

## Meeting Minutes

**January 7, 2015**  
**1:00 P.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  
Jacob Bell, Director of Legislative Services  
Debbie Fodey, Administrative Assistant  
Kim Ferkany, Administrative Assistant  
Genevieve Hoffman, Administrative Assistant  
Greg Hickman, Assistant Legal Counsel  
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

**NEW BUSINESS**

Mr. Hickman presented the draft Hearing Officer Manual for consideration by the Members.

## DISCUSSION

Chairman Bainbridge suggested compiling together all the proposed grammatical changes to the Hearing Officer Manual and then submitting them to General Counsel rather than discussing each change individually at today's meeting. Commissioner Gillmor suggested submitting the grammatical changes after the Commission concludes its final meeting regarding the Hearing Officer Manual. Rachael Rentas-Black also suggested that it would be better to submit the proposed changes after the final meeting. Chairman Bainbridge indicated that any proposed changes regarding grammar will be submitted after the final meeting.

Commissioner Taylor suggested that the Administrative Assistants agree upon how certain words should be capitalized (ex., "Hearing Officer" or "hearing officer"). Chairman Bainbridge agreed and also noted that General Counsel is the central clearing house.

Chairman Bainbridge asked how we will proceed with the discussion. Ms. Rentas-Black stated that Greg Hickman will lead the discussion since he worked on the reorganization and formatting of the proposed Hearing Officer Manual. Mr. Hickman noted we intend to discuss Sections A through G at today's meeting, though he indicated that we may or may not get through Section G given the volume of information. He also discussed the "road map" for this discussion that provides the titles of new policies and those that are proposed for new titles as well as the location of memos that are proposed to be moved to a different section of the manual.

### **Section A: Employee and Employer**

Mr. Hickman reported that Ms. Rentas-Black and he are proposing that Section A be divided into two sections that would address employee/employer issues and injury issues separately. Mr. Hickman indicated that Section A would now be titled "Employee and Employer" and would include only those policies dealing with these topics.

### **Memo A1 – Exposure to Blood or Bodily Fluids**

Mr. Hickman addressed proposed new Memo A1, which will set out the employees that are eligible for a claim based on their exposure to blood or bodily fluids. Mr. Hickman noted that current Memo A1, titled "Foster Grandparent Volunteers Are Not Employees" is recommended for rescission at the recommendation of Ms. Rentas-Black. Mr. Hickman then asked if there were any comments on A1. Commissioner Gillmor asked to include the statutory definitions for peace officers and firefighters in the proposed policy. Tom Connor indicated that whether to include these definitions in the policy is up to the Commission to determine. Commissioner Taylor indicated that clarification is

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appropriate for policy and further indicated that words that have a specific statutory definition should be defined in Commission policies.

Chairman Bainbridge asked how the Commission should proceed on ratifying each policy. Ms. Rentas-Black recommended that the Commission wait until staff has presented the final draft of the proposed Manual to vote on the policies. Chairman Bainbridge indicated that the Commission would deal with the proposed Manual as a working draft for now.

### **Memo A2 – Professional Employer Organizations (PEOs)**

Mr. Hickman then discussed Memo A2, currently titled “Handicap Relief v. Additional Allowance.” Mr. Hickman noted that current Memo A2 will be moved into Section B, which will be titled “Injury.”

Mr. Hickman stated that new Memo A2 will be titled “Professional Employer Organizations (PEOs). Ms. Rentas-Black stated that this policy is being recommended to provide guidance to the Hearing Officers on a topic that is not currently addressed in the Hearing Officer Manual. Mr. Connor indicated that the Bureau of Workers’ Compensation (BWC) adds PEOs to the claim and that the Commission has been providing notice of hearing to all of the PEOs noted in a claim file. Commissioner Taylor stated that PEOs are complicated and the current draft of the new policy does not provide sufficient guidance to the hearing officers. Mr. Connor offered to work on the draft. Commissioner Gillmor asked who in the Senate worked on the PEO legislation. Mr. Connor responded Mr. McGregor sponsored the legislation. Jacob Bell indicated that Mr. Patton worked on the statutory provision also. Commissioner Gillmor asked if Mr. Hughes is also working on this issue. Mr. Bell responded that it is a shared committee.

