

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
February 23, 2022**

Members Present

Andrew Marcham
James Arnold
Richard Burleigh
Darin Monroe
Brad Cederblom
Shellie Martin
Matt Pappas
Brad Stoddard
Brian Whitlock, Chairman
Joe Maloney

Members Absent

Dave Anderson
Dr. Paul Collins
Dane Higdem
Craig Mello
Ex-Officio: Senator Jim Patrick
Ex-Officio: Representative Scott Syme

Industrial Commission

Aaron White, Chairman
Thomas E. Limbaugh, Commissioner
Thomas P. Baskin, Commissioner
George Gutierrez, Director

Opening Remarks and Introductions:

Chairman Brian Whitlock led the meeting and opened the meeting at 9:00 a.m. Introductions were not done due to the meeting being held via Zoom videoconferencing.

Minutes of November 10, 2021:

The minutes of the November 10, 2021 meeting were presented for review and approval. Upon motion of Richard Burleigh, seconded by Shellie Martin, the minutes of November 10, 2021 were approved. The minutes were adopted by unanimous vote.

Industrial Commission Report:

2022 Legislation. Chairman White provided update on proposed legislation dealing with workers' compensation law.

H0518 (dealing with lump sum settlements and I.C. § 72-404) was pulled and replaced with H0590. Chairman White summarized the provisions of the proposed bill. The bill provides that when parties are represented by counsel, then the proposed lump sum settlement is *ipso facto* in the best interest of the parties and that the settlement does not require Commission approval. The Commission expressed skepticism with the proposed bill, because the Commission helps to ensure that the terms of the settlement are in the best interests of parties, particularly the claimant.

H0464 (dealing with compensability of injuries from COVID-19 vaccine if Employer mandates vaccination as a condition of employment) as also been pulled and revised as H0593. Commission is watching that one closely.

Fee and Non-fee Rules: currently going through the process of approval with the House.

Chairman Whitlock had comment about H0518/H0590 (proposed law on lump sum settlements). He mentioned that they reviewed draft language of the proposed legislation at the prior Committee Meeting in November 2021. The comments and concerns made by Committee at that time were largely not included in the draft of H0590. Chairman Whitlock mentioned his concern that there should be another set of eyes, outside of the parties, such as the Commission, to review the terms of the lump sum settlement. First of all, to make sure all the terms are correct, but also, to make sure the claimant is apprised of all the parameters and consequences of settling their case, and that they understand what rights they are electing to waive by entering into a lump sum settlement. Chairman Whitlock also addressed that concerns have been raised about the time that it takes to approve a lump sum settlement. He asked that Patti Vaughn present the data she compiled on that.

Lump-Sum Settlement Statistics: Patti Vaughn presented the steps that Benefits Analysts and then the Commissioners review in order to get a proposed lump sum settlement approved. She then presented the charts showing how many settlements are approved and how long it takes for each settlement to be approved once it is submitted to the Commission. In CY21, 858 lump sum settlements (LSS) were submitted to the Commission for approval. Ultimately, 855 of those LSS were approved, only 3 were not approved. Mr. Maloney had a question if the data could be extrapolated to show the number of LSS approved between 18-30 days, and 30-60 days, instead of 18-60 days. Patti said she would update that. If a LSS is submitted with the complete package (all the info needed to approve), the average processing time is 6.17 days (with 80.5% approved within 7 days). If the LSS is submitted and missing information, the average days is 17, with a median date of 11. 51.7% of these settlements approved within 11 days, and 70% were approved within 17 days of receipt. Patti mentioned that the overwhelming number of LSS are put on hold because of some issue dealing with award of attorney fees. Mr. Arnold asked if the Commission could compile the number of cases that went to an 18(D) Hearing from Jan 2019 to the present. Patti said that she would look into that and provide that information to the Committee. Ms. Martin asked if there have been more proposed LSS presented to the Commission in 2021 vs. 2020 or 2019. Patti said that the number of proposed LSS in 2021 has declined slightly, but not significantly, as compared to 2020 and 2019. Mr. Burleigh asked if these charts/data have been presented to the legislature. Patti confirmed that the House Committee had been presented with this data. Mr. Marcham inquired if self-insured employers were included in these numbers. Patti confirmed that they had been. Ms. Martin asked how often the Commission reviews proposed LSS. Patti stated that the Commission reviews daily, each day as the proposals are submitted. Patti also clarified that the days in the data are calendar days, and not business days. Commissioner Limbaugh stated that they asked Governor's Office for direction on how the Commissioners could address their concerns with the pending legislation (H0590). The Commission was directed no to attend in person, and instead submit written testimony. Commissioner Limbaugh stated that they would submit written testimony and include both of these charts to the letter.

