

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
February 14, 2018**

Members Present

Ray Anchustegui
Dave Anderson
Connie Barnett
John Greenfield
Dane Higdem
Mike McPeek
Gardner Skinner
Shellie Martin
Ex-Officio: Senator Jim Patrick

Members Absent

Larry Kenck
James Arnold, Chairman
Dr. Paul Collins
Craig Mello
Brian Whitlock
Ex-Officio: Representative Scott Syme

Industrial Commission

Thomas E. Limbaugh, Chairman
Thomas P. Baskin, Commissioner
Aaron White, Commissioner
Mindy Montgomery, Director
Kamerron Monroe, Secretary

Opening Remarks and Introductions:

Mike McPeek, acting as Chairman for James Arnold, opened the meeting and led with introductions. Mr. McPeek next requested introductions of Committee members and public attendees. The new Commissioner, Aaron White and new Insurance Representative, Shellie Martin were introduced by Commissioner Baskin. The new Commission Secretary, Kamerron Monroe was also introduced. Their background and professional qualifications were summarized.

Committee Members Resignation:

The resignation of Larry Kenck, Aaron White and Connie Barnett were announced. Larry Kenck resigned due to health reasons and nominated Brad Cederblom to fulfill his term. Aaron White resigned as a member of the Committee due to his recent appointment to the Commission; he nominated Joe Maloney to fulfill his term. Connie Barnett resigned due to health reasons and nominated Richard Burleigh to fulfill her term. These nominations will be discussed at the next Industrial Commission Administrative meeting.

Minutes:

The Minutes of November 8, 2017 were presented for review and approval. Commissioner Baskin moved to approve the minutes of November 8, 2017 as written; seconded by Mr. Dane Higdem. The minutes were adopted as written.

Industrial Commission Report:

Status of 2018 Rules and Legislation. Commissioner Limbaugh reported on the Idaho Industrial Commission's 2018 Rules and Legislation; all of the Rules the Industrial Commission presented passed both the Senate and the House Commerce and Human Resources Committees. The Commission did hold IDAPA Docket # 17-0204-1702 RE: Notice to Claimant/Average Impairment Rating to address concerns and readdress this rule later in the year. Chairman Limbaugh thanked Senator Jim Patrick for his assistance with passing the rules in the Senate Commerce and Human Resources Committee. Chairman Limbaugh did report that questions were posed for Idaho Code 72-402 RE: Prompt Payment; that payment must be made within 28 days of disability. This rule has to do with auditing purposes as the Commission informed the Legislature.

The Commission also held changing the statute regarding payment of impairment. Chairman Limbaugh stated that Commissioner Baskin commented that, "Sometimes when you are close to the topic you understand it completely but when you try to explain it to someone else who doesn't deal with it everyday it's quite difficult." The Commission may revisit this statute change next year.

Chairman Limbaugh also shared several legislative bills the Commission was following. Senate Bill 1208 proposed expanding prison inmate workers into agricultural work. The Commission has seen a draft of the bill adding workers' compensation for those inmate workers. The bill hasn't gone to the House yet. There is currently a federal program (PIE) that farmers can utilize to have prison workers through this program but they had to have workers' compensation coverage for those people before the State stepped in, bypassing the requirement for workers' compensation. There is another proposed bill circulating that would define the term employers in regards to independent contractors, if the bill progresses the Commission will look further into what it means for us.

Chairman Limbaugh asked if there was any public comment. There was no public comment.

Audit Guidelines. Benefits Administration Manager Patti Vaughn reported on the implementation of the Audit Guidelines. Ms. Vaughn indicated that all of the comments that were received on the Audit Guidelines were taken into account; there were many comments that related to EDI. The Commission had previously received a request for some guidelines for the audit process. These guidelines had many stakeholders participating in the process. This version of the Audit Guideline has set forth the standards; the Commission will be working on a new draft to incorporate EDI procedures to include the comments about EDI to be considered. The Guidelines will go into affect April, 2018. The Industrial Commission Benefits department is currently on a self-imposed moratorium until April 1st.

Public Comment: Mike Haxby asked when we could expect to see the revised draft with EDI edits. Ms. Vaughn indicated that they are updating their business processes continually and anticipate the revised draft becoming available within the next 3-6 months. The current final version of the Audit Guidelines is available on the Commission's website.

Public Comment: Shellie Martin asked if they will be auditing EDI files in April while they are waiting for revised Audit Guideline version. Ms. Vaughn indicated that they won't be looking at EDI files prior to the end of the moratorium; they will be looking at legacy claims but may be auditing EDI before the final version of the revised Audit Guidelines. Ms. Vaughn stated that they were also indicating their expectations in the EDI implementation guide.

Med Fee RFP. Ms. Vaughn provided an update on the Med Fee RFP. The Commission has issued an RFP to determine what the average group payments are for the same procedures. The RFP's scope includes group health average rates including the average implant payments when applicable and also quantify the additional work that workers' compensation requires versus a group health payment and other option items. The RFP was released on December 22, 2017 and it closed on February 9, 2018. The Commission is currently in the evaluation period and anticipates an award on the RFP in March.

Senator Patrick commented that Ms. Vaughn had been a very excellent speaker when presenting the rules in front of the Senate Commerce and Human Resources Committee this year.

Updates:

Industrial Special Indemnity Fund- Annual Report CY 2017 and Assessment FY19. Special Indemnity Fund Manager, James Kile reported on the Industrial Special Indemnity Fund CY 2017 and Assessment FY19.

Mr. Kile compared the Notice of Intent and Notice of Complaint filings, between years; last year saw more Notice of Intent filings. On a FY basis they are seeing a 46% increase which may mean more filings in the upcoming years. Mr. Kile also went on to explain that the Complaints they are seeing are more complex in nature with multiple preexisting injuries.

The Special Indemnity Fund is continuing to settle cases through lump sums or statutory agreements. Mr. Kline compared both lump sums and statutory benefits agreements in the past year. Additionally, both average weekly wages and attorney's fees had been on the rise.

The assessment of the ISIF in the last few years has fluctuated. Mr. Kile will have more accurate assessment closer to the May meeting; it is looking like a slight increase. Mr. Kile asked for questions or comments.

Senator Patrick asked how the Industrial Special Indemnity Fund calculates the average weekly wage. Mr. Kile informed Senator Patrick that the Department of Labor does that annually and we usually receive it in September or October.

Mr. Kile had nothing further to report.

Other Issues/Announcements:

Potential Subcommittee Discussion RE Idaho Code 72-451. Rob Shoplock of the Professional Firefighters of Idaho addressed the Committee on the possibility of a legislative change to Idaho Code 72-451 which relates to psychological injury. Rob Shoplock introduced himself, and briefly related his prior work on legislation with the Commission for Firefighters. Mr. Shoplock explained that they are working with the Fraternal Order of Police, volunteers and Fire Chiefs, ambulance workers and the State to develop something that would be beneficial to workers and employers in regard to Post-Traumatic Stress Disorder claims for first responders. Mr. Shoplock wanted to shed light on PTSD for first responders and provided recent examples around the nation about suicide rates for firefighters. Mr. Shoplock asked the Committee about putting together a subcommittee to start looking at Idaho Code 72-451. Commissioner Baskin stated if the Committee was open to the idea, a subcommittee could be formed.

Gardner Skinner asked if Mr. Shoplock had done any work yet on the extent of the recognition of PTSD in other states workers' compensation systems. Mr. Shoplock indicated that they had been following Virginia and Washington in regards to what they have done with PTSD legislation and mental-mental to mental-physical claims. Mr. Shoplock indicated that he is also educating himself on the issue and therefore did not have any proposals. Mr. Shoplock stated that under Idaho law, unless there is a physical injury associated with the mental injury it isn't an injury; this is a change they are hoping to make.

Commissioner Baskin stated that Idaho Code § 72-451 addresses psychological accidents and injuries, and it would admit the compensability of PTSD if the requirement of the statute were met. Commissioner Baskin gave the example a 17 year-old clerk at the 7/11 that is held up at gun point and develops PTSD. A sudden and extraordinary event such as being robbed at gun point would probably qualify for that, as required by statute. There would still need to be a physical manifestation of the psychological injury which may be satisfied by migraines, inability to sleep, etc. Commissioner Baskin opined that there is a path forward in our statute currently to address those types of injuries. Commissioner Baskin posed the thought that firefighters are subject to many traumas psychologically in the course of their work life, he would be interested in knowing what the science is on whether PTSD can be the result of cumulative events in the course of work-life which may impact the path moving forward. If this is not the case, why would a firefighters' case be any different from the 7/11 employee? Mr. Shoplock stated that he found a case in Idaho, *Luttrell v the Clearwater County Sheriff's Office*, where a dispatcher who had taken a 911 call developed a nervous breakdown afterwards. It was referred to it as acute anxiety disorder and underlying a tachycardia issue, which was a physical manifestation but the claim was denied. Mr. Shoplock further went on to discuss how his past experiences as a firefighter still affect him.

Shellie Martin raised the concern about which employment occupations would qualify for this and if it would open it up to everyone. Ms. Martin opined about the differences between the firefighters from the ER staff, police or other occupations that suffer traumatic events. Mr. Shoplock indicated that he only pulled information on firefighters and provided statistics for firefighters versus the general public.

Mr. McPeck expressed concern about firefighters essentially asking for another piece of legislation that carves out emergency responders. Mr. McPeck provided the definition, criteria

and symptoms for diagnosis in the DSM-V for PTSD. Mr. McPeek opined that it was broad enough to include the first responders and other occupations. Mr. McPeek reiterated that by focusing solely on Mr. Shoplock's profession it eliminates all the other professions or situations that could occur in the workplace which could create issues with special classification.

Dane Higdem made the comment that his workers encounter traumatic situations but aren't trained like firefighters or encounter it frequently in their profession. Mr. Higdem opined that almost everyone here could qualify for this but understands that we can not help everyone. Mr. Gardner stated that the worker would have to meet the criteria outlines in the DSM-V and would require a psychiatric evaluation. Therefore, Mr. Gardner suggest we work off the DSM-V when look at this issue. Mr. Shoplock stated that many job are stressful but his occupation experiences more suicides. Mr. Shoplock indicated that they had bipartisan support to run legislation to help firefighters, police officers, and ambulance workers. Mr. Gardner asked for members to be on the Subcommittee: Woody Richards, Mike McPeek, Gardner Skinner, Dane Higdem, Dave Anderson, Commissioner Baskin, Jason Carrier, Brad Eidam, Dr. Paul Collins, Rob Shoplock, and Alan Gardner.

Mr. McPeek asked for public comment on any of the issues presented today. Chairman Limbaugh thanked Connie Barnett for her contributions to the Committee over the years. There were no other comments.

Preparation for Future Meetings:

Topics for Discussion at Next Meeting. No topics for discussion were voiced.

Next Meeting Date: May 9, 2018 at 9:00 a.m.

There being no further discussion and no further business, Mr. Gardner Skinner moved to adjourn the meeting seconded by Mr. Dave Anderson.

The meeting adjourned at 9:55 a.m.