

REGULAR MEETING OF THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

APPEALS

Friday, December 1, 2023
9:00 p.m.
Commission En Banc Courtroom
1915 N. Stiles Ave.
Oklahoma City, Oklahoma
www.wcc.ok.gov

AGENDA

CALL TO ORDERCommission's Chair, Chairman Russell
ROLL CALLPresiding Appellate Officer, Commissioner Tilly
BUSINESSPresiding Appellate Officer, Commissioner Tilly

STATEMENT OF COMPLIANCE BY CHAIRMAN

THE FOLLOWING MATTERS ARE PRESENTED FOR CONSIDERATION AND ACTION, IF ANY, DEEMED APPROPRIATE BY THE COMMISSION

A. MINUTES:

- The drafted Minutes of the Special Appeals Meeting of November 9, 2023 will be considered for approval.

B. Commission Consideration of Adoption of Final Order in the Following Cases:

1. Rachel Fritz v. City of Tulsa (OWN RISK #10435), File #CM3-2019-06216R

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Anthony Blair appeared for the Claimant and Jordan S. Ensley appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Tilly moved to take preliminary action to reverse the Administrative Law Judge's order on the TTD issue.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER REVERSED

2. **Lonnie Chastain v. The Toro Company FKA The Charles Machine Works Inc. (OWN RISK), File #CM3-2021-06047T**

Respondent filed an appeal from the order issued by Administrative Law Judge Blodgett. Daniel Talbot appeared for the Claimant and Connie M. Wolfe appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Commissioner Tilly

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

3. **Peggy Wallenstein v. Nortek Air Solutions LLC and Everest Premier Insurance Company, File #CM3-2023-07142H**

Claimant filed an appeal from the order issued by Administrative Law Judge McMillin. Tim Kent is the attorney of record for the Claimant and Chad Whitten is the attorney of record for the Respondent.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

4. **Ernest Mullins III v. Paul Brightwell Dirt Works Inc. and National American Ins. Co., File #CM3-2022-07617G**

Respondent filed an appeal from the order issued by Administrative Law Judge Curtin. Elizabeth Gray appeared for the Claimant and Angela Reinstein appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

C. Commission Consideration of Adoption of Final Order in the Following Cases:

Items C1-C3 are pending Supreme Court Decisions

1. Allan Hare v. MITF, File #CM3F-2019-04761J

Claimant filed an appeal from the order issued by Administrative Law Judge Curtin. Ray Lahann is the attorney of record for the Claimant and Stefan Wenzel is the attorney of record for the Respondent.

This case came on for Oral Argument on November 18, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

2. James Crittenden Jr. v. MITF, File #CM3F-2019-07602A

Claimant filed an appeal from the order issued by Administrative Law Judge Blodgett. McCaffrey & Associates are the attorneys of record for the Claimant and Michael A. Fagan is the attorney of record for the Respondent.

This case came on for Oral Argument on November 18, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

3. James Randy Westlake v. MITF, File #CM3F-2022-01067X

Respondent filed an appeal from the order issued by Administrative Law Judge Lawyer. Ray Lahann is the attorney of record for the Claimant and Travis R. Colt is the attorney of record for the Respondent.

This case came on for Oral Argument on March 17, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

4. Jerry Green v. MITF, File #CM3F-2015-07692A

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Susan Jones appeared for the Claimant and Jordan S. Ensley appeared for the Respondent.

This case came on for Oral Argument on April 21, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take preliminary action to affirm the Administrative Law Judge's order and issue a supplemental order at a future date.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

5. Virgil Breeze v. Premium Transportation Group Inc. and XL Insurance America Inc., File #CM3-2021-06787E

Both parties filed an appeal from the order issued by Administrative Law Judge Inhofe. Daniel J. Talbot appeared for the Claimant and R. Jay McAtee appeared for the Respondent.

This case came on for Oral Argument on April 21, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

6. Patricia Troxell v. MITF, File #CM3F-2017-00855A

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. April Spurgeon appeared for the Claimant and Michael A. Fagan appeared for the Respondent.

This case came on for Oral Argument on April 21, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Chairman Russell moved to take preliminary action to draft an order directing the Administrative Law Judge to appoint an independent nurse manager to accompany the claimant to the physician's examination.

