

Workers' Compensation Board
Meeting Minutes
May 12-13, 2011

Thursday, May 12, 2011

I. Call to order

Director Monagle, acting as Chair of the Alaska Workers' Compensation Board, called the Board to order at 9:05am on Thursday, May 12, 2011, in Anchorage, Alaska.

II. Invocation and Pledge of Allegiance

III. Roll call

Director Monagle conducted a roll call. The following Board members were present:

Chuck Collins	James Fassler	John Garrett	Linda Hutchings
David Kester	Krista Lord	Arylis Scates	Patricia Vollendorf
Janet Waldron	Robert Weel	Zeb Woodman	

Director Monagle introduced new members Krista Lord, Arylis Scates, and Zeb Woodman, who were all appointed to the Board effective March 1, 2011.

IV. Agenda Approval

A motion to approve was made by member Hutchings, and seconded by member Weel. The agenda was approved by unanimous vote.

V. Approval of Meeting Minutes

A motion to approve the minutes from the January 12, 2011 regular Board meeting was made by member Hutchings and seconded by member Weel. Member Kester noted the minutes on page five reflects consideration of a proposal to amend 8 AAC 45.535 and strike the proposed change to AS AAC 45.540. His notes reflected the opposite. Director Monagle replied that he would have staff review the recording to verify the Board's actions. The minutes were approved by unanimous vote, with the noted exception by member Kester.

VI. Director's Report

1. Administrative Officer Alan Ezzell reviewed the FY11 YTD budget.
2. Mr. Ezzell stated the legislature approved an appropriation to produce a medical fee schedule.
3. Mr. Ezzell stated the Division is finalizing its review of bids to produce a cost of living adjustment (COLA) survey.

4. Director Monagle reviewed current Division staffing, and introduced new staff members Hearing Officer Robert Vollmer, and Program Coordinator Velma Thomas.
5. Director Monagle recognized Chief of Adjudications Janel Wright for her receipt of the 2011 Governor's Denali Peak Performance Award Honorable Mention for Co-Worker Recognition.
6. Director Monagle reviewed the status of the workers' compensation re-write.
7. Director Monagle reviewed filed legislation. HB12 establishes a workers' compensation advisory council. HB232 and SB103 extend the firefighter presumption to existing firefighters. SB116 would create a workers' compensation carve-out, which would allow workers' compensation benefits to be distributed, and disputes resolved outside the Alaska Workers' Compensation Act through the collective bargaining process. There was no action on the aforementioned legislation. HB13, authorizing the Division to produce a new medical fee schedule, did pass and is awaiting transmittal to the Governor's Office. It is anticipated that the vendor may not have the fee schedule produced within the time limited prescribed by the Board in last year's regulation. The Board may be asked to adopt an emergency regulation this Summer.

VII. Old Business from Previous Meeting

1. Director Monagle reviewed the Board's adoption of 8 AAC 45.093 and 8 AAC 45.094, which became effective February 20, 2011. He noted that the task before the Board was to now adopt the necessary medical screening forms prescribed by AS 23.30.121 and the newly adopted regulations.
 - Chief of Adjudications, Janel Wright, presented and reviewed the two proposed forms, Firefighter Medical History form and the Firefighters Lung & Heart Physical Examination and Cancer Screening form.
 - Member Hutchings moved to adopt the prescribed forms, which was seconded by member Waldron. After discussion, member Hutchings made a subsidiary motion to add a question to the Firefighter's Medical History form to determine a firefighter's exposure to second-hand smoke. Motion was seconded by member Waldron. After discussion, the subsidiary motion was approved unanimously. The main motion to adopt the prescribed forms, as amended, passed unanimously.

Break 10:20am-10:37am

2. Consideration for adoption the proposed regulation concerning appeal of a Board designee discovery order, 8 AAC 45.065, which was approved by the Board in January. The Board was joined telephonically by Assistant Attorney General Jessica Srader.
 - No public comment was received on the proposed regulation.

