

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

August 13, 2014

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

Council Members Present: Stephen Joyce; Edmund Corcoran, Jr.; John Pulgini; Stephen Falvey; Bernie Mulholland; Teri McHugh; Todd Johnson.

Also Present: George Noel, Director; Linda Turner, Deputy Director; Omar Hernandez, Senior Judge; William Tattan, General Counsel; William Taupier, Director of Administration; Robert Ford, Budget Director, EOLWD; John Riordan, Deputy General Counsel; Karen Fabriszewski, Trust Fund Director; Ray Marchand, Director of Investigations; Melissa Butts, Joint Task Force, EOLWD; Michael Kelley, Hub International, NE; Christine Cronin, Workers' Compensation Research and Inspection Bureau (WCRIB).

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

Absent: Mickey Long; Bill Corley; John Regan; Antonio Frias (Ines Leonardo); Dennis Hines; Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Director of Administration
- DIA FY 2014 Accomplishments – George Noel, Director

Action Items

- Minutes – May 14, 2014
- Minutes – June 11, 2014

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Stephen Joyce began the meeting at 9:15 A.M. Chairman Joyce asked for a brief moment of silence for Judge Joseph J. Pulgini who passed away recently. The Chairman extended the Council's sympathy to Council member John Pulgini and his family.

The Chairman asked Senior Judge Omar Hernandez to provide the judicial update.

DIA UPDATE

Judicial Update

The Senior Judge stated the conference and hearing queues are down. The Senior Judge explained that he

has added an extra week to both cycles, going to a fourteen week cycle for all judges. Senior Judge Hernandez stated that this will allow the judges to tap into the backlog and move some of the cases along.

The Senior Judge stated that with respect to judicial appointments/reappointments there are a total of 22 candidates scheduled to be interviewed on August 27th and August 28th.

The Senior Judge reported that Judge Lynn Brendemuehl in Fall River has been nominated to the Framingham District Court. He noted that she would be appearing before the Governor's Council next Wednesday, August 20th. He stated that they were moving Judge Cordoza to the Fall River office, which will leave a vacancy in Worcester. The Senior Judge indicated that they are reshuffling Judge Brendemuehl's cases.

The Senior Judge reported that another judge in the Fall River office would be going out for back surgery in September and will be out anywhere from three to six months. He indicated that her cases would be reshuffled as well.

Senior Judge Hernandez reported that on October 9th, a conference in conjunction with the Rhode Island Workers' Compensation Court will be held in Massachusetts. He explained that this conference to discuss best practices in Massachusetts and Rhode Island will include lawyers and judges from both states. He noted that if successful, the effort could be broadened to a regional conference with Maine, New Hampshire, Vermont and Connecticut.

Council member Edmund Corcoran suggested that the Advisory Councils in both states be included as well. Mr. Corcoran stated that there is a lot of good that can come from that kind of dialogue and it is good that the Agency is participating. Mr. Corcoran noted, for instance, that Rhode Island does a wonderful job in their annual review of reimbursement rates.

Mr. Corcoran stated that during the last meeting he had raised the possibility of receiving a list of judges with late decisions and the reasons for the tardiness.

The Senior Judge stated that he had run a report a couple days ago to see which judges have late decisions, but there is a problem with close dates. He explained that before he provides such information, he would like to remind the judges that once the record closes, they need to enter a close date, so that he can provide accurate information. He stated that he is compiling this information now and hopefully he will have more accurate numbers for the Council next month.

Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for August 2014. He offered the following statistics: Conference Queue: 944; Hearing Queue: 618; Reviewing Board Inventory: 24; Impartial Exams for FY'15 (to date): 306 (8 waivers); Exam Fees Collected for FY'15: \$131,150; Impartial Medical Examinations in FY'14: 4,376 (22 waivers); and Exam Fees Collected in FY'14: \$2,088,718.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in July: 238 (11 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'15 (to date): 238; fine collection for July: \$104,720; total fines in FY'15 (to date): \$104,720; SWOs issued in FY'14: 2,345; total fines collected in FY'14: \$1,327,628;

compliance checks for July: 8,765; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 579 (FY' 15).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in July 2014: 1,141; total cases filed in FY' 15 (to date): 1,141; total cases filed in FY' 14: 11,960; total First Report of Injury Forms (FRI) filed in July 2014: 2,990 (2,603 filed electronically; 87%); total FRI filed in FY' 14: (to date): 31,384 (11,937 online).

