



STATE OF OKLAHOMA

WORKERS' COMPENSATION COMMISSION

MINUTES

of the

WORKERS' COMPENSATION COMMISSION

FOR THE STATE OF OKLAHOMA

for the

June 19, 2014

Regular Public Meeting

MINUTES OF THE MEETING OF THE WORKERS' COMPENSATION COMMISSION
FOR THE STATE OF OKLAHOMA

NOTICE OF THIS MEETING WAS FILED WITH THE SECRETARY OF STATE ON THURSDAY, DECEMBER 12, 2014.

The members of the Workers' Compensation Commission for the state of Oklahoma met at 1915 N. Stiles Ave., Oklahoma City, Oklahoma, on June 19, 2014.

Members present: Chairman Troy Wilson, Commissioner Denise Engle, Commissioner Bob Gilliland.

Chairman Wilson expressed appreciation for those in attendance and announced the agenda has been posted for this meeting. After the roll was taken, he announced the presence of a quorum and affirmed that all documents had been filed. The Statement of Compliance with the Open Meetings Act was read and the meeting was called to order at approximately 1:30 p.m.

Approval of Minutes

Chairman Wilson moved to approve the minutes of the June 13, 2014 special meeting.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

No: None. Abstentions: None. The motion carried.

Executive Director's Report

Dr. Rick Farmer gave his report and covered the following items:

- Case Statistics
As of Monday, a total of 820 have been filed. The numbers remain low, but they are beginning to tick upward.
- Confirmations
The last week of the legislative session, all three Commissioners were confirmed.
- Self-Insurance
Several public entities renew on July 1, and will meet the deadlines.
- OWCC Audit
The audit of the OWCC has been ongoing since late January. I spoke to the State Auditor today. He is going to take steps to wrap up the audit very quickly.
- Budget
The WCC and CEC will have separate agency budgets. We have a meeting with OMES on Friday to set up the WCC's budget. SB 2127 appropriated \$2,750,000 to each the WCC and the CEC. HB 3539 split the fee income based on the entity generating it.

About 80 percent of the fees will go to the CEC. The Commission has had a cooperative relationship with the CEC and we expect that to continue. The Commission has communicated revenue projections to Judge Taylor and asked for a meeting.

Commissioners' Reports

Commissioner Engle gave her report and covered the following items:

- In the past month, Commissioner Engle spoke with the following groups about implementing the new process including:
 - Oklahoma Safety Council Annual Conference in Tulsa: a lot of questions from employers as well as positive feedback.
 - Independent Insurance Agents Annual Conference in Norman: well attended – interesting feedback. Several insurance representatives said rates were coming down, so we are already seeing some positive results since implementing the new administrative system.
- The Commission is planning an education conference September 22-23 for about 500 attendees. Governor Fallin will be one of the speakers.

Commissioner Gilliland presented his report about the following items:

- CERTIFICATION OF MEDIATORS
To become a certified mediator, one must submit a signed and completed Commission prescribed Mediator Application form and resume to the Commission and meet the statutory requirements in 85A OS §110. This application should be amended to assure mediators are familiar with the 6th Edition of the AMA Guidelines and the Official Disability Guidelines published by the Work Loss Data Institute. The Commission's List of Mediators was last updated on 4/7/14. Mediators shall be required to complete at least six (6) hours of continuing education.
- ATTORNEY FEE DISPUTES
In most cases, attorney fees are set by statute. 85A OS §82. Should a fee dispute arise as to the amount or the attorney entitled to the fee, the dispute will come before an ALJ.
- PENALTIES
Under the statute, the Commission may assess a fine against an employer who fails to secure the payment of compensation. Compliance investigates and sends a proposed judgment to the employer. The employer may contest the proposed judgment and request a hearing, which will go before an ALJ. In another provision, any employer who after notice refuses to send any report required by statute shall be subject to a civil penalty.

Until WCIS or another case management system is in place, the Commission does not have an efficient means to investigate failure of an employer to file a Form 2. Once a case management

system is programmed or in place to handle Form 2s, a report could be generated letting the Compliance Division know when a Form 3 is filed without a corresponding Form 2.

