

Meeting minutes: Workers' Compensation Advisory Council

Date: Feb. 7, 2024

Minutes prepared by: Alyssa Westergard, executive secretary to the Workers' Compensation Advisory Council

Location: Department of Labor and Industry, Minnesota Room, 443 Lafayette Road N., St. Paul, MN

Attendance

Members attended

Bernie Burnham
Colin Beere
David Henrich
Ed Reynoso
Gary Thaden
John Thorson
Maggie Hobbs
Matthew Schmidt
Nicole Van Heel
Robert Ryan
Lauryn Schothorst
Rep. Joe McDonald
Sen. Paul Utke

DLI staff members attended

Commissioner Nicole Blissenbach
Assistant Commissioner Kate Daly
Alyssa Westergard
April DelCastillo
Bretta Hines
Brian Mak
Brian Zaidman
Carey Wagner
Chris Leifeld
Denise Holmes
Emily Streier
Ender Kavas
Ethan Landy
Hared Mah
Jeanne Vogel

Jennifer Bucholz
Jessica Stimac
Jon Brothen
Josiah Moore
Julie Klejewski
Karen Kask-Meinke
Laura Zajac
Lisa Wichterman
Mike Haire
Pam Carlson
Sonya Herr

Visitors attended

Adam Wolkoff, deputy chief judge, Office of
Administrative Hearings
Abigail Rankin, Office of Administrative Hearings
Alison Khan, Workers' Compensation Reinsurance
Association
Andrea Everling, MWCIA
Andrea Rau, Winthrop
Andrew Essling, Minnesota Counties
Intergovernmental Trust
Andrew Morrison, Self-Insurers' Security Fund
Auntara De, MWCIA
Brad Lehto, Minnesota AFL-CIO
Carla Ferrucci, Minnesota Association for Justice
Dana Gerber, Atkinson Gerber
Daniel Gillis
Deb Norsten, Hennepin County
Hlee Vang, Department of Human Services

James Heer, Workers' Compensation Reinsurance Association
Jennifer Wolf, MWCIA
Jenny Starr, chief judge, Office of Administrative Hearings
Jessica Stoeckman, SFM
Joe Schindler, MHA
Joel Canber, Minnesota Association for Justice
John Hollick, SFM
John Reynolds, NFIB
John Wiatros, Mackinaw Administrators
Jonna Jeffers, Med Logix
Kara Huberty, League of Minnesota Cities
Karen Ebert, Minnesota Counties Intergovernmental Trust
Katie Storms, Minnesota Defense Lawyers

Aassociation/Lind Jensen
Kim Drevnick, Self-Insurers' Security Fund
Kristen McHenry, Allina
Kristina Lund, workers' compensation judge, Office of Administrative Hearings
Mark Freeman, Teplinsky Law Group
Melissa Hysing, Minnesota AFL-CIO
Michael Lewis, Workers' Compensation Court of Appeals
Nadya Armolich, Meuser Law
Sara Curtis, CorVel
Sarah Groskreutz
Stacie Goodrich, CompRehab
Steve Hollander, Vocational Rehabilitation Associates
Teri Burthay, Allin

Call to order and roll call

Commissioner Nicole Blissenbach called the meeting to order at 9:45 a.m. A roll call was taken and a quorum was present.

Approval of the minutes and agenda

Colin Beere moved to accept today's agenda and the minutes from Jan. 10, 2024. Matthew Schmidt seconded the motion. A roll call vote was taken and the motion carried.

Announcements

Commissioner Blissenbach announced it was Assistant Commissioner Kate Daly's last Workers' Compensation Advisory Council (WCAC) meeting as assistant commissioner. Commissioner Blissenbach said she will truly miss working with Assistant Commissioner Daly and thanked her for all the hard work she has done for the department and council during the past two years. She said Assistant Commissioner Daly's work has made a great impact on both the Workers' Compensation Division at the Department of Labor and Industry (DLI) and on the department as a whole.

Assistant Commissioner Daly thanked Commissioner Blissenbach and said she would miss working with everyone on the council, but that she looks forward to working with them as a stakeholder in the future.

Assistant Commissioner Daly announced there will be kickoff meetings for the post-traumatic stress disorder (PTSD) study: the first will be April 24; and the second will be April 29. These will be hosted by DLI and the

University of Minnesota for stakeholders interested in the study. More details can be found on the department's website.

Agenda items

1. Office of Administrative Hearings legislation – Chief Administrative Law Judge Jenny Starr, Office of Administrative Hearings (OAH)

Chief Judge Jenny Starr began by thanking the council for the opportunity to address it and wishing Assistant Commissioner Daly the best in her future endeavors. Chief Judge Starr also introduced Deputy Chief Judge Adam Wolkoff and Associate General Counsel Abigail Rankin, who were there with her to help present and answer any questions.

Chief Judge Starr stated they had reached out to stakeholders, as well as bar leaders at the Minnesota Association for Justice and Minnesota Defense Lawyers Association to come up with their legislative proposals. They also worked closely with DLI and WCCA to draft their proposals. Chief Judge Starr noted the majority of the proposals were technical clean-up that reflects long-established practice and some came to light as both Work Comp Campus and C-Track became established. Some proposals also reflect the modern practices seen today, such as hearings done on a hybrid platform. The one procedural change OAH is proposing is that OAH adapt the same electronic filing requirements that have already been in place for Campus at DLI and WCCA. This would mean filers would be expected to file electronically in OAH's case management system, except for pro se employees.

