

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

May 11, 2011
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

CM Present: Chairman Mickey Long; Vice-Chairman Edmund C. Corcoran, Jr.; John Regan; Stephen Joyce; Stephen Falvey; John Pulgini; Bernard Mulholland; David Powell (Kevin Hurstack).

Also Present: COO Timothy McMahon; Director Philip L. Hillman; Senior Judge William McCarthy; William Tattan, Deputy Director and Chief Legal Counsel; Reuben Kantor, Director of Operations; William Taupier, First Deputy Director of Administration; Jack Defina, CFO; Ray Marchand, Director of Investigations; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB); Michael Kelley, AIM Mutual Insurance Company.

Advisory Council Staff:

Absent: CM: Dennis Hines; Peter A. Cook, Sr.; Department of Business Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update - Senior Judge William McCarthy
- Vital Statistics - William Taupier, Deputy Director of Administration

Action Items

- Minutes – April 13, 2011

Workers' Compensation Legislative Discussion

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Mickey Long began today's meeting at 9:00 a.m. The Chairman asked that Senior Judge Bill McCarthy provide the Advisory Council members with the Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge William McCarthy updated the Council members on the progress of his initiative to pair up the conciliators with administrative judges to enhance the dispute resolution process. Specifically, the Senior Judge reminded members that a conciliator would still meet with the parties to review each claim but the proposal would allow for much quicker intervention. The Senior Judge stated that he is continuing with his final initiative in the hopes that the DIA will charge a nominal fee for Section 15 petitions (petition for approval of third party settlements).

Vital Statistics

Mr. Bill Taupier updated Advisory Council members on the information contained within the DIA's vital statistic report for May 2011 (see attached). Conference Queue: 620; Hearing Queue: 520; Reviewing Board Inventory: 64; Impartial Exams for FY' 11 (to date): 3,349 (45 waivers); Exam

Fees Collected for FY' 11: \$1,311,413. In fiscal year 2010 there were 5,069 Impartial Medical Examinations (64 waivers); Exam Fees Collected in FY' 10: \$1,792,626.

Mr. Bill Taupier updated Advisory Council members on the Stop Work Order (SWO) and Caseload Statistics. The DIA issued 226 SWOs in April (37 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'11 (to date): 2,484. Fine collection for April 2011: \$106,150; total fines in FY' 11 (to date): 1,037,625; SWOs issued in FY' 10: 3,421; total fines collected in FY' 10: \$1,110,125; compliance checks for March 2011: 4,702; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 6,265 (FY'11).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in April 2011: 1,027; total number of cases filed in FY' 11 (to date): 10,345; total number of cases filed in FY' 10: 12,940; total number of First Report of Injury Forms (FRI) filed in April 2011: 2,267; total number of FRI filed online in March 2011: 732 (32%); total number of FRI filed in FY' 11 (to date): 25,701 (6,997 online); total number of FRI filed in FY'10: 30,443 (8,934 online).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims reported in FY' 11 (to date): 96; total amount of §65 claims paid by the Trust Fund in FY'11 (to date): \$5,169,620; total number of §65 claims filed in FY' 10: 137; total amount of §65 claims paid by the Trust Fund in FY'10: \$6,508,487; total recovery efforts against uninsured employers FY' 11: \$1,171,250; total recovery efforts against uninsured employers FY' 10: \$709,946.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total amount of §37/37A petitions paid in FY'11 (to date): \$15,605,708; total amount paid on these claims in FY'10: \$22,877,653; total monies recovered by the Trust Fund in FY' 11 (to date): \$990,733; total monies recovered in FY' 10: \$709,946; total COLA reimbursements to insurers in FY'11 (to date): \$13,612,642; total COLA reimbursements to insurers in FY'10: \$11,767,228.

Mr. Taupier reported that as of April 2011, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 247 (199 DIA employees, 48 WCTF employees). The DIA is authorized to have 283.2 payroll positions (including all full and part-time positions).

Mr. Taupier presented the accounting and finance statistics. Total referral fees collected in FY' 11 (to date): \$2,748,770; total referral fees collected in FY' 10: \$3,863,852; total first report fines in FY' 11 (to date): \$117,805; total first report fines in FY' 10: \$109,700; total assessment collections in FY' 11 (to date): \$60,920,019; total assessment collections in FY' 10: \$75,002,051; total SWO fines in FY' 11 (to date): \$1,589,978; total SWO fines in FY' 10: \$1,597,919.

