



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

September 18, 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 September 18, 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 August 21, 2014 regular meeting for approval.

Motion: Commissioner Gilliland moved to approve the minutes of the August 21, 2014 regular meeting.

Second: Commissioner Engle.

Commissioner Engle requested two changes to the minutes of the August 21, 2014 regular meeting. The Minutes currently state on Item 4, "Commission Ratification of Termination of Commission Employees." The change would remove the words "Ratification of" in order to remain consistent with the wording of the meeting agenda. The minutes would state for Item 4, "Commission Termination of Commission Employees." The Minutes state on Item 8, "The motion carried." The request was to clarify that the vote was on the motion for a continuance of Item 8 by changing the wording to, "The motion to continue consideration of this item in the future carried." The revised minutes will be posted on the Commission website.

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

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 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 stated above.

Second: Commissioner Gilliland.

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

The motion carried.

Open Session

Motion to re-convene into Open Session: Chairman Wilson.

Second: Commissioner Engle.

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

The motion carried.

2. Commission Approval of the Distribution of Undistributed Surplus of Workers' Compensation Self-Insurance Programs

85A O.S. §102 states the Commission shall approve the distribution of all undistributed policyholders' surplus of a Workers' Compensation Self-Insurance Program if the Program complies with the specified criteria.

Oklahoma Automobile Dealers Self-Insurance Association (OADSIA) has made a request for a partial distribution of surplus funds in the amount of \$3,100,000. The distribution will be payable in the amount of \$150,000 from fiscal year 2007-2008; \$150,000 from fiscal year 2009-2010; \$100,000 from fiscal year 2010-2011; \$500,000 from fiscal year 2011-2012; 2,200,000 from fiscal year 2012-2013.

Chairman Wilson recognized Christopher Sturm, Administrator of the OADSIA, as a visitor and called on him to describe the association's process of distributing the surplus funds being requested in Item 2.

Chairman Wilson recognized Andrea Bair, Deputy Director, Insurance Services, to explain her recommendation of Item 2.

Chairman Wilson confirmed with Commissioner Engle that she had reviewed the recommended association's process of distributing surplus funds, the specified criteria of the program, and agreed with the distribution.

Motion: Commissioner Engle moved to approve the distribution to the Oklahoma Automobile Dealers Self-Insurance Association.

Second: Commissioner Gilliland.

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

The motion carried.

3. Commission Approval of Group Self-Insurance Applications for New Membership

Commission Rule 810:25-11-3 states a new membership to a self-insurance group may not become effective without Commission approval. All applications for membership are filed with the Commission. The application includes evidence of the execution of the indemnity agreement, power of attorney, and joint and several liability agreement, as required by 810:25-11-15, with signed approval of the applicant by the association, and is accompanied by a current balance sheet and income statement. The following are the applicants and the respective self-insurance group associations to which they are applying for membership:

Oklahoma Automobile Dealers Self- Insured Association (# 75058):

McClain's RV Superstore OKC West, Inc. (Previously was McClain's RV Superstore)
Bixby Auto Plaza, LLC
Byford Le Norman Duncan BCG, LLC d/b/a Byford Chevrolet-Buick-GMC
Byford Le Norman CDJR, LLC d/b/a Byford Chrysler-Dodge-Jeep-Ram
David Stanley, LLC
Tommy Nix Auto Group, LLC
Lawton Automotive, LLC d/b/a Lawton Kia
James Hodge, Inc. d/b/a James Hodge Toyota (Previously was Toyota of Muskogee)

Oklahoma Operators Self- Insurance Fund (# 75292):

A D R O, LLC d/b/a McDonald's Restaurants

Oklahoma Health Care Association (# 75175):

Cleveland Area Trust Authority
Jay Medical Services LLC d/b/a Epic Medical Center
LeFlore County Hospital Authority

Chairman Wilson recognized Andrea Bair, Deputy Director, Insurance Services, to explain her recommendation of Item 3, that the Commission approve the membership of the above listed applicants and the respective self-insurance group associations to which they are applying for membership.

Chairman Wilson confirmed with Commissioner Engle that she had reviewed the respective self-insurance group associations and their requirements to which the above listed groups had applied.