### **Memo A3 – Contract for Coverage – Special Services**

Mr. Hickman reported that Staff is recommending the rescission of Memo A3 because the policy is obsolete. Commissioner Taylor indicated that she does not know if the policy is obsolete. Mr. Connor noted that the statute has changed and the policy is outdated. He further stated that the Commission would need to rewrite the policy if it is to be kept in the Manual. Mr. Connor noted that the statute provides guidance on this issue and there is no need for a policy for guidance. Commissioner Taylor indicated that this issue is confusing and it is nice to have direction as to who is and who is not covered. Ms. Rentas-Black noted that she never saw this issue while working in her capacity as a hearing officer.

### **Memo A4 was moved.**

### **Memo A5 was moved.**

**Section B: Injury**

Mr. Hickman indicated that this section, currently titled “Occupational Disease” will now be titled “Injury.”

**Memo B1 – Handicap Relief vs. Additional Allowance**

Mr. Hickman reminded the Commission that this memo was previously A2 and that he moved the memo to the injury section when the first section was divided into two separate sections. He further noted there were no substantive changes to the policy. Commissioner Taylor had a question about the last sentence. Mr. Connor responded that the last sentence deals with additional allowances and what needs to be shown as it relates to the claim. Mrs. Gillmor requested that the last sentence be modified to delete the reference to “allowed condition” and to replace that term with the phrase “industrial injury or occupational disease.”

Mr. Hickman noted that current Memo B1, titled “Firefighters’ and Police Officers’ Occupational Diseases,” will now be located in Section C, which will now cover the topic of occupational diseases.

**Memo B2 – Substantial Aggravation**

Mr. Hickman reported that current Memo B2, titled “Baker’s Asthma,” has been recommended for rescission and replacement with Memo A5, titled Substantial Aggravation.”

Commissioner Taylor requested that staff change the sentence in the third line of the proposed memo where it states, “the hearing officer should clearly state that the claim...” to state that hearing officers “shall clearly state that the claim...”

**Memo B3 – Injuries Caused by Idiopathic Causes**

Mr. Hickman stated that current Memo B3, titled “O.R.C. 4123.85 and *White v. Mayfield*” will be moved into Section C, which will be titled “Occupational Disease.”

Mr. Hickman stated that Memo B3 is a new policy. Commissioner Taylor inquired whether the policy should include the syllabus from the *Lawler* case. Commissioner Gillmor requested additional time to consider the proposed policy. Ms. Rentas-Black stated that she could incorporate the syllabus from the *Lawler* case into the draft of the proposed policy if the Members desire that it be included. Chairman Bainbridge requested that no modification of the draft be made until Mrs. Gillmor has had the opportunity to consider the proposed draft.

**Section C: Occupational Disease**

Mr. Hickman reported that Ms. Rentas-Black and he are proposing that Section C now be titled: Occupational Disease” and that Section D be titled “Temporary Total and Wage Loss.”

**Memo C1 – Firefighters’ and Police Officers’ Occupational Disease**

Mr. Hickman stated that current Memo C1, titled “Vacation Pay Not Offset” will be moved to new Section D. Mr. Hickman then reminded the Commission that this memo was previously B1.

Mr. Hickman asked if there were any questions regarding Memo C1. Commissioner Taylor stated that the sentence in the second paragraph in the policy appears to be missing some verbiage. Mr. Connor advised that it came straight from the statute. Commissioner Gillmor asked Ms. Rentas-Black if the reorganization of the Hearing Officer Manual will impact hearing officers. Ms. Rentas-Black noted that they will be trained in regards to all the changes. Mr. Adams noted that something is missing from the second paragraph and he suggested rewording the policy to state that an occupational disease “is one that has been induced.” Commissioner Taylor suggested that the policy could state that an occupational disease is the “result of exposure.” Chairman Bainbridge requested that Staff review the language in the case law and modify the language in the policy.

**Memo C2 – Processing of Claims for Mesothelioma**

Mr. Hickman stated that current Memo C2, titled “Sports Team Set-offs” will be moved into Section I, which is titled “Jurisdiction.”

Mr. Hickman stated that Memo C2 is a new policy. Mr. Hickman inquired if there were any questions or concerns with the proposed policy. Commissioner Gillmor requested additional time to consider the new policy.