Also, the statute provides that if there is a delay in medical payments, it would be brought to the Commission's attention by the filing of a Form 19, Provider Request for Medical Fee Dispute Resolution. The Commission does not currently have a procedure in place for either of the penalties provided in this section. The ALJ could assess the 25% penalty for any amount due at the hearing on the medical fee dispute. Notification of this penalty could be sent to the Compliance Division which would track the assessment of these penalties. Once an employer or insurance carrier has been assessed a certain number of penalties, establishing a pattern of delaying payments, the Compliance Division could assess the employer or insurance carrier the \$5,000 penalty.

There is a penalty for failing to file the Form 4, as required. A procedure is not currently in place for assessing this penalty. The ALJ could note that a Form 4 was not filed and send the information to the Compliance Division. Compliance would then send notice to the employer of the penalty and the employer would be given the opportunity for a hearing on the assessment.

There is also a penalty under statute for failure to pay the required Multiple Injury Trust Fund assessment and also for the Self-Insurance Guaranty Fund. Under either circumstance, notice of payment is required to be given to the Commission. Compliance would send fine notices to the employers who failed to comply.

At a hearing before an ALJ or the Commission, the ALJ or Commission may find a person in contempt and fine the person, at that time, in an amount not to exceed \$10,000.

There are criminal penalties for fraud. If the Commission finds a violation of fraud, the Chair of the Commission or the Attorney General refers the matter to the prosecuting attorney having criminal jurisdiction over the matter.

- TORT CASES

An employee can pursue an intentional tort action before the Commission (ALJ) or in district court, but not both. Tort cases are an exception to exclusive remedy, but should not require any additional preparation should the employee pursue his claim before the Commission.

- DISCRIMINATION OR RETALIATION

The new Act vests the Commission, rather than District Court, with exclusive subject matter jurisdiction to hear claims of employees who claim the employer has discriminated against them because the employee has filed a claim under the Act. The Commission may award up to \$100,000. The prevailing party is also entitled to recover costs and a reasonable attorney fee.

Commissioner Engle asked modifying a penalty in the future would require a statutory change or a rule change. Commissioner Gilliland responded if it was just a modification, then by rule. If a new penalty was to be created, it must be by statute.

Chairman Wilson thanked the other Commissioners for their informative reports and introduced Dr. Rick Farmer to provide a status report on the Commission's EDI implementation.

EDI Implementation Timeline

Dr. Rick Farmer explained that an Electronic Data Interchange is our way of getting the TPA's, insurance companies, and our computers to talk to each other and allows information to be transferred automatically. Currently, the data on the forms is being type in manually. The new law created several additional forms which has increased the typing fourfold, so having an EDI will improve our efficiency and be a wiser use of resources. We were told this normally can take between 12-18 months, but we should be able to make it happen sooner.

OMES Information Services Procurement worked with us on our RFP. We received two bids from national vendors and our three-person team reviewed them independently – Clif Cypert, Kim Bailey, and Chris Herndon. Each member of the team came to the same conclusion as to the best choice. Our timeline includes holding a public hearing on EDI following our selection.

The Commissioners voted to develop a standard set of data to keep everyone consistent. The IAIABC has developed a standard called Release 3 (R3) which identifies the amount of data in fields to be filled in and chooses the standard that allows what the insurance companies are already able to deliver, and for us to be able to receive. The Commission voted at the last meeting to adopt R-3 as our standard. It will require some changes to our forms through this process. We will need to develop internal and external report. Jason Smitherman is assisting us with the forms. He is the Risk Manager for Oklahoma City and supervises the filing of many forms. He knows what it takes and what we need to do in the future to make this project a success.

Executive Session

Motion to enter into Executive Session: Commissioner Gilliland.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

No: None. Abstentions: None. The motion carried.

Open Session

Motion to re-convene into Open Session: Commissioner Engle.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

No: None. Abstentions: None. The motion carried.

Adjournment

Chairman Wilson announced that the next Regular Public Meeting of the Commission will be June 19, 2014 at 1:30 p.m.

Motion to adjourn: Chairman Wilson.

Second: Commissioner Engle.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

No: None. Abstentions: None. The motion carried.