

Workers' Compensation Board Meeting Minutes

January 13-14, 2009

January 13, 2009

I. Call to order

Director Heikes called to order the regular meeting of the **Workers' Compensation Board** at 9:00 AM on **January 13, 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	

III. Approval of minutes from last meeting

Commissioner Click Bishop provided opening remarks and recognized former Director for Workers' Compensation Paul Lisankie. Mr. Lisankie was thanked for this service to the State of Alaska.

IV. Open issues

- a) Board Designees List approved & seconded.
- b) 2009 Hearing Calendar approved & seconded
- c) Next Board Meeting set for September 30 - October 2, 2009.

V. New business

- a) Code of Conduct for panel members (8 AAC 45.105 & 45.106)
Motion moved and seconded to accept for purposes of discussion and consideration.
 1. Discussion concerning the public comments and language of the proposed regulation. The Board went into executive session to discuss comments by the Board and legislative attorneys. Following executive session the Board requested the regulation be amended and returned to the Attorney General for the requested revisions and presentation for public comment.
- b) Annual Reports:
 2. Administrative Report: Jeremy Dodson - Admin Officer II
 - o Approximately \$480,000 lapsed back into the Workers' Safety Account at the end of fiscal year 2008. This was due to personnel vacancies.
 - o October 2007 Meeting outstanding issues update:
 - Redistribute the workload more evenly amongst Workers' Compensation Hearing Officers and refrain from holding hearings that would require a Hearing Officer to issue more than six Decision and Orders in a month.
 - Currently the Division has set a minimum of 4 D&O's being issued a month for each Hearing Officer.
 - Increase the Division's FY09 budget to provide "at least \$50,000 annually" for training of staff and Board members

with special concern for Workers' Compensation Hearing Officers.

- This was accomplished in FY 2009. We currently have training scheduled for Feb 23rd for Board Members and 5 hearing officers are scheduled to attend training at the National Judicial College in Reno, NV.
- Increase the Division's FY09 budget to fund an additional Administrative Clerk III position in the Anchorage office. Initiate a request for and oversee Division of Personnel's creation of a new Job Classification, "Workers' Compensation Officer III," and hire one for the Anchorage office.
 - The Anchorage office did receive an Admin Clerk II not a III. The class study for a Workers Compensation Officer III was denied however a WCO II was appointed to supervise the WCO's in the Division. Richard Degenhardt was promoted to this position.
- Seek a reclassification of all Administrative Clerk II positions in Anchorage and Fairbanks to Administrative Clerk III positions. Also seek a reclassification of all Investigator II positions in Anchorage to Investigator III positions.
 - There is currently a class study underway for the Admin Clerks. Positions will be allocated to the new specifications by June 30, 2009.
 - The Division is looked at the Fraud Unit as a whole to determine if upgrades are needed or allowable by the class specification standards.
- Seek a statutory amendment to require interest earned on Workers' Safety and Compensation Account to remain in the account rather than go into the General Fund.
 - This is being looked at. This may require a statutory change.
- Seek a statutory amendment of AS 23.30.041 establishing that jobs held prior to age 18 may not be considered by the Reemployment Benefits Administrator when determining eligibility for retraining benefits.
 - This is the current practice by the RBA office.
- Resolve a perceived inconsistency between AS 23.30.012 and AS 23.30.145 by seeking a statutory amendment making claimant attorney's fees approval automatic when part of a C&R agreement not required to be approved by the Board.
- Renew the past working relationship with the Labor-Management "Ad Hoc" Committee on Workers' Compensation.
- Pursue better physical security for offices in Anchorage and Juneau.

- This was completed in FY 2008 in both Anchorage and Juneau.
 - Hold Board meetings quarterly, starting with a one-day meeting on February 8, 2008.
 - Meeting in February was held. Quarterly meetings may not be needed.
 - Reduce the need for hearings and Decision and Orders involving uninsured employers. Do so by adopting procedures giving the Fraud Investigation Section authority to negotiate penalties with certain less egregious offenders and submit stipulated orders for Board review and approval.
 - The Fraud Unit has started using Stipulations to accomplish this request.
 - Increase the efficiency of the hearing of uninsured employer cases, and shift the time burden to the violators, by establishing a separate hearing day with “traffic court” process where all must be present when the session starts and await the calling of their case for hearing.
 - This is currently being done.
 - Mandate the use of the new 6th Edition of the AMA Guides to the Evaluation of Permanent Impairment effective March 31, 2008. Staff will monitor the new edition’s availability so the Board may reconsider the date of use should the expected December 2007 availability date slip substantially.
 - This was accomplished.
 - Advertise the existence and success of the Fraud Investigation Section.
 - The Division website is being updated to help with this request. We are looking at advertising the Fraud Hotline in FY 10.
3. Second Injury Fund: Mike Monagle – Program Coordinator
- SIF is a dedicated fund in existence since statehood. Its purpose was to provide an economic incentive for employers to hire or retain an employee with a specific disability.
 - Raymond Clark
 - Appeals Commission Decision
 - Statutory change needed in order to prevent adverse consequences to the SIF.
 - 25% of the Alaska workforce is employed by self-insured employers
 - New regs needed
 - Independent audits of employers reserve practices
 - Perhaps require payments to the Benefits Guaranty Fund
 - Safety net fund or mandatory security
4. Benefits Guaranty Fund: Mike Monagle – Program Coordinator

