**Workers' Compensation Board**
**Monday, September 18, 2023**
**1:00 p.m**.

MEETING MINUTES

**In-Person Staff:**

Jenny Ogawa, Interim Board Chair
Sally Curey, Member
Roger Ousey, Member
Moises Ceja, Member
Joy Dougherty, Presiding ALJ
Amanda Pletcher, Hearings Division Support Manager
Lauren Eldridge, Interim Managing Attorney
Katy Gunville, Board Executive Assistant
Heidi Havercroft, Senior Staff Attorney
Pete Wogsland, Senior Staff Attorney
Katelyn Crowe, Transcription Coordinator

**In-Person/By Phone Attendees:**

Julene Quinn, Julene M. Quinn LLC
Jovanna Patrick, Hollander Lebenbaum & Patrick
Cathy Ostrand-Ponsioen, Workers' Compensation Division
Kevin Anderson, SBH Legal
Elaine Schooler, SAIF Corporation
David Barenberg, SAIF Corporation
Ivo Trummer, SAIF Corporation
Unidentified

**Call to Order**
Chair Ogawa called the meeting to order.
The public and WCB staff are participating in this meeting via telephone and in-person in the Salem Office.

**Roll Call**
Managing Attorney, Lauren Eldridge, took roll, reflected in the attendees 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 passes.

**Approval of Past Minutes**
Member Ousey moved for approval of minutes from March 7th, 2023, and June 23, 2023 meetings. Member Ceja seconded. Motion passes.

**Division Reports/Updates**

Administrative Services Division: There was no report.

Hearings Division: Joy Dougherty, Presiding Administrative Law Judge, provided the update for the Hearings Division. Hearings Division is still working on the Florence location, it is very close to being ready. During the week of September 11, 2023, Joy Dougherty, Terry Bello (Administrative Services Manager), and Dan Palacios (DCBS IT&R) attended an E-Court conference in Phoenix, AZ on behalf of WCB. They were able to connect with the Chief Information Officer of the Oregon Judicial Department and his team to discuss technological trends within the court system and how WCB could be a part of that system. Judge Doughtery will be sharing information gathered from that conference at a later time.

Board Review: Lauren Eldridge, Managing Attorney, provided the update for Board Review Section. On August 1, 2023, Pete Wogsland was promoted to Senior Staff Attorney. Pete has been a staff attorney with the Board since 2019.

**New Business/Public Comment**

Biennial Review of Attorney Fee Schedule: Chair Ogawa provided a recap of what had been submitted so far. At the March 7, 2023, Board Meeting, OTLA attorneys had submitted three exhibits. Also, attorney Julene Quinn had provided public comment at that meeting requesting the Board consider bifurcation of attorney fees at the hearings level. SAIF had asked the Board to consider that attorney fees have continued to increase. After the March 2023 Board Meeting, SAIF and attorney Jodie Phillips Polich, submitted additional exhibits (Ex. 4 and 5). At the Board's June 22, 2023, meeting, the Board further discussed, received, and listened to further comment and information regarding the attorney fee schedule review. At that meeting, attorney Ted Heus, requested the Board consider bifurcation of attorney fees at the hearing level. On September 6, 2023, the Board issued its annual attorney fee report, which included 2022 data. The Board is looking to improve the attorney fee report by including more specific data regarding the statutory basis for attorney fees awarded at the hearing level and on Board Review. Specifically, the Board looks to distinguish fees on Board Review and at the hearing level from fees approved pursuant to settlements and stipulations. The Board also looks to provide more detailed information regarding combined attorney fee awards on Board Review. Chair Ogawa then asked for public comment regarding the new attorney fee report. None was made at that time.

