

SPECIAL MEETING OF THE
OKLAHOMA WORKERS' COMPENSATION
COMMISSION

APPEALS

Friday December 16, 2016
9:00 a.m.
Commission Chambers
1915 N. Stiles Ave.
Oklahoma City, Oklahoma
www.wcc.ok.gov

AGENDA

CALL TO ORDER Presiding Appellate Officer, Chairman Gilliland
ROLL CALL Presiding Appellate Officer, Chairman Gilliland
NOTICE OF COMPLIANCE.....Dana Esparza
BUSINESS Presiding Appellate Officer, Chairman Gilliland

A. MINUTES:

- The drafted Minutes of the Special Appeal Meetings of November 17, 2016 and December 15, 2016 will be considered for approval.

THE FOLLOWING MATTERS ARE PRESENTED FOR CONSIDERATION AND ACTION, IF ANY, DEEMED APPROPRIATE BY THE COMMISSION

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

The hearings before the Commission en banc will be conducted pursuant to the authority and jurisdiction of the Administrative Workers' Compensation Act, Title 85A O.S. §1 et seq., and the Workers' Compensation Commission's Permanent Rules, OAC 810. The procedure for the hearings before the Commission en banc is as follows:

- Each party will be allowed ten (10) minutes for oral arguments.
- The appellant will present first. Appellant may divide his or her ten minutes for argument, allowing a portion of that time for rebuttal.

- Both parties are subject to questioning by Commissioners.

1. Tanner David Cassell v. Jr. Reynolds Welding & Roustabout LLC & Compsource Mutual Ins. Co. (FKA Compsource Oklahoma), File #CM2015-07668A

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Brandon J. Burton is the attorney of record for the Claimant and Robert A. Manchester is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action, affirming the order and decision of the Administrative Law Judge and issuing an order to that effect, or taking preliminary action in the matter to reverse, modify, remand or if otherwise do not fully affirm the order of the Administrative Law Judge and instructing the Law Clerk or other staff member to draft a proposed Order to be considered in further deliberations at a future Commission meeting, or continuing the matter.

2. Jesse McPeak v. Express Services Inc. & New Hampshire Insurance Co., File #CM2015-03051F

Claimant filed an appeal from the order issued by Administrative Law Judge Sommer. Bob Burke is the attorney of record for the Claimant and Travis A. Fulkerson is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action, affirming the order and decision of the Administrative Law Judge and issuing an order to that effect, or taking preliminary action in the matter to reverse, modify, remand or if otherwise do not fully affirm the order of the Administrative Law Judge and instructing the Law Clerk or other staff member to draft a proposed Order to be considered in further deliberations at a future Commission meeting, or continuing the matter.

3. Anthony L. Davis v. Unit Drilling Co. (Own Risk #17006), File #CM2015-01734F

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Randy D. Edmondson is the attorney of record for the Claimant and Peter Mills is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action, affirming the order and decision of the Administrative Law Judge and issuing an order to that effect, or taking preliminary action in the matter to reverse, modify, remand or if otherwise do not fully affirm the order of the Administrative Law Judge and instructing the Law Clerk or other staff member to draft a proposed Order to be considered in further deliberations at a future Commission meeting, or continuing the matter.

4. Stacy T. Mathews v. Porta John Co. of Tulsa & Compsource Mutual Ins. Co. (FKA Compsource Oklahoma), File#CM2015-03327J

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Arthur H. Adams is the attorney of record for the Claimant and Blake I. Whitten is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action, affirming the order and decision of the Administrative Law Judge and issuing an order to that effect, or taking preliminary action in the matter to reverse, modify, remand or if otherwise do not fully affirm the order of the Administrative Law Judge and instructing the Law Clerk or other staff member to draft a proposed Order to be considered in further deliberations at a future Commission meeting, or continuing the matter.

5. Lisa K. Brazeal v. Whataburger Restaurants LLC Commerce & Industry Insurance Co., File #CM2016-00499K

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Craig R. Armstrong is the attorney of record for the Claimant and Catherine C. Taylor is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action, affirming the order and decision of the Administrative Law Judge and issuing an order to that effect, or taking preliminary action in the matter to reverse, modify, remand or if otherwise do not fully affirm the order of the Administrative Law Judge and instructing the Law Clerk or other staff member to draft a proposed Order to be considered in further deliberations at a future Commission meeting, or continuing the matter.