- Fund created in 2005 to pay benefits to injured EE's working for an uninsured employer when employer defaults on obligation to pay.
 - Fund balance is approx \$940,000
 - There is currently \$600,000 in default payments outstanding.
 - There are 34 claims against the fund and uninsured employers
 - 4 claims have been paid by the fund totaling \$75,000.
 - The 34 claims equal approximately \$425,000 in liability claims.
 - Right now the fund lacks the authority to collect from the employer.
5. Other New Business: Board requested the Division work on legislation capturing .041(k) benefits for SIF and requested that the Division draft regulations for self-insured employers requiring that an independent actuarial review be conducted of the employer's reserves.
6. Open discussion concerning significant Appellate opinions and Board decisions.

IV. 5:00 pm. Meeting Adjourned for the day.

January 14, 2009

Meeting called to order at 9:00 am.

- 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

- 7. Director's Report: Trena Heikes – Division Director
 - There is a SIME process change for submitting questions to the Board. Bulletin went out to address this procedure.
 - Beginning as soon as we can get the software implemented, Prehearing conferences will be recorded
 - Senior Management Retreat
 - WC Offices will start implementing a new file system.
 - Civil Penalty Defaults
 - Director Heikes and Chief of Adjudications Wright met with Jan DeYoung from the AG's office. The Division is working on a procedure to pursue collections.
 - Training
 - 2/23/2009 Board members will attend training at 1016 West 6th for required annual Executive Branch Ethics Act training by Asst Attorney General Backman. Training will also be provided by Chief Justice of the Supreme Court Dana Fabe concerning deliberations.
 - The Division will be sending Hearing Officers to the National Judicial College in Reno, Nevada in April.
 - Director Heikes and staff are working on a training manual for new Board Members.
 - Updates to the *Workers' Compensation and You* pamphlet are forthcoming.

- Procedural Refinement Group Discussed
 - Chancy Croft, Joe Kalamarides, Penney Zobel, Bob Griffin
- c) Proposed Regulations Discussion
 - Workers' Compensation Benefit Guarantee Fund
 - Board adopted Division suggestions outlined in Bulletin format to be drafted into regulation format and forwarded to Attorney General.
 - Civil penalties against uninsured employers
 - Board adopted Division's proposed regulation with changes. Proposed regulation to be forwarded to Attorney General.
 - SIME process
 - Board adopted process for submission of questions to SIME physicians by parties as outlined in Division Bulletin. Bulletin to be drafted into regulation format and forwarded to Attorney General.
- d) Public Comment taken from following individuals:
 1. Shelby Davison of the law firm of Davison and Davison addressed the need for a code of ethics governing hearing officer conduct and a conflict between AS 23.30.041(c) which requires that the employee's inability to return to their job be "a result of the injury" and 8 AAC 45.510(b) which allows for an eligibility evaluation on all compensable injuries.
 2. Janice Shipman, Vocational Counselor. Ms. Shipman discussed the need for assessment of late fees and interest against insurers when Vocational Counselor bills are not timely paid.
 3. Dave Donley. Mr. Dave Donley spoke of the Board's authority under AS 23.30.005(m) to give advice to the Legislature in matters concerning workers' compensation and recommended the Board be more pro active in advancing legislation. He spoke of the need for various statutory changes.
 4. Ivan Moore, employer, discussed concern with the lack of regulations regarding the levy of penalties against uninsured employers and urged the Board to consider adopting a premium based method for the assessment of penalties.
 5. Michael Jensen, employee attorney, addressed problems with the Board's adoption of the 6th Edition to the AMA *Guides* to the Evaluation of Permanent Impairment and urged the Board to pursue legislation reverting back to the earlier 5th Edition of the *Guides* for the assessment of permanent impairment.
 6. Ron Peters with the Laborer's Union Local 341 requested that death benefits be raised from \$5,000 to \$25-\$50,000.

VI. Adjournment

Director Trena Heikes adjourned the meeting at **4:15 pm**.

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

Minutes approved by: WC Board members