



STATE OF OKLAHOMA

**WORKERS' COMPENSATION COMMISSION**

M I N U T E S

of the

WORKERS' COMPENSATION COMMISSION  
FOR THE STATE OF OKLAHOMA

for the

August 21, 2014

Regular Public Meeting

MINUTES OF THE MEETING OF THE WORKERS' COMPENSATION COMMISSION FOR THE STATE OF OKLAHOMA

NOTICE OF THIS MEETING WAS FILED WITH THE SECRETARY OF STATE ON THURSDAY, DECEMBER 12, 2014.

The members of the Workers' Compensation Commission for the state of Oklahoma met at 1915 N. Stiles Ave., Oklahoma City, Oklahoma, on August 21, 2014.

Members present: Chairman Troy Wilson, Commissioner Denise Engle, Commissioner Bob Gilliland.

Chairman Wilson expressed appreciation for those in attendance. After the roll was taken, he announced the presence of a quorum and the Statement of Compliance with the Open Meetings Act was read. The meeting was called to order at approximately 1:30 p.m.

**Approval of Minutes**

Chairman Wilson presented the minutes of the July 17, 2014 regular meeting for approval.

**Motion:** Commissioner Engle moved to approve the minutes of the July 17, 2014 regular meeting.

**Second:** Commissioner Gilliland.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

**The motion carried.**

Chairman Wilson presented the minutes of the August 6, 2014 special meeting for approval.

**Motion:** Commissioner Engle moved to approve the minutes of the August 6, 2014 special meeting.

**Second:** Commissioner Gilliland.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

**The motion carried.**

Chairman Wilson called for a vote presented an addendum to the minutes of the December 17, 2013 regular meeting for adoption. The Minutes state "Chairman Wilson called for a vote on action taken in Executive Session." As no action was taken, the addendum would clarify that in fact no action was taken during Executive Session. The addendum would clarify that no action was in fact taken in Executive Session on December 17, 2013. The addendum would be attached to the previously adopted minutes.

**Motion:** Commissioner Engle moved to adopt the amendment and require that it be attached to the previously adopted minutes.

**Second:** Commissioner Gilliland.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

**The motion carried.**

**1. Executive Session for the Purpose of Confidential Communications Between the Commission and Its Attorneys Concerning Pending Litigation and Related Claims and Charges Filed With the U.S. Equal Employment Opportunity Commission**

Pursuant to 25 O.S. § 307(B)(4), an Executive Session is proposed for the purpose of conducting confidential communications between the Commission and its attorneys concerning pending lawsuits and claims against the Commission, including *Angela Sanders v. The Oklahoma Workers' Compensation Commission* and *Katral McKnight, et al., v. The Oklahoma Workers' Compensation Commission*, and related claims and charges filed with the U.S. Equal Employment Opportunity Commission.

The Commission's counsel, Neal Leader, from the Attorney General's Office advised that public disclosure of the communications relating to these claims and lawsuits would seriously impair the ability of the Commission and their counsel to respond to the litigation and claims.

**Motion:** Chairman Wilson moved that the Commission:

- (A) determine That Disclosure Will Seriously Impair the Ability of the Commission to Respond to the Claims and Lawsuits, and
- (B) go into Executive Session for the purpose of confidential communications between the Commission and its attorneys concerning pending litigation and related claims and charges filed with the U.S. Equal Employment Opportunity Commission.

**Second:** Commissioner Gilliland.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

**The motion carried.**

**Open Session**

**Motion** to re-convene into Open Session: Commissioner Gilliland.

**Second:** Commissioner Engle.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

**The motion carried.**

**2. Commission's Construction of the Provisions of 85A O.S. §§ 19 and 22, as They Relate to the Power of the Commission Chair to Employ Administrative Staff for the Commission**

Under the provisions of Title 85A, Section 19, Subsection E, the Chair of the Commission is vested with various powers, including the power, "to employ administrative staff for the Commission . . ." Commission's general appointment powers are set forth at Title 85A, Section 22(B) which provides, "Commission may appoint as many people as may be necessary to be administrative law judges and in addition, may appoint such examiners, investigators, medical examiners, clerks, and other employees as it deems necessary to effectuate the provisions of this

act.” As noted in the Review from the Attorney General’s Office presented to the Commission at its last meeting, the provisions regarding the Chair’s power to act as the appointing authority is subject to more than one interpretation. Senior Assistant Attorney General Neal Leader has advised that it is his best legal judgment that the most fair and reasonable interpretation of the provisions is to consider the language in Section 22 as the granting of broad appointing powers to the Commission, and the provisions of Section 19 vesting the Commission Chair with appointment power, as one of the means by which the Commission can exercise its appointing authority—in this case by action of the Chair. Mr. Leader further advises that the Chair’s Section 19 appointment power extends to the employment of all of the Commission’s “administrative staff,” and that because of the broad definitions of the words “administrative” and “administration,” the term “administrative staff” is best broadly construed to confer upon the Chair the power to hire and fire all Commission employees that serve administrative functions, as opposed to decision-making or policy-making functions.

