

Workers' Compensation Advisory Council
Meeting Minutes
May 30, 2007
Kneip Building Conference Room #3
Pierre, SD

The Workers' Compensation Advisory Council met on Wednesday, May 30, 2007, at the Kneip Building Conference Room #3 in Pierre, South Dakota.

Members Present

Dennis Daugaard, Chair
Pam Roberts
Paul Kinsman
Glenn Barber
Chris Lien
Jeff Haase
Carol Hinderaker
Paul Aylward
Guy Bender
Randy Stainbrook

Members Absent

Connie Halverson

Others Present

Phil DeGreff
Paul Bachand
Bob O'Connell
Kelly Hefti
Sharon Bossman
Dennis Finch
Larry Klaahsen
Mark Anderson
Jeff Shultz
Fern Johnson
Lynn Job
Naomi Cromwell
Larry Ahrendt
Mike Mores
Patsy Mehlhaff
Beth Dobbs
Bob Mercer
Mark Reichelt
Mary Weischedel
James Marsh

Chairman Daugaard, called the meeting to order and roll call was taken by Sarah Trebesch. Glenn Barber MOVED approval of the minutes from the August 1, 2006, meeting. Paul Aylward SECONDED. Motion Carried.

Chairman Daugaard opened the meeting with an explanation of how the council was established and their role.

New council member, Paul Kinsman, was introduced by Pam Roberts. Paul is the new Secretary of Revenue, and replaced Gary Viken as a result of Gary's retirement.

James Marsh gave a review of the “State of the Workers’ Compensation” for the annual report. Section One covered the premium rates and how they are fairly stable. South Dakota was listed as 44th in premiums per rate study done by Oregon.

James also gave a brief overview of two Supreme Court decisions that have been issued: Orth vs. Stoebner and Permann Construction Company, which found that work need only be a contributing factor to a person’s injury in order for the injury to be considered work-related and Wise vs. Brooks Construction Services, which found that an insurance company that denies medical benefits on the basis of work relatedness or some other ground is not entitled to use the fee schedule if they are subsequently held responsible for the claim.

James advised the AMA has announced that the Permanent Partial Impairment Guide, Sixth Edition, will not be released in print until as least November 2007; therefore, a proposed change would have to wait until 2008 or later.

James gave a brief overview of the 2007 legislative session. SB 142: An act to provide for collection of certain workers' compensation by court order. The bill passed and was signed by the governor.

James provided information on two working groups with attorneys. The first group includes Jeff Shultz, Mike McKnight, Rick Orr, and Rob Anderson. The second group includes attorneys Dennis Finch, Margo Julius, Jim Leach and Jeff Maks. Their task is to review issues and give the Council an idea of legislative proposals.

James reviewed the following research/discussion items which were discussed and developed with the attorney groups:

- Permanent Total Disability claims and the eligibility standards. In the Scheid case, the Department held and was supported by the Supreme Court, that given the way the law is written now at 62-4-52 sub section 2 and 53, that even if regular work were available, it shouldn’t change Mr. Scheid’s eligibility for total disability benefits. He could work full-time and receive disability benefits in addition to his earnings.
- Employer notice. Change “actual knowledge requirement”.
- Causation issue regarding the definition of injury. The term personal injury is generally not used in workers’ compensation cases so it was felt that it was appropriate to strike it. It is proposed to clarify it and simply say that a major contributing cause test is intended to apply both to an injury and to the condition that results from it.
- Legislation concerning medical costs that have been improperly delayed, in terms of how they should be paid. The group is discussing delays and the need for a panel for independent medical examinations.
- Independent Medical exams. The issue has been presented that independent medical exams are being ordered rather frequently and that the expense to have them performed is pretty high. The commission discussed the item and decided not to pursue the item any further at this time.

- Wise case. Language was proposed to clarify current practice.
- Amendment to § 62-1-15 to be amended to read as follows: In any proceeding or hearing pursuant to this title, evidence concerning any injury, disability, impairment, or need for treatment shall be given greater weight if supported by expert medical opinion.
- Revision of the misconduct statute in cases of drug use.

(Whereupon, the meeting was in recess at 2:34 p.m. and reconvened at 2:47 p.m.)

The next item on the agenda was written testimony from American Insurance Association endorsing legislation that would address the South Dakota Supreme Court decision, Capital Motors v. Scheid.

Written testimony was also received from Farmers Insurance Group. Mike Mores was present to give additional testimony. He explained the letter included an amendment to 62-4-45, and a proposed change giving the Department of Labor authority to approve permanency ratings. Farmers Insurance Group believes the changes will help prevent delays.

Public testimony was also heard from Fern Stanton-Johnson regarding her proposals. The Council invited Fern to come back to the July 31, 2007 meeting with her proposals written as the statute is stated. And, make reference to the specific changes she would like to make, so the council can better understand how the changes would impact current law.

The next council meetings were scheduled for July 31, 2007, and August 27, 2007, starting at 10:00 a.m. both days, in Kneip Conference Room #3.

Chairman DAUGAARD declared the meeting adjourned and all were in favor.