

Meeting Minutes

December 4, 2014
11:00 A.M.

TYPE OF MEETING Commission Meeting

ATTENDEES Chairman Thomas H. Bainbridge
Commissioner Jodie M. Taylor
Commissioner Karen L. Gillmor
Tim Adams, Executive Director
Tom Connor, Director of Adjudicatory Services
Rachael Rentas-Black, Chief Legal Counsel
Debbie Fodey, Administrative Assistant
Kim 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. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Present
Commissioner Taylor	Present
Chairman Bainbridge	Present

OLD BUSINESS

Chairman Bainbridge moved to approve the Meeting Minutes of August 12, 2014. Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

NEW BUSINESS

MOTION

Chairman Bainbridge moved to approve the final filing of amended rule 4121-3-34 of the Ohio Administrative Code (OAC) pursuant to Revised Code 119.032. Chairman Bainbridge also moved that the effective date of the aforementioned amended rule be December 15, 2014, and that the next five-year rule review date for said rule be February 1, 2017.

DISCUSSION

Commissioner Gillmor inquired why the rule's next review date was not in 2019. Rachael Rentas-Black noted that the rule will stay on the original schedule regarding the next review date because the current review was not a five-year rule review but an intermediate one necessitated by the Thirion case. Ms. Rentas-Black further stated that the staff has not changed the rule since it was originally filed with JCARR because the agency did not receive any comments at the public hearing. Commissioner Taylor seconded the aforementioned motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

DISCUSSION

Five-year Rule Review 2015

Ms. Rentas-Black discussed the five-year rule review for the year 2015. These rules cover confidential personal information (CPI) and include Ohio Adm.Code 4121-4-01, 4121-4-02, 4121-4-03, 4121-4-04, and 4121-4-05. Ms. Rentas-Black recommended no changes be made to these rules. She further indicated that the Rules Advisory Group (RAG) has also recommended that no changes be made to the aforementioned rules and the Bureau of Workers' Compensation (BWC) does not plan to amend its CPI rules, which are due to be reviewed next year.

MOTION

Chairman Bainbridge moved to approve the original filing of OAC rules 4121-4-01, 4121-4-02, 4121-4-03, 4121-4-04, and 4121-4-05 as no change rules.

DISCUSSION

Commissioner Taylor asked if the Industrial Commission (Commission) CPI policy being considered comports with the aforementioned rules. Mr. Connor and Ms. Rentas-Black responded with "yes." Commissioner Gillmor inquired which policy was being considered. Mr. Connor responded that staff is working on a CPI policy that addresses employees accessing their workers' compensation files while on "state time." Commissioner Taylor seconded the aforementioned motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

DISCUSSION

R96-1-01 "Referral of Occupational Disease Claimants for Medical Specialists Examination" and R03-1-02 "Modification of R96-1-01 related to medical evidence necessary to support a claim for an asbestos-related condition"

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Jodie M. Taylor, *Member*
Karen L. Gillmor, Ph.D., *Member*

Chairman Bainbridge indicated that the next items on the agenda were Commission resolutions R96-1-01 and R03-1-02, which pertain to occupational disease claims. Mr. Connor noted that he wanted to bring this to the Commission's attention for some guidance. Mr. Connor indicated that 20 years ago R96-1-01 was a response to the trend of semi-trucks pulling into parking lots and performing x-rays on employees and making diagnoses about asbestos exposure. Mr. Connor then pointed out that, in 2002 or 2003, the Supreme Court issued the Hubbard case, which held that the resolution was not applicable to asbestos-related mesothelioma, resulting in R03-1-02.

Mr. Connor noted that the purpose of the resolutions was to provide a minimum level of evidence to support a referral for a specialist examination. The resolutions were not intended to limit the filing of better or more accurate medical evidence. Mr. Connor pointed out that CT scans and biopsies are examples of better evidence than what the resolutions require. However, the BWC has taken the position that the resolution requires the submission of a B-reader x-ray and the BWC will not refer a claim for a specialist examination without such evidence.

Mr. Connor indicated that he has been told that the Medical Board no longer certifies B-readers. As a result, the BWC has requested that the Commission update the resolution to include High-resolution CT scans as a diagnostic test supportive of a referral for a specialist examination. Mr. Connor wondered if the Commission would agree to that change or whether the Commission would like to revamp the entire resolution since it has been twenty years since it was first drafted. Alternatively, Mr. Connor wondered whether the Commission should be providing any guidance to the BWC as to when to schedule a specialist examination. Mr. Connor also indicated that Dr. Welsh suggested putting together a panel of experts to look at this topic.

Commissioner Taylor noted that she does not understand why the Commission ever established a policy that directed the BWC when to conduct specialist exams and what evidence was needed to conduct such examinations. Mr. Connor indicated that outside groups came to the Commission for guidance. The resolutions merely provide guidance to the BWC when setting up statutory exams. Chairman Bainbridge agreed and noted that BWC is well aware that B-readers are outdated and asked if this should be a BWC resolution. Mr. Connor asked if he should present this to RAG in order to get a feel for how outside representatives feel about the resolutions. Commissioner Taylor wants to talk to RAG since she does not believe that it is the Commission's place to tell the BWC what to do. Chairman Bainbridge noted that this resolution is outdated. Commissioner Taylor agreed. Chairman Bainbridge indicated that he likes Dr. Welsh's idea of the panel but wondered whether the BWC should organize the panel. Mr. Connor suggested taking it to RAG to see what they have to say, noting that the BWC is represented in the group. Commissioner Taylor requested that, if RAG thinks that it is the Commission's role to provide guidance to the BWC, that Mr. Connor ask them to explain why they feel that way. Commissioner Taylor added that if RAG is adamant

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about the Commission being involved, then the Commission can look into setting up a panel of experts. Chairman Bainbridge indicated that this matter will be presented to RAG and brought back to the Commission's attention. Chairman Bainbridge asked if there was anything else to discuss.

ADJOURNMENT

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

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Respectfully submitted,



Tim Adams
Executive Director