

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

November 14, 2012
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: John Regan, Chairman; Edmund Corcoran, Jr.; Antonio Frias (Ines Leonardo); Stephen Falvey; Teri McHugh; Todd Johnson; Maydad Cohen, 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; Bob Ford, Budget Director, EOLWD; Yashira Pepin, Deputy Chief of Staff, EOLWD; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Michael Kelley, AIM Mutual.

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

Absent: Stephen Joyce; Dennis Hines; David Powell; Mickey Long; John Pulgini; Bernie Mulholland; William Corley; 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
- Update on IT Issues – Roody Herold, CIO, EOLWD
- Update on Impartial Fee Increase – Philip Hillman, Director
- FY' 13 Hiring and Fiscal Controls – Maydad Cohen, Chief of Staff, EOLWD

Action Items

- Minutes – October 10, 2012

Discussion on Legislation for the 2013-2014 Legislative Session

Discussion of FY' 12 WCAC Annual Report

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman John Regan began the meeting at 9:00 A.M.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez reported that the conference queue is down and, more importantly, the time frame between conciliation and conference is decreasing. The Senior Judge stated that he had made adjustments to the judges' schedules and there has been a one month reduction in the Boston and Springfield offices, bringing wait times down to three months. The Senior Judge stated that the average

wait time in Fall River is down to two months and that the wait times in Lawrence and Worcester are down to two and a half months. He explained that he would evaluate the wait times at the end of the adjustment period with the hope of keeping the queue at an eight to ten week time frame.

Senior Judge Hernandez stated that they have received 42 judicial applications, including the judges who are up for reappointment. He informed Council members that they are finalizing the scheduling of interviews and that hopefully he will be able to provide the Council with a date at the December meeting. The Senior Judge stated that there are currently six reappointments and two vacancies. The Senior Judge reminded the Council that there are also some holdovers in the pool from the last round of interviews, which has a two year window.

Update on Impartial Fee Schedule

Director Philip Hillman updated the Council members on the impartial fee schedule. He indicated that the impartial fee increase to \$650 has been approved. Director Hillman explained the proposed impartial fee increase must now go to the Secretary of State and a public hearing must be scheduled, which probably will take place around December 17, 2012. The Director stated that once the hearing is complete, there is a 30 day window before the process is complete. At that point, he explained, the fee change can officially be announced.

Vital Statistics

First Deputy Director Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for November 2012. He offered the following statistics: Conference Queue: 620; Hearing Queue: 817; Reviewing Board Inventory: 25; Impartial Exams for FY'13 (to date): 1,399 (20 waivers); Exam Fees Collected for FY'13: \$514,450; 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 October: 225 (32 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'13 (to date): 896; fine collection for October: \$150,927; total fines in FY'13 (to date): \$459,953; SWOs issued in FY'12: 2,637; total fines collected in FY'12: \$1,381,085; compliance checks for October 2012: 6,519; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 2,099 (FY'13).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in October 2012: 1,237; total cases filed in FY'13 (to date): 4,142; total cases filed in FY'12: 12,646; total First Report of Injury Forms (FRI) filed in October 2012: 2,861; total FRI filed online in October 2012: 1,209 (42%); total FRI filed in FY'13: (to date): 10,314; 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): 39; total amount of §65 claims paid by the Trust Fund in FY'13 (to date): \$1,532,674; 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: \$574,211; total recovery efforts against uninsured employers FY'12: \$1,047,057.

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): \$6,912,808; total amount paid on these claims in FY'12: \$24,198,415; total COLA reimbursements to insurers in FY'13 (to date): \$2,545,493; total COLA reimbursements to insurers in FY'12: \$20,077,659.

Mr. Taupier reported that as of October 2012, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 242 (195 DIA employees, 47 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 13 (to date): \$1,399,757; total referral fees collected in FY' 12: \$3,774,237; total first report fines in FY' 13 (to date): \$18,808; total first report fines in FY' 12: \$115,000; total assessment collections in FY' 13 (to date): \$20,148,656; total assessment collections in FY' 12: \$82,117,762; total SWO fines in FY' 13 (to date): \$459,953; total SWO fines in FY' 12: \$1,381,085.

FY' 13 Hiring and Fiscal Controls

Mr. Maydad Cohen, Chief of Staff for the EOLWD, discussed state hiring and fiscal controls for FY' 13. Mr. Cohen noted that, from discussions three or four years ago, the Advisory Council's position vis-à-vis the Agency's budget is clear.

Mr. Cohen explained that it looks more and more likely that revenues will be insufficient to meet the state's FY' 13 obligations. He indicated that the situation should be clearer in January, when the Secretary of A&F will make an announcement. Mr. Cohen stated that in the meantime, A&F would like every agency to impose an FTE cap in the next couple of months. Mr. Cohen noted that an FTE cap is not a hiring freeze. He explained that, essentially, the state picks a day and takes note of how many FTEs the agency has as of that day—in the case of DIA, 141 FTEs. Mr. Cohen indicated that A&F will then freeze the agency at that amount of FTEs. Within the cap, he explained, each agency can keep doing what they are doing—if someone leaves their position, the agency can replace them with no issues. He explained that it does not have to be the exact position, but can be any position as long as the agency lives within their FTE cap.

Mr. Cohen indicated that the Secretariat is seeking a waiver for the DIA from the FTE cap, so that DIA can continue with the current cap of 251 employees, rather than 241. Mr. Cohen stated that he does not know whether the waiver will be granted, but believes that the DIA has previously received more leeway than other EOLWD agencies, because of its funding mechanism. He stated that until they get an answer, they are processing all HR the way it should be processed. Mr. Cohen stated that he believed that the DIA would be asked to put revenue generating positions first and hold off a little bit on all other positions, to see what happens in January. Mr. Cohen stated that the Executive Office may ask the Council for assistance in the future, but as of now, it is not necessary.