Rankin presented OAH's 32 legislative proposals to the council. Their proposals include the following.

- Amending Minnesota Statutes section 176.011, subdivision 1a, to clarify administrative conferences take place at either DLI or OAH.
- Amending Minn. Stat. section 176.011, subd. 2, to clarify the term "child" applies to the child of any person judged by a court to be a parent.
- Amending Minn. Stat. section 176.081, subd. 1, to clarify attorneys who are claiming legal fees for representing an employee shall file their statement of attorney fees with the office.
- Amending Minn. Stat. section 176.106, subd. 4, to reflect modern practices of parties appearing personally, by telephone or by electronic means before either DLI or OAH.
- Amending Minn. Stat. section 176.1292, subd. 2, and Minn. Stat. section 176.1292, subd. 9, to clarify the words "his" or "her" refer to the employee.
- Amending Minn. Stat. sections 176.155, subd. 1, 176.155, subd. 2, 176.238, subds. 3, 4 and 6, and 176.239, subds. 2, 3, 5, 6, 9 and 10, to establish practice and make clear that contest to the location and provider of an independent medical examination, and requests for discontinuance of compensation, are both heard by a workers' compensation judge at OAH.
- Amending Minn. Stat. section 176.155, subd. 2, to remove extraneous language.
- Amending Minn. Stat. section 176.238, subd. 6, to clarify a petition to discontinue may be filed by the employer or the insurer in alignment with the rest of the statute.
- Amending Minn. Stat. section 176.253, subd. 2, to correct a typographical error, changing "in" to "on."

- Amending Minn. Stat. section 176.271, subd. 1, to clarify proceedings under chapter 176 may be filed with DLI or OAH.
- Amending Minn. Stat. section 176.285, subd. 2, to reflect the procedural change requiring electronic filing except by pro se employees.
- Amending Minn. Stat. section 176.285, subd. 2a, to permit WCCA and OAH to adopt rules for certification of electronic signatures.
- Amending Minn. Stat. section 176.285, subd. 2b, to permit electronic service on any person with an account in the OAH case management system.
- Amending Minn. Stat. section 176.305, subd. 1, to clarify filing must be consistent with Minn. Stat. section 176.285, which governs filing format.
- Amending Minn. Stat. section 176.321, subd. 3, to require scheduling a pretrial conference in addition to a hearing in cases without a filed answer or without an agreement to request an extension of the deadline to file an answer, in line with Minn. Stat. section 176.331.
- Amending Minn. Stat. section 176.322 to clarify decisions based on stipulated facts are made by a workers' compensation judge at OAH.
- Amending Minn. Stat. section 176.341, subd. 6, to clarify requests for expedited hearings are heard by a workers' compensation judge at OAH and removing extraneous language to reflect established practice.
- Amending Minn. Stat. section 176.361, subd. 1, to reflect "office" instead of "compensation judge" to more thoroughly reflect the authority before which matters are heard, as well as reflect OAH may adopt rules to govern procedure before it in accordance with statutory authority.
- Amending Minn. Stat. section 176.361, subd. 4, to clarify requirements for intervenors in all proceedings.
- Amending Minn. Stat. section 176.421, subd. 7, to clarify OAH is responsible for the preparation of the record.

Chief Judge Starr, Deputy Chief Judge Wolkoff and Associate General Counsel Rankin answered questions from the council and engaged in conversation surrounding the proposed legislative changes. A few items will require further review and will be brought back before the council at the next meeting.

2. DLI legislative proposals – Ethan Landy, DLI Office of General Counsel

Ethan Landy addressed the council and said DLI had taken the feedback from the council at the most recent meeting regarding its legislative proposals and made some changes. One change that was made was to add effective dates to the proposals. The additional proposals were as follows.

- Removing language in Minn. Stat. section 176.101, subd. 2a, to clarify how permanent partial disability is calculated.
- Revising the proposed added language to Minn. Stat. section 176.104, subd. 1, to clarify when an employee may be referred to the Vocational Rehabilitation Unit when there is a dispute.
- Removing a cross-reference from the previously proposed additional language in Minn. Stat. section 176.129, subd. 10.
- Amending Minn. Stat. section 176.135, subd. 7, to clarify the provisions of the electronic records law do apply to either the agent or the provider when filling a request, as would the penalty.

- Making grammatical changes to the previously proposed additional language to Minn. Stat. section 176.231, subd. 9a.
- Changing “DLI” to “The commissioner” in the previously proposed added language in Minn. Stat. section 176.275, subd. 1.

Landy answered additional questions from the council; the commissioner noted DLI would follow up on the questions raised, as well as have a conversation with the revisor’s office regarding the effective dates.

Other business

The next Workers’ Compensation Advisory Council meeting is Feb. 21, 2024.

Adjournment

Bob Ryan moved to adjourn the meeting and Bernie Burnham seconded. A roll call vote was taken and the meeting adjourned at 10:52 a.m.

Respectfully submitted,
Alyssa Westergard, executive secretary