



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

July 17, 2014

Regular 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 July 17, 2014.

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

Chairman Wilson expressed appreciation for those in attendance and announced the agenda has been posted for this meeting. After the roll was taken, he announced the presence of a quorum and affirmed that all documents had been filed. The Statement of Compliance with the Open Meetings Act was read and the meeting was called to order at approximately 1:30 p.m.

Approval of Minutes

Chairman Wilson moved to approve the minutes of the June 19, 2014 regular meeting.

*Motion* to approve the minutes: Commissioner Engle.

*Second*: Commissioner Gilliland.

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

No: None. Abstentions: None. The motion carried.

Budget Report and Recommendation

Dr. Rick Farmer reported on the budget situation and gave a breakdown of the appropriations, assets, and fee income of the Commission as decided by the Legislature through SB1062, SB2127, and HB3539. The document with the budget is identified as Exhibit A and is included as a part of these minutes.

**Budget Recommendation**

Executive Director, Rick Farmer, handed out a proposed FY-15 budget for adoption and presented an explanation on the proposal. It was an overview of the Budget Work Program the Commission will be presenting to OMES for approval.

**Background**

SB1062 transferred all assets, including cash and personnel to the Commission on February 1. From that point until July 1 the WCC and the CEC shared one budget account and one staff. By agreement, a sub-account was established for the CEC to pay its judges, a few key staff and some expenses. We shared all other expenses and staff.

**Income**

The General Appropriations bill (SB 2127) provided the Commission \$2,750,000. Because of the Supreme Court ruling on the Higher Education funding case there is a sequester of .12 percent. That means the Commission's appropriation is \$2,746,647.

The CEC received a similar appropriation and their agency budget line was reopened. They became fully independent. HB 3539 divided the fee income between the CEC and the WCC.

- We receive fees from the compliance office that cover the cost of those employees transferred from Labor.
- We receive fees from the self-insurance office that cover the cost of those activities.
- There is a new fee that will be paid by insurance carriers to us in January.

Almost all of the other fees are case resolution fees, about \$1,700,000, and will go to the CEC. This is income that the WCC would have used to pay for the shared personnel. This bill takes effect August 22.

- Our fee revenue for July and August will be about \$100,000 less than we originally anticipated because of the current docket loads.

WCC total fee revenue for FY-15 is expected to be around \$876,000.

We begin the year with about \$900,000 on hand. This makes our total funds available about \$4,523,000.

### **Expenses**

Appropriated money cannot be carried forward, so we need to spend it first. We plan to spend our appropriated money on salaries, benefits, and rent on the 3<sup>rd</sup> floor.

Our limited fee income and our carryover will be spent on the remaining salaries, benefits and general operations.

- The severance packages will cost about \$422,000 including the leave for the CEC Judges whose terms expired and their court reporters.
- OMES is consolidating our IT department. We are asked to pay half of all of the joint WCC/CEC IT costs. The CEC is asked to pay the other half. The current estimate of our OMES IT cost is about \$217,170.

These expenses against our fees and carryover total about \$1,776,000.

As you can see, this budget spends every dollar of income and carryover. It also leaves our expense accounts very short. This will be a difficult budget to maintain.

We have enacted a number of efficiencies which the chairman will highlight later. This brings us to the subject of the layoffs last week.

As soon as we saw the budget bills we began making plans for how to function with limited resources. By the first week of June we had identified the positions (without any names attached) we would need to function independently and within our budget allocation. By the end of June we had discussed our future needs with the department supervisors and began moving staff and equipment. Once the CEC determined what staff it would need to function, it was the duty of the Commission to release the rest. They were our employees under SB1062 and we simply did not have the funds to retain them.

This is a stark budget, but it is the best we can do with the resources we were given. We will attempt to make it work by being frugal. I encourage you to adopt this budget.

*Motion to approve the budget as presented: Commissioner Gilliland.*

*Second:* Commissioner Engle.

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

No: None. Abstentions: None. The motion carried.

