

Idaho Industrial Commission
Negotiated Rulemaking Meeting
IDAPA 17.01.01 - Administrative Rules Under the Worker's Compensation Law (ZBR
Rewrite)
17.01.01.401-17.01.01.602
May 8, 2024
9:30 a.m. (MST)
Boise (Les Boise Room), CDA, Lewiston, Idaho Falls, Pocatello, Twin Falls

Commissioner Claire Sharp opened the meeting at 9:30 a.m. Commissioner Sharp asked that anyone providing comments during this meeting identify themselves for the record. Commissioner Sharp indicated the meeting would be conducted in person and online.

Kamerron Slay, Commission Secretary, summarized the rulemaking process and the upcoming scheduled negotiated rulemaking meeting as detailed in the *May 1, 2024, Vol 24-5 Administrative Bulletin*. Ms. Slay provided tentative dates for the public hearings later this year. Ms. Slay indicated once the public hearing dates had been finalized, the Commission would publish them on the agency's website. Ms. Slay indicated the comment deadline for negotiated rulemaking was August 1st, and comments could be submitted to her e-mail. Ms. Slay indicated there would be another comment period for proposed language for the public hearings. Ms. Slay turned over the meeting to Commissioner Sharp to discuss the draft IDAPA language.

Commissioner Sharp indicated that the meeting would focus on IDAPA *17.01.01.401* through *17.01.01.602*. Commissioner Sharp started the discussion on *.401* relating to average weekly wage. Commissioner Sharp summarized the Commission's draft language regarding the computation of average weekly wage which resulted in striking part *.04* of the regulation for being unnecessary. Commissioner Sharp asked for comments. Micheal DeGraw, Industrial Commission, inquired why this section was being struck. Commissioner Sharp indicated the rule didn't specify every single example, as such the thought was it was unnecessary. Anthony Shively commented that if it doesn't cover all situations, it may be a good reason to keep it.

Commissioner Sharp summarized the changes to IDAPA *.402*. Commissioner Sharp inquired if *.01* was redundant. Stephanie Butler, State Insurance Fund, indicated she'd like to add for consideration under *.402.01* a potential clause at the end that says, "unless the claim is in litigation." Ms. Butler expressed concern about averaging impairment ratings, and it puts sureties in a difficult position of paying out something that may not be recoverable. Brad Eidam, Claimant Attorney, responded to the comment indicating concern why either side should be potentially prejudiced by not averaging because the case is in litigation as it may not be an issue in the litigation. Mr. Eidam indicated it could potentially result in penalizing an injured worker who might get a lower impairment compensation instead of averaging. Matthew Vook, Claimant Attorney, commented that he disagrees with the litigation standard, indicating that it will delay filing of complaints until after the impairment ratings are obtained. Mark Peterson, representing employers and sureties, agreed with Ms. Butler's comment and how it would define litigation. Mr. Peterson stated through the litigation process, the burden is on the claimant to demonstrate that they're entitled to impairment and that issue is going before the Commission to decide. Mr.

Peterson commented that it puts a lot of burden on a surety or employer to continue paying benefits while the Commission adjudicates the case. Mr. Peterson indicated that averaging impairments before it's adjudicated seems not to consider the fact that the burden is upon the claimant to demonstrate an entitlement to any kind of benefit. Jacob Stewart, James, Vernon, and Weeks, commented averaging impairments was a fair compromise.

Commissioner Sharp summarized the proposed changes to .403 Commissioner Sharp inquired whether these regulations should be added to the statute. There were no comments. Commissioner Sharp moved to .404 and summarized the draft changes including striking unnecessary language and the addition of adding a 12-month limitation for the release of information. Chris Wagner, Intermountain Claims, expressed concern about the 12-month limitation indicating you can receive indemnity benefits for many years and the surety may want to be able to obtain records to make an appropriate decision of whether treatment would be related to the claim, especially in light of decisions where it could have significant financial ramifications.

Ms. Butler indicated her support for Mr. Wagner's comment, but acknowledged it isn't clear what a correct time frame would be. Mr. Shively commented on his agreement with Mr. Wagner as an arbitrary 12-month expiration would just create more work. Patti Vaughn, Industrial Commission, provided additional information that the 12-month period was due to complaints from medical providers not accepting the authorization. Ms. Vaughn indicated the thought behind the 12-month period would be it would minimize medical providers rejecting the authorizations. Ms. Vaughn indicated they weren't married to the 12-month timeline and would like some feedback from medical providers on what would be acceptable. Mr. Stewart commented that the Commission's approved release form of the complaint pleading indicates unless otherwise revoked the authorization would expire upon resolution of the workers' compensation case. Mr. Stewart indicated if there was a deadline needing to be placed adding in something that was consistent with the Commission's release form and so the medical providers must accept it.

