



CHARLES D. BAKER, JR.
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

1 CONGRESS STREET, SUITE 100
BOSTON, MASSACHUSETTS 02114 - 2017
(617) 727 - 4900, EXT. 7443
WWW.MASS.GOV/WCAC/

JOHN PULGINI
CHAIR

TODD JOHNSON
VICE-CHAIR

MAUREEN O'CONNELL
EXECUTIVE DIRECTOR

MINUTES

April 10, 2019

Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Attendees: John Pulgini; Todd Johnson; Mickey Long; Stephen Joyce; Teri McHugh; Michael Kelley; Bernie Mulholland; Stephen Falvey; James Steenbruggen, Linda Edmonds Turner, Director; Bill Taupier, Director of Administration; Omar Hernandez, Senior Judge; Kevin O'Leary, General Counsel; Robert Cronin, Investigations Director; Karen Fabiszewski, Director of Workers' Compensation Trust Fund; Maureen O'Connell; Darnel Turbides; Daniel Judson, President of Worker's Compensation Rating and Inspection Bureau (WCRI); and Daniel Crowley, Vice President – Customer Services for WCRI.

AGENDA

Chairman's Welcome

DIA Update

- DIA Judicial Update – Omar Hernandez, Senior Judge
 - Conference/Hearing/Reviewing Board Queue
 - Impartial Medical Exams/Physicians
- DIA Vital Statistics – Bill Taupier, Director of Administration
 - Cases Filed with DIA
 - Workers' Compensation Trust Fund
 - Personnel Update
 - Enforcement and Compliance
- Director's Update – Linda Turner, Director
- Trust Fund Update – Karen Fabiszewski, Director
- Executive Director's Update
- Action Items
 - Minutes – December 18, 2018
 - Minutes – February 13, 2019
- Communications
 - Lease Update
 - WCRI MA's Circular Letter No. 2348 ANC
- Miscellaneous
 - Camargo Case

CHAIRMAN'S WELCOME

The meeting began at 9:35 AM; Chairman Pulgini moved the agenda out of order and directed the floor to Director of Administration, Bill Taupier.

DIA UPDATE

Vital Statistics

Mr. Taupier said the April 2019 Conference queue is 871 cases, which is up compared to the March figure of 831. Currently, the average waiting period for a conference is between 12 to 20 weeks. The April 2019 Hearing queue is 311. This is down when compared to the March figure of 326.

With regard to Pending Hearing Decisions, there were five in the month of January, six in the month of February and six in March.

Chairman Pulgini asked Mr. Taupier if there was an explanation for the pending hearing decision numbers for January, February and March within the 12 to 36 month period. Mr. Taupier said his understanding of those pending hearing decisions could be the result of some complex cases.

Council Member Michael Kelley stated that he didn't understand how the pending hearing decisions for the 9 to 12 month period could go from zeros to the current figures in the 12 to 36 month period. Mr. Taupier said the statistics for those periods could be the result of dates being entered incorrectly.

Council Member Kelley asked if the current waiting period for conferences is accurate even though the report states the queue is down. Mr. Taupier confirmed the current wait period is accurate.

The Reviewing Board inventory of cases on appeal for the month of April is 95 cases. This is up when compared to the March inventory of 90.

The Impartial Medical Examinations (IMEs) were 2,598 for FY 2019; the number of fee waivers granted was 55 and \$1,227,129 in collected exam fees.

Mr. Taupier provided statistics on Stop Work Orders (SWOs), 182 were issued in the month of March for a total of 1,489 for FY 2019. 101 SWOs were reissued as the result of defaults of previous orders. Fine collections for the month of March were \$59,748 with a FY 2019 total of \$747,682. For FY 2018 a total of 1,909 SWOs were issued; and collected \$983,445 in total fines.

Director of Investigations Robert Cronin mentioned the addition of a new investigator.

Council Member Stephen Joyce praised the Investigation unit's enforcement and compliance efforts for trending and maintaining steady over the years.

Without any further questions, Mr. Taupier continued; The DIA conducted 7,337 compliance checks in the month of February with 4,066 workers brought under workers' compensation insurance coverage.

The office and field compliance checks are 3,392 (Office) and 3,945 (Field) totaling 7,337 compliance checks for the month of March 2019.

