

**Workers' Compensation Board**  
**Tuesday, June 17, 2014**  
**10 a.m.**

Meeting Minutes

Present: Holly Somers, Chair  
Sally Curey, Member  
Judy Johnson, Member  
Steve Lanning, Member  
Margaret Weddell, Member  
Roger Pearson, Managing Attorney  
Joy Dougherty, Presiding Administrative Law Judge  
Karen Burton, Executive Assistant  
Debra Young, Staff Attorney  
Julie Masters, SAIF Attorney

**Call to Order**

Chair Somers called the meeting to order.

**Approval of Agenda and Order of Business**

Lanning moved for approval of the agenda. Curey seconded. Motion carried.

**Approval of Past Minutes**

Lanning moved for approval of the March 20, 2014 meeting minutes. Weddell seconded. Motion carried.

**Reports of Administrative Staff**

Hearings Division: No report.

Board Review: No report.

Administrative Services Division: Bello absent; no report.

**Unfinished Business**

None.

**New Business**

Somers welcomed new Members Judy Johnson and Sally Curey.

**Consideration of comments regarding the May 30, 2014 rulemaking hearing concerning the adoption of permanent amendments to OAR 438-005-0046 (Filing and Service of Documents; Correspondence).**

Pearson summarized the rule amendments which expand the definition of filing to include anything received via the portal. The amendments arose from the Technology Advisory Committee which proposed various concepts and opened up the potential for electronic filing and service of documents as technology allows.

Weddell moved that the Board adopt the rule amendments. Lanning seconded. All in favor: Somers, Curey, Johnson, Lanning, and Weddell.

Pearson reported that staff will prepare an order of adoption for the Members' review and approval for filing with the Secretary of State, with a recommended effective date of September 1, 2014. The Members approved.

**Continuing discussion and consideration of public comments regarding cases where exhibits are submitted “on-the-record” without a formal hearing.**

At the last meeting, the Members deferred deliberations to solicit further input from the public. Since that time, comments were received from [Julie Masters](#) and [Brad Garber](#).

Member Curey noted that because the scenario happens infrequently, she was not in support of adopting a rule.

PALJ Dougherty reported that she had polled ALJs and relayed that the majority resolve these “on-the-record” matters by way of correspondence. Some ALJs handle these situations by conference call to discuss exhibits then schedule closing arguments, and others set a closing argument schedule but instruct the parties to clarify the exhibits in advance. With regard to evidentiary issues, some ALJs address them in their O&Os, others discuss them in closing arguments, and some ALJs suspend the closing arguments until such issues are resolved.

Member Johnson agreed with Curey's comments, and did not believe a rule was necessary. She felt taking the extra step of sending a letter was an effective method. In addition, because it is a discretionary process, she had concerns with boxing in ALJs with a rule.

Troubled by inconsistencies, Member Weddell favored a more level playing field for the parties. She values the work done by ALJs, but believes it is the Board's responsibility to set the rules. Seeing no advantage in using various methods, Weddell reasoned that a broad rule requiring the specific identification of the issues/exhibits would lay an organized framework for which ALJs and parties can operate.

Member Lanning supported the Board moving forward with rulemaking even though it may not be a frequent problem.

During discussions, the Members considered various objectives such as: What would the penalty be if parties did not comply with the rule, and who would enforce it? If rulemaking were considered, is the goal to have exhibits determined during closing arguments? Even after the O&O issues, ALJs still have the discretion to reopen the record under existing Board rules. Would a rule eliminate the issue in *Penturf*? If rules were implemented for “on-the-record” cases, there would be no symmetry to those cases having a hearing. Rather than a rule, could the request for hearing form be expanded to include the issues, then hold the parties to them?

Chair Somers acknowledged the importance of maintaining ALJ discretion, and because ALJs have different ways of deciding a case, they must be able to manage each case as they see fit. Also, there are varying perspectives on closing arguments.

Julie Masters commented that the Board’s Specification of Issues (check-the-box form) is very broad in the types of issues that get appealed in a reconsideration order (which encompass a large portion of on-the-record cases), and perhaps could be expanded to further specify those issues.

Due to the recent amendments to OAR 438-006-0045 which became effective on April 1 (parties must verify that they have made a good faith effort to confer in an attempt to clarify the issues), PALJ Dougherty was amenable to monitor its possible effect on “on-the-record” cases.

The Members deferred further discussion on “on-the-record” cases and will revisit the subject later this year.

### **Public Comment**

As above.

### **Announcements**

None.

### **Adjournment**

There being no further business, the meeting adjourned.