6. Roger Mairel v. Express Personnel Services & New Hampshire Insurance Co., File#CM2015-05252R

Respondent filed an appeal from the order issued by Administrative Law Judge Sommer. Randy D. Edmonson is the attorney of record for the Claimant and Travis A. Fulkerson is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action, affirming the order and decision of the Administrative Law Judge and issuing an order to that effect, or taking preliminary action in the matter to reverse, modify, remand or if otherwise do not fully affirm the order of the Administrative Law Judge and instructing the Law Clerk or other staff member to draft a proposed Order to be considered in further deliberations at a future Commission meeting, or continuing the matter.

7. Kenneth Lee Waring v. Stone Trucking Southwest LLC & Midwest Employers Casualty Co., File#CM2015-07381H

Respondent filed an appeal from the order issued by Administrative Law Judge McMillin. John L. Harlan is the attorney of record for the Claimant and Jace H. Powell is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action, affirming the order and decision of the Administrative Law Judge and issuing an order to that effect, or taking preliminary action in the matter to reverse, modify, remand or if otherwise do not fully affirm the order of the Administrative Law Judge and instructing the Law Clerk or other staff member to draft a proposed Order to be considered in further deliberations at a future Commission meeting, or continuing the matter.

8. Everardo Nunez v. Frac Tech Holdings LLC & Liberty Insurance Corp., File #CM2016-01295R

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Aaron Corbett is the attorney of record for the Claimant and John A. McCaleb is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action, affirming the order and decision of the Administrative Law Judge and issuing an order to that effect, or taking preliminary action in the matter to reverse, modify, remand or if otherwise do not fully affirm the order of

the Administrative Law Judge and instructing the Law Clerk or other staff member to draft a proposed Order to be considered in further deliberations at a future Commission meeting, or continuing the matter.

B. Commission Consideration of Adoption of Final Order in the Following Case:

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

On November 10, 2016, the Commission voted to take preliminary action to remand the matter to the Administrative Law Judge for ruling on reevaluation of the right shoulder by an IME chosen by the Administrative Law Judge and other proceedings consistent therewith and to instruct Commission staff to draft a proposed order for future consideration by the Commission. The proposed order has been distributed to the Commissioners for consideration of adoption.

Possible Action:

Possible action may include, but is not limited to: taking no action, adopting the order as proposed or as modified at the hearing, or continuing the matter.

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

On November 10, 2016, The Commission voted to take preliminary action 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 to instruct Commission staff to draft a proposed order for future consideration by the Commission. The proposed order has been distributed to the Commissioners for consideration of adoption.

Possible Action:

Possible action may include, but is not limited to: taking no action, adopting the order as proposed or as modified at the hearing, or continuing the matter.

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

On November 10, 2016, The Commission voted 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 and to instruct Commission staff to draft a proposed order for future consideration by 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. The proposed order has been distributed to the Commissioners for consideration of adoption.

Possible Action:

Possible action may include, but is not limited to: taking no action, adopting the order as proposed or as modified at the hearing, or continuing the matter.

4. Paul Edward Lewis v. Freymiller Trucking & Travelers Insurance Co. & D&M Carriers & Travelers Indemnity Co. of America, File # CM2015-01094H

On November 17, 2016, The Commission voted to take preliminary action to remand the matter to the Administrative Law Judge with instructions to appoint an IME and take other action consistent therewith and to instruct Commission staff to draft a proposed order for future consideration by the Commission. The proposed order has been distributed to the Commissioners for consideration of adoption.

Possible Action:

Possible action may include, but is not limited to: taking no action, adopting the order as proposed or as modified at the hearing, or continuing the matter.

5. Greg James v Oklahoma Department of Corrections & CompSource Mutual Ins., File # CM2015-05912J

On November 17, 2016, the Commission voted to remand the matter to the Administrative Law Judge with instruction to modify paragraph V1 of the Administrative Law Judge's Order denying compensability and

authorize the Commission's Presiding Appellate Officer to sign and file an order reflecting such modification on behalf of the Commission.

Possible Action:

Possible action may include, but is not limited to: taking no action, adopting the order as proposed or as modified at the hearing, or continuing the matter.

D. Announcements

Commission's next special business meeting is Tuesday, December 19, 2016. Commission's next special meeting regarding Appeals is scheduled for Friday, January 20, 2017.

ADJOURNMENT.....Presiding Appellate Officer, Chairman Gilliland