



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  
October 30, 2014  
Special 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 October 16, 2014.

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

Others in attendance on behalf of the Commission: Neal Leader, Rick Farmer, Clif Cypert, Jay Cannon, Kim Bailey, Holly Miller, and Tiffany Pratt.

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 September 26, 2014 regular meeting for approval.

***Motion:*** Commissioner Engle moved to approve the minutes of the September 26, 2014 regular meeting.

***Second:*** Commissioner Gilliland.

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

**The motion carried.**

**1. Commission Adoption of Employee Harassment Policy**

*Proposed for the Commission's consideration was an employee harassment policy. The Commission is committed to fostering a safe work environment where every employee is treated with dignity and respect. The proposed policy is attached hereto as Attachment A and is included as part of these minutes.*

Chairman Wilson recognized Commissioner Gilliland to present Agenda Item 1.

***Motion:*** Commissioner Gilliland moved that the Commission adopt the Employee Harassment Policy as presented in Attachment A.

***Second:*** Commissioner Engle.

Commissioner Engle moved to amend the proposed policy, stating her amendment would bring the definition in compliance with the state statute. The motion died for lack of a second.

Chairman Wilson commended Commissioner Engle for presenting her amendment but said it would be wise to adopt the policy used by the Attorney General's office which provides a good model for the Commission. Chairman Wilson said if the policy needed to be changed in the future, it could be included on the agenda for a future meeting.

Commissioner Gilliland stated that under 74 O.S. §18, the Oklahoma Attorney General is the chief law officer of the state and represents all state agencies. Commissioner Gilliland said that on that basis, he preferred to use the same Employee Harassment Policy at the Commission as is used at the Attorney General's Office.

Those voting aye: Commissioner Gilliland and Chairman Wilson.

Those voting no: Commissioner Engle.

**The motion carried.**

**2. Consideration of an Amendment to Fiscal Year 2016 Commission Budget Request Proposal and Supplemental Budget Request for FY 2015 to Revise the Manner in which Court Reporters are Addressed**

*The Commission's budget request proposal for FY 2016 and supplemental budget request for FY 2015 were approved at the Special Commission Meeting on September 26, 2014. The Commission considered amending the FY 2016 budget request proposal to transfer the funding request for court reporters from a special project line item on the budget to the professional services line. Additionally, court reporters will be added to the FY 2015 supplemental budget request professional services line.*

Chairman Wilson recognized Executive Director, Rick Farmer, to present a recommendation to the Commission to approve an amendment to FY 2016 Commission budget request proposal and amended FY 2015 supplemental budget request.

**Motion:** Chairman Wilson moved to adopt the proposed Fiscal Year 2016 Commission Budget Request Proposal and Supplemental Budget Request for FY 2015 to revise the manner in which Court Reporters are addressed.

**Second:** Commissioner Gilliland.

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

**The motion carried.**

**3. Proposed Approval of the Transfer of Funds from the Commission to the Court of Existing Claims**

*In the Agreement entered into on January 30, 2014, between Judge Taylor and Chairman Wilson, the Commission agreed to create a budget sub-account within the Commission's 865-200 account for FY-14. The Court of Existing Claims (CEC) was given exclusive control of this account, which received monthly allocations from the Commission. The Agreement was made in an effort to preserve and respect the CEC's autonomy. The sub-account created for the CEC has a carryover balance from FY-14 in the amount of \$51,790.56.*

Chairman Wilson recognized Executive Director, Rick Farmer, to explain his recommendation that the Commission consider a vote to transfer the \$51,790.56 carryover balance from the Commission's account to the CEC's account.

**Motion:** Chairman Wilson moved to adopt the recommendation to transfer the \$51,790.56 carryover balance from the Commission's account to the CEC's account, and if the final amount is more than five percent of \$51,790.56, the Commission will bring the item back for consideration.

**Second:** Commissioner Gilliland.

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

**The motion carried.**

#### **4. Proposed Approval of Additional 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 workers. The following physicians have been vetted by the Medical Director and recommended to be added as IME's for the Commission:*

- Michael Brandon Johnson, M.D. - orthopedic surgery
- Paul Jacob, D.O. - orthopedic surgery

Chairman Wilson recognized Medical Director, Dr. Jay Cannon, to present a recommendation to approve two additional Independent Medical Examiners for the Commission.

