



MEETING MINUTES

OF THE

OKLAHOMA WORKERS' COMPENSATION COMMISSION

SPECIAL BUSINESS MEETING

FEBRUARY 13, 2020

STATEMENT OF OKLAHOMA OPEN MEETING ACT COMPLIANCE

Notice of this Special Business Meeting was filed with the Secretary of State's office on Thursday, February 6, 2020, at 2:22 p.m. in compliance with the Open Meeting Act.

The agenda was posted at least 24 hours in advance of the meeting, in compliance with the Open Meeting Act. It was posted on the Commission website and at 1915 N. Stiles Ave., Oklahoma City, Oklahoma, the Commission's principal office.

MINUTES OF THE FEBRUARY 13, 2020, SPECIAL BUSINESS MEETING OF THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

The members of the Oklahoma Workers' Compensation Commission met at 1915 N. Stiles Ave., 2nd floor, Oklahoma City, Oklahoma, on February 13, 2020.

Members present: Chairman Mark Liotta, Commissioner Jordan Russell, and Commissioner Megan Tilly.

Others present: Lauren Hammonds Johnson, WCC; Hopper Smith, WCC; Alexander Watkins, WCC; Collin Fowler, WCC; Dr. Jay Cannon, WCC; and Joe Biscone.

Chairman Liotta expressed appreciation for those in attendance. He stated that public comments or questions would not be taken at this meeting. The Commissioners intended to discuss the Physicians Advisory Committee's specific recommendations for deviations from the AMA's guides to the evaluation of permanent impairment for shoulder injuries and general use of the Sixth Edition. After the roll was taken, he announced the presence of a quorum. The meeting was called to order at approximately 3:00 p.m.

1. Approval of Minutes

- a. The drafted minutes of the January 16, 2020, Regular Business Meeting of the Commission were considered for approval.

Motion: Commissioner Tilly moved to approve the minutes of the January 16, 2020, Special Business Meeting of the Commission.

Second: Commissioner Russell

Those voting aye: Chairman Liotta, Commissioner Russell, Commissioner Tilly.

The motion carried.

- b. The drafted minutes of the January 27, 2020, Special Business Meeting of the Commission were considered for approval.

Motion: Commissioner Tilly moved to approve the minutes of the January 16, 2020, Special Business Meeting of the Commission.

Second: Commissioner Russell

Those voting aye: Chairman Liotta, Commissioner Russell, Commissioner Tilly.

The motion carried.

2. **Discussion and possible action regarding the Physician Advisory Committee's specific recommendations for deviation from the AMA's guides to the evaluation of permanent impairment for shoulder injuries and general use of the Sixth Edition.**

Title 85A O.S. § 17(B)(3) authorizes the Physician Advisory Committee ("PAC") to, after public hearing, review and make recommendations for acceptable deviations from the American Medical Association's Guides to the Evaluation of Permanent Impairment.

Such recommendations shall be made to the Workers' Compensation Commission ("WCC"), which may adopt, in whole or in part, the recommendation of a method or system to evaluate permanent disability that shall deviate from, or be used in place of or in combination with the Guides. 85A O.S. § 60.

Section 60 of Title 85A also provides that if the WCC adopts a method or system to evaluate permanent disability, such method shall be submitted by the Commission's Executive Director to the Governor, Speaker of the House of Representatives, and the President Pro Tempore of the Senate within the first ten legislative days of a regular session of the Legislature. Such method shall be subject to disapproval by joint or concurrent resolution of the Legislature during the legislative session. If the Legislature does not take action on the method or system submitted, it shall become operative thirty days following the adjournment of the Legislature.

The PAC submitted two recommendations for consideration by the WCC. (The PAC's recommendations letter, in full, is attached to this agenda):

- a. *"The Guides to the Evaluation of Permanent Impairment, 6th edition, states that impairment is a medical decision determined by physicians. However, previously noted, frequently the impairment rating does not adequately capture the true disability of the claimant. As previously alluded, the shoulder seems to be a point in particular.*

The subcommittee determined that the most pressing issue was the impairment rating for the shoulder and most of their work was directed at this condition.

The subcommittee recommended and the PAC concurred that the most expedient solution would be for the legislature to disconnect impairment and disability as one and the same.

We recommend that impairment be determined by the physician and that disability be determined by the ALJ after consideration of other extenuating circumstances in addition to impairment (such as age, education, training, experience, and the claimant's ability to return to his previous or similar profession or occupation at the same or similar salary)."

Chairman Mark Liotta opened discussion for section (2)(a) of the PAC's recommendations. The Commission expressed that accepting section (2)(a) of the PAC's recommendation would change the definition of disability and impairment contrary to law. The Commission discussed that it does not have the authority to change the definition of disability and impairment as set by statute and interpreted by the Supreme Court of Oklahoma.

Motion: Commissioner Russell moved to take no action on section 2(a) of the agenda.

Second: Commissioner Tilly.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly

The motion carried.

- b. *"On page 418 of the Guides to the Evaluation of Permanent Impairment, 6th edition, the following is provided as an instruction:*

If there are multiple diagnoses within a specific region, then the most impairing diagnosis is rated because it is probable this will incorporate the functional losses of the less impairing diagnoses. In rare cases, the examiner may combine multiple impairments within a single region if the most impairing diagnosis does not adequately reflect the losses."

We recommend changing the phrase 'In rare cases' to 'At the examiner's discretion'. This change would allow the impairment rating to better reflect the degree of impairment rather than relying on one ratable diagnosis to encompass the entire range of impairments."

Chairman Mark Liotta opened discussion for section 2(b) of the PAC's recommendations. The Commission discussed whether or not changing the language "In rare cases" to "At the examiners discretion" would have any effect the AMA's guides to the evaluation of permanent impairment for shoulder injuries and general use of the Sixth Edition, since the Sixth Edition already provides some discretion to physicians to use the most clinically accurate method of rating.

Motion: Commissioner Russell moved to take no action on section 2(b) of the agenda.

Second: Commissioner Tilly.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly

The motion carried.

3. Announcements

The Commission's next regular business meeting is on Thursday, February 20, 2020, at 1:30 p.m. The Commission's next regular business meeting is on Thursday, February 27, 2020, at 9:00 a.m.

ADJOURNMENT.....Chairman Mark Liotta

Motion: Commissioner Tilly moved to adjourn.

Second: Commissioner Russell.

Those voting aye: Chairman Liotta, Commissioner Russell, and Commissioner Tilly

The motion carried. The meeting adjourned at 3:27 p.m.