

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

DECEMBER 1, 2010

Minutes of the meeting of the Workers' Compensation Industrial Council held on Wednesday, December 1, 2010, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog, Vice-Chairman
Bill Chambers
James Dissen
Dan Marshall
Delegate Nancy Guthrie

1. Call to Order

Chairman Bill Dean called the meeting to order at 1:00 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes were sent out from the last meeting. Has everyone had a chance to read the previous meeting minutes? Is there a motion to approve the minutes as stated?

Dan Marshall made the motion to approve the minutes from the October 21, 2010, meeting. The motion was seconded by James Dissen and passed unanimously.

3. Office of Judges Report – Rebecca Roush, Chief Administrative Law Judge

Judge Rebecca Roush: Good afternoon, Mr. Chairman and members of the Council. I wanted to give you a brief update. Before you is the report for October – we combined October and November. We actually don't have the November statistics available yet since the month was closed yesterday.

For the month of October we acknowledged 458 protests, which seems to be a slight tick upward. We think we are going to meet our projected goal of 5,000 protests

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for the calendar year 2010. Other than that, the statistics remain pretty much unchanged from what they are from month to month. I am happy to take any questions you may have on the report.

Chairman Dean: Mr. Marshall, do you have any questions?

Dan Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No.

Chairman Dean: Mr. Dissen?

James Dissen: No.

Chairman Dean: Mr. Chambers?

Bill Chambers: No, sir.

Judge Roush: Just one more thing – what we've been working on in the Office of Judges this past month. We've had a lot of work to conform to – the regular rules of our procedure that govern the state. We've been working on the employee performance appraisals for all of our employees, as well as the recent job contact questionnaire which is something that is required of all the employees. That has taken some amount of time in our shop. And basically that's what we've been working during the past month.

Chairman Dean: Thank you.

4. General Public Comments

Chairman Dean: Does anybody from the general public have a comment today?

5. Old Business

Chairman Dean: Does anybody from the Industrial Council have anything to bring up under old business?

6. New Business

Chairman Dean: Does anybody from the Industrial Council have anything to bring up under new business? Ryan, do you have anything?

Ryan Sims (Associate Counsel, OIC): No, sir.

Chairman Dean: I have a question. I just want to hear an opinion on this. Say we've got "Bill Dean Construction," and an employee gets hurt. I don't want him to go on workers' compensation. I want to continue to pay him to do whatever. He's got a broken hand, let's say, and I refuse to give him a claim number. What does that employee need to do? How would you handle that?

Mr. Sims: You're saying he is being told by the employer, "We won't give you a workers' comp. . ."

Chairman Dean: We won't give you a claim number to go to the doctor. He goes to the doctor on his own and they said, "We need a claim number since you are telling us that you were hurt on the job."

Mr. Sims: Is it a self-insured employer? It doesn't matter either way.

Chairman Dean: I won't say that. It's a big reputable company. I'm using "Bill Dean Construction" because I don't want anybody calling. . .It's a big company [contractor] with a good reputation, works a lot in this area. But they are telling him, "We're not going to give you a workers' comp number. We want you to continue to come to work and we'll pay you, but we won't give you a workers' comp number." What does that employee do? Who does he turn to? And he's got a fractured hand, so he does need medical attention.

Mr. Sims: The first thing I would advise him to do is to contact the OIC Consumer Services Division and they would be able to guide him – who his employer's carrier is, if they're insured; or if they are self-insured they shouldn't be doing this; and he could lodge a very significant complaint against them in that situation. The second remedy he would have under our scheme would be to file for an "expedited hearing." There is a scheme under the Office of Judges where. . .to some degree I would defer to Becky Roush on this. That's essentially a denial of benefits. They haven't given you a claim number. But I think there is a scheme to get an expedited hearing before the Office of Judges in that situation.

Judge Roush: Obviously he has the right to file a claim, file an application for benefits with the employer. I don't believe the employer has the right to unilaterally reject it, which I think would be illegal under the workers' compensation statute. It is completely improper and I am sure subject to numerous fines by this particular agency. The employer is required to file a poster or some kind of notice of who their workers' compensation carrier is with the Human Resource Department. I would encourage them to file an application, get the form. OIC has them on their web page. BrickStreet has them on their web page. All the forms are similar, and they are approved by the agency. Discouraging a claimant from filing an application is illegal and likely fraud under our statute.

Chairman Dean: It does go on every day. But a person who needs medical attention, the average person doesn't know who to turn to or where to go. And I had a person ask me this today, "Who would this guy go to?" I said, "I could give you a guess, but I'm not going to answer that until I ask somebody."

Judge Roush: Ryan is correct that the Consumer Services Division downstairs regularly fields questions such as these. They could walk them through the steps on how to file an application.

Chairman Dean: I was just curious as to where this person would go. Like I said, the average construction worker – I'm not saying they're not intelligent – but they don't know who to turn to and a lot of them may not know how to use a computer.

Mr. Sims: We have a "sub unit" of our Consumer Services Division that is solely dedicated in helping comp claimants identify whether their employer is insured or self-insured and where to file the claim, because every carrier does have a slightly different application. They all have to have them, but they each have a slightly different one. We have a unit that is solely dedicated in talking to the claimant, "Who is your employer? Let me look this up." They get on our system and find out who their carrier is and help guide them [claimants] in the right direction; give them the application they need to fill out.

Chairman Dean: I just wanted to ask the question. I wouldn't try to answer it without asking someone first. Thank you, Judge Roush and Ryan. Does anybody else have anything under new business that they would like to bring up?

7. Next Meeting

Chairman Dean: The next meeting is scheduled for Wednesday, January 12, 2011, at 1:00 p.m. at the Offices of the Insurance Commissioner. Does that work for everyone?

8. Adjourn

Chairman Dean: Is there a motion for adjournment?

Mr. Hartsog made the motion to adjourn. The motion was seconded by Mr. Marshall and passed unanimously.

There being no further business the meeting adjourned at 1:14 p.m.