

Tennessee Advisory Council on Workers' Compensation
MINUTES
February 27, 2014, 1:30 p.m. CST
Legislative Plaza, Room 30
301 Sixth Avenue North
Nashville, Tennessee

Members present:

Voting Members

Chair Christy Allen, Assistant State Treasurer for Legal, Compliance and Audit

Kerry Dove

J. Anthony Farmer

Bob Pitts

Gary Selvy

Nonvoting Members

Paula Claytore via telephone

Sandy Fletchall via telephone

Bruce Fox via telephone

Dr. Keith Graves

John Harris via telephone

Abbie Hudgens

Lynn Vo Lawyer

Jerry Mayo

Gregg Ramos

Mike Shinnick

Lynn Schroeder, Administrator

Chairman Allen called the meeting to order at 1:33 p.m. and proceeded to the first order of business, item two of the agenda, and asked Ms. Schroeder to call the roll, after which she declared that a **quorum was present**.

Chairman Allen proceeded to item three on the agenda, the approval of the minutes. A **motion** to approve the minutes of the February 6, 2014 meeting was made by Mr. Kerry, **seconded** by Mr. Pitts. A voice vote was taken, the **motion passed** and the minutes were approved.

Under new business, the Chair called **House Joint Resolution 0647** (Eldridge). Presentation was made to Council Member Mr. Jerry Lee by Representative Pody, Vice-Chair of the Consumer and Human Resources Committee. Representative Pody read the resolution, which included all 99 members of the House, into the record recognizing Mr. Lee for his invaluable service to the State of Tennessee and to the Advisory Council on Workers' Compensation. Representative Pody stated ". . . we pause to thank these citizens who devote their time and talents to the State in their fields of expertise to assist the legislature, whereas, Jerry Lee is one of those citizens." Representative Pody then presented Mr. Lee with the resolution signed by Chairman Jimmy Eldridge, Speaker of the House, Beth Harwell, Speaker of the Senate, Ron Ramsey, and Governor

Bill Haslam, indicating that it was an honor to give it to Mr. Lee. Mr. Lee thanked Representative Pody, stated that it had been “. . . an honor and privilege to serve the Council as a representative of the employees at a time when there were a lot of changes coming down the pike.” Chairman Allen thanked Mr. Lee for his service, thanked him on behalf of the Treasurer as well, then recognized Mr. Pitts for comment. Mr. Pitts commented to Mr. Lee that the resolution had been supported by the entire council and that, on behalf of the Council, they enjoyed the relationship they had with him and, that in their respective jobs, “. . . not too many people say nice things about us, but every one of the good things was summarized in the “whereas” in the final resolution.” He then personally thanked Mr. Lee for his service.

Chairman Allen called the next item on the revised agenda, that being **HB1786-SB2088 with amendment** (Pody/Beavers), recognized Representative Mark Pody to present as the sponsor and further asked him to describe the posture of the bill since there was an amendment that may not have been considered to date. Rep. Pody explained that the bill would be heard the next week and that he wanted to accomplish two things with the bill: codify the language concerning the ombudsman so that injured workers would have assistance if they do not have an attorney representing them; and change the appointment of Appeals Judges from the Governor to appointment on a rotating basis among the Governor , the Speaker of the Senate and the Speaker of the House upon the ending of the first terms forward.

Chairman Allen thanked Representative Pody for his explanation and called for any comments first from the floor, then the Council members and recognized Mr. Pitts. Mr. Pitts asked the representative whether the language for the amendment was intended to clean up the language of the original bill. Rep. Pody responded in the affirmative. Mr. Pitts then clarified that the amendment was moving along with the bill. Mr. Pitts continued to share that his belief was that administrative judges within a division of the state are different from those in a court system and the appointment process in this reform effort should produce judges that conform to the system. Accordingly, he believed the appointment powers should remain in the hands of the Governor. Consequently, Mr. Pitts **moved** that the Council should oppose this bill unless that provision is removed. He indicated that he would like the record to show what his explanation was and why he felt that portion was bad policy. The motion was **seconded** by Mr. Dove. The vote resulted in three abstentions, so the bill went out with **no recommendation, but comments would be forwarded to the Committee**. Chairman Allen thanked Representative Pody for his presentation. Representative Pody thanked the members of the Council and expressed his appreciation of their service. Mr. Pitts expressed appreciation to Rep. Pody as well.

