

IDAHO INDUSTRIAL COMMISSION  
**NEGOTIATED RULEMAKING- Average Weekly Wage**  
**1<sup>st</sup> MEETING MINUTES**  
Tuesday, July 11, 2018  
9:00 a.m.  
700 So. Clearwater Ln., Boise, Idaho  
1<sup>st</sup> Floor Conference Room

**Interested Parties:**

Stephanie Butler- State Insurance Fund  
Lisa Kerns- State Insurance Fund  
Cindy Weigel- Intermountain Claims  
Shellie Martin- Travelers Insurance  
Woody Richards- Insurance Rep.  
James Arnold- Claimant Attorney Rep. (T)

**Industrial Commission:**

Chairman Tom Limbaugh  
Commissioner Aaron White  
Commissioner Tom Baskin  
Director Mindy Montgomery  
Secretary Kamerron Monroe  
Patti Vaughn, Benefits Manager  
Lacey Rammell-O'Brien, Law Clerk  
Sonnet Robinson, Law Clerk  
Richelle Flores, Benefits  
Jennifer Pool, Benefits

**Welcome and Introductions**

Chairman Thomas Limbaugh called the meeting to order at 9:02 a.m. and led with introductions.

**The following handouts were provided to the group:**

- (1) Average Weekly Wage Draft Language – 2018 (2) Negotiated Rulemaking Writer's Manual Handout

**Discussion & Comments:**

Chairman Limbaugh explained the issue; a worker was injured and was off work for a while to recover, the worker then returned to work and was injured a second time eight (8) days later. The worker's total temporary disability (TTD) payments were based upon the previous fifty-two (52) weeks which included his period of recovery from the first injury. The worker contacted his State Representative and the State Representative asked the Commission to look at the issue during rulemaking. Chairman Limbaugh asked for comments and thoughts.

Jamie Arnold inquired how sureties handle this issue. Shellie Martin explained in her experience in this situation you would take the injured worker's highest thirteen (13) week quarter, "I would have taken something more favorable to the employee." Ms. Martin expressed that the statute gives many options on calculating average weekly wage. Commissioner Baskin asked if Sureties had to do this. Ms. Martin explained that you do not have to but the statute does say you can take the highest thirteen (13) week quarter, take a "like" employee or several other ways.

Commissioner Baskin explained that the Surety was in a position where it had used the period of TTD benefits into consideration and the injured worker received significantly less TTDs after the second injury. After fifty-two (52) weeks the injured worker is paid based on average state wage which does not include TTDs in calculation of the average state wage. The draft language presented essentially kicks out the period TTDs were paid and goes further back.

Concern was raised about how far back is “further back.” This issue was compared to when employees suffer other medical issues like pregnancy or personal illness. Sureties explained that when they encounter medical issues in non-work related injuries they look at their best quarter or like wages.

Idaho Code § 72-419, Determination of Average Weekly Wage was referred to and reviewed. Mr. Arnold explained that in his experience he has used Idaho Code § 72-419 subsection 4(b) to negotiate this issue. There was a lengthy discussion on how Sureties interpret and apply Idaho Code § 72-419 when presented with this issue. Deputy Attorney General Blair Jaynes explained that this is why we are here to see what works and if there is a need for a change.

Chairman Limbaugh asked if there were any more comments. Commissioner White suggested making the rule require that the Sureties pick the average weekly wage calculation that was most favorable to the Claimant. Commissioner Baskin indicated that Idaho Code § 72-419 does say that.

Commissioner Baskin commented that the sentiment around the table is the draft language does more harm than good. Stephanie Butler remarked that the issue can be addressed by the statute. Chairman Limbaugh stated that the Commission will take everything into consideration and interested parties should check the website for updates.

**Next Meeting:**

None were scheduled at this meeting. There being no further business, the meeting adjourned at 10:47 a.m.