

IDAHO INDUSTRIAL COMMISSION
NEGOTIATED RULEMAKING- Averaging Impairments
1st MEETING MINUTES

Tuesday, July 17, 2018

10:00 a.m.

700 So. Clearwater Ln., Boise, Idaho

1st Floor Conference Room

Interested Parties:

Woody Richards- Insurance Rep.
Cindy Weigel- Intermountain Claims
Jeanne James- St. Luke's
Brent Gunnell- Skaug Law
Matt Andrew- Skaug Law
Kirsten Ocker- State Insurance Fund
Avery Roberts- ITLA
Teresa Raymond- State Insurance Fund
Becky Coble- State Insurance Fund
Lisa Kerns- State Insurance Fund

Industrial Commission:

Chairman Tom Limbaugh
Commissioner Aaron White
Commissioner Tom Baskin
Director Mindy Montgomery
Secretary Kamerron Monroe
Patti Vaughn, Benefits Manager
Richelle Flores, Benefits
Jennifer Pool, Benefits

Welcome and Introductions

Commissioner Baskin called the meeting to order at 10:05 a.m. and led with introductions.

The following handouts were provided to the group:

- (1) Averaging Impairment Draft Language- 2018 (2) Negotiated Rulemaking Writer Manual Handout

Discussion & Comments:

Commissioner Baskin provided the background and summarized the issue of when a Claimant received 2 or more impairments. The Commission wants to hear everyone's comments out before deciding to go forward with this rule. Commissioner Baskin asked for comments.

Brent Gunnell commented that it may be archaic to force an averaging of impairment ratings, it might be best to litigate or negotiate instead.

Matt Andrew disagreed, there are so many options when anyone can go doctor shopping and we are kidding ourselves to think it doesn't happen. Mr. Andrew argued that the parties know the risk when presenting the case; the manifest injustice clause can also come in to play when averaging impairments.

Commissioner Baskin commented that personnel in Benefits will not be able to average impairments and the parties will have to wait until a Hearing to average them stating, "we are not

going to be able to make that assessment at this administrative level which is how we got here.” Mr. Andrew replied that, to Claimants, this a substantial hurdle they face in how quickly they can get their benefits.

Benefits Administration Manager Patti Vaughn explained there is concern that the surety is not telling the Claimant that the rating(s) exist. Ms. Vaughn suggested that the rule change may elect to direct sureties to inform/contact claimant that another impairment rating exists and inform them of their right to file a Complaint and take it through a Hearing. Commissioner Baskin inquired if surety explains why they choose not to average impairments to the Benefits Department.

Ms. Vaughn explained that Benefits does not have that authority and tell Sureties as much. Sureties have to be ready to defend why they did not average impairment. Ms. Vaughn doesn't want any of the Benefit Analysts to be giving an opinion on physicians giving opinions. Mr. Gunnell inquires as to why Sureties come to the Benefits Department to explain why they are not averaging impairment when they have to according to IDAPA rules. Ms. Vaughn indicated that it comes to us in a variety of ways; audit, SOP, etc. Deputy Attorney General Blair Jaynes explained that if it comes to us in an audit, it could result in surety's authorization being revoked.

Cindy Weigel questioned how often this issue comes up as the AMA 6th Edition Guide is straight forward. Ms. Weigel would generally teach that if they had a difference of impairment they would take it back to their physician for clarifications using the AMA Guide. The guide isn't standard but most impairment ratings are writing from there; the variety should come into play is pretty minor when the guide is being used. Ms. Weigel stated that sureties should average the two impairments because they are both credible. Sometimes Ms. Weigel gets impairment that differs from the original option and Ms. Weigel ask for clarification again from the treating physician. If we don't choose to adopt; it is usually settled in the lump sum or negotiated with opposing counsel

Mr. Andrew agreed that the Surety is probably confident in their assessment and can defend their denial of averaging. Mr. Jaynes commented that if there is a disagreement they can go to the Commission. Mr. Andrew stated that is an additional expense if they do go. Ms. Weigel commented that it usually costs more to litigate than to average the impairments; Ms. Weigel would intervene in this case where averaging would cost less than litigating.

Ms. Vaughn raised the issue of including language that if the Claimant feels there is a dispute, to contact the Industrial Commission. The State Insurance Fund disagreed, stating it could be construed as legal advice. Ms. Kerns stated that the State Insurance Fund feels there should not be a change, there will be extreme cases no matter what, and that no rule will be able to take care of every case.

Woody Richards suggested having a rule that when two doctors give differing opinions a third should be chosen to resolve the issue with the parties splitting the costs. The Sureties commented that it is hard to find a third physician who is willing to come in-between the other opinions and decide.

Commissioner Baskin asked the Sureties if they are seeing a reluctance of Physicians willing to give impairments. Ms. Weigel indicated they are, especially in small communities where they get referrals from patients, and cases are becoming more complex.

Commissioner Baskin asked if a physician reputation is ever a factor. Ms. James indicated that Sureties do look at case law and see who has been put in the “shining light” and whose opinion is not valued in decisions. Ms. Weigel stated they also take that into consideration when finding physicians.

Commissioner Baskin stated he understands how that can put treating physician in conflict and wants to avoid that.

Next Meeting:

Commissioner Baskin asked for any additional comments. There were no more comments. No additional meetings were scheduled at this time. Commissioner Baskin stated that the comment period would be extended until Wednesday, July 25th. The meeting adjourned at 10:47 a.m.