H0593. This draft legislation is a revised version of H0464, deals with compensability of COVID-19 vaccine injuries when Employer mandates vaccination as a condition of employment. Chairman Whitlock asked if the law already provided for compensation for these scenarios. Commissioner Limbaugh clarified that the proposed legislation really does not change anything in current law. Injuries from vaccination when the vaccination is required by employment is already covered by existing law. Commissioner Baskin joined the meeting and added that the proposed legislation deals with issues that are already covered under existing law. Baskin was slightly concerned with the language “accident or injury” in subsection (2) instead of the “accident and injury.”

IRIS Modernization. Shana Barrowclough updated the committee on the IRIS project. The Commission anticipates the first application (Compliance Department) is going to go live sometime between April and July of 2022. The remaining applications will follow thereafter in 12-18 months.

Subrogation Memo. Commissioner Baskin provided summary of the guidance that the Commission issued to parties on subrogation issues that crop up in cases, particularly in approval of lump sum settlements. An ad hoc committee was convened to put together the memo back in September and November of 2021. Drafts were reviewed at each of those meetings, comments were received and put in the finished product, and the memo was posted in December 2021. It is the guidance that the Commission will rely on in resolving these claims.

Amended JRP 12. Commissioner Baskin updated the Committee on a recently amended JRP regarding dismissals of cases, particularly where the claimant has failed to prosecute or take any action in their case for a period of 6 months. In light of a recent Supreme Court decision (*Fuentes*), the Commission amended its rule related to these types of cases to create a mechanism and codify the procedure to dismiss these cases. There were no questions, but Ms. Martin expressed her appreciation of the amended rule.

Chairman Whitlock asked for any public comment before proceeding.

Public Comment: no public comment was made at this time.

Other Issues/Announcements:

Subcommittee on I.C. § 72-208. Andrew Marcham updated Committee on the subcommittee that was held regarding I.C. § 72-208 and intoxication issues in a workers compensation case. Concerns were expressed about Idaho law on this matter, some states, such as California and Utah, have disallowed benefits completely if intoxication if the cause of the injury. Others expressed concern that changing current law would shift burden from insurance to the county or taxpayers. And changing existing law would take away benefits to workers in Idaho that they currently enjoy. Ultimately, the subcommittee did not reach consensus on the issue. Mr. Marcham stated that an attempt would be made to bring up the subcommittee in a year or so and see if consensus could be reached.

ISIF Annual Report 2021. Kim Murphy updated Committee on ISIF's annual report and went through the data/charts/and tables with the Committee. Commissioner Baskin asked if there has been any impact from recent Supreme Court decisions that ruled that there is essentially no statute of limitations on ISIF claims. Ms. Murphy stated that she has not yet seen any impact from that Decision.

Public Comment: Chairman Whitlock asked for any public comments. There were none.

Preparation for Future Meetings:

Topics for Next Meeting. Mr. Burleigh asked that at the next meeting there be a discussion and updates on the proposed legislation pertinent to workers' compensation currently before the legislature. Mr. Maloney agreed that it should be discussed at the next meeting.

Next Meeting Date: May 11, 2022

Chairman Whitlock asked for any public comments or questions. There were none. There being no further discussion and no further business, the meeting adjourned at 10:06 a.m.