

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

March 13, 2013
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: John Regan, Chairman; Stephen Joyce, Vice Chairman; Edmund Corcoran, Jr.; William Corley; Mickey Long; Todd Johnson; Antonio Frias (Ines Leonardo); Dave Powell (Kevin Hurstak); John Pulgini; 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; Bob Ford, Budget Director, EOLWD; Sarah O'Toole, Director of Operations, EOLWD; William Harney, Director of OEVR; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Michael Kelley, AIM Mutual.

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

Absent: Stephen Falvey; Bernie Mulholland; Teri McHugh; Dennis Hines; 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 – January 9, 2013
- Minutes – February 13, 2013

Office of Education and Vocational Rehabilitation (OEVR) Update – William Harney, Director, OEVR
Discussion of House Bill 1 and Proposed Letter to the Governor

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.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez updated Council members on the conference and hearing queues. The Senior Judge stated that the conference queue is at a pretty good level—2½ months in Boston, Fall River and Worcester; and 3½ months in Springfield and Lawrence. He noted that the backlogs in the

Springfield and Lawrence regions are small. The Senior Judge reported that the hearing queue is down from last month.

The Senior Judge reported that the judicial applicants have met with the Governor's General Counsel, Kate Cook. He indicated that he currently does not have a time frame for the remaining steps in the judicial appointment/reappointment process.

Chairman Regan offered the Council's assistance in trying to advance the judicial appointment/reappointment process, if such assistance would be helpful.

Senior Judge Hernandez informed the Council that the Impartial Medical Unit continues to recruit doctors. He stated that they have recruited three or four dentists. As of July 1st, the Senior Judge stated, doctors would be required to use the paperless system.

Council member Todd Johnson asked the Senior Judge if the increase in the impartial exam payments was helping recruit doctors.

Mr. Taupier explained that some doctors are still having trouble with the \$650 fee as it is still a little less than they typically receive for similar examinations.

Mr. Michael Kelley stated that the current price for an IME can be as low as \$500 and as high as anywhere from \$1,000 to \$2,000, with the average cost being about \$750. Mr. Kelley explained that when the impartial fee increase was initially proposed, the average fee was around \$623 or \$628.

The Senior Judge informed the Council that the family of Judge Novick will be holding a memorial to celebrate her life on April 7, 2013 at 2:00 PM at the United Parish in Brookline.

Vital Statistics

First Deputy Director Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for March 2013. He offered the following statistics: Conference Queue: 531; Hearing Queue: 871; Reviewing Board Inventory: 50; Impartial Exams for FY'13 (to date): 3,376 (33 waivers); Exam Fees Collected for FY'13: \$1,073,400; 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 February: 180 (9 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'13 (to date): 1,753; fine collection for February: \$77,576; total fines in FY'13 (to date): \$891,346; SWOs issued in FY'12: 2,637; total fines collected in FY'12: \$1,381,085; compliance checks for February 2013: 6,380; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 4,581 (FY'13).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in February 2013: 905; total cases filed in FY'13 (to date): 7,948; total cases filed in FY'12: 12,646; total First Report of Injury Forms (FRI) filed in February 2013: 2,524; total FRI filed online in February 2013: 870 (34%); total FRI filed in FY'13: (to date): 19,782; 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): 84; total amount of §65 claims paid by the Trust Fund in FY'13 (to date): \$3,213,748; 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: \$926,656; total recovery efforts against uninsured employers FY' 12: \$1,047,057.

Director Philip Hillman told Council members that if the Trust Fund is not tracking toward the \$9M amount budgeted, next month's Trust Fund slide will include a column showing the Agency's forecast.

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): \$15,731,120; total amount paid on these claims in FY' 12: \$24,198,415; total COLA reimbursements to insurers in FY' 13 (to date): \$5,474,009; 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 February 2013, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 240 (190 DIA employees, 50 WCTF employees).