**Motion:** Commissioner Gilliland moved to adopt Mr. Leader’s recommended construction of 85A, Sections 19(E) and 22(B), as conferring upon the Chair the power to hire and fire all Commission employees that serve administrative functions, as opposed to decision-making or policy-making functions.

**Second:** Chairman Wilson.

Those voting aye: Chairman Wilson, Commissioner Gilliland.

Abstentions: Commissioner Engle.

**The motion carried.**

### **3. Commission’s Recognition of the Chair’s Power to Enter into VBO’s, Accept Resignations and Terminate Commission Employees**

In July, the Commission Chair entered into VBO’s and accepted the resignation of the following positions:

<b><u>Position</u></b>	<b><u>Employee’s Name</u></b>
Clerk II	Fuller, Janis R.
Strategic Process Facilitator	Hall Jr., Thomas P.
Court Reporter	Jones, Cynthia K.
Court Reporter	Massey, Kimberly J.
Docket Clerk	Mendoza, Juanita Maria
Clerk II	Mitts, Devin
Docket Clerk	Parker, Carolyn J.
Court Reporter	White, Michelle
Business Manager I	Twyman, Vicky
Clerk II	Pike, Lori E.

In July, the Commission Chair terminated Commission employees occupying the following positions:

<u>Position</u>	<u>Employee's Name</u>
Administrative Technician I	Anderson, Kara D.
Microfilm Operator	Carrier, Rewa L.
Computer Programmer	Gray, Debbie L.
Court Reporter	Idleman, Kevin L.
Clerk III	McKnight, Katral U.
Data Processing Encoder II	Sanders, Angela D.

Chairman Wilson recognized Mr. Leader to explain Item 3. Mr. Leader explained that the issue presented by this agenda item is that the Commission is determining whether to recognize the Chair's power to enter into VBO's, accept resignations and terminate the incumbents holding the positions listed above as falling within the term "administrative staff," and therefore, falling within the Chair's hiring and firing powers under Title 85A, Section 19.

**Motion:** Commissioner Gilliland moved that the Commission determine that the positions at issue fall within the term "administrative staff," and thus fell within the Chair's "hiring and firing" power.

**Second:** Commissioner Engle. Commissioner Engle questioned whether Tom Hall's position was administrative. Chairman Wilson said he was not with the Commission in a policy-making role but only an administrative one.

Those voting aye: Chairman Wilson, Commissioner Gilliland.

No: Commissioner Engle.

**The motion carried.**

#### 4. Commission Termination of Commission Employees

Since the above named terminated employees were approved by vote to fall within the term "administrative staff," that Section 19 did confer upon the Chair the power or ability to hire or fire such employees. Therefore, the terminations were effectuated. However, out of an abundance of caution, action was taken by the Commission to ratify the Chair's terminations.

Chairman Wilson recognized Mr. Leader to explain Item 4. Mr. Leader explained what ratification was and its effect under the law.

**Motion:** Commissioner Gilliland moved to ratify the Chair's termination of all listed employees.

**Second:** Commissioner Engle.

Those voting aye: Chairman Wilson, Commissioner Gilliland.

Abstentions: Commissioner Engle.

**The motion carried.**

**5. Ratifying the Hiring of Commission Employees**

Since February the Commission has announced the hiring of various employees. The following are Commission employees hired after February 1, 2014:

Clif Cypert, Deputy Director	Dana Esparza, Paralegal
Dr. Jay Cannon, Medical Director	Kim Bailey, Law Clerk
Andrea Bair, Deputy Director of Insurance	Ann Campbell, Counselor
Thomas Lewis, Administrative Officer	Teresa Allen, Counselor

Chairman Wilson recognized Mr. Leader, and asked him to explain Item 5.

**Motion:** Commissioner Gilliland moved to ratify the Chair's hiring of the above listed employees.

**Second:** Commissioner Engle.

Commissioner Engle requested an amendment to remove the Deputy Directors from the list until a discussion regarding their responsibilities could be further discussed. There was no second on the amendment, thus the motion to amend died for lack of second.

The original motion to ratify the Chair's hiring of the above listed employees stood.

