ohio-499, an injured worker sustained a back injury in 2003. He had surgery and underwent physical therapy with the intent to return to work. During the time from his injury to his termination, the employer paid him wages in lieu of TTD. The injured worker was terminated for a comment he made about the company's president and the employer ceased wage payment. He filed for TTD and a DHO denied the TTD, finding that his termination constituted a voluntary abandonment of employment under *Louisiana-Pacific Corp. v. Indus. Comm.*, 72 Ohio St. 3d 401. Thereafter, an SHO reversed, finding he was temporarily and totally disabled when he was fired, consistent with *Pretty Prods. v. Indus. Comm.*, 77 Ohio St. 3d 5. Thereafter, the employer appealed. The Supreme Court concluded that both cases factor into the TTD eligibility analysis. While the injured worker would be barred for TTD under *Louisiana-Pacific*, the Court found the undisputed fact that he was medically incapable of returning to his former position of employment at the time of his termination means that he was eligible for TTD under *Pretty Prods.*

## ***Activities inconsistent with permanent total disability compensation***

In *McDaniel v. Indus. Comm.*, 118 Ohio St. 3d 319, 2008-Ohio-2227, the injured worker was awarded PTD compensation beginning in 1991. In 2003, BWC received information that the injured worker was operating a lawn care business and his services were used and paid for by at least six customers. Eventually, the injured worker admitted all the activity reported by Bureau investigators. The Bureau then motioned for the Commission to terminate PTD, declare overpayment as of May 10, 2001, and issue a finding of civil fraud. The Commission granted the Bureau's requests after finding the injured worker's activities constituted sustained remunerative employment. The Court of Appeals for Franklin County vacated the Commission, relying on *Lawson v. Mondie Forge*, 104 Ohio St. 3d 39, 2004-Ohio-6068, 817 N.E. 2d 880, which held that 207 documented activities of a questionable nature did not foreclose PTD. The Court of Appeals believed that since the injured worker had engaged in much fewer than 207 activities, he had not engaged in sustained remunerative employment. The Commission appealed the Court's decision. The Supreme Court found by limiting itself to the numerical approach, the Court of Appeals had failed to obtain the timeframe and character of activity that a contextual analysis would have provided. The Court held that because the injured worker's activities were done in connection with a business enterprise, it was appropriate for the Commission to consider them. The Court reversed the judgment of the Court of Appeals. To the contrary, in *State ex rel. AT&T, Inc. v. McGraw*, Slip Opinion No. 2008-Ohio-5246, the Court found, where the injured workers' wife was the sole proprietor of a muzzle loading firearm shop and the injured worker referred to his involvement in the business as a hobby and as a way of keeping busy, that there was no evidence that the injured worker was capable of engaging in the disputed activities on a sustained basis. It found mere presence at the store is not itself disqualifying and that injured worker was not getting paid for taking a look at guns.

## ***Self-insured employer entitled to offset for taxes withheld under wage replacement program***

In *State ex rel. General Motors Corp. v. Industrial Comm.*, 2008-Ohio-1593, on October 4, 1998, Stephan, a GMC employee, herniated a disc in the performance of his duties. Following the injury, Stephan filed a workers' compensation claim. While Stephan's claim was pending, GMC paid him \$7,091.30 through its wage replacement insurance program. In making those payments, GMC withheld a portion of each payment and sent the withholdings to federal and state taxing authorities. In February 1999, GMC informed the Commission that it would recognize Stephan's injury and that he was thus entitled to \$9,119.71 in TTD payments. GMC paid Stephan the difference between the TTD benefits and the amount it had already paid him through the wage replacement program.

Stephan believed that he was owed additional compensation because GMC's payment did not include the taxes GMC previously withheld. A DHO found that he was entitled to a net amount of \$9,119.71. GMC appealed, and a SHO determined that GMC had paid the correct amount and vacated the order. Stephan appealed to the Commission, which vacated the order of the SHO and ordered that GMC could not claim an offset for the withheld taxes. GMC filed a complaint in mandamus in the Franklin County Court of Common Pleas and the trial court denied GMC's requested writ. On appeal to the Court of Appeals, the Court reversed the trial court's order and remanded the case with "instructions to issue the requested writ of

## **Supreme Court Case Updates Continued**

mandamus ordering the Industrial Commission to set off the full amount paid by [GMC] under the non-occupational sickness and accident insurance program, including those amounts withheld from the employee's taxes." The injured worker and the Commission filed notices of appeal with the Supreme Court of Ohio.

The Supreme Court affirmed the judgment of the Court of Appeals. The offset statute at R.C. 4123.56(A) contains no ambiguity – "compensation paid under this section ... shall be paid only to the extent by which the payment or payments exceeds the amount of the non-occupation insurance or program paid or payable." The Supreme Court found GMC was entitled to a set off for the entire amount GMC paid, including the tax withholdings.