Director Hillman stated that the Agency's goal is to increase the employee count from the 240 to around 251. He explained that the positions filled would be in so-called revenue generating areas. He stated that the majority of the new hires would probably be split between the Trust Fund and Dispute Resolution and will not have an impact on the shared services. He noted that the potential Dispute Resolution hires would be support staff.

Council member John Pulgini asked if the specific jobs that the Director was referring to in Dispute Resolution were positions that would help speed up the time frame between conciliation and conference. Mr. Pulgini noted that the Council has heard how difficult it is for the secretaries to download documents, which slows down the process. Mr. Pulgini asked if the new hires would help address these issues.

Director Hillman explained that the issue of upload speeds is more of a technology issue. He indicated that the Agency is addressing the issue on two fronts. First, Director Hillman stated that the Agency is upgrading its pipelines in all the offices to allow faster uploads, starting with Boston. Second, the Agency intends to hire a consultant to ensure that the Agency is doing everything it can to address the slow upload issue. The Director noted that the cost of the upgrades would be approximately \$20,000-\$30,000. He stated that, at this point, he does not have the cost of the consultant because the RFQ is being developed.

Council member Mickey Long asked if private businesses were having these types of data transmission delays. Mr. Long stated that he did not believe that Federal Government offices, including the courts, had these problems.

Council member John Pulgini explained that the Social Security Administration (SSA) has large volumes of data going through their cables, including medical records necessary for hearings. He also indicated that the SSA uses videoconferencing for some proceedings.

Chairman Regan stated that it might be worth going over to SSA to observe how they manage their data flow.

In response to a question, Senior Judge Hernandez stated that, with respect to the proceedings in the courtrooms, the Agency is 100% paperless. He explained that the problem the Agency is experiencing is uploading and moving files internally.

Chairman Regan requested that, as the Agency begins the fiscal year, Director Hillman share with the Council some of the business planning for the Agency. He stated that although he appreciates the various

benchmarks the department monitors in tracking historic data, he wondered if some of this data could be used for a more predictive purpose. Chairman Regan asked the Director to share some of the things being looked at to judge the success of the organization. He asked that the information be shared with the Council so that the Council could make those evaluations along with the Agency. Chairman Regan requested that Director Hillman also discuss what warning signs the Agency looks for. Chairman Regan stated that it might be helpful to have this discussion right before the fiscal year begins.

Director Hillman stated that he would provide the Council with an overview of how he assesses the effectiveness of the Agency. The Director suggested that he would also discuss the opportunities that he is looking at over the next one or two years to move the Agency forward.

Chairman Regan suggested that this be placed on the May agenda.

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 13 (to date): \$2,598,907; total referral fees collected in FY' 12: \$3,774,237; total first report fines in FY' 13 (to date): \$37,908; total first report fines in FY' 12: \$115,000; total assessment collections in FY' 13 (to date): \$44,576,365; total assessment collections in FY' 12: \$82,117,762; total SWO fines in FY' 13 (to date): \$891,346; total SWO fines in FY' 12: \$1,381,085.

Mr. Corcoran asked that cost factor be added to assessment collections slide regarding Deloitte's involvement, as a consultant, in the assessment process.

ACTION ITEMS

A motion was made to approve the January 9, 2013 minutes.

Motion seconded and carried.

A motion was made to approve the February 13, 2013 minutes.

Motion seconded and carried.

OFFICE OF EDUCATION AND VOCATIONAL REHABILITATION (OEVR) UPDATE

Mr. Bill Harney, Director of OEVR, provided an overview of his unit. He stated that OEVR is charged with finding appropriate candidates for return to work services. Mr. Harney informed the Council that part of the job was to oversee the service providers with the ultimate goal of getting the clients back to work full time. Mr. Harney noted that OEVR also certifies vocational rehabilitation providers.

Mr. Harney explained that eligibility for OEVR services is typically based on several things: liability must be established, the claimant must be receiving benefits or they have recently lump summed and the employees have the right to request assistance within two years from a lump sum. He indicated that the employee must not be able to return to their previous job, but must have the ability to return to full time employment.