- Adjudications Chief Janel Wright reviewed the proposed regulation for the Board.
 - Board member Waldron moved to adopt the proposed regulation, which was seconded by member Kester. There was no further discussion. The motion passed on a 10-1 vote, with members Collins, Fassler, Garrett, Hutchings, Kester, Lord, Scates, Vollendorf, Waldron and Weel voting in favor, and member Woodman voting against.
3. Consideration for adoption of the proposed regulation concerning continuances and cancellations of Board hearings, 8 AAC 45.074(b), which was approved by the Board in January.
 - No public comment was received on the proposed regulation.
 - Adjudications Chief Janel Wright reviewed the proposed regulation for the Board.
 - Board member Hutchings moved to adopt the proposed regulation, which was seconded by member Scates. There was no further discussion. The motion passed unanimously.
 4. Consideration for adoption of the proposed regulation concerning frivolous or unfair controversions, 8 AAC 45.182(d), which was approved by the Board in January.
 - No public comment was received on the proposed regulation.
 - Adjudications Chief Wright reviewed the proposed regulation for the Board.
 - Board member Kester moved to adopt the proposed regulation, which was seconded by member Weel. There was no further discussion. The motion passed unanimously.

Director Monagle chose to hold the next two proposed regulations, dealing with an unlawful change of physician, definition of a month, and reemployment benefits, over until Friday's Board meeting.

VIII. New Business

1. Approval of new Board designees.
 - New designees include Robert Vollmer (WC Hearing Officer I), Penny Helgeson (WC Officer I), and Carole Quam (WC Officer I).
 - Adjudications Chief Wright reviewed the duties of Board Designees for the Board.
 - Member Hutchings moved that the Board approve the amended list of Board designees, which was seconded by member Fassler. There was no additional discussion. The motion passed unanimously.
2. New case law review.
 - Hearing Officer Dee Ford reviewed the Alaska Supreme Court case *Lewis Walunga v Municipality of Anchorage*, 249 P.3d 1063 (April 15, 2011).

- Hearing Officer Bill Soule reviewed the Alaska Workers' Compensation Appeals Commission decision in Charles West v State of Alaska Benefit Guaranty Fund, decision no. 145, appeal no. 10-004 (January 20, 2011).
- Hearing Officer Linda Cerro reviewed the Alaska Workers' Compensation Appeals Commission decision in Cuno Hanson v City of Seward, decision no. 146, appeal no. 10-012 (January 21, 2011).
- Hearing Officer Robert Vollmer reviewed the Alaska Workers' Compensation Appeals Commission decision in Willard Harris v M-K Rivers, decision no. 147, appeal no. 09-0027 (March 4, 2011).
- Hearing Officer Bill Soule reviewed the Alaska Workers' Compensation Appeals Commission decision in Laura Colrud v Denny's of Alaska, decision no. 148, appeal no. 10-015 (March 10, 2011).
- Hearing Officer Marie Marx reviewed the Alaska Workers' Compensation Appeals Commission decision in Larry Winkelman v Wolverine Supply, Inc, decision no. 149, appeal no. 10-025 (March 21, 2011).
- Hearing Officer Dee Ford reviewed the Alaska Workers' Compensation Appeals Commission decision in Esther Runstrom v Alaska Native Medical Center, decision no. 150, appeal no. 10-001 (March 25, 2011).
- Hearing Officer Bill Soule reviewed the Alaska Workers' Compensation Board decision in Sandra Lindeke v Anchorage Grace Christian School, AWCB decision no. 11-0040 (April 8, 2011).

Lunch 12:00pm-1:31pm

3. General discussion.

- Director Monagle proposed the possibility of hosting listening sessions around the state, to afford stakeholders an opportunity to provide feedback to the Board and the Division on issues and/or concerns they have about the workers' compensation process. The Board was supportive of the idea. It was recommended to hold the sessions "after hours", when working people could attend.
- Director Monagle proposed implementing a process for obtaining feedback from parties after prehearings and/or hearing. Board members were generally not supportive of the idea, preferring the aforementioned town hall meeting approach.
- Regarding public comment on proposed regulations, several board members expressed they prefer to see the Division continue the process of having oral hearings in addition to written comments.
- Director Monagle spoke about the current status on the negotiations concerning the Department's lease renewal at Eagle Street in Anchorage.

4. Proposal to approve a new regulation concerning the definition of “previously rehabilitated”, 8 AAC 45.900(j).
 - Adjudications Chief Wright reviewed the proposed regulation for the Board.
 - A motion to approve was made by member Collins, and was seconded by member Waldron. After extensive discussion by the Board the motion passed on a 10-1 vote, with members Collins, Fassler, Garrett, Hutchings, Kester, Lord, Scates, Vollendorf, Waldron and Weel voting in favor, and member Woodman voting against.
 - The proposed regulation will go out to public comment and come back before the Board at their October meeting for final adoption.
5. Proposal to approve a new regulation concerning the filing of physician reports, 8 AAC 45.086.
 - Director Monagle and Adjudications Chief Wright reviewed the proposed regulation for the Board.
 - A motion to approve was made by member Weel, and was seconded by member Hutchings. After discussion by the Board, member Weel made a subsidiary motion to change the language in 8 AAC 45.086(a) to read, “....a report prescribed by the Board which includes the following...” The motion was seconded by member Weel. There was no additional discussion on the subsidiary motion, which passed unanimously. The vote on the main motion to approve the proposed regulation passed unanimously.
 - The proposed regulation will go out to public comment and come back before the Board at their October meeting for final adoption.

