Workers' Compensation Board
Tuesday, March 7, 2023
10:00 a.m.

MEETING MINUTES

In-Person Staff:

Connie Wold, Board Chair
Sally Curey, Member
Roger Ousey, Member
Jenny Ogawa Member
Moisés Ceja, Member
Robert Pardington, Managing Attorney
Joy Dougherty, Presiding ALJ
Katy Gunville, Board Executive Assistant
Terry Bello, Administrative Services Manager
Bianka Rivera, Executive Assistant
Melanie Chin, Board Review Specialist

In-Person/By Phone Attendees:

Julene Quinn, Julene M. Quinn LLC
Cathy Ostrand-Poinson, Workers' Compensation Division
Ted Heus, Heus Law LLC
Jodie Phillips Polich, Attorney
Tom Belusko
Gayle Shields, Attorney
Dustin Karsteller
Mark Jennings
Elaine Schooler, SAIF Corporation
Keith Semple, Johnson Johnson Lucas et al
Aaron Clingerman, Dunn & Roy PC
Anonymous

Call to Order
Chair Wold called the meeting to order.
The public and WCB staff are participating in this meeting via telephone; some WCB staff participated in the Salem office.

Roll Call
Robert Pardington took roll, reflected in the attendee list above.

Approval of Agenda and Order of Business
Member Ousey moved for approval of the agenda and order of business. Member Curey seconded. Motion passed.

Approval of Past Minutes
Member Curey moved for approval of minutes from December 7th, 2022. Member Ogawa seconded. Motion passed.

Division Reports/Updates

Administrative Services Division: Terry Bello, Manager of the Administrative Services Division (ASD), provided an update. ASD is hiring temporary help for IT services; Jason Thurston joins us next Monday, March 13, 2023. Jason comes to us from multiple firms, most recently DELL Computers. Jason will be located in the Salem office, but he will still help out in our other offices. Mary Turnbow, after 36 years, who has worked as our docket coordinator, will be retiring. This is a huge loss of institutional knowledge for us and we hope board members have an opportunity to say goodbye before Mary leaves. WCB signed a lease for a hearing location in Florence. The Florence location will serve the Southern coast and the opening date is July 1, 2023. Ms. Bello will be traveling to Bend to renew that lease at the end of July 2023. Because Bend is the most popular location, some accommodations will be made, like additional entrances and exits to the hearing room. New furniture for our Medford and Eugene offices will be going in soon. Salishan is coming up, and WCB will be having an administrative staff training that day and we have some speakers from DCBS available to come and speak. Last week we participated with DCBS information and resources to create the WCB strategic plan which should be finalized shortly. No questions from board members at this time.

Hearings Division: Joy Dougherty, Presiding Administrative Law Judge, provided the update for the Hearings Division. PALJ Dougherty has been working with Terry Bello with all the updates she mentioned since they also fall under Hearings Division. PALJ Dougherty asked if anyone had any questions. Member Ousey asked if the Hearings Division is hiring for help. PALJ Dougherty said they were currently conducting an ALJ recruitment. Member Ousey also asked how far out is their mediation docket? PALJ Dougherty said that if parties are wanting to schedule mediation we are scheduling in June, with very few dates in May. Hearings Division has been having issues with the lack of interpreters. Member Ousey asked how uniform, on the request for hearing, is the identification of a need of an interpreter made. Terry Bello stated that there is a place on the request form where a claimant can request an interpreter and request a language. PALJ Dougherty shared that we had a case where a claimant requested an in-person interpreter two days before the hearing, and we were not able to accommodate that. Member Ogawa asked if the Hearings Division is planning to do mediation trainings? PALJ Dougherty responded that we had planned to have mediation trainings in 2020 but it had to be pushed out. Although it is not something we do very often, we are planning to do more mediation training due to 33-36% loss of mediators in the past 10 years. There were no additional questions.

Board Review: Robert Pardington, Managing Attorney for the Board Review Unit, provided the update, and reported that the current staff attorney recruitment is open through March 13, 2023. There was nothing else to report.

New Business
Chair Wold referred to the agenda advising us that this meeting was to include a discussion of

written comments and any public testimony regarding our biennial review of attorney fee schedules. Biennial review occurs every 2 years, and the last Biennial review was in Dec. 2020. Three submissions of attorney fee comments were received and these are also posted on our website. Written submissions included: Exhibit 1, May 17, 2022, from OTLA; Exhibit 2, a letter dated September 16, 2022, from Dodge and Associates; and Exhibit 3, a March 5, 2023 letter from Jodie Phillips Polich. So far, this is the information we have, no additional reports.

Public Comment

Julene Quinn stated that the attorney fee biennial review is very important and fee schedules require a very serious review. The first bifurcated order was approved in 2021. There has been a handful of cases that have engaged in it, and every attorney fee dispute has been able to amicably settle. It will be her request, as the board considers adjustment of attorney fees schedules, and the rules, that the board consider very strongly allowing this as an optional process at a hearing level. There are many cases that are complex and there are not a lot of sufficient attorneys. Member Sally Curey added she did her own research a couple years ago and researched how many attorneys are practicing workers' compensation. Chair Wold thanked both Ms. Quinn and Member Curey, and mentioned that we are working on strategic planning and would welcome any or all ideas, internal and external. Ms. Quinn concluded her comments.