**Motion:** Commissioner Engle moved to approve the above listed physicians to be added as IME's for the Commission.

**Second:** Commissioner Gilliland.

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

**The motion carried.**

#### **5. Consent Agenda for Travel Claims**

*85A O.S. §23 states any commissioner or employee of the Commission shall be entitled to receive his or her necessary traveling expenses as provided in the State Travel Reimbursement Act. The expenses shall be certified by the person who incurred them and shall be allowed and paid on presentation of vouchers approved by the Commission. In accordance with this section, the Commission will consider a vote to approve the currently outstanding vouchers attached hereto as Attachment B.*

All vouchers listed within the Consent Agenda were made available to each Commissioner prior to today's meeting, and are considered routine. They were enacted by one motion of the Commission. If separate discussion is desired, that item may be removed from the Consent Agenda and separately voted upon.

**Motion:** Commissioner Engle moved to approve all of the vouchers listed in Attachment B.

*Second:* Commissioner Gilliland.

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

**The motion carried.**

Chairman Wilson asked Commissioner Engle to research the travel policies of other state agencies and report her findings. Commissioner Engle responded that she would.

#### **6. Consent Agenda for Payments Made from the Workers' Compensation Fund**

*85A O.S. §22(A)(5) states that all expenditures of the Commission in the administration of the act shall be allowed and paid from the Workers' Compensation Fund on the presentation of itemized vouchers approved by the Commission. In accordance with this section, the Commission considered a vote to approve the currently outstanding vouchers attached hereto as Attachment C.*

**Motion:** Chairman Wilson moved to approve all of the vouchers listed in **Attachment C**. If the final amount for the October and November totals more than five percent of the total listed in **Attachment C**, the Commission will bring the item back for consideration.

*Second:* Commissioner Gilliland.

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

**The motion carried.**

#### **7. Reports**

##### **i. Commissioner Engle's Report**

Commissioner Engle presented a summary report on the development of a proposal for statutory changes and rule revisions. The Commission has been operating by its emergency rules and we are now in the process of developing the permanent rules. Kim Bailey and the Attorney General's office are assisting with this detailed and important project. Commissioner Engle encouraged the public to take part in the public comments process by emailing suggestions to the Commission at [rules@wcc.ok.gov](mailto:rules@wcc.ok.gov).

##### **ii. Commissioner Gilliland's Report**

Commissioner Gilliland gave a summary report on the activity of the Administrative Law Judges, including case resolutions. As of October 1, the Commission had 18,572 Form 2's filed. There have been 2,198 Form 3's filed since February 1, 2014. There were 449 Form 3's filed in September. The Form 3's are slowly increasing, but at predictable levels so they are being processed in a timely manner. There are now more claims being filed with the Commission than with the Court of Existing Claims.

The ALJs are able to have pre-hearing conferences three to four weeks after filing. They are able to have trials 90 days after the first pre-hearing conference and often earlier for the more simple cases. There were a number of cases which have been appealed. We are currently working on the preliminary stages of those appeals. The Commission requested an opinion by the Attorney General which we hope to receive before entering the deliberative stages on those appeals.

There is a provision on the Form 3's which states when there is no activity on the claim for six months, the claim can be dismissed without prejudice. The ALJ would make sure to provide notice to the attorneys and the pro se's, and let the ALJ adjudicate based on the reasons provided. There are approximately 20 of those cases at present.

The Commission's Medical Director, Dr. Jay Cannon, is currently working on a summary of the ODG and AMA 6<sup>th</sup> Edition guidelines to provide to the attorneys to assist them in understanding the new system.

Commissioner Gilliland said he is researching the possibility of a benefit review conference which could be held two to three weeks from when the Form 3 is filed. The process is used in Texas and helps to move cases forward in a more timely fashion because it can be presented at an early stage in the case. The benefit review office in Texas has been helpful with in the initial information gathering process.

Commissioner Engle asked about how the ALJ handles a dismissal. Commissioner Gilliland explained that the ALJ would listen to the reason for the delay and would make the decision whether to write an order for a case dismissed with or without prejudice, or set the case for a pre-hearing conference.

#### **8. Executive Session for the Purpose of Confidential Communications Between the Commission and Its Attorneys Concerning Pending Litigation Filed With the Oklahoma Supreme Court**

*Pursuant to 25 O.S. § 307(B)(4), an Executive Session was proposed for the purpose of conducting confidential communications between the Commission and its attorneys concerning pending lawsuits against the Commission, including Ellsworth Construction Co., et al. v. Tara Inhofe, Administrative Law Judge, et al. and Robin E. Williams v. The Oklahoma Workers' Compensation Commission.*

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

**Motion:** Chairman Wilson moved to vote (A) to determine that disclosure would seriously impair the ability of the Commission to respond to the lawsuits, and (B) to go into Executive Session for the purposes stated above.

**Second:** Commissioner Gilliland.

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

**The motion carried.**

Chairman Wilson asked for a motion to reconvene in Open Session.