Those voting aye: Chairman Wilson, Commissioner Gilliland.

Abstentions: Commissioner Engle.

**The motion carried.**

**6. Exercise of the Commission's Power, Under Title 85A, Section 19, to Prescribe Additional Duties and Responsibilities of the Commission Chair**

Under the provisions of Section 19 of Title 85A, Subsection E, the Commission is empowered to impose various additional duties and responsibilities upon the Chair. Presented for the Commission's consideration was whether to impose some or all of the additional duties and responsibilities listed below upon the Chair:

- a. **Vesting the Chair with the Duty and Responsibility of Hiring, Firing and Fixing the Salary of All Commission Employees Except the Executive Director, Administrative Law Judges, Attorney/Law Clerks, and the Medical Director.**

- b. Vesting the Chair with the Power and Responsibility of Entering Into All Leases, and Contracts Involving Expenditures of \$50,000 or less, and,
- c. Empowering the Chair to Make Task and Report Assignments, and Establish Deadlines for the Performance of a Task, or Submission of a Report
- d. Empowering the Chair to Organize the Reporting Relationships of All Staff

Commissioner Gilliland explained Item 6 and made a recommendation for the Commission to consider taking action to confer on the Chair all of the above listed duties and responsibilities.

**Motion:** Commissioner Gilliland moved to take action to impose all of the listed duties and responsibilities upon the Commission Chair:

**Second:** Chairman Wilson.

Commissioner Engle requested that each of the duties be considered separately, which the Commission did.

**Item a.** Commissioner Engle requested an amendment to exempt the Deputy Directors and Commissioners from the list of positions in *item a*. There was no second on the amendment. Thus, the motion to amend died for lack of a second.

The original motion for consideration of *item a* stood.

Those voting aye: Chairman Wilson, Commissioner Gilliland.

No: Commissioner Engle.

**The motion carried.**

**Item b.** Commissioner Engle requested an amendment to raise the spending authorization of the Chair to the agency's full budgeted amount in *item b*.

There was no second on the amendment. Thus, the motion to amend died for lack of a second.

The original motion for consideration of *item b* stood.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

**Item c.** Commissioner Engle requested an amendment to make an exception for the Commissioners on *item c*. There was no second on the amendment. Thus, the motion to amend died for lack of a second.

The original motion for consideration of *item c* stood.

Those voting aye: Chairman Wilson, Commissioner Gilliland.

No: Commissioner Engle.

**The motion carried.**

There was no discussion on **item d.**

Those voting aye: Chairman Wilson, Commissioner Gilliland.

No: Commissioner Engle.

**The motion carried.**

**7. Proposed Delay in Contracting for and Installation of the Electronic Data Interchange (EDI) System Until Next Fiscal Year**

Executive Director to the Commission, Dr. Rick Farmer, made the recommendation to delay the acquisition and implementation of the EDI system. He explained that since the procurement process for acquiring an EDI system has been greatly delayed and because it was impossible to acquire and install the EDI system prescribed, or to do so in the near future, the Commission will consider a vote to delay that system, and use the monies from this fiscal year which would have been used to acquire the system, to hire employees to perform some of the functions that the EDI system would have performed.

Although 85A O.S. §101(B) states EDI shall be implemented by July 1, 2014, that statutory deadline was impossible to achieve from the start. Implementing an EDI system generally is an 18 month process. Implementation will likely be accomplished more quickly once the Commission has the funding next fiscal year and is able to avail itself of the statutory resources provided. The statute provides for the assistance of the Insurance Commissioner and an Advisory Committee appointed by the Governor.

**Motion:** Commissioner Gilliland moved to delay the acquisition and implementation of the EDI system to at least the next fiscal year and use the funds that were attributed in the budget for that purpose to hire the necessary people to perform some of the functions that the EDI system would have performed.

**Second:** Chairman Wilson.

Those voting aye: Chairman Wilson, Commissioner Gilliland.

No: Commissioner Engle.

**The motion carried.**

**8. Delegation of Commission's Consideration and Actions on Third-Party Administrator, Self-Insurance and Group Self-Insurer Permit Applications and Related Sanctions to Commission Administrative Law Judge**

Under the provisions of Section 21 of Title 85A, the Commission may delegate to an administrative law judge the ability to hear and decide the rights of interested parties—except the Commission’s authority to hear appeals of decisions from administrative law judges—to an administrative law judge. Here the Commission will consider whether to authorize the chair to delegate the review and action on Applications for Third Party Administrators, Self-Insurance and Group Self-Insurer Permits and the imposition of sanctions to an administrative law judge.

