

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

June 8, 2016

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

Council Members Present: Steve Joyce; Steve Falvey; Bernie Mulholland; Michael Kelley; Todd Johnson; Mickey Long; Frank Ruel.

Also Present: Linda Edmonds Turner, Director; Omar Hernandez, Senior Judge; Bill Taupier, Director of Administration; Karen Fabiszewski, Acting General Counsel; Marc Joyce, Senior Regional Services Manager; Pasqua Scibelli, Civil Litigation Manager; Alan Green, Deputy Director of Investigations; Aaron D'Elia, CFO; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRIB); John P. Murphy, Massachusetts Insurance Federation.

Advisory Council Staff: Evelyn Flanagan.

Absent: John Regan; Bill Corley; John Pulgini; Teri McHugh; 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 – Bill Taupier, Director of Administration
- Update on Regulatory Review Process – Karen Fabiszewski, Trust Fund Manager
- Update on Public Information Office
- Director's Update – Director Linda Edmonds Turner

Communications

Action Items

- Minutes – March 9, 2016
- Minutes – April 13, 2016
- Minutes – May 11, 2016

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Steve Joyce began the meeting at 1:30 P.M. The Chairman stated that Director Linda Turner had any announcement to make to the Council members.

Director Linda Turner explained that Mr. Bob Ford, Chief Financial Officer (CFO), had recently retired and she wanted to introduce Mr. Aaron D'Elia who was chosen to replace Mr. Ford. She stated that Mr. D'Elia had begun his career in banking and then moved to public service. She asked Mr. D'Elia to provide a few comments.

Mr. D'Elia stated that he was happy to be here and looks forward to working with the Council. Mr. D'Elia explained that when Mr. Ford retired he took his place as CFO. He informed the Council that he was currently working with Deloitte and Touche on the investment rates, which have to be done by the start of the fiscal year. Mr. D'Elia explained that they were very close to finishing the process and once he has the new rate he would provide it to the Council. Mr. D'Elia indicated that the rate will go down but he could not state by how much at this point but as soon as they analyze everything he would let everyone know. Mr. D'Elia stated that he had to leave but he was happy to answer any quick questions members may have. He noted that in the future he would be at the meetings for the duration.

Chairman Joyce thanked Mr. D'Elia and asked Senior Judge Omar Hernandez to provide his Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez stated that the conference queue had come down slightly and the average wait time between conciliation and conference for Springfield and Lawrence are at approximately two and a half months; while Worcester, Boston and Fall River are at three months. Senior Judge Hernandez noted that the impartial physician contracts have gone out and they are coming back signed so it appears that the roster is currently in good shape.

Senior Judge Omar Hernandez stated that right before this meeting he had received approval to post the judicial positions. The Senior Judge noted that this posting included all twelve positions.

Senior Judge Hernandez stated that the Opiate Program has been reviewed by Secretary Walker and is moving along. The Senior Judge stated that he was scheduled to meet with Secretary Walker and then they would be doing a presentation at the Governor's Office.

Senior Judge Hernandez stated that the pending hearing decisions have stayed about the same so in an effort to move them along he has added this performance to the judges' reviews. He explained that he wrote comments for those judges with outstanding decisions so this is now part of the record.

Council member Mickey Long asked that when the Senior Judge inquires about these cases if he could find out which cases have employees not receiving compensation. He explained that he is very concerned if any of these cases have an injured worker not collecting benefits since they are the only individual who does not have a stake in the system.

Council members reiterated their request for month to month comparisons of pending decisions for 6 to 9 months, 9 to 12 months, 12-24 months, 24 to 36 months and finally 36+ months so the council can regularly track the changes.

Council member Michael Kelley stated that he had received a call last month from an attorney who had traveled out to Springfield for a case. He stated that apparently Judge Poulter was unable to come to work for one reason or another and the attorney wanted to compliment Judge Rose because he told anyone who showed up for one of Judge Poulter's conferences that he would stay and hear her cases on her behalf because several people had traveled from Boston. He explained that this person just wanted to acknowledge Judge Rose's extra effort in recognizing the situation and wanted to applaud Judge Rose.

Senior Judge Hernandez stated that this had come to his attention too. The Senior Judge stated that Judge Rose always steps up and that he is a really good judge.

Council member Mickey Long asked if the agency had made any effort to try to do anything via skype to allow a trial to take place remotely by agreement of all parties.