Council member Ed Corcoran asked if the judges would be impacted by the hiring controls, since there are a good number of judges coming up for reappointment.

Mr. Cohen explained that if the strict 241 FTE cap is imposed on the DIA, only two out of eight judicial positions would be impacted because there are two vacancies. He indicated that the other six positions are already part of the 241 FTE count.

Update on IT Issues

Mr. Roody Herold, Chief Information Officer of EOLWD, updated Council members on IT issues at the DIA. He explained that there had initially been a misconception as to what was causing the delays. He said that the issue had initially been identified as slowness in moving data back and forth between regions. He indicated that it is now clear that this issue involves the uploading of medical data by attorneys, an issue in which IT was not really involved. Mr. Herold noted that having identified the problem, they need to upgrade the network to allow the attorneys to continue to upload medical records.

Mr. Herold noted that another part of this problem is that electronic filings were implemented without a cap on file size. He indicated that this is unrealistic. He informed the Council that a couple of weeks ago, he met with the Senior Judge and others to discuss the need to initiate a cap as to the size of the file that can be uploaded to the network. As a result, they had agreed to cap uploads at 10 MBs. Mr. Herold explained that they believe that setting the cap and giving the attorneys another way to submit files greater than 10 MBs, such as sending large files by disc, will help minimize the issues we are now having of the slowness of uploading the files.

Mr. Herold indicated that he had looked at what other courtrooms around the Commonwealth are doing in terms of electronic uploads. He explained that he could not find one courtroom that allows the uploading of files, including the trial courts. Mr. Herold stated that certain courts allow the uploading of a pre-determined document or a PDF, but not massive files.

Mr. Herold stated that if we were to do this all over again, we would have identified what the network is capable of doing and then initiated some sort of cap as to the size of the file. Mr. Herold stated that since they cannot go backward, they would bring Boston up to a 50 Mbs pipe and the regional offices will be increased to 30 Mbs pipes. He indicated that this is probably a three to five year plan, as the stream of data will get larger and larger. He explained that the system upgraded in 2009 is at the end of its life cycle. He stated that he did not have an exact date of when the upgrades will take place but it probably would be happening by the beginning of next year. He noted that it will not happen all at once and that the regions will be brought online as the updates are completed.

In response to a question, the Senior Judge indicated large files in excess of 10 MBs are increasingly being submitted.

DISCUSSION OF LEGISLATION FOR THE 2013-2014 LEGISLATIVE SESSION

Chairman Regan stated that there would be a conversation about the 2013-2014 Legislative Session at the December meeting. He explained that he and Will had discussed sending around the list of legislation filed for this session, both the items endorsed by the Council and those not endorsed by the Council. The Chairman stated that he is asking members come to the December meeting prepared to go through that process again, so when the new session comes around the Council will be ready to act. He stated that the question is whether or not the Council wants to go beyond the list of items already filed and file its own separate legislation that is not already listed.

Chairman Regan suggested that if there are ideas that members have about any bill not contained in the already existing list of bills they should let Will know and to the extent possible provide some sort of a draft as to what they would like endorsed and then filed. He stated that he believed the filing deadline for the general public is January 18, 2013, and the Council should have it all done and ready by then.

DISCUSSION OF FY'12 WCAC ANNUAL REPORT

Chairman Regan stated that Will had also sent around a draft of the FY'12 Annual Report. The Chairman noted that among the annual reports that he has seen for agencies, this one tends to be among the most detailed. Chairman Regan stated that members should review the whole document and contact Will as soon as possible if they have any edits.

The Chairman stated that the piece that would be in most need of review is the FY'12 Concerns and Recommendations outline. Chairman Regan stated that he has had a chance to look over the document and it looks like it pretty accurately presents some of the things we have talked about and the issues we raised. The Chairman stated that he was asking that members take a careful look at that piece and if

anyone has comments or edits, get them to Will as soon as possible. He stated that the goal is to have this report finalized and endorsed in December and ready to go to the House and Senate Clerks, the Secretary of EOLWD, and the Labor and Workforce Development Committee. He stated that we want to get that document done as close to the first of the year as we possibly can. Chairman Regan asked that edits be submitted to Will by Wednesday, November 21st.

EXECUTIVE DIRECTOR UPDATE

Executive Director Will Monnin-Browder stated that the 2012 Oregon Workers' Compensation Premium Rate Ranking study was recently released. He stated that in case anyone is not familiar with the study, it is conducted by the Department of Consumer and Business Services and attempts to compare workers compensation premium rates across the 50 states and District of Columbia. He stated the 2012 median value is \$1.88 per \$100 of payroll and that according to the study, Massachusetts has the 44th highest workers compensation premium rates in the country—73% of the national median.

Chairman Regan stated that the agency consistently gets a good grade for providing a system that is not terribly expensive but is pretty good on the benefit side. He noted that the agency appears to have struck that balance between offering a very good benefit structure and keeping it affordable.

MISCELLANEOUS

Director Hillman stated that the Council should be aware that Auditor Suzanne Bump's office is doing an audit of the DIA, which is done every three years for all agencies. Director Hillman explained that the auditors began this week. Director Hillman noted that audit is more than simply a financial audit, indicating that the focus is more on processes and procedures at the DIA. He stated that the auditors will be at the DIA for a while and, although no end date was given, if all goes well, it should be done in three to four months.

Director Hillman also congratulated Council member Ed Corcoran on his presentation at the IAIABC conference in Rhode Island.

The next meeting of the Advisory Council is scheduled for Wednesday, December 12, 2012, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.