Chairman Allen called the next item on the revised agenda, that being **HB1440-SB1645** (McCormick/Norris) which was presented by Josh Baker, Administrative Attorney & Legislative Liaison, Tennessee Division of Workers’ Compensation. The Chair welcomed Mr. Baker who started with a brief summary. He explained that the proposed legislation corrects non-conformity of language and processes that exist in the code following the passage of Public Chapter 289 and public Chapter 282. Additionally, the legislation updates T.C.A. §50-6-242. Finally, the bill will change the procedure for assessing penalties in uninsured employer cases to bring them into alignment with other Divisional penalty assessment processes. It will take it from a pre-due process procedure to a post-due process procedure.

Mr. Baker went through the proposed bill section by section. He explained that Section 1 provides a definition of specialty practice group. Section 2 clarifies that limited liability companies will continue to be treated similar to a partnership for purposes of exemptions. Section 3 concerns penalties collected by the Division being used to offset administration costs. Section 4 concerns medical billing disputes by the medical payment committee and provides that they only apply to those procedures occurring as of July 1, 2014. Section 5 provides the procedure for an employee to acquire a second opinion on surgery or diagnosis if no panel is provided by the employer. Section 6 provides that MMI for mental injuries with a physical component is presumed to be whenever active medical treatment ends. Section 7 updates § 50-6-242, and Section 8 corrects 50-6-242(b) to ensure that injuries before the effective date of July 1, 2014 are dealt with under the proper process. Section 9 is the civil penalty assessment,, going from a pre due process to a post due process procedure. Sections 10 through 12 are language changes only to ensure conformity with Public Chapter 289. Section 13 is the enacting clause, which has an effective date of July 1, 2014 for all items except Section 9 penalty procedure, which will go into effect as soon as the bill is signed into law.

Chairman Allen asked for comments from the audience and, seeing none, turned it over to discussion by the Council. Mr. Tony Farmer asked if Mr. Baker was going to comment on Section 7. Section 7 refers to T.C.A. §50-6-242 and allows a court to provide additional benefits in cases where certain thresholds are met. The thresholds now are: 1) over 55; 2) cannot read or write on a grade 8 level or there is no GED or high school diploma; 3) the injured worker has no reasonably transferrable job skills in their disabled condition; and 4) the injured worker has no reasonable employment opportunities available locally. Presently, if an injured worker meets 3 of 4 of those criteria (usually provided by a vocational disability expert), they are entitled to extended benefits.

Instead of the four present criteria, the change in the proposed law provides for different criteria. If an injured worker cannot find employment at 66 2/3% of their pre-injury wage (rather than the present 100%) and if the authorized treating physician certifies that the injured employee can never go back to performing their pre-injury occupation, an age of 40, the same education factors as in the present law. If all of those criteria are met and a judge deems an inequality exists with the award as formed, the judge could fashion a remedy up to 450 weeks to the extent of the PPD.

Chairman Allen recognized Mr. Tony Farmer who inquired if the Division of Workers' Compensation had drafted this bill to which Mr. Baker replied in the affirmative. He further inquired as to the logic behind the 66 2/3% being proposed. Mr. Baker indicated that, rather than the 100% figure previously used, the division was looking for a figure that would be considered a significant reduction to one's income and determined that 1/3 of a person's income would be a proper figure.

Mr. Farmer inquired if this was a compromise number and noted that the proposed standard of being unable to return to 2/3 of what one was earning is a significant change from the long-standing standard of being unable to return to former employment. Mr. Farmer asked whether there was a rational basis to the change and whether it was based on statistical or empirical information. Mr. Baker replied that there were no facts or study that it was based upon, but that it was a logical assumption.

Mr. Gregg Ramos was recognized by Chairman Allen and inquired as to what had occurred in the recent past that motivated the need for the initial threshold to be lowered from 100% of wages to 2/3 of wages. He expressed concern and indicated that one of the frustrations he has is when legislation is proposed to provide a solution to a problem that may not exist.

Mr. Farmer made a further point that the same condition of unemployment exists for the injured worker whether they are making 67% or 99% of their prior wage and that the new proposed figure of 66 2/3 makes eligibility smaller and does not limit based on workers who have lost the ability to perform their former employment.

Chairman Allen asked for further comments from the council members and recognized Mr. Pitts.

