

John R. Kasich, Governor
Thomas H. Bainbridge, *Chairman*
Jodie M. Taylor, *Member*
Karen L. Gillmor, Ph.D., *Member*

Meeting Minutes

December 3, 2013
11:00 A.M.

TYPE OF MEETING Commission Meeting

ATTENDEES Chairman Thomas H. Bainbridge
Commissioner Jodie M. Taylor
Commissioner Karen L. Gillmor
Tom Connor, Executive Director
Rachael Black, Chief Legal Counsel
Debbie Fodey, Administrative Assistant
Kimberly Ferkany, Administrative Assistant
Genevieve Hoffman, Administrative Assistant
Greg Hickman, Administrative Assistant
Keith Carpenter, Administrative Assistant

CALL TO ORDER

The meeting was called to order by Chairman Bainbridge.

ACTION BY

Mr. Connor called the roll.

ROLL CALL

Chairman Bainbridge	Present
Commissioner Taylor	Present
Commissioner Gillmor	Present

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OLD BUSINESS

Commissioner Gillmor identified corrections to the minutes of the November 27, 2013 public meeting. The minutes are to be corrected and circulated to the Commission members. The minutes Chairman Bainbridge indicated that the approval of the November 27, 2013 Meeting Minutes will be voted on at the next Commission meeting.

NEW BUSINESS

- A. Proposed Telephone Hearing Request Guidelines
- B. Proposed PTD Grant Tentative Order Guidelines
- C. Rule 4121-3-20 VSSR
- D. Hearing Officer Manual Policy O3: SHO Review of Settlements
- E. Proposed Changes to IC-2 Application PTD

DISCUSSION

Proposed Telephone Hearing Request Guidelines:

Mr. Connor noted that concerns have been raised regarding the need for Telephone Hearing Request guidelines. Commissioner Taylor recommended that the Guidelines require the requesting party to provide timely notice when making a request as is required by the continuance rule. Commissioner Gillmor suggested the draft guidelines be amended to provide an opportunity for the opposing party to respond to the request prior to a decision on the request. In paragraph 4, Commissioner Gillmor pointed out the following needed changes: (1) In addressing the timeline for IC level hearings, the guidelines state 5 days rather than 5 business days. (2) The guidelines provide if a request for telephone participation at the district, staff and deputy levels is granted, the Hearing Administrator will make the necessary arrangements. The guidelines do not address arrangements for Commission level hearings. (3) The guidelines provide for Commission level hearings the parties will be notified in a timely manner. The guidelines do not mention notification for lower level hearings. Commissioner Gillmor inquired into the concerns raised by the team assembly to draft the policy. Mr. Connor replied the guidelines were not unanimous but represented a compromise. Since the guidelines do not address requests made less than 5 business days prior to hearing, Commissioner Gillmor inquired into how such requests would be processed. Mr. Connor replied the request would be treated as a request for a continuance and ruled upon as such. Mr. Connor will revise the current guideline and distribute a draft for the Commission members to review.

Proposed Permanent Total Disability (PTD) Grant Tentative Order Guidelines:

Commission members discussed concerns raised by the Rules Advisory Group (RAG) regarding PTD Grant Tentative Orders. Specifically, the Commission members discussed upon which medical evidence the Staff Hearing Officers should rely in determining a start date when

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PTD is awarded. It was determined the best way to handle this concern is by amending the PTD rule. Mr. Connor will draft proposed changes to Rule 4121-3-34 and distribute the draft for the Commission members to review.

Hearing Officer Manual Policy O3: SHO Review of Settlements:

Paragraph (1) provides the signature of a non-attorney representative is not sufficient or appropriate *as set forth in previous guidance given on the issue*. Commissioner Gillmor suggested the policy needs to articulate or identify the “previous guidance.” Paragraph (1) also provides an e-signature is permitted so long as the legal requirements are met. Commissioner Gillmor suggested the policy needs to articulate or identify the legal requirements. Commissioner Gillmor also noted that the above policy contains a few typographical errors. Mr. Connor will revise the proposed policy and distribute the revised policy for Commission member review.

Rule 4121-3-20 Additional Awards by Reason of Violations of Specific Safety Requirements (VSSR):

Mr. Connor advised that RAG had discussed the above rule in great detail. Some of the issues discussed by RAG included the exchange of evidence, when to submit evidence, holding pre-hearing evidentiary conferences, and implement a final status conference. In the last sentence of paragraph (D)(9), Commissioner Gillmor suggested that the word “may” should be replaced with “shall.” Chairman Bainbridge noted that changing the word would compromise the hearing officer’s discretion. Mr. Connor suggested adding a “show good cause” standard.

Commissioner Gillmor inquired into why requests for reconsideration from VSSR orders are treated as requests for re-hearing and adjudicated by a second Staff Hearing Officer rather than being presented to the Commission members as a request for reconsideration as other issues are processed. Mr. Connor stated the VSSR re-hearing process was implemented prior to the development of the reconsideration process. Commissioner Gillmor suggested the issue be raised to the RAG.

Rather than having one deadline date for submission of written documents, Commissioner Gillmor suggested the rule provide first a deadline date for the injured worker’s submission of written documents, followed by a deadline for the employer’s submission of written documents, and a final deadline date for the injured worker to submit rebuttal evidence. Chairman Bainbridge suggested implementing requirements similar to those of the civil procedure in the Ohio courts. Such requirements would provide more detail about the evidence that is being submitted. Commissioner Gillmor suggested the proposed change be discussed with the RAG.

Commissioner Taylor raised a concern regarding the portion of the rule dealing with written synopsis of witness’ testimony and the Hearing Officer’s role in arbitrating disputes over the written synopsis.

Mr. Connor is to discuss the issues raised with the RAG.

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Proposed Changes to IC-2 Application for Compensation for Permanent Total Disability (PTD):

Mr. Connor noted all the proposed changes that are to be made to the current PTD application. Commissioner Gillmor suggested adding the following to the application: Injured Worker's daily activities, date of Injured Worker's retirement, and other disability benefits the Injured Worker may be receiving. Commissioner Gillmor suggested the proposed IC-2 Application be discussed with RAG. Mr. Connor will present the above suggestions to RAG for consideration.

ADJOURNMENT

Chairman Bainbridge moved to adjourn. Commissioner Taylor seconded the motion.

ROLL CALL

Chairman Bainbridge	Yes
Commissioner Taylor	Yes
Commissioner Gillmor	Yes

Respectfully submitted,



Tom Connor
Executive Director