### ***Prior denial of medical payment res judicata***

In *State ex rel. International Truck & Engine Corp. v. Indus. Comm.*, 2008-Ohio-4494, decided September 11, 2008, the injured worker had a workers' compensation claim for several allowed conditions sustained while in the course of employment. In 2005, he requested authorization for surgery, but a SHO issued an order denying the authorization because the surgery and related services were not "reasonably related" to the allowed conditions. On the advice of his treating physician, he had the surgery, which was successful, at his own expense. The injured worker then moved for TTD based on medical evidence from his treating physician that indicated that his disability during the post-surgical recovery period was related to his allowed conditions. In 2006, a DHO awarded TTD compensation to the claimant. The DHO found that although the surgery was disallowed, it "stemmed" from the allowed conditions, and that causal relationship made the compensation payable.

The employer filed an action for a writ of mandamus alleging that the Commission abused its discretion by awarding TTD compensation for the surgery. The employer asserted that the surgery was not compensable without a causal relationship to the allowed conditions, and the Commission's 2005 order had denied that relationship. Thus, the issue was res judicata. The Court of Appeals disagreed, but on appeal the Supreme Court agreed with the employer rejecting the Commission's claim that it had continuing jurisdiction over the claim per the holding in *Gobich v. Industrial Comm.*, 103 Ohio St. 3d 585, 2004-Ohio-5990. The Court held that absent the Commission's proper invocation of its continuing jurisdiction over its 2005 order, the issue of whether a causal relationship between the surgery and the claimant's allowed conditions was res judicata. Informal invocation of continuing jurisdiction was not permitted.

### ***Legally blind injured worker suffered loss of vision under R.C. 4123.57(B)***

In *ex rel. Autozone, Inc. v. Indus. Comm.*, 117 Ohio St. 3d 186, 2008-Ohio-541, the injured worker perforated his eye with a screwdriver while working. On May 6, 2004, Dr. Mah examined him and found he had 20/200 vision in the left eye--he was legally blind. Thereafter, the injured worker moved for a scheduled loss award for total loss of vision based on the loss of his natural lens. The DHO denied the total loss award because he still had some vision in his left eye. A SHO revised the DHO's decision relying on *Parsec, Inc. v. Indus. Comm. (1998)*, 82 Ohio St. 3d 417. In *Parsec*, the injured worker obtained an award for total vision loss when the lens was surgically removed due to an industrial injury. The SHO also relied on R.C. 4123.95, which directs workers' compensation statutes to be construed liberally in favor of injured workers. Thereafter, the employer's appeal was refused by the Commission and the appeals court. The employer filed a mandamus action. The Supreme Court affirmed the decision of the Court of Appeals, and denied the employer's requested writ of mandamus. The Court found that the examining doctor's determination that the injured worker was rendered legally blind in his left eye due to the loss of a lens, constituted some evidence that the injured worker sustained the loss of sight of an eye under R.C. 4123.57(B).

### ***Commission required to strictly comply with language of R.C. 4123.65(A)***

In *Wise v. Ryan*, 118 Ohio St. 3d 68, 2008-Ohio-1740, the injured worker sustained an injury in 1995 to his leg and his claim was allowed. Following surgery and treatment, he received TTD. On June 2, 1997, he signed a settlement agreement. The injured worker had an IQ of 72, read at a fourth grade level, and was not represented by counsel. Five years later, the injured worker, represented by counsel, moved to vacate the settlement agreement based on his lack of representation and competency at the time of signing. A DHO denied his motion after finding the injured worker failed to meet any of the prerequisites necessary to invoke continuing jurisdiction under R.C. 4123.52. The SHO found the claimant was competent enough to understand the agreement at the time of signing, affirming the DHO's order. On mandamus, the Court of Appeals affirmed the Commission order. The Supreme Court began by identifying the five prerequisites by which the Commission could exercise continuing jurisdiction under R.C. 4123.52. Particularly, the Court determined that an agreement's failure

to satisfy R.C. 4123.65(A) met two of the five prerequisites under R.C. 4123.52. The Court determined that the agreement clearly violated R.C. 4123.65(A) as it failed to set forth the circumstances under which a settlement of claim was desirable. Then, the Court applied *Jones v. Conrad (2001)*, 92 Ohio St. 3d 389, which held that the violation of any provision of R.C. 4123.65 mandated the exercise of continuing jurisdiction. The judgment of the Court of Appeals was reversed.

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## New and Amended Hearing Officer Manual Policies

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Effective November 5, 2008:

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

The service of interpreters will be secured for hearings, pre-hearing conferences, 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.