Mr. Harney explained that the Rehabilitation Review Officers (RROs) interview 30 to 40 individuals a month to make a determination of suitability (DOS). On average, he explained, about 30% of those people will be deemed suitable for services. He explained that medical reasons are the most common cause of someone being unsuitable for OEVR services. He explained that no one is disqualified for a lack of language skills or education.

Mr. Harney noted that once the employee has completed their training, OEVR will continue to monitor them for 60 or 90 days. Mr. Harney stated that so far this year, the completion rate for plans is 79%. He explained that the success rate at getting clients back to work is around 55%.

Mr. Harney indicated that he had looked back over the prior five years and determined that about 62% of the individual written rehabilitation plans (IWRPs) put together are training plans and that the rest are for people who need job placement assistance, including resume writing and interview techniques. Mr. Harney stated that over the years the most common training has been for CDL license and the health and medical fields. Mr. Harney noted that insurers are generally supportive of OEVR efforts.

Chairman Regan asked how much the Agency spent on OEVR (i.e. staff salaries, etc.), how much insurer's spent on the services and whether the Agency is happy with the return on investment. Chairman Regan asked that Mr. Harney return next month with this information. The Chairman also suggested working with other departments in the Secretariat to track workers beyond the 60 day period currently being utilized.

Chairman Regan thanked Mr. Harney and stated that Will Monnin-Browder would follow-up to explain what exactly it is that the Council is looking for at next month's meeting.

DISCUSSION OF HOUSE BILL 1 AND PROPOSED LETTER TO THE GOVERNOR

Chairman Regan stated that at the last meeting, a suggestion was made to send a letter to the Governor relative to one of the provisions in the proposed budget having to do with the elimination of the workers' compensation benefit tax exemption. The Chairman noted that the Executive Director had drafted a letter to come from the Chairman and Vice Chairman. The letter raises the issues discussed a month ago, particularly those raised by Mr. Long and by Mr. Mulholland around the historical nature of the exemption and why it is in place. The Chairman asked if any Council members had any suggestions or concerns about the letter.

Vice Chairman Stephen Joyce suggested that it might be useful to see if someone from A&F would come talk with the Council about the decision to include this item in the budget. He questioned whether the person who put this in the Governor's budget proposal knew about the debate in 1991 over reductions in benefit levels.

Council member Mickey Long stated that he thought the letter needed to reference the Council's opposition to, rather than concern with, the language included in Outside Section 7 of the proposed budget. Mr. Long explained that the Council was not concerned about it, but, rather, opposed it. Mr. Long also recommended changing the last sentence in the second paragraph to reference the fact that Massachusetts has one of the lowest benefit levels in the country. Mr. Long explained that he believed that if the tax exemption was eliminated, people would push to go back to pre-1991 benefit levels.

Chairman Regan suggested that the letter be approved with the amendments suggested by Mr. Long.

A motion was made to approve the letter as amended.

Motion seconded and carried.

Chairman Regan stated that the Chairs of both House and Senate Ways and Means will be copied on the letter. Chairman Regan also suggested that Mr. Doheny inform A&F of the letter and see if someone would like to attend next month's Council meeting to discuss the issue further.

Vice Chairman Joyce stated that in the future, when the budget is being developed, it might be helpful if the Administration reaches out to the Council if there is going to be something in the budget impacting workers' compensation. Mr. Joyce stated doing so would allow the Council to weigh in during the development stage, rather than afterwards.

DISCUSSION OF PENDING LEGISLATION

Chairman Regan explained that most workers' compensation bills are before the Joint Committee on Labor and Workforce Development, which is historically where the Council does most of its advocacy. He noted that a list of filed bills is included in the materials for today's meeting. Chairman Regan suggested that everyone review the bills in preparation for a discussion about which to endorse at next month's meeting.

The next meeting of the Advisory Council is scheduled for Wednesday, April 10, 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.