

**REGULAR MEETING OF THE
OKLAHOMA WORKERS' COMPENSATION
COMMISSION**

~ APPEALS ~

Friday, September 22, 2023
9:00 a.m.
Commission En Banc Courtroom
1915 N. Stiles Ave.
Oklahoma City, Oklahoma
www.wcc.ok.gov

MINUTES

Members present: Chairman Jordan Russell, Commissioner Megan Tilly, and Commissioner Scott Biggs.

Staff present to support the Commission: Alexander Watkins, WCC; Lindsey Christopher, WCC; and Monica Pack, WCC.

STATEMENT OF OKLAHOMA OPEN MEETING LAW COMPLIANCE

Chairman Russell stated the administrative meeting was being held in compliance with the Open Meetings Act.

CALL TO ORDER.....Presiding Appellate Officer, Commissioner Tilly

Call to order 9:00 a.m. by Commissioner Tilly, Presiding Appellate Officer.

ROLL CALL.....Presiding Appellate Officer, Commissioner Tilly

After the roll call was taken, Commissioner Tilly announced the presence of a Quorum.

A. MINUTES:

- The drafted Minutes of the Regular Appeals Meeting of July 21, 2023, were considered for approval.

Motion: Commissioner Biggs made a motion to approve the Regular Appeals Meeting of July 21, 2023, minutes.

Second: Commissioner Tilly

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

THE MOTION CARRIED: MINUTES APPROVED

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

1. 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 the Claimant and Travis R. Colt appeared for the Respondent.

Motion: 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.

Second: Commissioner Biggs

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

THE MOTION CARRIED: PRELIMINARY ACTION TO REVERSE ORDER AND SUSTAINING DIMISSAL OF CERTAIN BODY PARTS

2. Kendall Jobe v. City of Tulsa (OWN RISK #10435), File #CM3-2019-01638K

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Michael R. Green is the attorney of record for the Claimant and Travis R. Colt is the attorney of record for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to continue this case to the next appellate docket.

Second: Chairman Russell

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

THE MOTION CARRIED: CONTINUED

3. James Massey v. MITF, File #CM3F-2022-04402N

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Susan H. Jones appeared for the Claimant and Connor Brittingham 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

4. Jeffrey Kimble v. Lake Region Electric Cooperative and Oklahoma Associates of Electric Self Insurers Fund, #CM3-2022-05256L

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Susan H. Jones appeared for the Claimant and Jon L. Derouen Jr. 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

5. 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.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Chairman Russell moved to take this case under advisement.

Second: Commissioner Biggs

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

THE MOTION CARRIED: TAKEN UNDER ADVISEMENT

6. 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 Unterschuetz appeared for the Claimant and David Custar appeared for the Respondent.

Motion: 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.

Second: Chairman Russell

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

THE MOTION CARRIED: ALJ ORDER REVERSED AND REMANDED

7. **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.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take this case under advisement.

Second: Chairman Russell

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

THE MOTION CARRIED: TAKEN UNDER ADVISEMENT

8. **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 appeared the Claimant and Laurie D. Judy appeared for the Respondent.

Motion: 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.

Second: Chairman Russell

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

THE MOTION CARRIED: VACATED AND REMANDED

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

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: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

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: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

3. Jimmie Wilson v. MITF, File #CM3F-2017-01505K

Respondent filed an appeal from the order issued by Administrative Law Judge McMillin. Micah Felton appeared for the Claimant and Stefan Wenzel appeared for the Respondent.

This case came on for Oral Argument on January 27, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission Tilly moved to take preliminary action to affirm the administrative law judge's order and find that it's neither contrary to law nor against the clear weight of the evidence.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

4. 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: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

5. Michael Lewis v. H3S Investments, LLC and Stonetrust Commercial Ins. Co., #CM3-2022-00255Y

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Darrel Paul appeared for the Claimant and Jennifer Finley appeared 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: Commissioner Biggs moved to adopt opinion as circulated.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER ADOPTED

6. 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: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

7. 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: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

8. 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 continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

9. 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: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

10. 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: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

11. 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 continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

12. Bobby Ross v. Bird Equipment LLC and Zurich American Ins. Co., File #CM3-2022-01159A

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Tim Kent appeared for the Claimant and James B. Cassody 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 affirm the Administrative Law Judge's order in regards to compensability; vacate the order in regards to the authorization of medical treatment; and remand to the ALJ to appoint an IME only on the surgical recommendation.

Motion: Commissioner Biggs moved to adopt opinion as circulated.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER ADOPTED

13. 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: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

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

THE MOTION CARRIED: ORDER CONTINUED

ADJOURNMENT

Motion: Commissioner Biggs moved to adjourn the meeting at approximately 2:20 p.m.

Second: Chairman Russell.

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

THE MOTION CARRIED: MEETING ADJOURNED.