#### Report on Self-Insurance Guaranty Fund trust accounts and cases

Chairman Wilson reported that one of the duties of the Commission related to the Self-Insurance Guaranty Fund trust accounts and there are a number of funds with over \$6 million being managed by the WCC. I do not believe the Commission needs to be in the claims administration business and have discussed with Barney Welch, Chairman of the Self-Insurance Guaranty Fund Board, to research what would be involved with transferring the management of these funds to another entity that could devote the proper attention that these trust funds deserve.

#### Executive Director's Report

**Case Statistics** – As of Monday, a total of 1099 Form 3s have been filed. The numbers remain low, but they are beginning to tick upward. We are now averaging over 70 per week.

**Weekly Department Reports** – This week I contacted various department heads and ask them to develop weekly reports. In particular, I asked them to develop aging reports, so we can see how long it is taking to resolve pending cases. These reports will show us the aging, the status and the outcomes.

**OWCC Audit** – The audit of the OWCC has been ongoing since late January. The auditor's office has not been able to collect the data that they need. They are asking for a meeting with us to discuss the situation.

**Budget** – The WCC and CEC will have separate agency budgets. We have a meeting with OMES on Friday to set up the WCC's budget.

SB 2127 appropriated \$2,750,000 to each the WCC and the CEC.

HB 3539 split the fee income based on the entity generating it. About 80% of the fees will go to the CEC. We have a very cooperative relationship with the CEC and we expect that to continue. We have communicated revenue projections to Judge Taylor and asked for a meeting.

#### Commissioners' Reports

Commissioner Engle's report included the following items:

**Rules** – the Commission is considering another round of emergency rules prior to the permanent rulemaking process. Although a public meeting has not yet been scheduled, we plan to send an alert soon and will be requesting comments in a public comment period.

**Electronic Data Interface (EDI)** – I am continuing to work with Dr. Farmer and others regarding the implementation of EDI. EDI should increase operational efficiency leading to overall cost savings. It will reduce some delays found in the reporting/data collection process. We have not scheduled it yet, but plan

to hold a public meeting soon. Also, we will issue an alert in the next few days regarding EDI implementation requesting any public comments.

**Counselor Program (Ombudsman)** – This division continues to fulfill a vital Commission role in responding to inquiries from claimants, companies and interested parties. The division has had 29 requests for mediation and is working on the development of Alternative Dispute Resolution methods to be available for claimants and employers.

**Insurance Services** – Andrea Bair and her team worked through a peak period which included a large number of July 1<sup>st</sup> self-insured and TPA renewals.

**Upcoming Educational Conference** – Save the date for the educational conference to be held in Oklahoma City on September 22-23 at the Tower Hotel and Conference Center. More details to come.

Commissioner Gilliland presented his report about the following items:

- Our Counselors' office received numerous telephone calls as to why cases had been stricken. There were about 600 cases stricken from the Court of Existing Claims' hearing dockets set for July. The Commission did not strike those cases as some phone calls to the Commission suggest. As many as 15 claimants a day were calling our counselor division asking why their cases had been summarily stricken. Those calls were referred to the Court of Existing Claims since they struck those cases. They have complete autonomy over their own dockets. Over 50 percent of those cases were over 2 years old; almost 100 over 5 years old; and several, more than 10 years old. The Commission's dockets went forward in a timely manner, without interruption.
- There have been almost 1,100 Form-3's filed since February 1, 2014. We have a procedure where the case is set for a prehearing conference within 2 to 3 weeks of a request by a party. A conference is held to narrow the issues to those disputed and discovery is set. The case is then set for trial or another status conference in 30 days. At the next status conference, the case is normally set for trial. Cases that are at issue are being heard within 90-120 days of filing. This allows the injured worker to receive medical treatment and benefits in a timely manner. It also allows them to return to work more quickly. Our Counselors' office contacts every unrepresented injured worker by letter offering assistance and mediation. The counselors also make contact with many of the unrepresented injured workers by phone to offer assistance in obtaining medical treatment or to help resolve other worker concerns. Employers are also contacted if problems arise. The ALJ's also encourage mediation and settlement at prehearing conferences. This proactive approach has drastically reduced the number of claims being filed. The hope is that a less abrasive and contentious system will evolve for the good of all concerned.

