

SPECIAL MEETING OF THE
OKLAHOMA WORKERS' COMPENSATION
COMMISSION

~ APPEALS ~

Thursday November 10, 2016

9:00 a.m.

Commission Chambers

1915 N. Stiles Ave.

Oklahoma City, Oklahoma

www.wcc.ok.gov

MINUTES

Members present: Chairman Bob Gilliland, Commissioner Mark Liotta and Commissioner Russell.

Staff present to support the Commission: Lindsey Christopher and Dana Esparza.

CALL TO ORDER Presiding Appellate Officer, Chairman Gilliland

Call to order 9:00 a.m. by Chairman Gilliland, Presiding Appellate Officer.

ROLL CALL Presiding Appellate Officer, Chairman Gilliland

After the roll call was taken, Chairman Gilliland announced the presence of a Quorum and the Statement of Compliance with the Open Meeting Act was read.

NOTICE OF COMPLIANCE..... Dana Esparza

STATEMENT OF OKLAHOMA OPEN MEETING LAW
COMPLIANCE

Notice of this Regular Meeting was filed with the Secretary of State's office on Monday, October 17, 2016 at 10:04 a.m., in compliance with the Open Meeting Act.

The Agenda was posted at 2:49 p.m. on Monday, November 7, 2016, more than 24 hours in advance of the meeting, in compliance with the Open Meeting Act. It was posted on the Commission website and at 1915 North Stiles, the Commission's principal office.

MINUTES:

- The drafted Minutes of the Special Meeting of October 21, 2016 were considered for approval.

Presiding Appellate Officer Chairman Gilliland presented the minutes of the October 21, 2016 Special Meeting for approval.

Motion: Commissioner Liotta made a motion to approve the minutes of the October 21, 2016 Special Meeting.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: MINUTES APPROVED

Appeal Hearings before the Commission En Banc from Orders Issued by the Commission's Administrative Law Judges

Franette Stratton v. Logans Roadhouse Inc. & Ace American Insurance Co., File # CM2015-01843A

Respondent filed an appeal from the order issued by Administrative Law Judge Sommer. Gary G. Prochaska represented the Claimant and John A. McCaleb represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Commissioner Liotta moved to affirm the Administrative Law Judge's order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, and Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

Lewis Baker v. BJs Restaurants Operations co. & Arch Insurance Company, File # CM2015-02387A

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Ryan Polchinski represented the Claimant and Terri Phillips represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Presiding Appellate Officer Chairman Gilliland moved to take preliminary action to remand the Administrative Law Judge's order for ruling on reevaluation of the right shoulder by an IME chosen by the Administrative Law Judge and other proceedings consistent therewith and instruct Commission Counsel to draft a proposed order to be considered for continued action at a future meeting.

Second: Commissioner Liotta

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, and Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER REMANDED

Jonathan McCoy v. Brady Welding & Federal Insurance Co., File # CM2015-02907L

Claimant filed an appeal from the order issued by Administrative Law Judge McMillin. Daniel J. Talbot represented the Claimant and Malcom D. Smith, Jr., represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Commissioner Russell moved to affirm the Administrative Law Judge's order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

Johnny Barham v. Billy May Enterprises Inc. & Compsource Mutual, File # CM2015-04278A

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Ryan Polchinski represented the Claimant and Preston Hanner represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Presiding Appellate Officer Chairman Gilliland moved to affirm the Administrative Law Judge's order with modifications to the Administrative Law Judge's order in paragraph IV 3 by correcting the typographical error of "Right Hand" by changing it to "Left Hand." The Order should be further modified in paragraph 3, third paragraph, next to the last sentence, by changing it to read "These weeks are combined "with" (rather than "to") 38.63% to the hand to make a total of 50% to the hand" and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Commissioner Liotta

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED WITH MODIFICATION

Martin Wilson v. WHB Transportation LLC (OWN RISK #13610), File # CM2015-04750L

Claimant filed an appeal from the order issued by Administrative Law Judge McMillin. Jack Stipe represented the Claimant and Tyler Worten represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Commissioner Liotta moved to affirm the Administrative Law Judge's order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Nay: Commissioner Russell

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

Kyle J. O'Kane v. Tulsa Oilers Hockey Inc., & Great Divide Insurance Co., File # CM2015-05787J

Respondent filed an appeal from the order issued by Administrative Law Judge McMillin. Bryce A. Hill is the attorney of record for the Claimant and Jennifer Ahrend represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Commissioner Liotta moved to affirm the Administrative Law Judge's order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Nay: Commissioner Russell

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland and Commissioner Liotta.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

Charolette Coston v. Pride Planting, Inc., &/or Valence Surface Technologies, LLC & American Zurich Insurance Company, File # CM2016-00318Q

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Pamela Cornett represented the Claimant and Jay Chaney represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Presiding Appellate Officer Chairman Gilliland moved to affirm the Administrative Law Judge's order, and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission. The Respondent raised the issue as to whether the Claimant's Constitutional arguments were properly raised. That objection is overruled. We have considered Claimant's Constitutional arguments. Claimant has failed to show that the Administrative Workers' Compensation Act is being unconstitutionally applied to this Claimant. In the future we urge parties to make the constitutional arguments, if known, to the Administrative Law Judge at trial.

Second: Commissioner Liotta

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

Announcements

Commission's next regularly scheduled meeting is Thursday November 2, 2016. Commission's next special meeting regarding Appeals is scheduled for Thursday, November 17, 2016.

ADJOURNMENT

Motion: Commissioner Liotta moved to adjourn the meeting at approximately 12:30 p.m.

Second: Commissioner Russell

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: THE MEETING WAS ADJOURNED.