Commissioner Sharp summarized the proposed changes to .405 including removing .01 as unnecessary as already detailed in statute. Commissioner Sharp inquired whether a driving suspension for any reason should preclude an injured worker from mileage reimbursement. Mr. Shively asked if the proposed change to .405 eliminated mileage reimbursement or if it was changing how they're calculated. Commissioner Sharp indicated that the statute sets the reimbursement, therefore striking it would simply remove redundant language. Mr. Vook commented that the suspension portion of this section is contrary to I.C. 72-405 and the purpose of workers' compensation. Mr. Vook would support the elimination of that section. Darin Monroe agreed with Mr. Vook's comment on the removal of the ineligibility because of revocation of driving privileges because of alcohol or drugs and stated there didn't appear to be anything in the statute that gave that authority. Mr. Monroe and Mr. Shively indicated their support for the removal as well.

Mr. Wagner commented that it should stay in as it felt like a punishment for the surety to include extra costs for having to provide transportation because someone broke the law outside of workers' compensation. Mr. Eidam expressed his support against keeping the penalty of not reimbursing a claimant because suspended driving privileges due to alcohol or drugs. Mr. Eidam indicated there

was a disconnect between the worker's compensation case and the driver suspension. Mr. Eidam indicated that it seems counterproductive to the goal of the workers' compensation system to get injured workers seen by a health care provider so they can get well.

Commissioner Sharp summarized the proposal to .501. Commissioner Sharp indicated the proposal would strike .01 as it's already in statute. Commissioner Sharp inquired as to whether the regulation remains necessary for the protection of the workers' compensation records as it's exempt from public records disclosure. There were no comments,

Commissioner Sharp summarized .601 and the proposal to strike the duplicative language. Commissioner Sharp indicated .08 would create a deadline for responding to your request from the Commission. Ms. Butler expressed concern with the three-day deadline edition imposed and suggested a 7-day deadline as more reasonable. Mr. Wagner agreed with Ms. Butler's statement. Ms. Vaughn gave additional information on the proposal indicating it would clarify "promptly." Leanne O'Dell, Risk Administration Services, commented that the deadline seems to conflict with Audit Guideline rule #4 which gives 15 working days for a response. Ms. Vaughn indicated they were two different sections of the rule. Cindy Weigel, Intermountain Claims, expressed concern about the time frame for response and agreed with Ms. Butler's comment about 3-days being snug.

Commissioner Sharp summarized the changes to .602 striking redundant language and outdated language. Commissioner Sharp inquired if there were comments but there were none.

Commissioner Sharp reiterated the deadline for comments and the method of submission. Commissioner Sharp indicated additional information was available on the website and materials would be posted there. Commissioner Sharp encouraged the participants to look at the latest draft indicating it was different from the draft previously supplied in November. Commissioner Sharp indicated that the current draft was based on the feedback received during the legislative session. Commissioner Sharp asked if there were any additional questions on this section, or any section, in the rule. Dexton Lake inquired about .403 regarding dental repair and permanent disability. Mr. Wagner commented that that the loss of a tooth was comparable to the loss of a limb and had no concern with dental impairment.

Emma Wilson, Breen, Veltman, Wilson, had a question about .402.01 regarding converting single ratings of a body part to a whole person. Ms. Wilson indicated that if someone had an upper extremity rating that you must convert it to a whole person and historically paid the rating closest to the body part. Ms. Wilson asked for clarification. Commissioner Sharp stated this regulation may be out of step with actual practice and inquired if this was inconsistent with the current practice. Ms. Wilson indicated it was inconsistent with what they're instructed to do based on the closest body part. Ms. Weigel commented suggestions to the section as it reads right now causes confusion. Ms. Vaughn commented there are instances where it does have a necessity that the impairment would need to be converted into a whole person rating to determine permanent disability. Commissioner Sharp indicated they would look at the section.

Commissioner Sharp thanked all the participants for the comments received today. Commissioner Sharp indicated that in line with the Zero-Based Regulation process the Commission was looking

at all of the rule regulations from the ground up. Commissioner Sharp expressed appreciation for the participation today during the meeting.

The meeting ended at 11:49 a.m.