The topic was then changed to bifurcation of attorney fees at the hearings level. Member Ousey noted that no written comment regarding the proposed concept had been received, but that testimony had been given at previous Board meetings. Member Ousey would like to wait to discuss the concept further once the Board is full. He further commented that bifurcation of attorney fees works well at the Board Review level; however, not used very often. He is not sure how often it would be utilized at the hearings level and would like more input from both sides on the pros and cons, as well as from the Hearings Division. Member Ousey would like to leave the review open for bifurcation of attorney fees at hearing level to receive more public comment until the next quarterly meeting, but is ok with closing the Biennial Attorney Fee Review. Member Ceja then provided his position. He would like more clarity and information on how the process would work. He agrees with Member Ousey on postponing to discuss the topic

further until the next quarterly meeting. Member Curey commented that she would like to close the Biennial Attorney Fee Review today, since there has been no further comment from the public. She would like to open a separate concept to address the bifurcation at hearings level, as well as statutory changes to Board level bifurcation of attorney fee process. Until the next Board meeting, the Board can receive information on how the process would work. Members Ousey and Ceja are open to Member Curey's suggestions. Member Curey made a motion to close the Biennial Attorney Fee Review. Attorney Julene Quinn then joined the meeting and objected to the closing of the Biennial Attorney Fee Review.

Julene Quinn would not like the Board to close their review of the Biennial Attorney Fee Review because she doesn't think the Board has taken action or addressed the issues/exhibits submitted by claimants' bar. Member Curey responded that the Board has heard testimony at meetings, and had previously been waiting on attorney fee statistics, but has not received any concepts in writing or proposed rule changes from the public since March. Ms. Quinn expressed her concern with the Board's decision-making capacity since the Board is not fully staffed. She also noted that claimants' bar was unaware of the review closing today. She has additional information and statistics to submit that she has discovered in the past few weeks. She had previously been waiting on the Board to calculate win/loss statistics, but ended up producing the data herself. Chair Ogawa asked the Board to respond to Ms. Quinn's comments.

Member Ceja was open to hearing and receiving more information on the Biennial Attorney Fee Review. He does not support a motion to close, knowing that there is more information available. Member Ousey wanted to hear about Ms. Quinn's new statistics and information. Member Curey commented that the Board hadn't received any new correspondence in six months and was ready to close the review today, but she is curious about Ms. Quinn's statistics. Ms. Quinn then presented the Board with three new submissions (Exs. 6-8). Member Curey then withdrew her motion to close the Biennial Attorney Fee Review.

Julene Quinn then explained her submissions/exhibits, starting with a brief written by SAIF's Beth Cupani for the *Christopher Taylor* case, which provides a history of attorney fees. Her second submission was a summary of House Bill 2764-A9, which states that the Board is to give a set schedule of fees. Ms. Quinn's final submission was Court of Appeal (COA) statistics from 2021 through September 2023, which she collected and compiled the data provided by the Workers' Compensation Division. She noted that the statistics reveal that since the pandemic, COA wins have gone down for claimants' attorneys. The statistics are also indicative of the decrease in claimant's attorneys, mostly due to retirement. Ms. Quinn would like the Board to keep track of claimant's attorneys. She believes the legislature gave the Board the obligation in 2015 of keeping claimant's bar healthy. She would like the Board to gather win/loss statistics at the Board Review level before closing out the biennial review and also take action in addressing Keith Semple's letter (submitted on behalf of OTLA). Member Curey responded that per Mr. Semple's letter, it sounded like claimant's bar would be presenting specific information to the Board at meetings in-person, over the phone, and in writing. Thus far, limited information has been presented to the Board pertaining to these issues/requests. Chair Ogawa commented that the Board does not have the technological capabilities at this time to collect some of the requested statistics mentioned in Mr. Semple's letter. Ms. Quinn was under the impression that the Board was working on getting the requested statistics. Chair Ogawa responded that some of

the requested statistics are addressed in the Board's September 2023 Attorney Fee Report.

Next, Ms. Quinn provided comment on bifurcation of attorney fees. She believes it has been a successful and efficient process at the Board Review level. The bifurcation process allows claimant's attorneys to focus on the complexity and merits of a case. She noted that most other legal forums have a similar system for bifurcating attorney fees.

