

## Meeting minutes: Workers' Compensation Advisory Council

Date: May 12, 2018

Minutes prepared by: Executive secretary to the Workers' Compensation Advisory Council

Location: Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155

### Attendance

#### Members attended

Jason Bartlett – via telephone

Walter Frederickson

Dennis Galligan – via telephone

Russell Hess – via telephone

Glen Johnson – via telephone

Douglas Loon – via telephone

Bill McCarthy

Ed Reynoso

Robert Ryan

Gary Thaden

Kevin Yakes – via telephone

#### Visitors attended

Laurie Beyer-Kropuenske – Department of Administration

Gary Carlson – League of Minnesota Cities

Joel Carlson – MNAH

Keith Carlson – Minnesota Inter-County Association

Jeremy Estenson – Alliance

Brian Rice – IAFF/MPFF

Suzanna Kennedy – MEWCA

Mary Krinkie – MHA

Brad Lehto – AFL-CIO

Melissa Lesch – Minneapolis

#### Legislative liaisons attended

Rep. Tim Mahoney – via telephone

Sen. Paul Utke – via telephone

#### DLI staff members attended

Julie Klejewski

Ethan Landy

Chris Leifeld

Ken Peterson

Jessica Stimac

Laura Zajac

Chief Judge Patty Milun – Workers' Compensation Court of Appeals

Kim Olson – CorVel Corporation

Ray Peterson – McCoy/Peterson

Dean Salitas – MNAJ

Mike Scully – Sieben Carey

Robyn Sykes – MCIT

Cam Winton – Minnesota Chamber of Commerce

Rep. Nick Zerwas – Minnesota House of Representatives

Chief Judge Tammy Pust – Office of Administrative Hearings – via telephone

### Call to order and roll call

Commissioner Ken Peterson called the meeting to order at 12:06 p.m. Roll call was taken and a quorum was present.

## Approval of the agenda

Peterson asked for approval of today's agenda. Bill McCarthy made a motion to approve the agenda and it was seconded by Robert Ryan. All voted in favor and the agenda was approved.

## Agenda items

### a. Legislative proposal

Peterson explained there are several proposed legislative additions to the workers' compensation legislation that the council had previously passed. These additions will be discussed and voted on today, as well as any other items that may be brought up by Workers' Compensation Advisory Council (WCAC) members.

The commissioner introduced Laura Zajac from the Department of Labor and Industry's (DLI's) Office of General Counsel. He explained Zajac will give a brief summary of the amendments being offered today. Zajac reviewed the changes found in the Office of Administrative Hearings (OAH)/DLI Dispute Resolution Filing Requirements document labeled *Agenda item a – Rev.* and dated May 11, 2018, and reviewed changes to the post-traumatic stress disorder (PTSD) proposed draft language – reference *Agenda item b.* Peterson asked for comments.

OAH Chief Judge Tammy Pust said OAH is in support of the language that has been agreed to, except the language with regard to subdivision 7, which was not the subject of the agreement between the agencies that has been worked on for the past two weeks. Pust clarified OAH doesn't take a position with regard to the PTSD language, but only with regard to the OAH/DLI collaboration that was worked out between the two agencies and has language that has been agreed to; however, the language regarding the Workers' Compensation Court of Appeals (WCCA) was not part of the agreed language.

Peterson stated everything in the amendments have been previously discussed and agreed to; however, he agreed with Pust that the issue that has not been negotiated is the WCCA rulemaking issue. He asked WCCA Chief Judge Patty Milun to come forward and speak to the council.

Milun explained the Minnesota Supreme Court instituted electronic filing under the e-court system for the whole judicial branch, which also opened up the opportunity for WCCA to participate and provide in the same electronic format – the appeals from WCCA to the Minnesota Supreme Court. The Minnesota Supreme Court required WCCA to transfer appeal records to it in a specific electronic format and this proposed legislation conforms to the Minnesota Supreme Court mandate. WCCA entered into an inter-agency agreement with OAH approximately one-and-a-half years ago and that meant OAH would transform paper appeal records, which were predominately the exhibits, into an electronic format, transmit the resulting PDF files to WCCA through its e-filing system and record a record index of the resulting PDF file. Milun doesn't believe this ever transpired. That was the format required by the Minnesota Supreme Court then and is the format required by it now. WCCA is now trying to move forward with this proposed legislation. OAH is required by statute to certify the record to WCCA. This proposed legislative change by WCCA would require the certification of the record be in an electronic format filing. By allowing this electronic format in a PDF file

form, mandated by the Minnesota Supreme Court, WCCA will expand the flexibility of its record-handling and enable its judges to review the same appeal record concurrently, which isn't an option right now. Milun commented she has heard the concerns and respectfully listened to the OAH chief judge and deputy judge in an email message last night. She stated it is a requirement and she is asking to make rules to allow a certified record in an electronic format filing.

Peterson explained that while Milun was speaking, a hand-out of WCCA's proposed legislation to subdivision 7 was distributed to the council members and to the visitors that shows the changes to the language in red.

