

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

May 8, 2013
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: John Regan, Chairman; Stephen Joyce, Vice-Chairman; Stephen Falvey; Edmund Corcoran, Jr.; Mickey Long; Teri McHugh; Todd Johnson; Antonio Frias (Ines Leonardo); Bill Corley; Bernie Mulholland; Dennis Hines; Mike Doheny, General Counsel, Executive Office of Labor and Workforce Development.

Also Present: Philip L. Hillman, Director; Omar Hernandez, Senior Judge; George Noel, Deputy Director of the DIA; William Tattan, General Counsel; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Marc Joyce, Senior Regional Services Manager; Marie Pires, Civil Rights Manager; Bob Ford, Budget Director, EOLWD; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Michael Kelley, AIM Mutual.

Advisory Council Staff: William S. Monnin-Browder; Evelyn Flanagan.

Absent: Dave Powell; John Pulgini; Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, First Deputy Director of Administration

Action Items

- Minutes – April 10, 2013

Director's FY' 14 Outlook

FY' 14 Assessment Rate

Discussion of Pending Legislation

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman John Regan began the meeting at 9:00 A.M. Chairman Regan asked Senior Judge Omar Hernandez to provide his update.

DIA UPDATE

Judicial Update

Senior Judge Hernandez updated Council members on the conference and hearing queues. He stated that the conference queue is up slightly, with the average wait time for a conference being between 10 and 12 weeks. He indicated that he would keep an eye on the queues and adjust if necessary.

The Senior Judge stated that with respect to reappointments, all six judges have been reappointed and sworn in. The Senior Judge informed the Council that Carol Calliotte was appointed to the Administrative Law Judge position and will be sworn in within the next couple weeks.

The Senior Judge stated that new contracts for physicians are being sent out and that the Impartial Unit continues to do a really nice job of recruiting doctors. He explained that he and Diane Neelon have continued to attend medical seminars in an effort to recruit doctors.

Vital Statistics

First Deputy Director Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for May 2013. He offered the following statistics: Conference Queue: 612; Hearing Queue: 985; Reviewing Board Inventory: 39; Impartial Exams for FY'13 (to date): 4,104 (44 waivers); Exam Fees Collected for FY'13: \$1,454,525; Impartial Medical Examinations in FY'12: 3,667 (48 waivers); Exam Fees Collected in FY'12: \$1,474,788.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in April: 224 (15 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'13 (to date): 2,213; fine collection for April: \$84,913; total fines in FY'13 (to date): \$1,127,473; SWOs issued in FY'12: 2,637; total fines collected in FY'12: \$1,381,085; compliance checks for April 2013: 6,917; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 5,816 (FY'13).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in April 2013: 982; total cases filed in FY'13 (to date): 10,006; total cases filed in FY'12: 12,646; total First Report of Injury Forms (FRI) filed in April 2013: 2,215; total FRI filed online in April 2013: 791 (36%); total FRI filed in FY'13: (to date): 22,174; total FRI filed in FY'12: 29,643 (9,034 online).

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'13 (to date): 107; total amount of §65 claims paid by the Trust Fund in FY'13 (to date): \$4,455,264; total §65 claims filed in FY'12: 111; total amount of §65 claims paid by the Trust Fund in FY'12: \$7,810,128; total recovery efforts against uninsured employers FY'13: \$1,163,910 total recovery efforts against uninsured employers FY'12: \$1,047,057.

Council member Ed Corcoran stated that the Trust Fund appears to be improving. Mr. Corcoran suggested that Mr. Patrick Ronan be invited to a Council meeting in the next couple of months to discuss the Trust Fund.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY'13 (to date): \$20,662,181; total amount paid on these claims in FY'12: \$24,198,415; total COLA reimbursements to insurers in FY'13 (to date): \$8,812,465; total projected expenses FY'13: \$14,500,000 total COLA reimbursements to insurers in FY'12: \$20,077,659.

Mr. Taupier reported that as of April 2013, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 241 (189 DIA employees, 52 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'13 (to date): \$3,299,635; total referral fees collected in FY'12: \$3,774,237; total first report fines in FY'13 (to date): \$45,308; total first report fines in FY'12: \$115,000; total assessment collections in

FY' 13 (to date): \$47,045,811; total assessment collections in FY' 12: \$82,117,762; total SWO fines in FY' 13 (to date): \$1,127,473; total SWO fines in FY' 12: \$1,381,085.

Director Hillman stated that the assessment rate would be discussed at next month's Advisory Council meeting.

DIA's Major Initiatives for Fiscal Year 2014

Director Hillman introduced Deputy Director George Noel to begin a discussion of the Agency's FY' 14 initiatives. Deputy Director Noel explained that the DIA has been working to identify points of entry for treatment of workers who suffer work-related injuries and illnesses as opportunities for outreach and education. Deputy Director Noel explained that there are a few reasons for these efforts. He explained there are indications that some workplace injuries being processed through MassHealth, rather than workers' compensation. Also, he explained that there is evidence to suggest that some community health centers do not want to accept workers' compensation claims and shift the cases off to other places. Deputy Director Noel noted that they continue to educate stakeholders throughout the commonwealth about the workers' compensation system.