***Motion:*** Commissioner Engle moved to reconvene in Open Session.

***Second:*** Commissioner Gilliland.

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

**The motion carried.**

#### **Adjournment**

Chairman Wilson announced the next Regular Meeting of the Commission for Thursday, November 20, 2014.

***Motion*** to adjourn: Commissioner Engle.

***Second:*** Commissioner Gilliland.

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

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

Troy L. Wilson  
Chairman

Robert H. Gilliland  
Commissioner



Denise Engle  
Commissioner

Dr. Rick Farmer  
Executive Director

STATE OF OKLAHOMA

## WORKERS' COMPENSATION COMMISSION

1915 N. STILES

OKLAHOMA CITY, OKLAHOMA 73105-4918

(405) 522-3222

It is the policy of the Oklahoma Workers' Compensation Commission not to discriminate in any of its employment practices on the basis of political or religious affiliation, race, creed, color, gender, sexual orientation, age, national origin, marital status or disability (so long as the disability does not render the employee unable to do the work for which employed). Any form of unlawful discrimination to which this policy applies is a very serious matter and will not be tolerated.

Sexual harassment is a form of unlawful discrimination based on sex. It includes, but is not limited to: unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is explicitly or implicitly a requirement of the individual's employment, or used as a basis for any employment decision concerning that individual, or when such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile or offensive work environment. Such behavior is prohibited by the Civil Rights Act of 1964, by the regulatory guidelines of the Equal Employment Opportunity Commission, by applicable state laws, and by this policy. In some circumstances, it may also violate other laws. Conduct prohibited by this policy includes, but is not limited to:

- Unwelcome sexual flirtation;
- Advances or propositions for sexual activity;
- Continued or repeated verbal abuse of a sexual nature, such as suggestive comments and sexually explicit jokes;
- Sexually degrading language to describe an individual;
- Remarks of a sexual nature to describe a person's body or clothing;
- Display of sexually demeaning objects and pictures;
- Offensive physical contact, unwelcome touching, pinching or brushing the body;
- Coerced sexual intercourse; and
- Sexual assault.

Any employee, who is subjected to or is aware of sexual harassment within the Oklahoma Workers' Compensation Commission, should report that information immediately to his or her supervisor, the Deputy Executive Director, or the Executive Director. Employees may report to any of their supervisors or administrators and need not observe any particular chain of command. The person receiving such report shall obtain the basic allegations and forward them immediately to the Executive Director. Sexual harassment by any employee of another will not be condoned or tolerated in the Oklahoma Workers' Compensation Commission. Appropriate disciplinary actions will be taken against any employee who causes, engages in, encourages, condones or otherwise permits unlawful sexual harassment, and against any supervisory or other responsible employee who fails to take corrective action as provided above. Such conduct may be grounds for disciplinary action, up to and including termination of employment. Any employee that believes he/she has been a victim of sexual harassment may complain of discrimination based on sex as outlined in this policy. Any employee attempting to penalize or retaliate against another employee for filing a complaint, reporting an incident of sexual harassment, or cooperating with an investigation of alleged sexual harassment, shall be subject to disciplinary action, up to and including termination of employment. It is the responsibility of all employees in this agency, supervisory and non-supervisory, to adhere to this policy and to use all reasonable efforts to further its goals and spirit.

**ATTACHMENT A**

## CONSENT AGENDA

<u>PAYEE</u>	<u>VOUCHER #</u>	<u>VOUCHER AMOUNT</u>
1. Patricia Sommer- Travel	00000765	\$70.68
2. Tara Inhofe- Travel	00000766	\$72.32
3. Michael Egan- Travel	00000767	\$70.48
4. Michael Egan- Travel	00000798	\$853.20

ATTACHMENT B

WCC FORM - HR-11 (Revised 10/2014)		AGENCY, BUSINESS UNIT	865	CLAIM OF: <b>Workers' Compensation Commission</b>
STATE OF OKLAHOMA Claim Voucher And Disbursements of Payroll Withholdings		October 2014 Payroll Claim		Address: 1915 N. Stiles OKC, OK 73105
ACCOUNT		<b>PAYROLL EXPENSE</b>	<b>AMOUNT</b>	FOR <b>\$105,956.23</b>
	200	Salaries	\$77,759.91	
	200	OASDI*, Medicare**	\$5,948.01	
	200	Benefits, SROP***	\$22,248.31	
				<b>CERTIFICATION OF PAYROLL</b>
				I hereby certify that the accounts to be charged and the amount of this payroll are correct as shown and authorize the State Treasurer to issue a warrant in payment for this expense.
				Chairman Signature _____
		<b>TOTAL AMOUNT</b>	<b>\$105,956.23</b>	Date _____
Voucher #:	000001			

