

# *Workers' Compensation Board Meeting Minutes*

February 24, 2009

## **I. Call to order**

Director Heikes called to order the regular meeting of the **Workers' Compensation Board** at **9:00 AM on February 24, 2009 in Anchorage, Alaska.**

## **II. Roll call**

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

|                |                     |
|----------------|---------------------|
| Don Gray       | Linda Hutchings     |
| David Kester   | Michael Notar       |
| Kiana Peacock  | Daniel Repasky      |
| Damian Thomas  | Janet Waldron       |
| Robert Weel    | David Robinson      |
| Sarah Lefebvre | Patricia Vollendorf |

## **III. Approval of minutes from last meeting**

Meeting minutes from January 13-14 meeting were approved with no changes.

## **IV. Open issues**

- a) Regulation regarding civil penalties against uninsured employers
  - Board considered the supplemental letter from Mr. Ivan Moore as a follow-up item from his public comment testimony during the January meeting. No action taken. Board moved to continue down the current path concerning regulations presented during the January meeting.
- b) Interest on Workers Safety Compensation Administration Account
  - Director Heikes shared that the automatic reinvestment of interest into this account may violate the constitutional prohibition on dedicated funds. She discussed an old AG opinion and a recent ruling on dedicated funds by the Alaska Supreme Court. Board agreed to withdraw its earlier request for a statutory change requiring the reinvestment of interest into the account.

## **V. Continued business from previous meeting**

- a) Proposed Regulations Discussion
  - Rehabilitation Regulations
    - 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
    - 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 45.510 Request for reemployment benefits eligibility evaluation
  - Board discussed and approved with changes
- 8 AAC 45.520 Determination of unusual and extenuating circumstances
  - Board approved – no discussion needed
- 8 AAC 45.522 Ordering an eligibility evaluation
  - Board discussed and approved with changes
- 8 AAC 45.525 Reemployment benefit eligibility evaluations
  - Board discussed and approved with changes
- 8 AAC 45.530 Determination on eligibility for reemployment benefits
  - Board discussed and approved with changes
- 8 AAC 45.535 Election of either a job dislocation benefit or a rehabilitation specialist
  - Board discussed and approved with changes
- 8 AAC 45.540 Rehabilitation specialist assignment for reemployment benefits
  - Board discussed and approved with changes
- 8 AAC 45.542 Change of rehabilitation specialist
  - Board discussed and approved with changes
- 8 AAC 45.550 Plans
  - 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. Jean Anne Daniels – Certified Rehabilitation Counselor, Aurora Care Coordinators and Consultants. Commented regarding the proposed rehabilitation regulations. Requested the Board think about how the Act, as enacted, places injured workers in a position to lose everything before their case gets through the Board’s process. She reviewed the training program certified rehabilitation counselors must go through and the ethical standards and process for bringing ethical concerns to light for review. She will submit written responses to the Board’s questions that require additional research.
2. Janice Shipman – Certified Rehabilitation Counselor, Vocational Rehabilitation Specialist, sole proprietor. CRC ethics require counselors in training to work for a certified rehabilitation counselor. She sees CRCs selling their certification in the WC system. Questions the ethics of permitting State DVR counselors and school district counselors to place their names on the WC list. Two years retraining and \$13,300.00 is not sufficient. She will supplement her comments in writing.
3. John Lewis – Ironworkers Union. Commented on the “Wrongful Death Statute” and the death of Tyler Kahle and Craig Bagley on July 19, 2007 while working for Alaska Mechanical, Inc. Injured workers’ families received only \$5,000.00 in death benefits, due to Alaska Workers’ Compensation “wrongful death statutes.” This was not enough to cover even burial expenses. It is cheaper for a contractor to pay \$5,000.00 when an employee dies than it is for an employer to conduct operations in a safe manner. There is no deterrent or incentive for an employer to operate in a manner to protect the safety of its employees because it is less costly when an employee dies. Mr. Lewis asked the Board to support a change in the statute and establish a deterrent to operating in an unsafe manner.

4. Stacy Allen – Registered Nurse, Laborers Union Local 341, Business Agent for all members who are health care workers. Speaking on behalf of the Laborers Union, Ms. Allen indicated the union supports increasing the death benefits under the Workers’ Compensation Act. Requests the Board support an increase in death benefits. The need for death benefits is rare; however, what is not rare is injured workers in need of information. The Union attempts to disseminate information and she notices employers she deals with feel frustration in having information to give their injured employees. The employers are placed in a position of conflict. She encourages the Board to improve or expand the information available for injured workers and employers. The information should come from the Division as the neutral party.
5. Kevin Dougherty - Laborers Union, former member of the Ad Hoc Committee. Impressed by the comments of John Lewis regarding death benefits.

