

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

Meeting Minutes

June 8, 2017
11:30 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 Hearing Services
Rachael T. Rentas-Black, Chief Legal Counsel
Jacob Bell, Director of Operations/Legislation
Casaundra Johnson, Administrative Assistant
Kim Ferkany, Administrative Assistant
Debbie Fodey, Administrative Assistant
Jennifer Rohrbaugh, Assistant Legal Counsel

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 indicated there was no old business to discuss.

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

NEW BUSINESS

4125-1-01 Wage loss compensation – Final File

Chairman Bainbridge asked whether the final file of Ohio Adm.Code 4125-1-01 Wage loss compensation was part of the five year rule review. Ms. Rentas-Black responded in the affirmative and stated there was a delay due to working with the Ohio Bureau of Workers' Compensation. Ms. Rentas-Black added there were a few changes made to the rule, but nothing since it was last presented to the Commission. Commissioner Taylor asked what changes were made to the rule. Ms. Rentas-Black responded that, on page 2, "despite a good faith job search" was added to paragraph (A)(8). Ms. Rentas-Black indicated another change was made on page 6 in which the proposed amendment eliminated a cross reference. Ms. Rentas-Black added that the changes were not substantive in nature and that there was no public comment or testimony at the public hearing. Chairman Bainbridge added there was another change on page 9 in paragraph 4. Ms. Rentas-Black stated that the language "claim related" was added after discussions with the Rules Advisory Group.

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the final filing of the following amended rule of the Ohio Administrative Code as set forth in Exhibit A "4125-1-01 Wage loss compensation."

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge further moved that the effective date of the aforementioned amended rule be June 26, 2017.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

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

MOTION

Chairman Bainbridge further moved that the next five year rule review for Ohio Adm.Code 4125-1-01 be February 1, 2022.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo B2 – Substantial Aggravation

Ms. Rentas-Black stated that she and Mr. Connor recommended changes to Memo B2 “Substantial Aggravation” in order to address the recent Supreme Court decision in *Clendenin v. Girl Scouts of Western Ohio*, Case No. 2015-1993. However, Ms. Rentas-Black indicated that Ms. Clendenin filed a motion for reconsideration with the Supreme Court and recommended tabling discussion of Memo B2 “Substantial Aggravation” until the *Clendenin* decision was final. Chairman Bainbridge and Commissioner Taylor agreed. Chairman Bainbridge stated there was no motion needed.

Memo E2 – Permanent Partial Disability – Hearing Officer Discretion

Mr. Connor stated that changes were made to Memo E2 “Permanent Partial Disability- Hearing Officer Discretion” at the May 17, 2017 meeting in which it provided that a hearing officer may rely upon a Combined Values Chart prepared by a nurse so long as the impairment ratings are determined by doctors. Mr. Connor stated that there were some members of the Ohio Association for Justice that believed the Combined Values Chart should not be used. Mr. Connor stated he spoke with the Ohio Bureau of Workers’ Compensation and he did not get the sense that the Bureau would stop using the Combined Values Chart.

Chairman Bainbridge stated he wanted Memo E2 “Permanent Partial Disability – Hearing Officer Discretion” sent to the Rules Advisory Group for further study after receiving several requests from various parties on both sides.

Commissioner Taylor asked whether the Commission should keep Memo E2 as it exists in its current form while the Rules Advisory Group reviews it further or if Memo E2 should be rescinded. Chairman Bainbridge indicated he was fine with either so long as the Rules Advisory Group has an opportunity to review. Mr. Connor stated that currently there is nothing wrong with the policy and it would be cleaner for the Commission to keep the policy in existence in its current form while the Rules Advisory Group reviews. Commissioner Gillmor stated that the Rules Advisory Group’s recommendation is only advisory and not the final decision of the Commission. Chairman Bainbridge agreed and stated that he only wanted the Rules Advisory Group to review Memo E2 further. Chairman Bainbridge then posed the question on