Mr. Leader of the Attorney General’s office explained that no action needed to be taken at this time and the matter could be addressed in the future.

**Motion:** Commissioner Gilliland moved to continue consideration of this item in the future.

**Second:** Commissioner Engle.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion to continue consideration of this item in the future carried.**

#### **9. Adoption of an Internal Policy and Procedure for Preparation of Commission Agenda and Minutes**

Mr. Leader explained the need for an agenda policy and proposed for the Commission’s consideration the following internal procedure for preparation of Commission Agendas:

Any Commissioner wishing to have an item placed on an Agenda should make that request by presenting it, in writing, to the Commission’s Executive Director; the requested item must be described with specificity. Requests must be presented no later than 10 days before a regular scheduled meeting, and as soon as possible when a special meeting is being called. All requests will be considered by the Chair and the Executive Director who shall agree on which items should appear on the Agenda. If they cannot reach an agreement, the decision of the Chair shall control.

Minutes of open meetings will be prepared by the Executive Director or designee of the Executive Director. The Chair will assign the person to take minutes in executive session at the time of the executive session.

**Motion:** Commissioner Gilliland moved to adopt an internal policy and procedure for preparation of Commission agenda and minutes on a trial basis until the Regular Public Meeting scheduled for November, when the Commissioners will review the process for further consideration.

**Second:** Chairman Wilson.

Commissioner Engle requested an amendment to give each Commissioner greater power to place items on the agenda. There was no second on the amendment. Thus, the motion to amend died for lack of a second.

The original motion for consideration stood.

Those voting aye: Chairman Wilson, Commissioner Gilliland.

No: Commissioner Engle.

**The motion carried.**

**10. Commission’s Construction of the “Three Year Experience and Competency” Requirement for Independent Medical Examiners in Commission Rule 810:15-9-1**

One of the eligibility requirements imposed on those seeking to become an independent medical examiner under Commission Rule 810:15-9-1, is that a physician must, “have at least three (3) years’ experience and competency in the physicians specific field of experience and in the treatment of work-related injuries . . .” An issue that has arisen is whether in calculation of the “three year experience requirement,” a physician’s functioning as a resident should be considered. Here the Commission is asked to interpret the Rule.

Dr. Cannon explained the situation and the intent behind the requirement and recommended that the Commission interpret the provision to include residency experience.

**Motion:** Commissioner Engle moved to accept Dr. Cannon’s recommendation to construct the rule to recognize a physician’s residency in the field they are practicing as an Independent Medical Examiner as part of the three years’ experience requirement.

**Second:** Chairman Wilson.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

**11. Commission Consideration of Sponsorship of Educational Programs for Independent Medical Examiners**

Under Commission Rule 810:15-9-1, one of the requirements is that Independent Medical Examiners must attend “Commission sponsored education programs at least once every two (2) years . . .”

Dr. Cannon presented for the Commission’s consideration, the following programs to be sponsored by the Commission, with additional programs to be considered at future meetings:

- a) Oklahoma Annual Workers’ Compensation Commission Educational Conference
- b) AMA Guides- Sixth Edition Training on September 5<sup>th</sup> in Oklahoma City

**Motion:** Commissioner Engle moved to accept Dr. Cannon’s recommendation that the Commission sponsor the above listed programs.

**Second:** Chairman Wilson.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

**12. Proposed Approval of Dr. Joshua Carey As an Addition to the Independent Medical Examiners for the Commission**

Title 85A OS §112 requires the Workers' Compensation Commission to create, maintain and review a list of licensed physicians who shall serve as independent medical examiners (IME). The Commission shall, to the best of its ability, include the most experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured employees. Dr. Joshua Carey, who specializes in general surgery, has been vetted by the Medical Director and recommended to be added as an IME for the Commission.

Dr. Cannon recommended that the Commission accept Dr. Carey as an Independent Medical Examiner.

**Motion:** Commissioner Engle moved to approve Dr. Joshua Carey as an IME for the Commission.

**Second:** Commissioner Gilliland.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

**13. Commission Approval of the Multiple Injury Trust Fund Assessment Rate**

Executive Director, Dr. Rick Farmer made a recommendation that the Commission take action on Item 13. Based on the following explanation which he presented to the Commission:

May 1, 2014, each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, and each employer carrying its own risk, including each group self-insurance association were notified of the assessment rate in effect from July 1, 2014 - June 30, 2015, in accordance with 85A O.S. §31(A)(5). The Multiple Injury Trust Fund (MITF) assessment rate to be charged in accordance with 85A O.S., §31 for the four-quarter period of July 1, 2014 through June 30, 2015 is six percent (6.00%) of anyone of the following:

- Gross direct premiums written for workers' compensation for risks located in this state (for insurance carriers and CompSource Oklahoma);
- Normal premiums (for group self-insurance associations); or
- Actual paid losses (for individual self-insured employers).