Over the past several years, workers’ compensation premiums have decreased. This is great news; however, there are a few items that should be addressed to assist injured workers. First, the funeral expense was set in 1973. He advocates for an increase in the benefit to \$7,500.00. Also, the PPI index of \$177,000.00 has not been increased since 2000. He shall provide a supplement to the Board. The 1968 death benefit is antiquated. If the death benefit is doubled, it will only be a three percent increase in the premium.

A legislative audit was done in 1999 and the committee recommended at that time an increase in the PPI index, funeral expenses and the vocational rehabilitation fee for plans. It is time to look at these again. I am also an advocate for compensation for lost health insurance benefits. Report done in 1990 indicates the cost will be one to one and a half percent of the premium. We have made a lot of progress in Alaska with safety programs. A prospective premium credit will be an incentive for employers.

The Board does have the authority to issue a resolution and send it to the Commissioner to apprise him of the Board’s position on issues.

6. Mary Moran – In House Vocational Counselor for Alaska National Insurance Company, Certified Rehabilitation Counselor in Anchorage for more than 20 years. There are issues regarding what is happening in the rehabilitation community. Encourages the Board to think about how they want the issues to be addressed. She experiences situation in which employees are not meeting face to face with rehabilitation specialists and they don’t know who is calling them. The atmosphere is extremely aggressive right now. There is only one company that is pushing back and not meeting with clients face to face. Ms. Moran has not written to the national agency regarding ethical violations; she is not certain she is obligated to do that.
7. Testimony was received regarding the deaths of Tyler Kahle and Craig Bagley, who worked for Alaska Mechanical Incorporated.
  - (A.) Kim White - Aunt of Tyler Kahle and mother of Tyler’s cousin, Paul, who held Tyler in his arms while Tyler took his last breath. Concerned because the workplaces in Alaska are not safe. The system is polluted and corrupted. The funeral benefit is insufficient.
  - (B.) Michelle Kahle - Mother of Tyler Kahle who died in Alaska. Looking for support in correcting some of the injustices they have encountered in the Alaska Workers’ Compensation system. Three issues she wishes the Board to address in future meetings: Increasing death benefit to an equitable level when an employee is killed at work due to the negligence of others; abolishing the exclusive remedy provision when a death at work involves negligence; and a

retroactive repeal to negate the 2004 amendment that extends the exclusive remedy to contractors and subcontractors, which are entities that are not even paying workers' compensation insurance. The contractor who should have been monitoring the safety of the equipment and work site should not be entitled to the exclusive remedy when they are negligent. The 2004 amendment allows big business a free ride and enables them to avoid safety.

- (C.) Monte Lamer - Worked in Alaska for 22 years for logging firms, fishing boats, a mine, a utility and he was an assemblyman in a town in Alaska. He is the uncle of Tyler Kahle. Employers are responsible for the safety standards and employees can be injured for three reasons, one is the employee failed to follow the safety rules; one is the employee was in the wrong place at the wrong time- an act of God; one is the employee is a casualty because the employer did not have the proper safety mechanisms in place. How is it that an employer can put an employee on a death march and have no responsibility for the casualty? Since 2004, the families of employees who die due to the negligence of the employer have no rights. He requests the Board do something to change this law.
- (D.) Sharon Lamer - Tyler Kahle's grandmother. Wants the Board to change the 2004 exclusive remedy law and increase the death benefit limits. Banking on this Board to hear their pleas and do the right thing. Law is a rule or action established, laid down or enforced by a governing authority; a rule or principle that always works in the same way under the same condition. Our current law does not do that. Our current law groups good companies and bad companies. Bad companies that laugh at the law because the workers' compensation exclusive remedy protects the bad companies. Tyler would have been better off if the company did not have workers' compensation insurance, then we could have sued the company. The loss of our family is immense. My other grandson, Paul, held Tyler as he took his last breath. Based upon Tyler's death, Paul received workers' compensation benefits for post traumatic stress disorder until the insurance company controverted his benefits. When all benefits were stopped, my husband and I took out our savings to provide those medical benefits, such as medications and counseling, that workers' compensation was supposed to provide. She requested the Board take an honest look at this situation; brainstorm if a life is worth is only \$5,000.00 , increase the limits; change the 2004 exclusive remedy bill; give good companies a tax credit and shut down the bad ones. She asked that the 2004 exclusive remedy bill be repealed retroactively.

## **VI. Adjournment**

**Director Trena Heikes** adjourned the meeting at **6:45 pm**.

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

Minutes approved by: Workers' Compensation Board