

Workers' Compensation Board

Meeting Minutes

October 2, 2009

I. Call to order

Director Heikes called to order the regular meeting of the **Workers' Compensation Board** at **9:00 AM** on **October 2, 2009** in **Anchorage, Alaska**.

II. Roll call

Director Heikes conducted a roll call. The following persons were present:

| | | | |
|---------------------|-----------------|---------------|--------------|
| Don Gray | Linda Hutchings | David Kester | Thomas Tibor |
| Daniel Repasky | Damian Thomas | Janet Waldron | Robert Weel |
| Patricia Vollendorf | Jim Fassler | Mike Notar | |

III. Approval of minutes from last meeting

No meeting minutes were available from July meeting. Will be presented during first meeting in 2010.

IV. Agenda approval

Agenda was approved unanimously

V. New Items

Motion was made and then withdrawn by Member Weel to rescind previous vote on board designees and reemployment benefits regulations.

Board designees list was amended to include Workers' Compensation Officer Lynda Gillespie in Juneau for the purposes of coordinating SIME appointments and doctor rotation.

VI. Continued business from previous meeting

a) Proposed Regulations Discussion

- Rehabilitation Regulations
 - 8 AAC 46.030 Financial factors considered for approval of an application for self-insurance authorization
 - Board discussed and approved with changes
 - 8 AAC 46.035 Factors considered for approval of a governmental entity's application for self-insurance authorization certificate
 - Board discussed and approved with changes
 - 8 AAC 46.050 Excess insurance
 - Board discussed and approved with changes
 - 8 AAC 46.060 Decision on application
 - Board discussed and approved with changes
 - 8 AAC 46.065 Certificate
 - Board discussed and approved with changes
 - 8 AAC 46.070 Revocation
 - Board discussed and approved with changes
 - 8 AAC 46.080 Application for renewal
 - Board discussed and approved with changes
 - 8 AAC 46.090 Decision on renewal

- Board discussed and approved with changes
- 8 AAC 46.100 Change of business status
 - Board discussed and approved with changes
- 8 AAC 46.110 Additional records and reports
 - Board discussed and approved with changes
- 8 AAC 46.120 Recordkeeping
 - Board discussed and approved with changes
- 8 AAC 46.130 Auditing
 - Board discussed and approved with changes
- 8 AAC 46.900 Definitions
 - Board discussed and approved with changes
- 8 AAC 45.400 List of rehabilitation specialists
 - Board discussed and approved with changes
- 8 AAC 45.415 Definition of rehabilitation specialist
 - Board discussed and approved with changes
- 8 AAC 45.420 Rehabilitation specialist application
 - Board discussed and approved with changes
- 8 AAC 45.430 Assignment of rehabilitation specialists
 - Board discussed and approved with changes
- 8 AAC 45.440 Removal of rehabilitation specialists
 - Board discussed and approved with changes
- 8 AAC 45.500 Reporting requirements
 - Board discussed and approved with changes
- 8 AAC 45.505 Stipulation to eligibility for reemployment benefits
 - Board discussed and approved with changes
- 8 AAC 45.507 Notice of employee rights to reemployment benefits
 - Board discussed and approved with changes
- 8 AAC 45.900 Definitions
 - Board discussed and approved with changes

b) Public Comment taken from following individuals:

1. Robert Rehbock – Claimants’ counsel. Has been practicing before board for over 33 years and never felt a need to address the Board. Has observed Board members working very hard and staff and Board members who no longer watch the clock, awaiting the time to depart when hearing cases. Having said that, his concern is the Board is not utilizing WCOs as Board Designees. He understands the Board reaffirmed their prior decision. There will never be a perfect procedure where the Supreme Court will not reverse or remand a particular decision; however, the decision which led to not using WCOs as Board Designees is being read too broadly, in his opinion. Fundamentally, he interprets the Supreme Court’s determination to say there is no such thing as a limitations defense in the State of Alaska. If a limitations defense is involved, he believes the Supreme Court will always find an employee was not properly advised. With new hearing officers, he would love for them to be hearing cases so the process can move more quickly and decisions and orders can be issued in a timely fashion.
2. Lulie Williams – Rehabilitation Specialist. She appreciates what the Board has done in their work; she never realized what hard work it was because she had never sat in on an entire Board meeting, as she did today. It is unfortunate the Board did not have a chance to consider and mull over all the public comments regarding the rehabilitation regulations or an opportunity to consider different viewpoints. The process was very flawed. There is something inherently wrong with the regulations because they were not developed through a group process and reflect only one viewpoint.

3. Janice Shipman – Rehabilitation Specialist. Appreciates the work the Board did to protect rehabilitation specialists’ primary residence. Under 8 AAC 45.500, Board Member Gray moved to include penalty and interest for rehabilitation specialists’ invoices. She supports this motion. The majority of rehabilitation specialists do not want to be considered troublesome. The proposed regulations do not address the six Alaska Division of Vocational Rehabilitation counselors, who are working full time, being placed on the Board’s list. These DVR counselors are taking work away from the private rehabilitation community and should be off the list. She recognizes it is something more than the Board can address; however, hopefully someone will listen.

4. Shelby Davison – Member of defense bar. She was not providing public comment to complain; but to applaud. She recognizes there have been significant changes, Director Heikes has been under attack and there has been controversy surrounding the regulations and the manner in which prehearings are conducted. She saw a great deal of thoughtful work done today. With regard to the letter signed by defense attorneys in the WC community, she did not sign it. When hearing officers sat as prehearing officers, she enjoyed it; it was a nice opportunity to meet with them outside the contentious hearing setting; and prehearing conference summaries were excellent. Her concern, as it has always been, was fairness and impartiality and that hearing officers do not take on too much of an advocacy role. Her hat is off to the Board for addressing difficult issues.

VII. Adjournment

Director Trena Heikes adjourned the meeting at 4:51 pm.

Minutes submitted by: Jeremy W. Dodson, Administrative Officer II

Minutes approved by: