Workers' Compensation Board
Tuesday April 29, 2025
10 a.m.

MEETING MINUTES

In-Person/By Zoom Staff: Joy Dougherty, Board Chair
Sally Curey, Board Member
Roger Ousey, Board Member
Moisés Ceja, Board Member
Jenny Ogawa, Board Member
Kerry Anderson, Project Manager
Jacqueline Jacobson, Presiding Administrative Law Judge
Lauren Eldridge, Managing Attorney
Heidi Havercroft, Senior Staff Attorney
Christina Alston, WCB Budget and Policy Analyst
Katelyn Crowe, Transcription Coordinator
Ian Brown, Administrative Law Judge
Holly Somers, Administrative Law Judge
Trisha Fleischman, Administrative Law Judge
Darren Otto, Administrative Law Judge
Halah Ilias, Administrative Law Judge
Greg Naugle, Administrative Law Judge
Robert Pardington, Administrative Law Judge

In-Person/By Zoom Attendees:
Samantha Powell, Department of Consumer & Business Services
Human Resources Administrator
Ivo Trummer, SAIF Corporation
Jeanette D., Unknown Affiliation
Katie Krametbauer, Summit Conflict Solutions
Unidentified Caller

Call to Order
Chair Dougherty called the meeting to order. The public and Workers' Compensation Board (WCB) staff members participated in the meeting by Zoom and in person in the Salem office.

Roll Call
Katelyn Crowe, Transcription Coordinator, took roll, reflected in the attendee list above.

Approval of Agenda and Order of Business
Chair Dougherty asked for a motion to approve the agenda and order of business. Member Curey moved for approval of the agenda and order of business. Member Ogawa seconded. Motion passed unanimously.

Approval of Past Minutes
Chair Dougherty asked for a motion to approve the February 27, 2025, meeting minutes. Member Ogawa moved for approval of minutes from the February 27, 2025, meeting. Member

Ousey seconded. Motion passed unanimously.

Division Reports/Updates
There was no update from the Hearings Division.

There was no update from Board Review.

Kerry Anderson provided a staffing update for WCB IT. WCB IT has now permanently filled the Information Systems Specialist (ISS) 3 and ISS 5 positions. Jason Thurston was hired to fill the ISS 3 position. Prior to accepting this permanent position, Jason was temporarily filling both the ISS 3 and ISS 5 positions for WCB. Rolando Mata has accepted the ISS 5 position. Rolando started with WCB in early April. Before joining WCB, Rolando worked for the Salem Police Department in its IT department and was an integral part of helping the department modernize and update its systems when it moved to the new police headquarters. WCB IT will also be recruiting for a newly created Litigation Research Analyst position. This will be a senior position in the Closed Coding Section of WCB IT. The Litigation Research Analyst will work with statistical reporting, special projects, and data analysis.

On behalf of Administrative Services Division Manager Amanda Pletcher, Kerry Anderson provided a staffing update for the Administrative Services Division (ASD). ASD hired Christina Alston as its new Budget and Policy Analyst. Christina began working for WCB in early January.

New Business

Discussion of and possible Board action on Administrative Law Judge salary under ORS 656.724.

Chair Dougherty began the discussion by providing some background on the topic. Salaries in the legal field have been impacted by the changes in the economy over the past several years. The Oregon State Bar (OSB) has published research regarding the impacts on salaries in the legal field. Under Executive Order 17-08, the State of Oregon has sought to maintain and establish itself as a top employer who can attract and retain top-tier talent. Under ORS 656.724(2), Administrative Law Judges are in the unclassified service under ORS chapter 240, and the Board shall fix their salaries in accordance with ORS 240.245. Under ORS 240.245, the Board shall maintain a salary plan equitably applied to the exempt position and in reasonable conformity with the general salary structure of the State. The Board has been given the authority to review and fix the ALJ salary, while being mindful of its duty as a state agency to be fiscally responsible. Chair Dougherty then opened the floor for public comment.

Jacqueline Jacobson, Presiding Administrative Law Judge (PALJ), provided some history and background on Oregon's workers' compensation system. Previously, workers' compensation disputes were resolved in the circuit courts. When workers' compensation disputes were held in the circuit court, one had to prove fault, and go through a jury trial. Overall, it was a lengthy process which kept workers from returning to work. When the workers' compensation system was created, it removed fault and established its own judiciary system in which workers' compensation ALJs adjudicated those disputes.

PALJ Jacobson then shared that ALJs are currently set with 18 hearings a week. They

independently write their own orders under a 30-day time frame after the record closes. WCB ALJs also travel one to two times a month to WCB's remote offices for hearings.
Some ALJs also provide mediation services for WCB, in addition to their hearing caseload. It takes 35 hours of training to become a certified mediator.