Motion: Commissioner Engle moved that the Commission approve the application for new membership to Oklahoma Automobile Dealers Self- Insured Association (# 75058) by the following applicants:

McClain's RV Superstore OKC West, Inc. (Previously was McClain's RV Superstore)

Bixby Auto Plaza, LLC

Byford Le Norman Duncan BCG, LLC d/b/a Byford Chevrolet-Buick-GMC

Byford Le Norman CDJR, LLC d/b/a Byford Chrysler-Dodge-Jeep-Ram

David Stanley, LLC

Tommy Nix Auto Group, LLC

Lawton Automotive, LLC d/b/a Lawton Kia

James Hodge, Inc. d/b/a James Hodge Toyota (Previously was Toyota of Muskogee)

Second: Commissioner Gilliland.

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

The motion carried.

Motion: Commissioner Engle moved that the Commission approve the application for new membership to the Oklahoma Operators Self- Insurance Fund (# 75292) by the following applicants:

A D R O, LLC d/b/a McDonald's Restaurants

Second: Commissioner Gilliland.

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

The motion carried.

Motion: Commissioner Engle moved that the Commission approve the application for new membership to the Oklahoma Health Care Association (# 75175) by the following applicants:

Cleveland Area Trust Authority

Jeay Medical Services LLC d/b/a Epic Medical Center

LeFlore County Hospital Authority

Second: Commissioner Gilliland.

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

The motion carried.

4. Commission Adoption of Employee Compensatory Time Policy

The Commission considered an employee compensatory time policy to properly account for time worked and leave taken by employees who perform work in excess of the established 40-hour workweek, attached hereto as Attachment A.

Chairman Wilson recognized Executive Director, Rick Farmer, to explain the employee compensatory time policy as listed in Item 4, Attachment A. Commissioner Gilliland requested a change to Attachment A – that the work week be defined as beginning on Saturday.

Dr. Farmer made the recommendation that the Commission adopt the proposed employee compensatory time policy with the requested amendment.

Motion: Commissioner Gilliland moved to adopt the proposed employee compensatory time policy as stated in Attachment A with the amendment.

Second: Commissioner Engle.

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

The motion carried.

5. Commission Consideration of Sponsorship of Educational Program 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 . . .” Presented for the Commission’s consideration is an additional program to the two programs previously approved by the Commission:

AMA Guides- Sixth Edition Training on December 5th in Oklahoma City.

Chairman Wilson recognized Dr. Cannon, and asked him to explain his recommendation to consider sponsorship of the educational program for IME’s listed in Item 5.

Motion: Commissioner Engle moved to approve the above listed programs for Commission sponsorship.

Second: Commissioner Gilliland.

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

The motion carried.

6. Commission Adoption of Open Records Act Fee Schedule

Section §24A.5 of the Open Records Act requires any agency establishing fees under this act to post a written schedule of the fees at its principal office and with the county clerk. Proposed for the Commission’s consideration is the Schedule of Fees attached hereto as Attachment B.

Chairman Wilson recognized Kim Bailey, Law Clerk for the Commission, to explain the statutory requirement of the Open Records Act, for the Commission to adopt a fee schedule as described in Item 5 and Attachment B.

Motion: Chairman Wilson moved that the Commission adopt the proposed fee schedule as stated in Attachment B.

Second: Commissioner Engle.

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

The motion carried.

7. Reports

The following reports were presented for informational purposes:

i. State Average Weekly Wage and Maximums

Chairman Wilson recognized Kim Bailey, Law Clerk of the Commission, to present the following report:

Title 85A sets the maximum compensation benefit rates based on a percentage of the State Average Weekly Wage (SAWW) reported to the Commission by the Oklahoma Employment Security Commission. Due to an INCREASE in the SAWW reported by the Oklahoma Employment Security Commission, the MAXIMUM compensation benefit rate for injury, illness or death has changed as follows:

For Temporary Total Disability (TTD), the maximum rate is **\$571.55** per week for work-related injury and illness occurring during the period beginning November 1, 2014 and ending October 31, 2015. *85A O.S. Supp. 2013, §45(A).*