Break 2:48pm-4:17pm

6. Director Monagle proposed several regulatory projects for consideration.
 - The Director proposed regulations be approved to allow WC Hearing Officers to adjudicate procedural, discovery, and stipulated matters without a panel of the Board, as authorized under AS 23.30.005(h). The Board discussed the merits of the proposal. The Board did not object to the proposal.
 - The Director proposed amending 8 AAC 45.138 to change the process by which cost-of-living adjustments are administered. The current process costs the Division anywhere from \$20,000 - \$75,000 to produce. The concept would be to annually identify eligible vendors that employers may use, who would then pay for those services directly. The Board discussed the merits of the proposal. The Board did not object to the concept, but opined that the Board limit its vendor selection so that insurance companies don't “shop around” for the lowest COLA rate.
 - The Director proposed regulations be approved adopting CMS guidelines for payment of medical charges. The Board discussed the merits of the proposal. The Board did not object to the proposal.

IX. Public Comment Period

Nobody appeared to provide public comment.

Meeting Adjourned 4:57pm

Friday, May 13, 2011

I. Call to order

Director Monagle resumed the Board meeting at 9:06 am on Friday, May 13, 2011 in Anchorage, Alaska. The following Board members were present:

Brad Austin	Jeffrey Bizzarro	Chuck Collins	James Fassler
John Garrett	Linda Hutchings	David Kester	Krista Lord
David Robinson	Arylis Scates	Patricia Vollendorf	Robert Weel
Zeb Woodman			

II. Old Business from Previous Meeting (continued)

1. Consideration for adoption of the proposed regulation concerning an unlawful change of physician, 8 AAC 45.082(b) and 8 AAC 45.082(c), and definition of a month, 8 AAC 45.082(l).

- Motion to adopt was made by member Hutchings, and seconded by member Kester.
- The Board reviewed public comment received on 8 AAC 45.082(b) and (c). There was no public comment received on 8 AAC 45.082(l).
- After discussion by the Board, the motion passed on a 10-3 vote, with members Austin, Bizzarro, Collins, Hutchings, Kester, Lord, Robinson, Scates, Vollendorf, and Weel voting in favor, and members Fassler, Garrett, and Woodman voting against.

2. Consideration for adoption of the proposed regulations concerning reemployment benefits, 8 AAC 45.510-.550. Because of the complexity of the proposed regulations, the Board addressed each section separately.

- Repeal and readoption of 8 AAC 45.510. Request for reemployment benefits eligibility evaluation.
 - Motion to adopt was made by member Hutchings, and seconded by member Fassler.
 - The Board reviewed public comments received.
 - After discussion, member Hutchings made a subsidiary motion to amend the proposed regulations to incorporate the marked-up changes recommended by the Division. The changes were not considered to be substantive. The motion was seconded by member Fassler. The subsidiary motion was approved on a 10-0 vote, with members Collins, Fassler, Hutchings, Kester, Lord, Robinson, Scates, Vollendorf, Weel,

and Woodman voting in favor, and members Austin, Bizzarro, and Garrett abstaining.

- After further discussion, the vote on the main motion to adopt 8 AAC 45.510 failed on a 7-5 vote, with members Austin, Collins, Hutchings, Kester, Lord, Vollendorf, and Weel voting in favor, members Bizzarro, Fassler, Garrett, Scates, and Woodman voting against, and member Robinson abstaining.
- Repeal of Section 8 AAC 45.520.
 - Motion to adopt was made by member Kester, and seconded by member Weel.
 - The Board reviewed public comments received.
 - After discussion, the motion carried unanimously.