When the WCB ALJ position has been discussed with the Department of Administrative Services (DAS), there have been comparisons to the ALJ 3s at the Office of Administrative Hearings. ALJ 3s also adjudicate administrative disputes, but their job qualifications and requirements differ from that of WCB ALJs. ALJ 3s are subject to review by the agencies who are involved in the disputes that they adjudicate, whereas WCB is an independent body. WCB ALJ orders are not subject to review other than on an appellate basis. Also, WCB ALJs' orders are final if they are not appealed. WCB ALJs are required by statute to be actively licensed by OSB, whereas ALJ 3s are not. WCB ALJs are subject to a four-part recruitment process. They are subject to review every four years by the Board Chair, and that review is also open to public comment. ALJ 3s are not subject to any of these requirements. According to OSB's market survey, attorney salaries have increased in the past few years. WCB ALJs have not received a salary increase since 2011 (other than statewide cost of living increases for State of Oregon employees).

The Hearings Division is currently recruiting for three ALJ positions, but also mindful of possible retirements in the future. PALJ Jacobson thanked the Board for reviewing the issue and was willing to answer any questions that the Board might have on the issue.

Member Ogawa added that WCB ALJs are excluded from the Administrative Procedures Act (APA). She agreed with the point that an ALJ's order is final, which is different from most administrative orders. Also, there is added significance to the ALJ's role in developing the record, since the Court of Appeals no longer has *de novo* review.

PALJ Jacobson responded that based on her understanding, when the workers' compensation system was first created, WCB's ALJs were not subject to review from the Board and that ORS 656.724(2) was in place when the Workers' Compensation Act was put together in 1965. Then Member Ogawa shared that when the 1965 Act was enacted, so was ORS 656.295, which outlined the appeals process. However, this was prior to when the Court of Appeals was established, so Board orders were appealed to the circuit court. She then cited the qualifications for the "hearing officer." From Member Ogawa's perspective with the enactment of the 1965 Act, the legislature acknowledged that workers' compensation was becoming more complex. She further added that under ORS 656.724, WCB ALJs have been granted the same powers as Board members. Unlike Board members, ALJs are required to have a law degree and are responsible for establishing the record for their cases.

Member Curey asked PALJ Jacobson for clarification regarding ALJs being set 18 hearings per week. PALJ Jacobson responded that the vacant ALJ positions have contributed to that number. The held rates and request for hearing rates have changed. Requests for hearing have slightly increased, but held rates have dropped significantly. Previously, the Hearings Division had been holding 10-12 percent of hearings in all locations. Now, held rates have reduced from 4-10 percent between all locations. Member Curey, further inquired about the requirements for an ALJ 3. PALJ Jacobson replied that it is her understanding that ALJ 3s are not required by statute to be licensed by OSB, nor are they bound by statute on how to conduct their recruiting process.

Only the Chief Administrative Law Judge at the Office of Administrative Hearings is required to be licensed. Also, WCB ALJ's write final orders, whereas ALJ 3 orders are often not final and are modifiable by the agencies which are involved in the litigation. PALJ Jacobson further pointed out that the ALJ 3 classification only requires three years of experience, whereas current WCB ALJs have on average between nine to 12 years of experience before being hired as ALJs. Again, the fact that WCB provides a mediation program is unique in comparison to other adjudication forums.

Member Ousey commented that in his 41 years of experience, no other resolution entity has offered him mediation or cited him to rules on the development of a record. He further noted that WCB is fairly insulated from the parameters of the APA. He asked PALJ Jacobson whether the points presented today had been shared with DAS.

PALJ Jacobson responded that the differences between WCB ALJs and ALJ 3s have been shared with DAS, because WCB ALJs have been compared to ALJ 3s as a comparable position. DAS relies on a salary and benefit report to compare State of Oregon positions to other states. However, every state runs their workers' compensation system very differently. This makes it challenging to find comparable positions to the ALJ in other states. Many other positions that DAS compared WCB ALJs were not licensed. PALJ Jacobson gathered that DAS is primarily looking at the education and work experience required.

Member Ceja had no comments or questions.

Chair Dougherty reserved her comments for a later meeting. She then asked for public comment. There was none. Member Ogawa then asked if she could hear some comments from a current ALJ. She particularly wanted to hear what a typical work day is like for a current ALJ.