**Memo C3 – R.C. 4123.85 and *White v. Mayfield***

Mr. Hickman then presented Memo C3 for discussion and reminded the Commission that this policy was previously Memo B3. Mr. Hickman stated that current Memo C3, titled, “Jurisdiction over the Issue of Maximum Medical Improvement” has been moved down to Section D. Mr. Hickman reported that Staff is only recommending the deletion of two sentences that do not provide guidance. Commissioner Gillmor requested additional time to consider this policy.

**Memo C4 – Certification of Temporary Total Disability/Treatment Requests for Physical and Psychological Conditions**

Mr. Hickman reported that current Memo C4, titled “Salary Continuation” has been moved into Section D. Mr. Hickman then stated that current Memo C5, titled “Temporary Total Disability/Treatment Due to Psychological Conditions” has been renamed and replaced current Memo C4. Mr. Hickman noted that the memo has been updated to address physical conditions. Commissioner Taylor asked to make a change in the sentence that begins with “Requests for TTD.” Commissioner Taylor suggested using

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the words “certification of” rather than “request for.” Ms. Rentas-Black agreed this change would provide better guidance. Commissioner Gillmor stated that this policy should not be in the occupational disease section of the manual. Ms. Rentas-Black suggested that the policy be moved to Section D, which will now be policies dealing with the issue of temporary total disability (TTD) issue.

### **Memo C5 was incorporated into Memo C4.**

### **Section D: Temporary Total and Wage Loss**

Mr. Hickman stated that Staff is recommending the elimination of the topic of Impairment of Earning Capacity as this issue is now obsolete and the renaming of this section to “Temporary Total and Wage Loss.”

### **Memo D1 – Vacation/Holiday Pay not Offset**

Mr. Hickman stated that Staff is recommending the rescission and replacement of current Memo D1, titled “Impairment of Earning Capacity (Temporary Partial) Payment for Back Period,” as obsolete. The new policy would be titled, “Vacation/Holiday Pay Not Offset.”

Mr. Hickman noted that draft Memo D1, which was formerly Memo C1, only addressed vacation pay. Mr. Hickman reported that Staff is recommending that the new policy also address holiday pay. Commissioner Taylor noted that hostage pay is not offset and inquired whether the policy should also address this form of pay.

### **Memo D2 – Jurisdiction over the Issue of Maximum Medical Improvement**

Mr. Hickman noted that this drafty Memo was former Memo C3 and reported there were no substantive changes made to this memo. Commissioner Gillmor noted that, in the last sentence, where there is a reference to “MMI,” this acronym should be spelled out (maximum medical improvement).

### **Memo D3 – Salary Continuation**

Mr. Hickman noted that this Memo was former Memo C4 and reported there were no substantive changes to Memo D3—only stylistic changes. Commissioner Taylor recommended that the first sentence be deleted. Commissioner Taylor asked if the BWC has a rule on salary continuation. Mr. Connor noted that the BWC has a rule requiring the parties to notify the BWC when salary continuation ends. Commissioner Taylor suggested pulling older Commission orders to ensure the policy comports with the Members’ decisions regarding this issue. Ms. Rentas-Black noted that she will get the orders. Commissioner Taylor then asked if we should reference the BWC in the last sentence. Mr. Connor would like to review the memo before offering an opinion on referencing the BWC.

**Memo D4 – State and Federal Unemployment Funds**

Mr. Hickman stated that Memo D4 is a new policy. Mr. Hickman stated that Ms. Rentas-Black suggested that a policy be created to provide guidance on this issue.

**Memo D5 – Voluntary Abandonment**

Mr. Hickman stated that Memo D5 is a new policy. Mr. Hickman noted that Ms. Rentas-Black gave several speeches in the spring and summer regarding the issue of voluntary abandonment and the Supreme Court of Ohio's decisions on this issue. Commissioner Taylor recommended changing the first sentence to state the word "request." Also, in the last bullet, Commissioner Taylor asked to change "conducted" to "conduct prohibited..." Commissioner Taylor also noted that the requirement of a written work rule can be satisfied by an employer handbook or through a series of write-ups. Ms. Rentas-Black stated that she will rewrite the memo to address written progressive discipline.