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY' 15 (to date): 10; total amount of §65 claims paid by the Trust Fund in FY' 15 (to date): \$281,045; total §65 claims filed in FY' 14: 107; total amount of §65 claims paid by the Trust Fund in FY' 13: \$8,544,837; total recovery efforts against uninsured employers FY' 15: \$64,527; total recovery efforts against uninsured employers FY' 14: \$1,013,557.

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' 15 (to date): \$0; total amount paid on these claims in FY' 14: \$28,017,378; total COLA reimbursements to insurers in FY' 15 (to date): \$59,704; total COLA reimbursements to insurers in FY' 14: \$14,509,275.

Mr. Taupier reported that as of July 2014, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 247 (193 DIA employees, 54 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 15 (to date): \$313,629; total referral fees collected in FY' 14: \$3,612,740; total first report fines in FY' 15 (to date): \$18,775; total first report fines in FY' 14: \$129,474; total assessment collections in FY' 15 (to date): \$10,355,155; total assessment collections in FY' 14: \$49,978,909; total SWO fines in FY' 15 (to date): \$104,720; total SWO fines in FY' 14: \$1,327,628.

DIA Fiscal Year 2014 Accomplishments

Director George Noel introduced Melissa Butts from the Joint Task Force on the Underground Economy and Employee Misclassification. Mr. Noel stated that Ms. Butts would be attending the Council meetings going forward. Mr. Noel also mentioned that the Task Force has recently been codified into law, so its existence and operation will no longer be pursuant to Executive Order.

Director Noel stated that the Agency has accomplished a great deal during FY' 14. He noted that they have established a WiFi network for all DIA offices and merged the Impartial Medical Unit and Central Scheduling Unit to streamline the process. Director Noel stated other accomplishments include:

- Expanding access to DMS via mobile devices;
- Implementing EDI filing of First Reports of Injury, increasing electronic filing to 88%;
- Recovering over \$1,000,000 by the Civil Litigation unit from non-compliant businesses and employers;
- Adjusting year-end balance to be in line with statutory 35% additional funding mandate projecting rate to be approximately 5.5% for the next few years;
- Tweaking the SWO process making collecting past due fines more efficient and effective;
- Implementing "Walk-in Lump Sum" program expediting case settlement;
- The hiring of a Deputy General Counsel and WCTF Director;
- Having two personnel honored with Pride in Performance Awards – Lois Biswanger (WCTF) and Joseph Brunnelle (Conciliation – Worcester);

- Conciliation unit resolving nearly 50% of cases during FY 2014.

EXECUTIVE DIRECTOR UPDATE

Executive Director William Monnin-Browder stated that given the Nominating Panel's schedule, the Advisory Council will likely need to convene in early September to interview and rate judicial candidates. He is hopeful that it will be possible to hold the Advisory Council judicial interviews on September 10th—the Council's regular monthly meeting date. Mr. Monnin-Browder indicated that he would keep the Council informed as the process moves forward.

The Executive Director stated that formal sessions of the 2013-2014 Legislative Session have concluded. He indicated that although legislation can advance in an informal session, it is quite difficult. With regard to the Advisory Council's legislative agenda, the Executive Director stated that the legislature passed and Governor Patrick signed legislation that, among other provisions, would increase the burial allowance under c. 152 and index it to eight times the State Average Weekly Wage.

With regard to legislation removing the limitation that scarring be on the hands, face or neck in order to be compensable, the Executive Director stated that language to make this change was included in the House version of the minimum wage and UR reform bill, but did not end up in the final bill. He indicated, however, that the fact that an amendment passed in the House to include such a provision in the minimum wage/UR reform bill, is a positive development.

Mr. Monnin-Browder explained that all legislation supported by the Council before the Joint Committee on Labor and Workforce Development had been reported from that Committee favorably, but did not progress further. He explained that Advisory Council-supported legislation continues to have success in receiving favorable reports by the JCLWD.

MISCELLANEOUS

Meeting Adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, September 10, 2014, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.