

Workers' Compensation Board
Thursday, February 15, 2018
10 a.m.

Meeting Minutes

Present: Connie Wold, Board Chair
Sally Curey, Member
Judy Johnson, Member
Steve Lanning, Member
Roger Ousey, Member
Joy Dougherty, Presiding ALJ
Roger Pearson, Managing Attorney
Terry Bello, Administrative Services Division Manager
Greig Lowell, Project Manager
Karen Burton, Executive Assistant
Jennifer Flood, Ombudsman for Injured Workers
Fred Bruyns, WCD
Keith Kekauoha, ALJ
Bin Chen, Attorney
Julene Quinn, Attorney
Jaye Fraser, SAIF
Elaine Schooler, SAIF

Call to Order

Chair Wold called the meeting to order.

Approval of Agenda and Order of Business

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

Approval of Past Minutes

Member Johnson moved for approval of the December 14, 2017 meeting minutes. Member Ousey seconded. Motion carried.

Reports of Administrative Staff

Administrative Services Division: Bello reported that WCB obtained many (gently used) upgraded computer monitors from State Treasury to add to our inventory, which is a good example of state agencies working together to streamline resources.

As of March 1, hearings set in Ontario will be held at the new location (Four Rivers Cultural Center). Bello is currently looking at location options for hearings set in Roseburg. The Salem office lease is coming up for renewal, and Bello is currently in negotiations for necessary building improvements.

Hearings Division: Dougherty echoed Bello's comments on the new Ontario office location, and acknowledged Bello's work for keeping the office move on track.

Board Review: Pearson announced Gabe Parton Lee began as a Staff Attorney on January 22. Also, Staff Attorney Barb Woodford will be retiring at the end of February.

Unfinished Business

None.

New Business

[Discussion of rule concept concerning translation of "non-English" written evidence at hearing.](#)

Chair Wold invited ALJ Kekauoha to provide an overview of the concept. He noted the concept originated in the Access to Justice Committee which was prompted by the Court of Appeals *Camacho* decision. Currently, practitioners and ALJs are addressing the issue on a case-by-case basis. Kekauoha reported concerns of a cost-shift to practitioners to have such documents translated. The concept envisions a process in which WCB interpreters not be relied on to translate written evidence, but rather implement a separate mechanism to do so.

After discussion of the concept, Chair Wold suggested referring the matter to an advisory committee to research the issue and bring a recommendation to the Board.

[Discussion of rule concept requiring that certain documents be distributed to injured workers along with a separate notice in multiple languages advising the workers of the importance of the document and possible avenues for assistance.](#)

Bin Chen provided an overview of the concept. He stated the conversation began with the Office of the Ombudsman for Injured Workers regarding concerns from non-English speaking claimants not understanding notices they receive. The concept would provide that many of the notices submitted to claimants be offered in at least four different languages (Spanish, Russian, Chinese, Vietnamese).

Fred Bruyns indicated that because the same issues encompass WCD notices, WCD will be appointing an advisory committee to consider the concept.

Jaye Fraser reported that SAIF is supportive of the need for certain translations, and if an advisory committee is comprised, SAIF would like to participate. Regarding notices, she believes it impacts claims processing more than Board processing. Because WCD's rules (OAR 436, Division 60) are set up to advise insurers how to process claims, Fraser suggested that WCD is where rulemaking should begin, or at least in tandem with WCB.

Member Curey asked, following the issuance of *Camacho*, whether SAIF changed its methods on processing 801s and 827s that are submitted in a different language. Fraser responded that they have internal staff that automatically translate those documents upon receipt. Curey questioned whether those translated 801s are supplied to IME doctors, for example.

Elaine Schooler, a SAIF attorney, relayed that for some non-English documents SAIF has bilingual claims adjusters that can translate documents based on their own language knowledge, as well as some who are fluent in Spanish or speak Russian. Such documents may be translated by a claims adjuster, and although it is not a formal translation, it provides an understanding of what the issues are, so when documents are provided to an IME facility, they may provide that history, but typically it is not solely based on an 801. So, from a claims processing standpoint, Schooler explained that not every document is translated and provided in hard copy form.

Jennifer Flood, the Ombudsman, believed the process is important, and is supportive of an advisory committee; particularly, she suggested one committee for both concepts for consistency and efficiency purposes.

Chair Wold recommended the appointment of an advisory committee to address both concepts. Member Curey made the motion. Member Lanning seconded. All in favor: Members Curey, Lanning, Johnson, Ousey and Wold.

Follow-up discussion of public comments received regarding proposed rule concepts concerning cost bill procedures (OAR 438-015-0019).

Pearson provided an update on the status of the cost bill concepts and the comments received from the survey. The concepts were proposed in light of *Siegrist*, which is currently pending at the Court of Appeals. A public meeting was held in March 2017, and the Board discussed rule concepts at that time. The Members asked for public input and a survey was posted in the March and April issues of the Board's News & Case Notes. The majority of comments received revealed no problems with the current "cost bill" system, noting that the current administrative rule is adequate.

As the proponent of the concept, Member Johnson acknowledged that the claimant's bar responded to the issues raised, most of which arose from arguments in *Siegrist*. Johnson recommended holding the matter in abeyance until the Court of Appeals issues its decision in *Siegrist*, and supported tabling the issue for now.

All Board Members concurred with tabling the issue.

Public Comment

As above.

Announcements

None.

Adjournment

There being no further business, the meeting adjourned.