The rate was calculated using a statutory formula. The formula involves dividing the gross direct written premium, normal premium and actual paid losses reported by workers' compensation payors for calendar year 2014 (\$1,014,897,799) into \$98,740,000 [the sum of the MITF's outstanding obligations for calendar year 2015 (\$96,190,000), as reported by the MITF, and

\$2,550,000 fixed by law for funding various state programs related to worker safety and workers' compensation fraud prosecution].

Assessments are due on the 15th day of the month following the end of the calendar quarter and are based on the payor's premiums or losses (as applicable) during the quarter. The new six percent (6.00%) rate applies beginning July 1, 2014 (i.e. the third quarter of calendar year 2014) until June 30, 2015.

**Motion:** Commissioner Gilliland moved to approve the assessment rate of six percent (6.00%) for the Multiple Injury Trust Fund.

**Second:** Commissioner Engle.

Commissioner Engle requested an explanation of why the Commission needed to take action on this item if the legislature had already prescribed it by law. Rick Farmer, Executive Director, explained that it is a statutory formula and that the law does require the Commission to take action on this matter.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

#### **14. Commission Ratification of Lease Agreements and Contracts**

The Chairman asked Mr. Leader to explain Item 14. The Commission's possible ratification of the following lease agreements and contracts which the Commission through the Chair had entered into from February 1, 2014 through August 21, 2014:

<u>Lease or Contract</u>	<u>Amount</u>
1. OMES Lease on Davison 3 <sup>rd</sup> Floor FY-14	\$20,628.99
2. OMES Lease on Davison 3 <sup>rd</sup> Floor FY-15	\$82,515.96
3. OMES Lease on 50 NE 23 <sup>rd</sup>	\$17,381.02
4. OMES Lease in Tulsa FY-15	\$5,294.23
5. OMES Lease on Davison 2 <sup>nd</sup> Floor FY-15	\$0
6. OMES Agency Business Services FY-15	\$19,440
7. OMES Human Capital Management FY-15	\$15,000
8. OMES ISD	\$137,170
9. OMES VOBO agreement	\$176,540.02
10. Operating Agreement with CEC FY-14	\$0
11. DOL MOU on Compliance Officer Transfers	\$0
12. WorkComp Strategies for EDI Consulting	\$2,400
13. Jason Smitherman for EDI Forms Consulting	\$4,500
14. NCCI for Proof of Coverage Database	\$0
15. Pen-Write Communications for Communications Plan	\$4,500

16.	Prodigy Group for Communications Audit	\$1,500
17.	Candor Media for Public Relations Assistance	\$4,800
18.	Attorney General's Office for legal services FY-14	\$51,408.75

**Motion:** Commissioner Gilliland moved to approve all of the lease agreements and contracts listed.

**Second:** Chairman Wilson.

Commissioner Engle requested that each item be voted on individually. Mr. Leader, Counsel from the Attorney General's office, made a procedural suggestion to the Commission to consider voting on the individual items which required further discussion and voting collectively on the remaining items. The Commission adopted this procedure.

**Items 1-5, 12-15, and 17-18.**

There was no discussion on Items 1-5, 12-15, and 17-18. The Commission voted on these as a single item.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

After questions by Commissioner Engle, and further discussion by the Commission on separate motions by Commissioner Gilliland and seconded by Commissioner Engle, the Commission considered approval of the following items:

**Items 6-8, 11, and 16.**

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

After questions by Commissioner Engle, and further discussion by the Commission on separate motions by Commissioner Gilliland and seconded by Commissioner Engle the Commission considered approval of the following items:

**Items 9 and 10.**

Those voting aye: Chairman Wilson, Commissioner Gilliland.

No: Commissioner Engle.

**The motion carried.**

**15. Proposed FY-2015 Contract between the Commission and the Oklahoma Office of the Attorney General**

The Commission considered a proposed contract engaging the legal services of the Oklahoma Office of the Attorney General for FY-2015. The cost of the contract is \$123,381.00.

**Motion:** Commissioner Gilliland moved to approve the contract with the Attorney General's Office in the amount of \$123,381.00.

**Second:** Commissioner Engle.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

### **Adjournment**

**Motion** to adjourn: Chairman Wilson.

**Second:** Commissioner Engle.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

**The motion carried.** The meeting was adjourned.