Motion: Commissioner Biggs moved to adopt order as circulated.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER ADOPTED

7. Fernando Colunga v. MITF, File #CM3F-2015-01300K

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Michael R. Green appeared for the Claimant and Jordan S. Ensley appeared for the Respondent.

This case came on for Oral Argument on May 19, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take this case under advisement.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

8. Leticia Arevalo v. Worldwide Printing & Distribution and Great American Alliance Ins. Co., File #CM3-2022-006317G

Claimant filed an appeal from the order issued by Administrative Law Judge McMillin. Arthur H. Adams is the attorney of record for the Claimant and James B. Cassody is the attorney of record for the Respondent.

This case came on for Oral Argument on June 16, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take preliminary action to modify the order and award TTD from October 7, 2022 to October 13, 2022 in the agreed upon stipulated rate and remand in part.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

9. Debra Ferguson v. Selco LLC and Employers Preferred Insurance Co. (FKA AMCOMP PREFERRED), File #CM3-2020-04017X

Respondent filed an appeal from the order issued by Administrative Law Judge Lawyer. Margaret E. Otterson is the attorney of record for the Claimant and Cathy C. Barnum is the attorney of record for the Respondent.

This case came on for Oral Argument on June 16, 2023. After reviewing the record, hearing oral arguments, and deliberating, Chairman Russell moved to affirm the portion of the order awarding evaluation and the treatment for weight loss and reverse and remand the portion of the order for the shower for appointment of a nurse case manager to evaluate and make recommendations to the Administrative Law Judge on that matter.

Motion: Commissioner Biggs moved to adopt order as circulated.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER ADOPTED

10. Travis Oakes v. City of Stillwater, File #CM3-2022-07536Y

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Daniel J. Talbot appeared for the Claimant and John D. Valentine appeared for the Respondent.

This case came on for Oral Argument on July 21, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take preliminary action to reverse the denial of Respondent's motion to terminate TTD.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

11. James Brock v. Starlight Express LLC and Compsource Mutual Ins. Co. (FKA COMPSOURCE OKLAHOMA), File #CM3-2021-04119R

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Susan H. Jones appeared for the Claimant and Travis R. Colt appeared for the Respondent.

This case came on for Oral Argument on September 22, 2023. After reviewing the record, hearing oral arguments, and deliberating, Chairman Russell moved to preliminary action to reverse the order sustaining Respondent's request for dismissal of certain body parts and authorize the Commission's appellate counsel or other staff member to draft a proposed order findings and facts and conclusion of law to be considered for continued action at a future meeting.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

12. Jimmy Mills v. Gary A. Crain Inc. and Imperium Insurance Co., File #CM3-2020-00795Q

Claimant filed an appeal from the order issued by Administrative Law Judge Curtin. Daniel J. Talbot appeared for the Claimant and R. Jay McAtee appeared for the Respondent.

This case came on for Oral Argument on September 22, 2023. After reviewing the record, hearing oral arguments, and deliberating, Chairman Russell moved to take this case under advisement.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

13. Richard Carmichael v. G.T. Bynum Co. LLC and Old Glory Insurance Co., File #CM3-2022-00963T

Claimant filed an appeal from the order issued by Administrative Law Judge Lawyer. Bret Untershuetz appeared for the Claimant and David Custar appeared for the Respondent.

This case came on for Oral Argument on September 22, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take preliminary action to reverse the denial of TTD, remand the case back to the ALJ, and issue an order at a later date.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

14. Kevin Power v. Flow Testing Inc. and Compsource Mutual Ins. Co. (FKA COMPSOURCE OKLAHOMA), File #CM3-2020-02016R

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. J. Kord Hammert appeared the Claimant and David J. Frette appeared for the Respondent.

This case came on for Oral Argument on September 22, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take this case under advisement.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

15. Prince Felder III v. Anheuser-Busch LLC and Indemnity Ins. Co. of North America (INA INS) (CT GEN), File #CM3-2021-06399R

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Ray Lahann is the attorney of record for the Claimant and Laurie D. Judy is the attorney of record for the Respondent.

This case came on for Oral Argument on September 22, 2023. Commissioner Biggs moved to take preliminary action to vacate the denial and remand back to the ALJ for the submission of further evidence as requested by the CIME in his report.

Motion: Chairman Russell moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

ADJOURNMENT.....Presiding Appellate Officer, Commissioner Tilly