Mr. Bill Taupier stated that this has been done but if the parties on the other end do not have a good internet connection with a camera and microphone available it becomes a problem. Mr. Taupier explained that had used “Go to Meeting” but the one part of this equation is that the agency does not have complete control which is a problem.

Chairman Joyce stated that in the future when the agency moves to another location it would be worth it to invest a few dollars to get this done.

Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA’s vital statistics report for June 2016. He offered the following statistics: Conference Queue: 774; Hearing Queue: 788; Reviewing Board Inventory: 108; Impartial Exams for FY’ 16 (to date): 3,733 (71 waivers); Exam Fees Collected for FY’ 16 (to date): \$1,939,171; Impartial Medical Examinations in FY’ 15: 4,146 (94 waivers); and Exam Fees Collected in FY’ 15: \$1,967,550.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in May: 196 (10 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY’ 16 (to date): 1,988; fine collection for May: \$137,611; total fines in FY’ 16 (to date): \$1,065,142; SWOs issued in FY’ 15: 1,938; total fines collected in FY’ 15: \$1,188,541; compliance checks for May: 7,453; estimated number of workers now covered by workers’ compensation insurance as the result of a SWO: 5,237 in FY’ 16 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in May: 1,007; total cases filed in FY’ 16 (to date): 11,047; total cases filed in FY’ 15: 11,837; total First Report of Injury Forms (FRI) filed in May: 2,718 (2,391 filed electronically: 88%); total FRIs filed in FY’ 16: 31,396; total FRIs filed in FY’ 15: 33,353 (29,290 online). In May the number of employee claims filed: 870; number of employee claims filed in FY’ 16 (to date): 9,313; number of discontinuances filed: 134; the total number of discontinuances filed in FY’ 16 (to date): 1,699; the number of third party claims filed: 3; total number of third party claims filed in FY’ 16 (to date): 35.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY’ 16 (to date): 117; total amount of §65 claims paid by the Trust Fund in FY’ 16 (to date): \$6,463,791; total §65 claims filed in FY’ 15: 99; total amount of §65 claims paid by the Trust Fund in FY’ 15: \$7,620,855; total recovery efforts against uninsured employers FY’ 16 (to date): \$1,207,613; total recovery efforts against uninsured employers FY’ 15: \$1,556,069.

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’ 16 (to date): \$19,519,779; total amount paid on these claims in FY’ 15: \$30,682,389; total COLA reimbursements to insurers in FY’ 16 (to date): \$7,848,409; total COLA reimbursements to insurers in FY’ 15: \$14,344,261.

Mr. Taupier reported that as of May 2016, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 228 (171 DIA employees, 57 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 16 (to date): \$3,728,857; total referral fees collected in FY' 15: \$3,888,246; total assessment collections in FY' 16 (to date): \$83,305,758; total assessment collections in FY' 15: \$70,934,257.

Council member Frank Ruel asked what it cost the DIA to get back the recovery money.

Ms. Fabiszewski explained that there is really no cost since this is done by the DIA's own litigation team. She stated that a lot of work is done by the trust fund attorney handling the case.

Council member Mickey Long asked if the statute should be tweaked to say "the judge shall join" a case to make it easier for the Trust Fund to recover these monies.

Ms. Fabiszewski stated that she would honestly have to think about it.

Regulatory Review Update

Acting General Counsel Karen Fabiszewski explained that the status of the regulations was the same as last month and the DIA draft regulations are with the Administration and Finance Agency. She stated that they are reviewing the regulations and once the DIA gets the OK from them then they will begin the formal promulgation process.

Circular Letter #348

Ms. Fabiszewski stated that with respect to Circular Letter #348, the working group has forwarded their recommendations to the Executive Office and they are finalizing some of the points. She explained that they are moving toward the end of the process.

Director Turner Update

Director Turner reported that the agency would be posting Mr. Monnin-Browder's position by Friday. She stated that she was in the process of working with Human Resources (HR) to get a pay adjustment for Ms. Flanagan.

Director Turner also reported that she had postponed the presentation by the Public Information Office since the manager of that unit had just got back from vacation and she wanted to review the information.

Executive Director Update (Interim)

Ms. Flanagan stated that HB4295 was referred to HWM on May 31, 2016 and was pending a new draft of HB3849. Also, HB4350 had also been referred to HWM on May 31, 2016. Ms. Flanagan stated that she would continue to monitor this and report any movement.

Council members suggested polling members to see if there would be a quorum for the July meeting and if not perhaps cancel it until August.

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, July 13, 2016, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.