**Memo D6 – Eligibility for Temporary Total Compensation After a Refusal of a Job Offer of Suitable Employment**

Mr. Hickman noted that Ms. Rentas-Black suggested the addition of this new memo to address this issue of eligibility for TTD after the refusal of a job offer of suitable employment and inquired whether there were any questions or concerns with the draft memo. Commissioner Taylor stated that the memo should refer to "his or her" rather than just "his." Commissioner Gillmor agreed. Ms. Rentas-Black also agreed and advised Mr. Hickman to revise the entire manual to make it consistent in this manner.

**Memo D7 – Application of the Wage Loss Rule**

Ms. Rentas-Black stated that Memo D7 is a new policy, addressing a provision in the new wage loss rule. Commissioner Taylor agreed the policy is necessary since the Commission had a hearing on this very issue.

**Memo D8 was moved.**

**Section E: Permanent Partial Disability**

**Memo E1 – Award Based Only upon Allowed Conditions**

Mr. Hickman noted that Memo E1 only has stylistic changes. Commissioner Taylor recommended changing "assure" to "ensure."

**Memo E2 – Permanent Partial – Hearing Officer Discretion**

Mr. Hickman noted that no substantive changes were made to Memo E2.

**Memo E3 – Injured Worker Must File an Application**

Mr. Hickman reported that Staff is recommending the rescission and replacement of current Memo E3, titled "Percentage Numbers in Whole Numbers," with a new policy

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titled, "Injured Worker Must File an Application." The current policy is obsolete and Ms. Rentas-Black has recommended that the policy be replaced with a new policy that addresses the *Sziraki* case, a decision issued by the Ohio Supreme Court two years ago. Commissioner Taylor asked if there was any requirement that an injured worker actually sign the application for permanent partial disability in order to approve its processing. Mr. Connor replied that there technically is not.

#### **Memo E4 – Processing C-92 Applications in Claims in which PTD has Previously been Granted**

Mr. Hickman then presented memo E4 for discussion. Mr. Hickman reported that Staff is recommending the rescission and replacement of current Memo E3, titled "100% Limitation – Cause of Action Before or After 10-01-63," with a new policy titled, "Processing C92 Applications in Claims in which PTD has Previously been Granted." This policy is being recommended by Ms. Rentas-Black to provide guidance to the hearing officers consistent with the Commission's decisions on this issue. Commissioner Taylor noted that the draft has a split infinitive and recommended rewriting the sentence to avoid breaking up the verb in the sentence.

#### **Memo E5 – Permanent Partial – Payment over Omitted Periods**

Mr. Hickman noted that no substantive changes were made to Memo E5. Ms. Fodey asked if hearing officers address the issue of the payment period in their orders when granting an award of permanent partial disability. Ms. Rentas-Black responded that hearing officers do not address the period of payment in a PPD order and that this is a function of the BWC. Mr. Connor noted that the Commission could delete this policy from the Manual.

#### **Memo E6 – Processing C-92 while Temporary Total in another Claim**

Mr. Hickman advised that only style changes were made to Memo E6, and asked if there were any questions. Chairman Bainbridge asked if this is basically the same, and Mr. Hickman indicated that it was. Commissioner Gillmor noted that she would like more time to think about this one.

#### **Memo E7 – Processing Applications for Compensation Pursuant to R.C. 4123.57(A) when Allowance Question is in Court**

Mr. Hickman noted that no substantive changes were made to Memo E7. Mrs. Hoffman asked about the second sentence of the policy where it provides for the processing of a C92 where the injured worker dismisses the complaint with the consent of the employer. She wondered about the saving statute, which provides for the refiling of a complaint within one year. Chairman Bainbridge asked if this is an existing rule. Commissioner Taylor advised that has been the Commission's policy.

Commissioner Taylor inquired about the last sentence in the first paragraph of the policy, which addresses the issue of additional allowance in court. Commissioner Taylor



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stated that the policy was unclear on whether a C92 application can be processed for those conditions that were allowed in an order that also denied an additional condition, and for which one of the parties appealed into court, since the sentence refers to “original conditions.” Ms. Rentas-Black suggested deleting the word “original.” Commissioner Taylor responded that, if the Members agree to delete the word “original”, the policy should state “all conditions.”