\* OASDI - Employer contribution for Social Security (OASDI stands for "Old Age, Survivor and Disability Insurance)

\*\* Medicare - Employer contribution for Medicare

\*\*\* SROP - State of Oklahoma Retirement Plan - Employer contribution

Employee	True Gross	Excess Benefit	FICA/Med	State Ins. Adj. Ben.	State Retirement	State Unemp.	State Share Annuities	Total Payroll Cost
Engle, Denise	\$10,364.42	\$0.00	\$792.81	\$1,542.66	\$1,710.13	\$0.00	\$26.55	\$14,436.57
Farmer, Rick	\$9,333.33	\$179.46	\$700.61	\$1,133.29	\$1,540.00	\$0.00	\$26.55	\$12,913.24
Gilliland, Robert	\$10,364.42	\$34.66	\$785.97	\$1,278.09	\$1,710.13	\$0.00	\$0.00	\$14,173.27
Wilson, Troy	\$10,364.42	\$51.34	\$796.80	\$1,261.41	\$1,710.13	\$0.00	\$26.55	\$14,210.65
Curtin, Shane	\$9,333.33	\$0.00	\$711.61	\$1,677.96	\$1,540.00	\$0.00	\$0.00	\$13,262.90
Egan, Michael	\$9,333.33	\$100.23	\$721.67	\$540.75	\$1,540.00	\$0.00	\$0.00	\$12,235.98
Inhofe, Tara	\$9,333.33	\$33.12	\$716.53	\$837.77	\$1,540.00	\$0.00	\$0.00	\$12,460.75
Sommer, Tish	\$9,333.33	\$104.63	\$722.01	\$536.35	\$1,540.00	\$0.00	\$26.55	\$12,262.87
<b>Total</b>	<b>\$77,759.91</b>	<b>\$503.44</b>	<b>\$5,948.01</b>	<b>\$8,808.28</b>	<b>\$12,830.39</b>	<b>\$0.00</b>	<b>\$106.20</b>	<b>\$105,956.23</b>

Gross Salaries	\$77,759.91
Benefits & Retirement	\$22,248.31
OASDI, Medicare	\$5,948.01
<b>Total</b>	<b>\$105,956.23</b>

Attachment C

WCC FORM - HR-11 (Revised 10/2014)		AGENCY BUSINESS UNIT		865	CLAIM OF: Workers' Compensation Commission
STATE OF OKLAHOMA Claim Voucher And Disbursements of Payroll Withholdings		November 2014 Payroll Claim			Address: 1915 N. Stiles OKC, OK 73105
ACCOUNT		PAYROLL EXPENSE	AMOUNT		FOR <b>\$105,956.23</b>
		Salaries	\$77,759.91		
		OASDI*, Medicare**	\$5,948.01		
		Benefits, SRP***	\$22,248.31		
					<b>CERTIFICATION OF PAYROLL</b> I hereby certify that the accounts to be charged and the amount of this payroll are correct as shown and authorize the State Treasurer to issue a warrant in payment for this expense.
					Chairman Signature _____
		TOTAL AMOUNT	\$105,956.23		Date _____
Voucher #:	.000002				

\* OASDI - Employer contribution for Social Security (OASDI stands for "Old Age, Survivor and Disability Insurance)

\*\* Medicare - Employer contribution for Medicare

\*\*\* SRP - State of Oklahoma Retirement Plan - Employer contribution

Employee	True Gross	Excess Benefit	FICA/Med	State Ins. Adj. Ben.	State Retirement	State Unemp.	State Share Annuities	Total Payroll Cost
Engle, Denise	\$10,364.42	\$0.00	\$792.81	\$1,542.66	\$1,710.13	\$0.00	\$26.55	\$14,436.57
Farmer, Rick	\$9,333.33	\$179.46	\$700.61	\$1,133.29	\$1,540.00	\$0.00	\$26.55	\$12,913.24
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Sommer, Tish	\$9,333.33	\$104.63	\$722.01	\$536.35	\$1,540.00	\$0.00	\$26.55	\$12,262.87
<b>Total</b>	<b>\$77,759.91</b>	<b>\$503.44</b>	<b>\$5,948.01</b>	<b>\$8,808.28</b>	<b>\$12,830.39</b>	<b>\$0.00</b>	<b>\$106.20</b>	<b>\$105,956.23</b>

Gross Salaries	\$77,759.91
Benefits & Retirement	\$22,248.31
OASDI, Medicare	\$5,948.01
<b>Total</b>	<b>\$105,956.23</b>

Attachment C