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

whether Memo E2 should remain in effect or should be rescinded. Commissioner Taylor asked Ms. Rentas-Black her thoughts. Ms. Rentas-Black responded that she would not recommend rescinding the memo since the Members are only referring the memo to the Rules Advisory Group for discussion. Ms. Rentas-Black noted that when the Commission worked on updating the Hearing Officer Manual, it was not presented to the Rules Advisory Group for their recommendations. Commissioner Taylor stated that when Memo E2 was originally presented to the Commission, the language was changed to make sure that the hearing officers knew they are not required to rely upon the Combined Values Chart. Mr. Connor stated he would be concerned with a rescission of Memo E2 and what kind of message it would send. Mr. Connor explained that, if the Members rescind Memo E2, it would give the appearance that the Commission thought there was something wrong with the changes it made to the memo at the May 17, 2017 meeting. Mr. Connor added that, in the past when the Rules Advisory Group reviews a memo, the memo stays in effect. Ms. Rentas-Black stated she supported Mr. Connor and also recommended to keep Memo E2 in effect. Chairman Bainbridge asked if a motion was needed to send Memo E2 to the Rules Advisory Group for further study to which Commissioner Taylor stated no motion was needed.

Memo G3 – Guidelines for PTD Tentative Grant Orders

Mr. Connor stated that Memo G3 “Guideline for Permanent Total Disability Tentative Grant Orders” was presented to the Rules Advisory Group for their recommendations and the proposed changes on the draft presented today reflect the consensus of the Rules Advisory Group. Mr. Connor explained that Memo G3 provides that a tentative order granting permanent total disability applications would be issued when there is no contrary medical evidence on file. Mr. Connor further explained that a party can file an objection to the tentative order, and a hearing would be set before a Staff Hearing Officer. Mr. Connor indicated that, if the objection is a legal issue, such as voluntary abandonment that would preclude permanent total disability compensation, then the Staff Hearing Officer would adjudicate the legal issue, and vacate the underlying tentative order and deny the permanent total disability application if the SHO found the evidence supported the existence of the legal defense. Mr. Connor explained that, if the objection is based upon medical evidence, then the SHO would vacate the tentative order and refer the matter to the Hearing Administrator for processing.

Commissioner Taylor questioned whether there will be a separate form for the party to list the reason for the objection. Mr. Connor answered that there will not be a separate form, and that the party can list the reason for the objection directly on the appeal. Commissioner Taylor questioned what would happen if the party did not list the reason for the objection and added that a separate form would be needed. Commissioner Taylor stated that on all other Commission appeals a reason is not needed. Mr. Connor answered that creating a separate form would not be a problem. Mr. Connor added that the Rules Advisory Group was agreeable to briefly state the reason for objection. Commissioner Taylor asked if an objection would be denied if the party did not list a reason. Mr. Connor responded that the Hearing Administrator could easily reach out to the party given the low volume of tentative orders. Commissioner Taylor responded that the Commission must spell out the process on how to handle an objection that does not include the reason in Memo G3. Commissioner Taylor added that the process must apply uniformly across all of the offices. Commissioner Taylor strongly recommended that Memo G3 needed to include a

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

sentence that clarifies how to handle an objection that does not state the reasoning. Commissioner Taylor further explained that workers' compensation law is to be liberally construed and she does not want a party's appeal denied because the reason for the appeal was not listed. Commissioner Taylor also recommended to change the formatting of the memo. Ms. Rentas-Black suggested adding language to the second paragraph after the first sentence that reads "If a party fails to set forth the basis of the objection, the objection will be forwarded to the Hearing Administrator who shall contact the objecting party and inquire as to the basis of the objection." Commissioner Taylor was agreeable to the proposed language. Ms. Fodey questioned what would the process be if the employer does not wish to provide a reason to the hearing administrator. Mr. Connor stated that providing a reason would be a requirement and the objection would be dismissed if a reason is not provided. Commissioner Taylor responded she has a problem with not processing an objection if the reason is not provided. Commissioner Taylor reasoned there are times an employer may not want to tip their hand as to the reason for the objection prior to the hearing. Commissioner Taylor stated the employer may be investigating the claim for fraud, for example, and may not want to include this reasoning on the objection. Chairman Bainbridge asked Ms. Rentas-Black to have the Rules Advisory Group look over Memo G3 again. Commissioner Gillmor stated she wanted to have Memo G3 brought back for additional research. Commissioner Gillmor also stated she understood Chairman Bainbridge and Commissioner Taylor's position. Commissioner Gillmor added she had additional editorial recommendations that she would share with Ms. Rentas-Black.

ADJOURNMENT

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

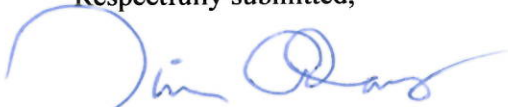
ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Respectfully submitted,



Tim Adams
Executive Director