Gayle Shields asked if the Board kept track of the number of claimants that are not represented? Could we compare several years? Chair Wold shared that it was addressed on page nine of the Attorney Fee report and that we have statistics from 2012-2021. It breaks down in three different groups of data. The first shows what percent of injured workers are represented by legal counsel at the hearing level, and then what percent are represented by counsel at Board Review, and another statistic for what percent are represented when there is a CDA settlement. A discussion of the statistics published in the Jan. 2023 Attorney Fee report followed. Ms. Shields asked if we have total number of claimants, and total number of appeals for actual number of people? Chair Wold stated that the report doesn't specifically break it down in numbers, just in percentage. Ms. Shields deals with individuals who have contacted her and can't find someone to represent them, concluding there is a big problem that they are not being represented. WCB is working on getting more statistics in that area, and WCD might have records.

Dustin Karsteller asked about the charts in pages 1-5, of the report and when is there a consideration for the attorney fees to go up? There are a lot of factors that go into the numbers increasing and this is an active and ongoing project. Member Ogawa added that speaking anecdotally about the increase in attorney fees and trying to access a reasonable attorney fee, the analysis is complicated, and that attorneys in this area are asking for more money, so they have to justify the reason. Member Ousey commented that according to the report, the increase in 6-10 also involves 30 plus different ALJs who are all bringing their own perspective to the factors that are created to be considered. Workers' compensation cases are getting harder and they have been needing more time. Member Curey added that the majority of these cases that are taken to the judges don't end with the claimant submitting a statement of services. It is a very complicated, tough issue. Chair Wold stated that we added some factors to consider and it was a complex equation.

Aaron Clingermen commented that we need to be careful about unrepresented claimants and extrapolating data with respect to unrepresented workers. We have to figure out WHY they are unrepresented. He urged the Board members to be careful and recognize why claimants are not represented.

Gayle Shields thanked Aaron for making that comment. She agreed there are a lot of unrepresented people and we do have extreme cases.

Elaine Schooler remarked that SAIF looked at the Board report and it showed increases from 2020-2021, and SAIF internally saw a 13 percent increase. Additionally, since 2014 there was about a 55 percent increase. Ms. Schooler would be happy to provide a copy of that data report from SAIF. What that data shows is that attorney fees have been rising. SAIF's total fees in 2021 came to be 13.5 million dollars. Of that total, $2 million was represented attorney fees. There has been discussion previously regarding fees that need to be part of the board review process. It's important to consider those fees. In addition, SAIF encouraged the Board to continue and expand its data collecting process and conclude this biennial review with the acknowledgement that fees have continued to increase, and that this is in part due to the new rules that went into effect a couple years ago. Member Ousey noted that he would like to obtain a copy of SAIF's report supporting Elaine's comments, which she said the Board would receive once it was finalized. Chair Wold said the 2022 data may be ready in a couple of weeks but also in time for another meeting. Member Curey said that SAIF's statistics reflect that in 2021, SAIF paid roughly 13.5 million dollars, but asked if they knew what is the percentage of the practice in Oregon workers' compensation because SAIF has the bulk of the business. Ms. Schooler affirmed that roughly about 47 percent. Member Curey wondered if the four categories that SAIF listed were included in the form WCD requests carries to fill out, or were they not broken down specifically? Ms. Schooler said that the form WCD requests has to do with the funds cost, so she couldn't speak to that because she is not the one completing it, but she would be happy to provide more information on what is reported. Chair Wold thanked Elaine, as she was also thinking of that. Member Curey stated that we talk about the statistics that come from WCD and the carriers report and trying to figure out how much the gap really is, and unless we know that all of the carriers are reporting the same categories of fees, she didn't think we could make an accurate comparison. Ms. Schooler clarified that the cost for appellate work would be reported to WCD. She questioned if that was separately reported? It would be reported at least as a total, but that she would need to ask.

Member Ceja had a question about defense costs, and whether the number included cases where there is no attorney. Elaine Schooler confirmed that it included all cases. She offered one suggestion, that a representative of workers' comp. could advise on that form, and identify what is not captured. Chair Wold recollected that SAIF actually did not separate out by FTE to distinguish those non litigation matters and Ms. Schooler agreed, but said she would provide more of that information in the next meeting. Chair Wold acknowledged that Member Curey mentioned that since we do not have any access to fees from the Court of Appeals or Supreme Court, is there a data request we should look at? We need to determine what those attorney fee amounts are and we would look into that. Additionally, we learned something today and will follow-up with WCD, and with WCB regarding the form. Member Ogawa then asked if Ms.

Schooler knew if the defense costs include more than just the attorney fees? Does it also include other litigation costs? Ms. Schooler replied that it does include other litigation costs. She believes it is to support staff and others, and other costs of legal preparation that go beyond just the attorney involved. Member Ogawa wondered if those are separate from the attorney fees, but Ms. Schooler didn't know if those are separated out. The Board does not collect the data, WCD does.

Chair Wold asked for any other public comments, stating that the members have already expressed that we have more than one session.

Jodie Phillips Polich was able to join the meeting late, and shared she felt like we need to make more gains in the area of attorney fees. Ms. Phillips Polich had nothing further to add.

Chair Wold turned to the members for comments.
There were no member comments.

Announcements
Member Curey thanked Bianka, Melanie, and Katy Gunville for doing all the work they do to get us ready for these meetings.

PALJ Dougherty thanked Mary Turnbow, stated her appreciation and commended her for her great work with her docket work. Mary's service needs to be really commended. Members Ousey and Curey agreed. Chair Wold extended her congratulations and recognized it would be a loss to us.

Adjournment
Chair Wold asked for a motion to adjourn. Member Ousey moved to adjourn. Member Ceja seconded. Motion carried. Meeting was adjourned.