For Permanent Total Disability (PTD) and Death, the maximum rate is **\$816.50** per week for work-related injury, illness or death occurring during the period beginning November 1, 2014 and ending October 31, 2015. *85A O.S. Supp. 2013, §45(D) regarding PTD, and 85A O.S. Supp. 2013, §47 regarding death.*

For Permanent Partial Disability (PPD), the maximum compensation benefit rate remains unchanged at **\$323** per week for work-related injury and illness occurring on or after February 1, 2014. *See, 85A O.S. Supp. 2013, §45(C).*

ii. Timeline on Permanent Rulemaking

Chairman Wilson recognized Kim Bailey, Law Clerk of the Commission, to present the following report:

The Commission's current Emergency Rules are effective until September 15, 2015. Therefore, the Commission is in the process of drafting its permanent rules to propose to the Legislature in the next legislative session. The tentative timeline for the permanent rulemaking process is as follows:

- Notice of Rulemaking Intent Submitted-November 25, 2014
- Rule Impact Statement Issued- December 30, 2015
- Public Hearing- January 15, 2015
- Adoption of Permanent Rules- February 19, 2015
- Submission to Governor and Legislature- February 24, 2015

The Commission is currently seeking the public's participation in the rulemaking process. Please send suggested revisions to the current emergency rules or suggested new rules to the following email address: rules@wcc.ok.gov. Receiving participation early in the process will be invaluable in ensuring the Commission develops the most effective rules for Oklahoma's workers' compensation system.

iii. Commissioner Gilliland's Report

Chairman Wilson recognized Commissioner Gilliland to present a summary report to update the Commission on the Commission's case activity, status of appeals, and the activity of the Administrative Law Judges.

On case activity we have 17,822 Form 2's, 1,928 Form 3's. Form 3's continue to climb but at a slow predictable rate. Under the old system, a third of the Form 2's went to a Form 3. As you can see, we are well below that percentage at 11 percent.

As far as addressing questions that I have received about appeals, the Commission has requested an opinion from the Office of the Attorney General relating to the Commission's deliberations on appeals. This request is due to a legal issue raised in the statute on which the Commission needs clarification before proceeding with the appeals process. The request has been submitted by the Commission and the opinion request already assigned by the Attorney General's Office.

Commissioner Gilliland explained that nine companies have opted out under the provisions of the Workers' Compensation Act. The benefits of the Opt-out must be the same or better under the Workers' Compensation law. An adverse determination may be appealed to federal court or the Commission, but there are no appeals at this time. We are working on procedural rules for taking such appeals but those are a long way from being received at the Commission.

iv. **Commissioner Engle's Report**

Chairman Wilson recognized Commissioner Engle to present the following report:

Commissioner Engle provided handouts and presented a summary report to address the recently released workers' compensation loss costs released by the National Council on Compensation (NCCI). Loss costs are used by insurers to determine rates for employers. It was noted that the cumulative loss cost reduction of 22.4 percent since the passage and enactment of Title 85A for an estimated savings of over \$200 million to Oklahoma employees. This savings is available for reinvestment and job creation and will ultimately benefit all Oklahomans. The report is identified as Attachment C, and is included as a part of these minutes.

v. **Oklahoma Workers' Compensation Educational Conference**

On September 22-23, 2014, the Commission will host the First Annual Oklahoma Workers' Compensation Educational Conference with Governor Mary Fallin to welcome and open the conference on Monday, September 22nd. The conference will be held in cooperation with the International Workers' Compensation Foundation. Sessions will take place at the Tower Hotel, 3233 N.W. Expressway, Oklahoma City, OK 73112.

The goal of the conference is to present information and updates to system practitioners and create an opportunity for dialogue on current and upcoming issues. Employers, worker representatives, medical providers and their office staff, insurance claims professionals, self-insurers, third party administrators, safety and human resource managers, claimant's and defense attorneys, and vocational rehabilitation providers are encouraged to attend. In fact, anyone interested in the workers' compensation system in Oklahoma will receive valuable information at the conference. The conference will also feature an Exhibit Hall, and presentations and workshops from experts within the Workers' Compensation Commission and the private sector.

Adjournment

Chairman Wilson announced the Commission has scheduled a Special Meeting for Friday, September 26, 2014 9:00 a.m., and the next regularly scheduled meeting is Thursday, October 16, 2014.

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.