

**WORKERS' COMPENSATION ADVISORY COUNCIL  
MINUTES ~ DECEMBER 14, 2006 MEETING [1:00 P.M.]  
710 JAMES ROBERTSON PARKWAY  
HEARING ROOM, FIRST FLOOR  
ANDREW JOHNSON TOWER  
NASHVILLE, TENNESSEE**

The meeting was called to order at 1:05 p.m. by Mr. Bob Pitts, at the request of Mr. Dale Sims, State Treasurer. A quorum of voting members was present; therefore it was not necessary to conduct the meeting electronically. Mr. Sims arrived shortly after 1:00 p.m. and assumed the duties of the chair. The following lists each member of the Advisory Council and indicates whether they attended the meeting:

**\*CHAIR:** Dale Sims, State Treasurer - Present

**\*VOTING MEMBERS:**

Employee Representatives

- > Jack A. Gatlin - Present
- > Jerry Lee - Present
- > Othal Smith, Jr. - Present

Employer Representatives

- > Ronnie Hart - Present
- > Thomas Hayes - Present
- > Bob Pitts - Present

**\*NONVOTING MEMBERS:**

- Kitty Boyte [TDLA representative] - Arrived at approximately 2:30 p.m.
- Tony Farmer [TTLA representative] - Present
- Kenny McBride [local governments representative] - Present
- Jerry Mayo [insurance companies representative] - Absent
- Sam Murrell, MD [health care providers representative -TMA] - Present
- A. Gregory Ramos [TBA representative] - Present
- David Stout [health care providers representative-THA] - Absent

**\*EX OFFICIO MEMBERS**

- Senator Joe Haynes - Absent
- Representative Jere Hargrove - Absent
- Commissioner Paula Flowers - Absent
- \*Designee, Deputy Commissioner John F. Morris - Present
- Commissioner Jim Neeley - Present

## 1. APPROVAL OF MINUTES

Prior to the meeting, the draft minutes for the September 5, 2006 and the October 5, 2006 meetings had been provided to the members for review. Ms. Hughes advised that no corrections or changes had been suggested by any member.

**ACTION:** Both sets of minutes were unanimously approved by the voting members.

## 2. CONSIDERATION OF DRAFT "SIGNIFICANT COURT DECISIONS REPORT" & APPROVAL FOR PUBLICATION

The members of the Advisory Council had been provided with a draft copy of the court decisions report prior to the meeting. Linda Hughes, Executive Director, summarized the cases included in the report and members were afforded the opportunity to ask questions. Mr. Farmer suggested the addition of the case in which the Supreme Court held the social security offset was applicable to death benefits.

**ACTION:** The voting members of the Advisory Council unanimously approved the court decision report, with the addition of the case suggested by Mr. Farmer, to be sent to the general assembly as required by statute.

## 3. PRESENTATION - IMPLEMENTATION OF LEGISLATION re: RECONSIDERATION OF SPECIALISTS' ORDERS

Mr. Mark Finks, Department of Labor and Workforce Development, explained the law became effective on May 26, 2006, and he presented the following statistics from the effective date through November 30, 2006:

<b>Total No. Of Requests for Reconsideration:</b>	192
Pending	14
Untimely Filed	24
Withdrawn by Requesting Party	12
Total Orders Issued	142

<b>Of those with Orders Issued:</b>	<b>Number</b>	<b>Percentage</b>
Affirm	105	74%
Affirm in Part & Modify in Part	19	13.4%
Reversal	4	2.8%
Remanded	14	9.8%

Mr. Fink's presentation included the following definitions applicable to the statistics reported:

**Affirm:** Reflects agreement by Administrator's Designee with decision reached by the Specialist.

**Affirm in Part & Modify in Part:** Reflects partial agreement by the Administrator's Designee with decision reached by the Specialist and partial change in the Specialist's original order.

**Reversal:** Reflects a conclusion by the Administrator's Designee different from the decision reached by the Specialist when the WC law is applied to all of the facts in the case.

**Remanded:** Reflects the need for the Specialist to follow-up and obtain additional information usually either from a doctor or from the Parties themselves to be considered in the decision-making process.

The members of the Advisory Council asked questions of Mr. Finks and other department personnel. Members of the Advisory Council expressed concerns regarding the remanding of orders back to the original specialist instead of the Administrator's Designee entering an order on the information available. In addition, it became clear from the statements of department personnel that the department is permitting the parties to submit additional information to the Administrator's Designee to be considered. Members of the Council expressed concern about this process as the intent of the 2006 legislation was to create a mechanism by which the Administrator of Workers' Compensation or the Administrator's Designee reviewed the information available to the specialist at the time the order was issued and to determine whether - based on the information- the specialist was correct in the order issued.

It also became clear during the discussions that the department specialists try to get the parties to come to an agreement as to whether the employee is entitled to workers' compensation benefits. The procedure followed by the department is not to issue an order if the employer/insurer

agrees to provide the benefits to the employee. Concern was expressed that without an order issued by a specialist an employee has nothing with which to pursue penalties against an employer if the employer/insurer stops providing the benefits.

**ACTION: No specific action was required to be taken by the members regarding this agenda item.**

### 3. PRESENTATION - LEGAL COMMUNITY CONCERNS

Mr. Tony Farmer began the discussion of this agenda item. He indicated his primary concern was that the specialists needed more education and training, both as to the Tennessee workers' compensation law and medical issues that relate to workers' compensation issues. Mr. Farmer distributed a document to the members that summarized concerns received from members of the Tennessee bar. (A copy of the document is attached to the minutes.)

Mr. Gregg Ramos indicted frustration with the policies of the department in not permitting continuances of scheduled benefit review conferences. Ms. Kitty Boyte arrived at the meeting as this agenda item was being concluded; she expressed her confidence that Mr. Farmer and Mr. Ramos had probably covered all the areas she would have covered.

Commissioner Neeley expressed his disagreement with the concerns expressed by the attorneys.

**ACTION: No specific action was required to be taken by the members regarding this agenda item.**

### 4. DISCUSSION OF POSSIBLE LEGISLATION

Mr. Othal Smith discussed the possibility of legislation to permit "Collectively Bargained Workers' Compensation Programs" in Tennessee. He explained this had been successfully implemented in California and he felt a pilot program in Tennessee that included selected unions and employers would be beneficial.

Mr. Farmer distributed a proposal to correct the Supreme Court's decision in *Wausau Ins. Co. V. Dorsett*, 172 S.W.3d 172 (Tenn. 2005) by changing the definition of "maximum total benefit" to the initial legislative intent.

**ACTION: No specific action was required to be taken by the members regarding this agenda item.**

Chairman Sims declared the meeting adjourned at 3:30 p.m.