Cases filed within DIA claims administration for March 2019 was 1,121. First Report of Injury (FRI) filings for March were 3,008. Total FRIs filed for FY 2019 is 26,154. FRIs for FY 2018: 34,430. Total cases filed for FY 2019 is 9,518. Cases filed in FY 2018: 11,979.

Please note: a case is an employee claim, an insurers request for discontinuance or a third party claim/lien.

Mr. Taupier offered the following statistics: the Workers' Compensation Trust Fund (WCTF) had 78 uninsured injuries for FY 2019 and 112 new Section 65 injuries were recorded in FY 2018. This figure is trending lower than last year. As of today, payments against open claims stand at \$5,075,009. The WCTF made \$8,102,089 in payments against open claims during FY 2018.

Council Member Mickey Long asked if it is typical for construction claims to be over double every month. Workers' Compensation Trust Fund Director Karen Fabiszewski stated that the numbers for First Report of Injury claims are based on year to date, not monthly. Ms. Fabiszewski confirmed that construction claims are generally the highest by a significant amount over other claims. General Counsel Kevin O'Leary added that the risk is higher in this field.

Council Member Stephen Falvey asked Mr. Cronin if the work assignments are affected by the difficulty in locating construction sites that relocate quickly. Council Member Falvey followed up his question by commenting on how work assignments should reflect the monthly statistics due to the unit having to be twice as productive to locate these construction sites. Mr. Cronin stated that insurance companies notify them the moment a workers' compensation policy is cancelled; immediately making them aware of a definite violation. Investigators are in turn dispatched to these construction sites where they begin to run plates on any and all vehicles parked on site until they have located the ones in question.

Chairman Pulgini asked if uninsured construction is broken down by the company's size or type. General Counsel O'Leary confirmed that it isn't broken down in that manner and also stated that the DIAs legal unit review cancellations to determine whether it was properly issued or not.

Council Members Long, Kelley and Falvey commented on uninsured construction workers, insurance premiums and audits.

Council Member James Steenbruggen asked Director Linda Turner if anything is being done to educate more building inspectors about workers' compensation insurance. Director Turner responded by saying that trainings were conducted through the stop work order process.

Mr. Cronin informed the Council that Deputy Director of Investigations Alan Green had a meeting with the Regional Building Inspectors Organization over workers' compensation insurance.

Council Member Long mentioned to the Advisory Council members that the Governor should be aware of uninsured workers in the next Workers' Compensation Advisory Council Annual Report.

Vice-Chairman Todd Johnson shared that although he agrees with the conversation concerning the issue of uninsured workers within the construction industry, the number of claims as a whole is on track and could lead into a strong year if the current trend holds to June.

Mr. Taupier offered statistics against uninsured employers for FY 2019: \$953,039 has been recovered by the Civil Litigation Unit and Workers' Compensation Trust Fund (WCTF).

Mr. Taupier provided statistics on the Second Injury Fund: \$13,384,801. The Cost of Living Adjustment (COLA) reimbursements were \$4,825,564. COLAs are quarterly and lag behind. The budget of \$18,500,000 is conservative.

General Counsel O'Leary commented on the Second Injury Fund stating that both collections and payments are down 37%.

Mr. Taupier presented statistics for DIA personnel which changed from 215 to 213. Mr. Taupier informed the Council that the DIA is in the process of hiring two Regional Managers, a Claims Manager, and Trust Fund Attorneys; the number of personnel will change within the next few months.

With regard to referral fees, \$3,407,078 have been received thus far; remain consistent overtime and lastly, the assessment collections for FY 2019: \$50,484,239.

Chairman Pulgini motioned for a vote on the Minutes for December 18, 2018 and February 13, 2019; the votes were seconded. With a quorum, all voted in favor.

Without any further questions for Mr. Taupier, Chairman Pulgini directed the floor to Senior Judge Hernandez.

Judicial Update

Chairman Pulgini asked if there was an explanation for the numbers documented in the 12 to 36 month period. Senior Judge Hernandez explained that there were some timeline issues and stated those numbers are closer to the 12 month mark instead of the 36 month mark.

Council Member Kelley asked for further clarification on the statistics regarding the Pending Hearing Decisions within the 9 to 12 month and 12 to 36 month period. Senior Judge Hernandez stated it could be the disposition code didn't get entered which in turn causes the case to carry over since they were opened without entering close dates.