Director Hillman added that a significant amount of money is being shifted and processed through private health insurance rather than workers' compensation. Director Hillman noted that Letitia Davis from the Department of Public Health (DPH) is doing a study on this issue.

Council member Mickey Long noted that having non-compensation carriers pay for workers' compensation claims is fraud. Mr. Long stated that there are some employers that pressure employees to fabricate the cause of an injury in order to keep costs down. He argued that education is important because many employees are unaware that this is workers' compensation fraud.

Chairman John Regan stated that it would be a good idea to coordinate with DPH once they have completed the study to discuss the data and the scope of this issue. He noted that once the information is available, the Council could discuss different ways to tackle this problem.

Council member Bernie Mulholland explained that there are three parts to this problem. First, he stated that in some cases, employees are pressured by employers not to report the injuries as having been sustained while working. In other cases, he continued, employees do not want to report the incident and instead use private insurance, hoping their employer will not find out. Finally, he indicated that some medical providers ask what secondary insurance is available and send bills to everyone to ensure that they will get paid.

Moving to the next FY' 14 initiative, Senior Judge Hernandez explained that he will continue his efforts to recruit doctors for the impartial medical examiners roster, emphasizing underrepresented specialties.

General Counsel Tattan stated that his FY' 14 initiative is to continue the DIA's emphasis on civil litigation against uninsured employers. He noted that they have initiated a program to use outside collection firms on selected debtors and to pursue out-of-state employers through the collection agency's attorneys. He stated that the collection agency would receive 20% of all money received. Mr. Tattan also stated that the Agency is considering capping SWO fines and writing off those they cannot collect on. He indicated that this issue would be discussed further at next month's meeting.

Mr. Bill Taupier spoke about three FY' 14 initiatives. The first, he stated, is to expand the use of online filing of a variety of DIA forms. He stated that they are working to recruit additional insurers, self-insurers and self-insurance groups to utilize electronic data interchange protocols, adding that the

insurers/groups will also have the opportunity to submit filings one at a time through the website. The second initiative, he stated, is to expand DMS access to iPad and other tablets, applications and androids. Mr. Taupier stated that the third initiative is to implementation of online meeting software to conduct internal and external training, etc. He noted that, under certain circumstances, this technology could be used in hearings.

Ms. Marie Pires, Civil Rights Manager, explained that she is working on an initiative to create and publish a civil rights/ADA section on the DIA website.

Director Hillman stated that they would continue to report quarterly to the Council on the progress of these initiatives.

ACTION ITEMS

A motion was made to approve the April 10, 2013 minutes.

Motion seconded and carried.

DISCUSSION OF PENDING LEGISLATION

Chairman Regan stated that he believed that the Joint Committee on Labor and Workforce Development would be holding their hearing on workers' compensation legislation in October. He suggested that the members review the legislation and decide which bills the Council would like to endorse for this session.

A motion was made to endorse House Bill 1423. Motion was seconded.

Vice Chairman Joyce stated House Bill 1423 is new. He explained that the bill would penalize employers who have been debarred from bidding or participating in state or municipal funded contracts for three years, who then participate in such a contract, despite their debarment.

Motion to endorse House Bill 1423 carried.

A motion was made to endorse S866/H1698; H1737; H1760; H1761; and S850/S871/H1496 which were endorsed by the Advisory Council during the 2011-2012 Legislative Session.

Motion seconded and carried.

Chairman Regan suggested that the Council consider endorsing House Bill 1694, which is an AIM bill. He explained that unlike Senate Bill 861, which would remove the limitation in existing law that scarring be on the hands, face and neck in order to be compensable, House Bill 1694 would preserve the limitation for surgical scars, but eliminate it for non-surgical scars.

Council member Mickey Long stated that he believed that scarring should be covered no matter what. Mr. Long explained that whether you are injured by a falling object at work and it leaves a scar or you are injured by a falling object and you need surgery and a surgical scar remains after surgery, the employee should be compensated since both injuries are work-related.

A motion was made to endorse Senate Bill 861.

Motion seconded and carried.

Mr. Michael Kelley recommended that S866/H1698 be amended to tie the burial allowance to the state average weekly wage as a multiplier, rather than setting a fixed rate. He explained that such an amendment would allow the rate to increase or decrease on an annual basis according to the average weekly wage.

A motion was made to draft for discussion at next month's meeting, an amendment to the burial benefit bills that would index the burial benefit to state average weekly wage.

Motion seconded and carried.

A motion was made that if any Council members would like to take a position on any remaining bills it would be discussed and voted on at the next meeting.

Motion seconded and carried.

MISCELLANEOUS

Motion made to adjourn the meeting.

Motion seconded and carried.

The next meeting of the Advisory Council is scheduled for Wednesday, June 12, 2013, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.