

SPECIAL MEETING OF THE
OKLAHOMA WORKERS' COMPENSATION
COMMISSION

~ APPEALS ~

Friday December 16, 2016
9:00 a.m.
Commission Chambers
1915 N. Stiles Ave.
Oklahoma City, Oklahoma
www.wcc.ok.gov

MINUTES

Members present: Chairman Bob Gilliland, Commissioner Mark Liotta and Commissioner Russell.

Staff present to support the Commission: Lindsey Christopher and Dana Esparza.

CALL TO ORDER Presiding Appellate Officer, Chairman Gilliland

Call to order 9:00 a.m. by Chairman Gilliland, Presiding Appellate Officer.

ROLL CALL Presiding Appellate Officer, Chairman Gilliland

After the roll call was taken, Chairman Gilliland announced the presence of a Quorum and the Statement of Compliance with the Open Meeting Act was read.

NOTICE OF COMPLIANCE..... Dana Esparza

STATEMENT OF OKLAHOMA OPEN MEETING LAW
COMPLIANCE

Notice of this Regular Meeting was filed with the Secretary of State's office on Monday, October 17, 2016 at 10:04 a.m., in compliance with the Open Meeting Act.

The Agenda was posted at 8:45 a.m. on Tuesday, December 15, 2016, more than 24 hours in advance of the meeting, in compliance with the Open Meeting Act. It was posted on the Commission website and at 1915 North Stiles, the Commission's principal office.

MINUTES:

- The drafted Minutes of the Special Meeting of November 17, 2016 were considered for approval.

Presiding Appellate Officer Chairman Gilliland presented the minutes of the November 17, 2016 Special Meeting for approval.

Motion: Commissioner Liotta made a motion to approve the minutes of the November 17, 2016 Special Meeting.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: MINUTES APPROVED

Appeal Hearings before the Commission En Banc from Orders Issued by the Commission's Administrative Law Judges

Tanner David Cassell v. Jr. Reynolds Welding & Roustabout LLC & Compsource Mutual Ins. Co. (FKA Compsource Oklahoma), File #CM2015-07668A

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Brandon J. Burton represented the Claimant and Dolsen Caster represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Commissioner Liotta moved to affirm the Administrative Law Judge's order with additional findings in our order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Commissioner Russell

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, and Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED WITH ADDITIONAL FINDINGS

Jesse McPeak v. Express Services Inc. & New Hampshire Insurance Co., File #CM2015-03051F

Claimant filed an appeal from the order issued by Administrative Law Judge Sommer. Jim Devinney represented the Claimant and Travis A. Fulkerson represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Commissioner Russell moved to affirm the Administrative Law Judge's order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

Anthony L. Davis v. Unit Drilling Co. (Own Risk #17006), File #CM2015-01734F

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Randy D. Edmondson represented the Claimant and Peter Mills represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Presiding Appellate Officer Chairman Gilliland announced that this case will be taken under advisement.

Stacy T. Mathews v. Porta John Co. of Tulsa & Compsource Mutual Ins. Co. (FKA Compsource Oklahoma), File#CM2015-03327J

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Bret unterschuetz represented the Claimant and Blake I. Whitten represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Commissioner Russell moved to affirm the Administrative Law Judge's order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Commissioner Liotta

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

Lisa K. Brazeal v. Whataburger Restaurants LLC Commerce & Industry Insurance Co., File #CM2016-00499K

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Craig R. Armstrong represented the Claimant and Lindsey Grayer represented the Respondent.

Motion: After hearing the oral argument of counsel and deliberating, Presiding Appellate Officer Chairman Gilliland moved to affirm the Administrative Law Judge's order with changes to paragraph IV section 2 per stipulation of counsel and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Commissioner Liotta

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED WITH CHANGES

Roger Mairel v. Express Personnel Services & New Hampshire Insurance Co., File#CM2015-05252R

Respondent filed an appeal from the order issued by Administrative Law Judge Sommer. Randy D. Edmonson represented the Claimant and Travis A. Fulkerson represented the Respondent.

Motion: After deliberating, Commissioner Liotta moved to affirm the Administrative Law Judge's order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland and Commissioner Liotta.

Those voting Nay: Commissioner Russell

THE MOTION CARRIED: ALJ ORDER AFFIRMED

Kenneth Lee Waring v. Stone Trucking Southwest LLC & Midwest Employers Casualty Co., File#CM2015-07381H

Respondent filed an appeal from the order issued by Administrative Law Judge McMillin. John L. Harlan represented the Claimant and Jace H. Powell represented the Respondent.

Motion: After deliberating, Commissioner Liotta moved to affirm the Administrative Law Judge's order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

**Everardo Nunez v. Frac Tech Holdings LLC & Liberty Insurance Corp.,
File #CM2016-01295R**

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Juan Maldonado represented the Claimant and John A. McCaleb represented the Respondent.

Motion: After deliberating, Presiding Appellate Officer Chairman Gilliland moved to affirm the Administrative Law Judge's order and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Commissioner Liotta

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland and Commissioner Liotta.