## **Section F: Scheduled Loss**

### **Memo F1 – Partial Loss of Vision**

Mr. Hickman advised that the substantive changes to Memo F1 are the inclusion of a sentence addressing the effect of a diagnosis of “legally blind” and a reference to the *AutoZone* case in the Note section of the policy.

### **Memo F2 – Loss of Vision – Corneal Transplants and Corneal Implants**

Mr. Hickman noted that no substantive changes were made to Memo F2.

### **Memo F3 – Ankylosis of Finger Joints**

Mr. Hickman indicated that the only change made to Memo F3 was changing the reference from the word “claimant” to “injured worker.” Commissioner Taylor requested a grammatical change in the first sentence to make the sentence in the active, rather than passive, voice.

### **Memo F4 – Loss of Use of Vision and/or Hearing Secondary to a Traumatic Brain Injury**

Mr. Hickman presented Memo F4, noting that Ms. Rentas-Black recommended the addition of this policy to the Manual to address the *Smith* decision.

### **Memo F5 – Loss of Use Need Not be Absolute**

Mr. Hickman then presented Memo F5 for discussion. Mr. Hickman reported that Ms. Rentas-Black is recommending this new policy to address the standard provided by the Supreme Court of Ohio in *Alcoa*. There were no comments made on this policy.

## **Section G: Permanent Total Disability**

### **Memo G1 – Request for Readjustment of Starting Date and/or Request for Reallocation of Permanent and Total Disability Award**

Mr. Hickman reported that Staff is recommending the rescission and replacement of current Memo G1, titled “Memo G1 Rescinded 11/27/01,” with current Memo G3, titled, “Request for Readjustment of Starting Date and/or Request for Reallocation of Permanent and Total Disability Award.” Mr. Hickman presented new Memo G1 and noted that there were no substantive changes made to the underlying policy. Commissioner Gillmor requested that paragraph three of the policy be amended to

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include the phrase “in state fund claims” after the word “Administrator.” Mr. Hickman asked if there were any other changes needed. Commissioner Taylor indicated that the word “who” should be inserted after the second reference to Staff Hearing Officer in paragraph 3. Commissioner Taylor also recommended that the word “supplemental” in the same paragraph should be changed to “*ex parte*.” Mr. Connor stated that, in the past, the Commission has not used the phrase “*ex parte*” because the courts do not like that phrase. Commissioner Taylor then recommended that the word “supplemental” be deleted.

Chairman Bainbridge pointed out that the introductory clause in the first sentence of paragraph two is not necessary. Commissioner Taylor agreed and recommended that the clause be deleted.

**Memo G2 – Submission of Medical Evidence or Vocational Reports for Permanent Total Disability That Is Not Timely Filed per Ohio Adm.Code 4121-3-34**

Mr. Hickman reported that Staff is recommending the rescission and replacement of current Memo G2, titled “Employer May File Application for Permanent Total Disability,” with current Memo G4, titled “Submission of Medical Evidence or Vocational Reports for Permanent Total Disability That Is Not Timely Filed per Ohio Adm.Code 4121-3-34.” Mr. Hickman stated that there were no substantive changes made to the underlying policy.

**Memo G3 – Guidelines for Permanent Total Disability Tentative Grant Orders**

Mr. Hickman noted that proposed Memo G3 was formerly Memo G5 and further noted that there were no substantive changes made to the underlying policy. Ms. Rentas-Black indicated that this was presented a few months ago to the Members. Mr. Connor noted that the memo was looped back to the Rules Advisory Group, who is okay with it. Chairman Bainbridge indicated that he is also good with the memo.

Mr. Hickman stated that his presentation of Sections A to G was complete and inquired again if there were any additional questions or concerns with the sections he had presented. Commissioner Taylor indicated that she believes that Section G should provide direction to the hearing officers on how to address order-writing when dealing with a permanent and total disability medical-only award. Commissioner Taylor noted that it causes issues in mandamus when a hearing officer goes into the *Stephenson* factors when granting permanent and total disability based solely on the medical impairment resulting from the allowances in the claim.

**Memo G4 was moved.**

**Memo G5 was moved.**

**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