Council Member Bernard Mulholland asked if the clock on the pending hearing decisions starts when the hearing is commenced. Senior Judge Hernandez responded that it starts when the record closes.

With respect to the Judges, the new Judge will be assigned to the Worcester office and assist Springfield as they are experiencing a backlog with certain cases. The Governor's Council is expected to vote on Attorney Matthew King April 24, 2019 with an expected start date of May 13, 2019.

Chairman Pulgini asked if it was possible for those backlogged cases to be heard in Worcester. Senior Judge Hernandez stated it was possible for some cases and that he has travelled Judges Rosado, Spinale, Segal and Barrett out to those regions to try and handle the backlog with some of those cases only for them to be rescheduled. With the new Judge in place it will hopefully bring some stability.

Chairman Pulgini asked for an update on judicial terms. Senior Judge Hernandez confirmed there were three last year; Judge Preston, Judge Williams and Judge Harpin expired in 2018; Judge Harpin will be retiring and leaving at the end of April. Terms for Judges Herlihy, Calliotte and Vieira will expire this year. Judge Vieira is retiring this year and is currently offline. Judge Williams will be transitioning from Boston to Fall River to assist with the caseload; leaving vacancies in Boston as some judges are also dealing with health issues.

Chairman Pulgini and Council Members Kelley and Long commented on the high number of continuances. Council Member Long asked about video conferencing. Senior Judge Hernandez said Attorneys want to be at the DIA office. Council Member Teri McHugh also commented on the continuances; stating that the Document Management System (DMS) can track the original scheduled conference and hearing notices, but is unable to track cases that are continued. Senior Judge Hernandez said Council Member McHugh made a great point and further explained that cases continued 6 weeks out goes into the system, but cases that are on a shorter timeframe don't.

Senior Judge Hernandez informed the Council of the three new Stenographers that have recently started; one stationed in Springfield, one in Worcester and one in Boston.

Without additional questions for Senior Judge Hernandez, Chairman Pulgini directed the floor to Director Turner.

Director Update

Director Turner updated the Council on the move. DIAs Boston office is scheduled to move in June and should have the lease signed for Boston in three weeks. DIAs Worcester office is also scheduled to move in June. The new location for the Boston office will remain in Boston and the new location in Worcester a short distance away from the old location.

Council Member Kelley asked if the new Worcester office had an address. Mr. Taupier confirmed DIAs new Worcester office location will be 100 Front Street, 3rd Floor Worcester, MA. 01608

Chairman Pulgini asked if DIAs new Boston location will have parking. Director Turner confirmed there will be plenty of parking but it won't be exclusive to the DIA.

Chairman Pulgini asked if management is aware of employee complaints regarding building construction and how it's resulting in dust and debris entering work areas through the air vents. Director Turner and Mr. Taupier confirmed they are aware of the issue and informed the Council that they're bringing someone in to test the air quality.

Without additional questions Chairman Pulgini directed the floor to Executive Director Maureen O'Connell.

Executive Director O'Connell informed the Council that there aren't any updates on terms of appointments; mentioned Daniel Crowley and Daniel Judson from Workers' Compensation Rating and Inspection Bureau are available to answer any questions about the Audit Noncompliance Charge (ANC) Pilot Program.

Council Member Long asked how far the program's progress is compared to other states. Mr. Crowley informed the Council; they were able to get the National Endorsement approved and are limited to a two year pilot program which begins May 1, 2019 and runs to June 30, 2021.

On March 26, 2019, the Massachusetts Commissioner of Insurance (Commissioner) issued a Decision and Order in Docket No. R2018-01 (Order) approving a filing that, in part, established a rule, endorsement and statistical code to enable workers' compensation insurance carriers to apply an Audit Noncompliance Charge (ANC) to audit their records. The ANC is approved for a two (2) year pilot program as described in the Revised Stipulation also approved by the Commissioner in the Order.

Chairman Pulgini shifted the agenda to the Camargo case and asked if the Council agrees that no further discussion is needed on the matter. The Council confirmed they are in agreement.

Chairman Pulgini mentioned a letter regarding a candidate interested in filling the Vocational Rehabilitation position for the Workers' Compensation Advisory Council.

Without additional questions the meeting adjourned at 10:32am.

The next meeting of the Advisory Council is tentatively scheduled for May 8, 2019, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017