Those voting Nay: Commissioner Russell

THE MOTION CARRIED: ALJ ORDER AFFIRMED

Commission Consideration of Adoption of Final Order in the Following Case:

1. Lewis Baker v. BJs Restaurants Operations co. & Arch Insurance Company, File # CM2015-02387A

On November 10, 2016, the Commission voted to take preliminary action to remand the matter to the Administrative Law Judge for ruling on reevaluation of the right shoulder by an IME chosen by the Administrative Law Judge and other proceedings consistent therewith and to instruct Commission staff to draft a proposed order for future consideration by the Commission. The proposed order has been distributed to the Commissioners for consideration of adoption.

After reviewing the record, hearing oral arguments, and deliberating, a proposed order was drafted and considered for adoption by the Commission.

Motion: Commissioner Liotta moved to adopt the order as proposed and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ORDER ADOPTED

**Johnny Barham v. Billy May Enterprises Inc. & Compsource Mutual,
File # CM2015-04278A**

On November 10, 2016, The Commission voted to take preliminary action to affirm the Administrative Law Judge's order with modifications to the Administrative Law Judge's order in paragraph IV 3 by correcting the typographical error of "Right Hand" by changing it to "Left Hand." The Order should be further modified in paragraph 3, third paragraph, next to the last sentence, by changing it to read "These weeks are combined "with" (rather than "to") 38.63% to the hand to make a total of 50% to the hand" and to instruct Commission staff to draft a proposed order for future consideration by the Commission. The proposed order has been distributed to the Commissioners for consideration of adoption. Claimant filed an appeal from the order issued by Administrative Law Judge Curtin. Henry Dalton represented the Claimant and Lacy N. Vassar represented the Respondent.

After reviewing the record, hearing oral arguments, and deliberating, a proposed order was drafted and considered for adoption by the Commission.

Motion: Presiding Appellate Officer Chairman Gilliland moved to adopt the order as proposed and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Commissioner Liotta

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ORDER ADOPTED

**Charlotte Coston v. Pride Planting, Inc., &/or Valence Surface
Technologies, LLC & American Zurich Insurance Company, File #
CM2016-00318Q**

On November 10, 2016, The Commission voted to affirm the Administrative Law Judge's order, and authorize the Commission's

Presiding Appellate Officer to sign and file an order on behalf of the Commission and to instruct Commission staff to draft a proposed order for future consideration by the Commission. The Respondent raised the issue as to whether the Claimant's constitutional arguments were properly raised. That objection is overruled. We have considered Claimant's constitutional arguments. Claimant has failed to show that the Administrative Workers' Compensation Act is being unconstitutionally applied to this Claimant. In the future we urge parties to make the constitutional arguments, if known, to the Administrative Law Judge at trial. The proposed order has been distributed to the Commissioners for consideration of adoption.

After reviewing the record, hearing oral arguments, and deliberating, a proposed order was drafted and considered for adoption by the Commission.

Motion: Presiding Appellate Officer Chairman Gilliland moved to adopt the order as proposed and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Commissioner Liotta

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ORDER ADOPTED

Paul Edward Lewis v. Freymiller Trucking & Travelers Insurance Co. & D&M Carriers & Travelers Indemnity Co. of America, File # CM2015-01094H

On November 17, 2016, The Commission voted to take preliminary action to remand the matter to the Administrative Law Judge with instructions to appoint an IME and take other action consistent therewith and to instruct Commission staff to draft a proposed order for future consideration by the Commission. The proposed order has been distributed to the Commissioners for consideration of adoption.

After reviewing the record, hearing oral arguments, and deliberating, a proposed order was drafted and considered for adoption by the Commission.

Motion: Commissioner Liotta moved to adopt the order as proposed and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ORDER ADOPTED

Greg James v Oklahoma Department of Corrections & CompSource Mutual Ins., File # CM2015-05912J

On November 17, 2016, the Commission voted to remand the matter to the Administrative Law Judge with instruction to modify paragraph V1 of the Administrative Law Judge's Order denying compensability and authorize the Commission's Presiding Appellate Officer to sign and file an order reflecting such modification on behalf of the Commission.

After reviewing the record, hearing oral arguments, and deliberating, a proposed order was drafted and considered for adoption by the Commission.

Motion: Commissioner Liotta moved to adopt the order as proposed and authorize the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Commissioner Russell

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: ORDER ADOPTED

Announcements

Commission's next special business meeting is Tuesday, December 19, 2016. Commission's next special meeting regarding Appeals is scheduled for Friday, January 20, 2017.

ADJOURNMENT

Motion: Commissioner Liotta moved to adjourn the meeting at approximately 12:49 p.m.

Second: Presiding Appellate Officer Chairman Gilliland

Those Voting Aye: Presiding Appellate Officer Chairman Gilliland, Commissioner Liotta and Commissioner Russell.

THE MOTION CARRIED: THE MEETING WAS ADJOURNED.