#### Roles of the interpreter in hearings:

- To facilitate the hearing process and to place the individual for whom services are provided in a position as close as linguistically possible to that of a similarly situated individual in the same legal setting
- Interpreters should only attend the hearing that they were notified to attend by the IC
- Render complete and accurate interpretation
- Avoid any conflict of interest, financial or otherwise
- Refrain from dispensing legal advice, communicating conclusions or expressing personal opinions to those for whom they are interpreting
- Maintain an impartial and neutral attitude
- Refrain from providing services if he or she has a stake in the outcome

#### Outside the hearing room:

- The interpreter may initially acknowledge the individual for whom services are provided to ensure successful communication
- Communication with the individual for whom interpretive services is provided is permissible by parties, through the interpreter, to clarify information prior to commencement of the hearing
- Interpreters should otherwise refrain from independent conversations with the parties or witness(es) prior to commencement of the hearing

The interpreters will submit a C-19 form for payment to the Office of Customer Service. The interpreting coordinator shall then submit the C-19 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)

Effective September 29, 2008:

### **Memo E7 - Processing Applications for Benefits Pursuant to O.R.C. 4123.57 when an Allowance Question is in Court**

The Industrial Commission shall not process an application for benefits pursuant to O.R.C. 4123.57 during the pendency of the employer's appeal of the original allowance in Court under O.R.C. 4123.512. If a question of an additional allowance is in Court, there is jurisdiction to process an application 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).

Please see *Hearing Officer Manual* policy I5 regarding the processing of other compensation and medical benefit issues during the pendency of the original allowance or additional allowance in Court.

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

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Effective September 29, 2008:

### **Memo I5 - Processing Compensation and Medical Benefits Issues in Claims When an Original Allowance or Additional Allowance Issue is in Court**

The chart on the following page delineates how compensation and medical benefits issues should be handled and processed when an employer's appeal is pending in court. Column one identifies the compensation or medical benefit issue. Column two indicates whether or not the compensation or medical benefit issue can be considered for adjudication when the original allowance issue is on appeal to court pursuant to O.R.C. 4123.512. Column three indicates whether or not the compensation or medical benefit issue can be considered for adjudication when an additional allowance issue is on appeal to court pursuant to O.R.C. 4123.512.

**NOTE:** *Hearing Officer Manual* policy E7 also addresses related issues.

Yes indicates – Process and/or adjudicate the request for compensation and/or benefits

No indicates – Do not process and/or adjudicate the request for compensation and/or benefits

## New Hearing Officer Manual Policies Continued

<u>Issue in Question</u>	<u>Original Allowance and R.C. 4123.512 Appeals to Court</u>	<u>Additional Allowance and R.C. 4123.512 Appeals to Court</u>
Temporary Total Disability	Yes	Yes
Permanent Total Disability	Yes	Yes
Medical Expenses	Yes	Yes
Permanent Partial Disability	No	No, except if request is based on the original allowance
Scheduled Loss	No	No, except if request is based on the original allowance
Impairment of Earning Capacity	No	No, except if request is based on the original allowance
Wage Loss Compensation	Yes	Yes
Motion for Additional Condition	Yes	Yes
Living Maintenance	Yes	Yes
Living Maintenance Wage Loss	Yes	Yes
Handicap Reimbursement (CHP-4)	Yes	Yes
Violation of a Specific Safety Requirement	Yes	Yes

Effective September 29, 2008:

### **Memo K5 - Timely Completion of Orders**

Hearing officers are to complete and issue their orders in a timely fashion. The hearing officer must issue an interlocutory advisement order if he or she will not be able to issue a final order within twenty-four (24) hours of the conclusion of the hearing. The advisement order will indicate why the hearing officer is taking the issue under advisement.

It is recognized that new evidence or arguments may be introduced at hearing requiring the need for more time to evaluate information in the claim file, and that some hearing issues may be complex and require more than twenty-four (24) hours to complete the final order. In those cases, once a hearing officer has issued an interlocutory order taking the matter under advisement, he or she must complete and issue a final "Mitchellized" order within seven (7) calendar days of the hearing. If a final "Mitchellized" order is not expected to be issued within seven (7) calendar days due to extenuating circumstances, the hearing officer is required to meet with their regional manager to discuss a definite date when the order will be issued.

In no case will an order be issued more than fourteen (14) calendar days after the hearing absent consent of the regional manager.

Effective September 29, 2008:

### **Memo M2 - No Communication with Physicians Examining for Industrial Commission**

No person or party other than Industrial Commission employees shall communicate with a licensed practitioner examining or reviewing on behalf of the Industrial Commission. This restriction shall also apply to the party being examined other than during the examination itself.