Pust commented in regard to Milun referencing the previous evening's email message because that was the first time OAH had seen this changed language. She said this language was in the mediated agreement between DLI and OAH in a different format, and OAH certainly agreed to do the language they saw before. Pust commented she believes Milun is incorrect in saying that what the language requires is simply electronic certification of the record. Pust stated OAH can certainly send an electronic document that says here is the record; however, the effect of the language is it requires OAH to ensure all parties that have filed with OAH do so electronically for OAH to have a complete electronic record. Pust stated since the new C-Track system is not mandatory, OAH has not asked for it to be mandatory, and the bar does not support it being mandatory; by making appeals mandatorily electronic we are, in effect, making C-Track mandatorily electronic for all filers at OAH. That is not a proposal Pust has ever asked the bar to support nor is it one she believes they do support. Pust stated she does agree to language saying they will happily work with WCCA to make sure everything OAH gets electronically will go to WCCA electronically. However, she said unless the state is mandating that workers' compensation filers, including injured workers who sometimes appeal to WCCA, do so electronically, the proposed language is not workable. She believed the language in the original agreed upon bill is workable and will still allow WCCA to meet the mandate of the Minnesota Supreme Court. Pust said OAH is more than happy to continue working with WCCA to figure out how to make this all work. OAH doesn't want the inadvertent consequence to be that OAH now needs to tell all filers, including unrepresented injured workers, they now need to file electronically.

Milun said she wants to make it clear that what they are asking for today is not something from the bar, they are asking the exhibits and the trial record be submitted in an electronic format and the format filing required of WCCA by the Minnesota Supreme Court. It is the trial transcript, which is already digitalized, and it is the exhibits, which are 99% of the paper that comes into the WCCA office from OAH. They are not seeking the filing by any party other than the transmittal of the evidence submitted to the trial judge at hearing.

Pust added the effect of the language is that somebody has to take the paper exhibits and make them electronic – and they are happy to work with WCCA to make that happen. But it isn't accurate to say the record is now electronic, because hearing exhibits are now in paper form. She said it boils down to who is going to do the electronic scanning, WCCA or OAH. She reiterated OAH will be happy to work with WCCA to work it out. OAH is not happy to have language put before them less than 24 hours before WCAC is asked to vote on it.

Keith Carlson, executive director, Minnesota Inter-county Association, spoke about the draft relating to the PTSD presumption. He thanked the representatives of labor and business, as well as the commissioner, for reaching out to the public sector and keeping it engaged about what was happening in the bill.

Carlson asked for the common understanding, to make it clear from the local government perspective, that this language covers individuals who work with incarcerated people within the detention facility, not individuals who work in the office and not workers who work in the field. Peterson replied there is that understanding. Carlson also stated, from the employers' perspective, they would like the effective dates of both sections to be concurrent.

Peterson asked for a motion on the entire package and then members could make any amendments they wished.

A motion was made by Gary Thaden to adopt the May 10, 2018, OAH/DLI Dispute Resolution Filing Requirements and agenda item b (handed out today) with one change on line 71, to delete the words *under section 626.84, subdivision 1*. The motion was seconded by Ryan. Thaden stated he is trying to do the whole package.

An amended motion was made by McCarthy to add secured treatment facilities to that language under those people eligible for the PTSD presumption. The amended motion was seconded by Ed Reynoso. All voted in favor of the amended motion and it passed.

Back to the main motion. Peterson asked Zajac to explain the effect of adopting the May 10, 2018, language in Thaden's motion. Zajac clarified there were two mailings sent to council members and interested parties, a set dated May 10 and a set dated May 11. The difference between the two is a revision to subdivision 7, governing WCCA. What was just approved was the May 10 version with the addition of secured treatment facilities and striking the reference to 626.84, subd. 1.

Before a vote on the whole package, Reynoso thanked everybody on the council, with special thanks to Rep. Nick Zerwas and Sen. Nick Frentz for their hard work and for leading the effort on PTSD and what he thought should have been done a long time ago. He thanked council members and stakeholders for their input.

McCarthy also thanked the stakeholder representatives in the room and on the call for all their hard work to push forward on PTSD. He thanked staff members and everyone involved in getting this done.

Douglas Loon thanked everyone for their hard work as well. He stated the fee schedule piece is a very important component to building a strong workers' compensation system; he is pleased to work out a deal about PTSD and proud to support it.

On behalf of the Department of Labor and Industry, Peterson thanked everyone for all their support.

Zerwas shared that during the few years he has worked on this issue, he has had a range of emotions, from frustration to being really impressed with how the multiple groups of stakeholders have rallied together in the end to negotiate and get this done.

Peterson stated the motion on the table was made to recommend the package as negotiated between management and labor in regard to PTSD and, second, regarding between OAH and DLI as amended. A roll-call vote was taken: Ryan, aye; Russel Hess, aye; Reynoso, aye; Glen Johnson, aye; Walter Frederickson, aye; McCarthy, aye; Dennis Galligan, aye; Kevin Yakes, aye; Loon, aye; Jason Bartlett, aye; Thaden, aye. All voted in favor and the motion passed.

## **Other business**

There was no other business.

## **Adjournment**

Thaden made a motion to adjourn the meeting, Reynoso seconded the motion, all voted in favor and the motion carried. The meeting was adjourned at 12:44 p.m.

Respectfully submitted,  
Julie Klejewski  
Secretary