Attorney Jovanna Patrick also provided comment in regards to the bifurcation topic. Ms. Patrick commented that bifurcation allows claimants' bar to have its own appellate section. She noted it's difficult to train and retain claimant's attorneys, hence why claimant's firms are typically smaller. There are less resources for new claimant's attorneys, and claimant's bar often loses attorneys to employer's side since there is more economic stability on that side of the practice. She is worried about the future of claimant's attorneys because of the lack of new attorneys entering the field and the demand for claimant's attorneys. Ms. Patrick would like to see more than the "usual" fee awarded at the hearing level. Bifurcation of attorney fees is important at hearing, because it would not drag on litigation if the parties don't agree on the fee. She believes it is important to have as an option.

Chair Ogawa opened the floor for further public comment, none was provided. Chair Ogawa confirmed the Board will continue the review of the biennial attorney fee report, as well as the concept of bifurcation of attorney fees at hearing level. She invites more information to be submitted before the next quarterly meeting.

The next topic of discussion was revised mandatory denial language drafted by the Access to Justice Committee. Jovanna Patrick was a part of that committee and presented the concept to the Board. She said currently the rules don't mandate how denial language appears or is formatted. She shared that the Oregon State Bar is going through a process to lower the reading level to 5/6 grade level of its online reading materials. Access to Justice suggested only bolding key words instead of entire paragraphs on a denial letter, so claimants can more clearly understand what needs to be done and when it needs to be done if they are wanting to appeal their denial. Often, claimants are confused on when and how to appeal a denial. Claimants' side would like to draw attention to the language that states they are entitled to an attorney and that their employer cannot fire them for filing a claim. Also, they drafted clearer WRME language. Access to Justice feels clearer language in the rules would help workers have a better understanding of their rights. There was discussion amongst the committee about putting an appeal date on a denial, but they couldn't come to an agreement. Overall, the consensus from both sides is to create clearer language on denials.

Attorney Elaine Schooler, from SAIF Corporation, provided further comment on the denial language topic. She shared that the Access to Justice Committee met to discuss this topic in response to the Workers' Compensation Division's Simplification Project, which is working to review the language on WCD's notices and correspondence. Access to Justice's drafted denial language is very similar to the current denial language. The committee would like to include the Ombuds for Oregon Workers' in further discussions regarding denial language. Ms. Schooler asked if Ms. Quinn's submissions would be posted on WCB's website. Chair Ogawa confirmed they would be posted on the website.

In response to Ms. Schooler, Ms. Patrick then further commented in regards to the reading level of the denial language. She said that the current denial language is a grade 10 reading level, whereas Access to Justice's proposed language brings it down to a grade 8. Chair Ogawa then asked for further comment on the topic. Member Curey suggested setting up an advisory committee of stakeholders to draft the new language. She also mentioned that in the past the Ombuds has also been involved in these types of committees. Chair Ogawa agreed with creating an advisory committee. Member Ceja supports improving the language and the creation of the committee. Member Ousey has no opposition to the advisory committee, but is hesitant to include the Ombuds because he is uncertain they would be able to tell the Board what workers actually think. He hopes they could find a worker who reads at the desired reading level to be involved in the process. He is also in support of simpler language. Member Ceja suggested that the advisory committee could also look into expanding the methods of requesting a hearing to appeal a denial. Chair Ogawa shared that the next steps would be for the Board to set up an advisory committee. She concluded the discussion by thanking OTLA, SAIF, and the Access to Justice Committee for putting together this proposed language. Chair Ogawa called for any final comments; there were none.

**Announcements**

WCB has hired Kerry Anderson as its new Project Manager of WCB IT Services. Ms. Anderson was the Mediation Program Coordinator and Assistant to Presiding ALJ Joy Doughtery and Assistant Presiding ALJ Monte Marshall. She will start her new role as project manager on October 2, 2023. Chair Ogawa concluded the announcements by sharing that by the next quarterly Board meeting there will be a full Board. The new Board Chair will be running that meeting.

**Adjournment**

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