Break 10:15am-10:36am

- Reconsideration of repeal and readoption of 8 AAC 45.510. Request for reemployment benefits eligibility evaluation.
 - Motion to reconsider the motion to repeal and readopt 8 AAC 45.510 was made by member Scates, and seconded by member Hutchings.
 - After discussion, the motion carried on a 7-4 vote, with members Austin, Collins, Hutchings, Kester, Lord, Vollendorf, and Weel voting in favor, members Bizzarro, Garrett, Robinson, and Woodman voting against, and members Fassler and Scates abstaining.
 - Motion to adopt 8 AAC 45.510 was made by member Hutchings, and seconded by member Weel.
 - The Board reviewed public comments received.
 - After discussion, the motion was approved on a 12-0 vote, with member Woodman abstaining.
- Adding Section 8 AAC 45.522. Ordering an eligibility evaluation without a request.
 - Motion to adopt 8 AAC 45.522 was made by member Weel, and seconded by member Hutchings.
 - The Board reviewed public comments received.
 - After discussion, member Weel made a subsidiary motion to amend the proposed regulations to incorporate the marked-up changes recommended by the Division. The changes were not considered to be substantive. The motion was seconded by member Hutchings. The subsidiary motion was approved by a 13-0 unanimous vote.
 - After further discussion, the vote on the main motion to adopt 8 AAC 45.522, as amended, was approved by a 13-0 unanimous vote.

Lunch 11:43am-1:04pm

3. Proposal to adopt amendments to 8 AAC 45.082(b)(4)(b) as adopted earlier and 8 AAC 45.082(c), to address typographical errors and statutory reference.
 - Motion to adopt was made by member Bizzaro, and seconded by member Weel.
 - After discussion, the motion carried unanimously.
4. Resumption of rehabilitation regulations.
 - Proposal to repeal and readopt 8 AAC 45.525. Reemployment benefit eligibility evaluations.
 - Motion to adopt 8 AAC 45.522 was made by member Hutchings, and seconded by member Weel.
 - The Board reviewed public comments received.
 - After discussion, member Hutchings made a subsidiary motion to amend the proposed regulations to incorporate the marked-up changes recommended by the Division. The changes were not considered to be substantive. The motion was seconded by member Weel. The subsidiary motion was approved by a 13-0 unanimous vote.
 - After further discussion, the vote on the main motion to repeal and readopt 8 AAC 45.525, as amended, was approved by a 13-0 unanimous vote.
 - Proposal to adopt an amendment to 8 AAC 45.525(b) and .530(c).
Determination on Eligibility for Reemployment benefits.
 - Motion to adopt 8 AAC 45.522 was made by member Kester, and seconded by member Weel.
 - The Board reviewed public comments received.
 - After discussion, member Kester made a subsidiary motion to amend the proposed regulations to incorporate the marked-up changes recommended by the Division. The changes were not considered to be substantive. The motion was seconded by member Weel. After extensive discussion, the subsidiary motion was approved by a 13-0 unanimous vote.
 - After further discussion, the vote on the main motion to adopt 8 AAC 45.530(b) and 8 AAC 45.530(c), as amended, was approved by a 13-0 unanimous vote.
 - Proposal to repeal and readopt 8 AAC 45.535. Election of either a job dislocation benefit or a rehabilitation specialist.
 - Motion to repeal and readopt 8 AAC 45.535 was made by member Hutchings, and seconded by member Collins.
 - The Board reviewed public comments received.
 - After discussion, motion was approved by a 12-0 unanimous vote, with member Woodman abstaining.

- Proposal to adopt an amendment to 8 AAC 45.542(a). Change of rehabilitation specialist.
 - Motion to adopt the amendment to 8 AAC 45.542(a) was made by member Hutchings, and seconded by member Weel.
 - The Board reviewed public comments received.
 - After discussion, member Hutchings made a subsidiary motion to amend the proposed regulations to incorporate the marked-up changes recommended by the Division. The changes were not considered to be substantive. The motion was seconded by member Weel. After discussion, the subsidiary motion was approved by a 12-0 unanimous vote, with member Woodman abstaining.
 - After further discussion, the vote on the main motion to adopt the amendment to 8 AAC 45.542(a), as amended, was approved by a 13-0 unanimous vote.
- Proposal to adopt an amendment to 8 AAC 45.550(a) and .550(b).
Reemployment plans.
 - Motion to adopt the amendment to 8 AAC 45.550(a) and 8 AAC 45.550(b) was made by member Kester, and seconded by member Hutchings.
 - The Board reviewed public comments received.
 - After discussion, motion was approved by a 12-0 unanimous vote, with member Robinson abstaining.

Meeting Adjourned 2:39pm