ACTION ITEMS

Chairman Long asked for a motion to approve the April 13, 2011 minutes.

Motion made to approve the minutes for April 13, 2011. Motion Seconded and Passed.

WORKERS' COMPENSATION LEGISLATIVE DISCUSSION

Council members discussed bills to be endorsed by the Workers' Compensation Advisory Council. Council members mentioned that historically the Executive Director was directed to set up meetings with the Chair of the Joint Committee on Labor and Workforce Development (JCLWD) prior to the

hearings to discuss legislation endorsed by the Advisory Council. The JCLWD hearing is scheduled for May 19, 2011 at 10:30 am in room A-1. Council Member Stephen Joyce offered to present testimony on the bills endorsed by the Advisory Council. The Council members agreed to support the bills filed in the past, as well as House Bill 2868, which removes the flat-fine against employers caught without workers' compensation insurance and establishes a premium avoidance fine with 3-times the premium the employer would have paid in the assigned risk pool.

Motion made to support the passage of House Bill 542, House Bill 1405, House Bill 1406, House Bill 2308, Senate Bill 915, Senate Bill, 927, Senate Bill 938. Motion Seconded and Passed.

EXECUTIVE DIRECTOR REMOVAL DISCUSSION

Council Members requested that the DIA Administration provide an explanation for their decision to let go of their Executive Director, Andrew Burton.

Members of the Administration explained that they were concerned about Executive Director Burton's role and how he conducted himself within the Administration. They explained that Executive Director Burton had contacted legislators in an effort to schedule a meeting regarding legislation endorsed by the Workers' Compensation Advisory Council (WCAC).

Members of the Administration explained that they had posted the position according to Human Resources Division's (HRD) rules. They informed the Council that state agencies are required to post all positions on the Commonwealth's HRD website. The Administration noted that in an attempt to expedite the filling of the vacancy, the deadline for all resumes is May 15, 2011.

Chairman Long requested that the agency repost the position and extend the deadline until May 23rd. Chairman Long stated that this would allow the Advisory Council time to form a Selection Subcommittee to review all applicants and set up interviews.

Council member John Regan stated that he was disquieted about the Administration's decision to remove Executive Director Burton without discussing the decision with the Advisory Council members since the Executive Director was considered WCAC personnel.

Vice-Chairman Ed Corcoran reported that during every legislative session the WCAC directs Executive Director Burton to set up meetings with the Chairs of the Joint Committee on Labor and Workforce Development. Executive Director Burton did nothing different from previous years and had performed all duties requested by the Advisory Council members. Vice-Chairman Corcoran maintained that Executive Director Burton was an asset to the Advisory Council members.

Council member Ines Leonardo explained that she was very upset by the decision of the Administration to remove Executive Director Burton from his position. She alleged that the Administration's decision was not in line with chapter 23E, §16 and as an oversight council the staff members were responsible for answering to the WCAC.

Council member Bernie Mulholland stated that 23E was silent on the removal of Advisory Council personnel. He informed the Administration that according to chapter 23E, §16, "The advisory council shall appoint such personnel as are necessary for the proper discharge of its duties..." which

would make the Advisory Council personnel responsible for reporting to the WCAC members and following their instructions.

Chairman Long argued that Executive Director Burton is a staff member of the Advisory Council and as such, must follow the Council members' direction. He noted that any successor to Executive Director Burton will be in a tough position if the successor is not clear on whom they answer to and is not sure whose orders to follow. Chairman Long explained that he does not want the influence of the WCAC to be diminished. He stated that he does not want the WCAC institution to get the Executive Director in trouble for carrying out the Council's directions.

Council member Steve Joyce stated that he was appreciative of Executive Director Burton's performance. Council member Joyce reported that the successor of this position will need to have free association between the Council and the Administration. He stated that the new Executive Director will need direction on what to do.

Council member Steve Falvey stated that Executive Director Burton kept the WCAC well informed and provided research. Council member Falvey noted that it will be very hard for the successor to reach the level of performance provided by Executive Director Burton.

Motion made to form a Selection Subcommittee to review resumes for the Executive Director position.

Chairman Long requested that Director Hillman repost the position and extend the deadline until May 23rd which will allow the WCAC to set up a Subcommittee to review the resumes.

Motion made to adjourn the meeting. Motion Seconded and Passed.

The next meeting of the Advisory Council is scheduled for Wednesday, June 8, 2011, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.