When an injured worker has been scheduled for an examination by an Industrial Commission physician, the injured worker's attorney or the attorney representing the listed employer, or the official representative of the injured worker or employer, shall be prohibited from attending or observing said examination.

This shall not affect the right of any party to proceed under O.A.C. 4121-3-09(A)(7) or impair the right of parties to file additional medical or other evidence with the Industrial Commission for inclusion in the claim file.

**NOTE:** Industrial Commission Resolution, No. R82-7-3 (January 25, 1982)

Reminder: All of the IC's Policies, Rules and Resolutions are available on our Website, [www.ohioic.com](http://www.ohioic.com).

Effective May 5, 2008:

### **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 an 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. The determination as to whether a substantial aggravation has occurred is a legal determination rather than a medical determination. Therefore, while it is necessary that a hearing officer rely on medical evidence which provides the necessary documentation pursuant to the statute, it is not necessary that the relied upon medical evidence contain an opinion as to substantial aggravation.

Effective May 5, 2008:

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

Treatment requests may be submitted by a psychologist, a medical doctor, a doctor of osteopathy, a licensed professional clinical counselor, or a licensed independent social worker. However, evidence in support of disability due to psychological conditions may only be submitted by a psychologist, a medical doctor, or a doctor of osteopathy.

## New Hearing Officer Manual Policies Continued

Effective May 5, 2008:

### 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 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 officer 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.

- (C) If a party requests the allowance of a symptom rather than a condition, that request should be dismissed rather than disallowed.

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

Effective May 5, 2008:

### Memo O3 - Staff Hearing Officer's Review of Settlements

O.R.C. 4123.65(D) requires that an Industrial Commission staff hearing officer review settlements and determine whether the "settlement agreement is or is not a gross miscarriage of justice."

A review of the following documentation shall be deemed sufficient to discharge this responsibility:

- 1)** A settlement agreement signed by all necessary parties and/or their attorney. The signature of a non-attorney representative is not sufficient or appropriate as set forth in previous guidance given on the issue. An e-signature is permitted so long as the legal requirements are met. An email is not sufficient to constitute an e-signature. Also, the thirty day period

provided to the parties to withdraw from the settlement agreement as described in O.R.C. 4123.65(C) cannot be waived by the parties.

- 2)** In state fund claims, a BWC approval order must set forth the terms of the final agreement of all necessary parties, including the amount allocated to each claim. In addition, the settlement documentation must also provide information which justifies the reasoning for the settlement as required by O.R.C. 4123.65(A). A separate order need not be issued in every claim so long as all parties to each settled claim are provided notice, in a BWC approval order, as to the settlement value of each claim being settled. In addition, if the amount of the overall settlement set forth in a BWC approval order matches the amount contained in the settlement agreement, it is not necessary for BWC to obtain another signature of the parties.

The staff hearing officer review shall include the documentation referenced above, and such additional information as may be necessary to determine the basis for the settlement amount. Generally speaking, review of documentation relied on to support BWC approval order will satisfy this requirement.

If the staff hearing officer determines that the amount and the terms of the settlement are not clearly unfair, the staff hearing officer should indicate that the settlement agreement was reviewed. If the staff hearing officer does not have sufficient information, as defined in this policy, to review the settlement or determines that the settlement is "clearly unfair," an order should be issued disapproving the settlement within the thirty day "cooling off" period.

Effective May 5, 2008:

### Memo P2 - Civil Penalty

When it has been determined that an employer has not corrected a previous violation as required by an order, BWC will refer the matter for adjudication of the issues of the subsequent violation as provided in O.A.C. 4121-3-20(G), as well as the civil penalty provided in O.A.C. 4121-3-20(H). In adjudicating these issues, notice must be provided to all parties to the claim as well as the employer involved. In determining whether to assess a civil penalty, the staff hearing officer should ensure that an injury was the proximate result of the first VSSR violation within the twenty-four (24) month period required in O.A.C. 4121-3-20(H).

Effective May 5, 2008:

### Memo P4 - Corrective Orders

Pursuant to O.A.C. 4121-3-20(G), every order which adjudicates a VSSR application and finds that a violation occurred must address the issue of correction of the violation. In no case should a VSSR grant order be silent on the issue of correction. If correction is unnecessary or impossible (for example, when a piece of equipment is no longer in service), the hearing officer should include such discussion in the order.

When BWC finds that the proper correction has not occurred, the matter will be referred to the Industrial Commission for processing pursuant to 4121-3-20(G) and (H). In that instance, the matter should be set on the issue of subsequent violation for failure to correct the previous violation, together with the issue of a civil penalty to be assessed pursuant to O.A.C. 4121-3-20(H).