#### Chairman's Report

Throughout the transition between the Commission and the Court of Existing Claims, both administrations agreed to cooperate on several levels. The WCC agreed to assist the CEC in helping them maintain their autonomy and funded their core operation by \$287,000 per month for the last five months of FY'14.

We funded and managed the pool of shared personnel while giving them priority use and service of all those functions for the 35 people. This saved the state thousands of dollars and provided continued employment for those people. All fee income came to the WCC which we used to pay for this shared

pool. It worked well and not only got us off to a good start and was supported by both the Supreme Court Chief Justice and the Governor, who praised our mutual willingness and ability to cooperate.

In FY'15 the Court was given approximately 90 percent of the settlement fee income. It is estimated that the Commission will receive the balance of 10 percent. The contribution is estimated to almost \$1.8 million directly to the CEC. The Commission had no ability to continue to fund the shared pool and was forced to split from the Court, keeping a limited number of staff. We continue to cooperate in the following areas as examples:

- The WCIS docketing module was designed for one person to finalize all dockets, so Valerie Rossiter will continue to calendar and notice dockets for both the CEC and WCC for some weeks.
- We will continue to operate at present with sharing postage and supplies.
- While the OKC receptionist was out on sick leave, we have supplied personnel for the front desk for several weeks. Upon her return, we have agreed to share to share this area of responsibility.
- We are happy to cooperate and are pledged to provide the CEC what they need to stand up their organization.

There are a number of efficiencies we intend to pursue to be good stewards of the State money and personnel. Several of those examples include:

#### **Use of Digital Recordings**

Our intent is to try to avoid having to hire Court Reporters but record each session for reference later if required. Not all cases require retrieval of the information but for those who desire a stenographer they can pay for one or request a CD – an attorney can send to an outside service for transcription and pay for it. Since each Judge had one Court Reporter, this could save \$700,000.

#### **Use of Order Writers**

The former system had one Order Writer per two Judges. Our intent is to ask the Administrative Law Judges to write their own orders which are mostly from boiler plate paragraphs. This could save \$350,000.

#### **EDI (Electronic Data Interchange) vs. Clerks**

As mandated in the law, we are pursuing vendor approval for the front end of the system, currently used in a number of states. This will allow data to be transmitted electronically instead of retyping input. This should save us several FTE's and several hundreds of thousands of dollars.

#### **ADR (Alternate Dispute Resolution) vs. Trials**

Many states are using a variety of techniques such as pre-trial conferences, Mediation and Counselors to gain access to issues and resolution up front so that a sole reliance on trials can be avoided. The objective is earlier resolution of issues and to get the employee back to work as soon as possible. We are working with a nationally known expert in ADR, Dr. Phyllis Bernard, OCU Law Professor, to assist us in the further development of these programs. Our goal is to resolve cases within a 90-120 day period, which is currently being achieved in some states.

We now have 4 ALJ's. The old system had 10 Judges; Arkansas has 14 ALJ's. There could be significant savings with limiting the number of ALJ's we use.

In the first year, we hope to save \$1.5 million. The Commissioners have assumed a direct managerial role at first, which has assisted with the program development at the beginning. We are most interested in effectiveness first, and then efficiency.

Executive Session

*Motion* to enter into Executive Session: Commissioner Gilliland.

*Second*: Commissioner Engle.

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

No: None. Abstentions: None. The motion carried.

Open Session

*Motion* to re-convene into Open Session: Commissioner Engle.

*Second*: Commissioner Gilliland.

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

No: None. Abstentions: None. The motion carried.

The following action was taken regarding Executive Session agenda item – discussion and possible vote on action to take regarding *Angela Sanders v. Oklahoma Workers' Compensation Commission*:

*Motion* to respond on or before August 8, 2014, and to appoint an independent hearing officer on or before September 8, 2014: Commissioner Gilliland.

*Second*: Commissioner Engle.

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

No: None. Abstentions: None. The motion carried.

Adjournment

Chairman Wilson announced that the next Regular Public Meeting of the Commission will be August 21, 2014 at 1:30 p.m.

*Motion* to adjourn: Chairman Wilson.

*Second*: Commissioner Engle.

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

No: None. Abstentions: None. The motion carried.