Mr. Pitts pointed out that there are issues with this new proposed legislation causing consternation from various parties and that to him it was “. . . inconceivable that a group of intelligent people can't get their arms around . . . and cannot properly define it to where there is a confidence level . . . and try to reasonably deal with the benefit level.” Mr. Pitts moved that the bill be reported out with recommendation, but showing the Council's concerns. Additionally, he requested that it be expressed to the legislature that the Advisory Council would like to see this bill reviewed before the next legislative session as well as the subsequent session.

Chairman Allen indicated that Mr. Pitts had made a motion to move the bill out with recommendation and detailing the Council's concerns. Mr. Selvy seconded the motion. Chairman Allen inquired if there was further discussion by the Council and recognized Mr. Selvy who thanked Abbie Hudgens, fellow Council member and Administrator of the Division of Workers' Compensation, for all of her work and patience and accommodation to all parties in arriving at this bill. He commented that the bill's intention was good and, although he agreed motion to move out and into the legislative debate process, that the small business community had concerns specific to section 7 in that it is problematic.

Mr. Pitts requested a withdrawal and rephrasing of his motion to move the bill out indicating that there is satisfaction with all sections of the bill except section 7. He made a **revised motion** for recommendation including section 7, with the proviso that the concerns expressed by the council are specifically shared with the members of the legislature.

Chairman Allen announced that Mr. Selvy had **seconded the revised Motion** and recognized Mr. Farmer for comment.

Mr. Farmer expressed his personal concern, on behalf of the voting members representing employees in the State of Tennessee, that since he had been a member of the Advisory Council on the employee side for 16 years, this was the first time the employees were excluded from any discussions or negotiations or preparations for legislation. He pointed out that a year ago, when the Governor's 2013 Reform Act was presented to the Advisory Council after extended discussions, the employee voting members, at his recommendation, voted in favor of the 2013 Reform Act because it had been represented to him that this very issue and others would be worked on jointly by all interested parties.

He stated that he did not recognize the validity of a process of developing legislation to protect injured workers that excludes the injured workers' representatives and that not one voting member of the council had been included in those discussions or negotiations since June of 2013. He explained that he had worked with three Governors' administrations, had worked as a member of this Council as an employee representative on every major workers' compensation reform that has taken place and employee representatives have participated in each of those reforms until this year and it was a serious concern of employee representatives who, in fact, represent injured workers.

He indicated that there was a term used frequently in the workers compensation forums referring to the parties of interest or those people most affected by workers' compensation changes, and it was troublesome that the preparation and negotiation of legislation this important, would not include representatives of the injured worker. He asked that the legislature acknowledge the concerns that the employee representatives have that they have been excluded from the process of negotiation of this legislation.

Chairman Allen thanked Mr. Farmer for his comments and recognized Mr. Dove.

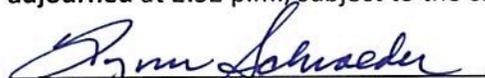
Mr. Dove indicated that Section 7 was problematic for some people he represents, but he was appreciative for all of the work that was done and he thanked Abbie Hudgens and her staff.

Chairman Allen called for further comments from the Council members on the motion which had been seconded. Roll resulted in a **unanimous vote and the revised motion was adopted.**

Chairman Allen moved to the next item on the agenda, that being **HB2105-SB2251** with amendment (Haynes/Massey). Ms. Schroeder presented the language of the bill with the amendment. First, leased operators/owners must show that they have a contractual relationship with the employer and are covered under their workers' compensation insurance before payment of any workers' compensation claim may be permitted. Second, the venue for any dispute regarding such contract will be in the Chancery Court in either the county where the contract was established or the county where the carrier's principal place of business is located. Mr. Baker clarified that only the contractual dispute would be heard by the Chancery Court, while anything else would be in the Court of Workers' Compensation Claims.

Mr. Pitts made a **motion that the bill be recommended.** He indicated that it was his understanding that, as amended, it was acceptable to all parties and the issue was where the dispute regarding the contract would be heard. The motion was **seconded.** Roll resulted in a **unanimous vote to recommend for approval.**

Chairman Allen called for any other business to come before the Council, and, seeing none, a **motion to adjourn** was made by Mr. Dove, **seconded** by Mr. Selvy, and the Council was **adjourned** at 2:32 p.m., subject to the call of the chair.


Lynn Schroeder, Administrator
Advisory Council on Workers'
Compensation


Christy Allen, Assistant State Treasurer
Legal, Compliance and Audit
Chairman Designee, Advisory Council on
Workers' Compensation