ALJ Holly Somers stepped forward to provide public comment. ALJ Somers shared that her days as an ALJ vary. She is one of WCB'S ALJs who is also a certified mediator, so her docket is 50 percent hearings and 50 percent mediations. Her days often consist of conference calls, hearings, and meditations. She often deals with personality conflicts between parties when managing her cases. She noted that even though there is a lower held rate for hearings than there used to be that there is still work that goes into a case that does not make it to hearing. If there is a motion for a change of manner (i.e., change from in person to telephone or hybrid) there can be logistical and technical challenges, especially if an ALJ is travelling. Mediations can take up a big portion of her day. She keeps contact with the parties throughout the process. There is a lot of work before, during, and after a mediation. Sometimes it can take a year for parties to come to an agreement because the circumstances can be complicated. Also, there can be multiple CDAs, DCSs, or stipulations, and sometimes employment components as well.

Member Ogawa commented that based on her experience as a former ALJ, mediations were often scheduled on writing days, and that can interfere with writing time for orders. ALJ Somers shared some of the issues that can come up when holding hearings at WCB's remote hearing locations; for example, a hearing being cancelled during your drive to the hearing or a party not showing up to the hearing, only for it to be reset in that location again. Also, scheduling interpreters can be challenging when holding hearings at remote offices.

Member Curey then asked if ALJ 3s communicate with parties ahead of a hearing and if they

travel or hold in-person hearings. PALJ Jacobson responded that it was her understanding that they do not do in-person hearings the same way that WCB does, and she is uncertain what they do leading up to a hearing. ALJ Somers wondered if ALJ 3s work with represented parties or with *pro se* individuals.

Member Curey wondered whether ALJ 3s deal with cases where they have to work with attorneys from an outside legal field. ALJ Somers responded that sometimes as a mediator you have to work with other areas of law, but noted that not all WCB ALJs are comfortable with that. She also shared that one thing not mentioned earlier that distinguishes WCB ALJs from ALJ 3s is being assigned Oregon OSHA cases. OR-OSHA cases use the APA.

Member Ogawa asked ALJ Somers if WCB ALJs do Court of Appeals mediations. ALJ Somers replied yes, and that she has worked with the Court of Appeals' mediation program in the past. The Board Members thanked ALJ Somers for her comments.

Chair Dougherty asked for further public comment. As there was none, the public comment portion of the discussion was closed. Chair Dougherty then moved to Board discussion.

Member Curey stated she is still looking for additional information and proposals. She had nothing further than what she has already asked.

Member Ogawa shared that her perspective on the issue has been presented by PALJ Jacobson and ALJ Somers. She supports a pay increase for ALJs; her position is based on 17 years as an ALJ. Member Ogawa summarized her opinion on the issue by pointing to ORS 656.742(4) and that ALJs are similarly situated as Board members. She also added that ALJs have a strict 30-day timeline from when the record closes to issue their orders. They do not have staff attorneys to help them with legal research. The timeliness of their orders is part of their performance evaluation. The 30-day time frame is there regardless of the size of their caseload. Also, there could be several ALJs retiring in the next couple years, so it is important to recruit qualified applicants with an attractive pay. She hopes the Board uses its statutory authority to increase ALJ pay.

Member Ousey provided his comments next. He shared that in his experience, particularly with the Employment Department, hearings before an ALJ 3 were held in person up until the 1990s. After the 1990s, hearings moved to telephone. He shared that with Social Security hearings you are entitled to an in-person hearing, but you have to wait. The other option for Social Security disputes is a video hearing. Member Ousey highlighted the WCB ALJ's duty to develop the record. The Board is bound by the record developed by the ALJs. Under the APA, evidence can be submitted up until the adjudicator issues their decision, and they can sometimes entertain new evidence. There are differences between what WCB ALJs have traditionally done, have continued to do, and what other ALJs do in other forums. Member Ousey agreed with reviewing ALJ salaries under the Board's statutory authority.

There was no further Board member discussion.

Chair Dougherty asked for a motion. Member Ousey made a motion for the Board to proceed in its review of the salary structure of the unclassified positions of the Workers' Compensation Board's Administrative Law Judges who are bound by the statutory requirements ORS 656, up

to and including that they maintain active licensure. Member Curey seconded the motion. Motion carried unanimously.

Chair Dougherty shared that in taking this action, the Board will receive input from DCBS Human Resources (HR). It was asked that DCBS HR Administrator Samantha Powell help coordinate a report for the Board to review. There will also be further public comment upon reviewing the proposed salary structure, and changes will be made as needed. Chair Dougherty also noted WCB is undergoing review of the 2025-2027 budget, and hopes to quickly review this proposal so it can be considered this legislative session.

General Public Comment
No comments from the public.

Announcements
There were no announcements.

Adjournment
Chair Dougherty asked for a motion to adjourn. Member Ousey moved to adjourn. Member Curey seconded. Motion carried unanimously. Meeting was adjourned.