

Management Labor Advisory Committee
Thursday, December 2, 2004
Labor and Industries Building, Conference Room 260

Committee Members Present:

Ken Hector, CNF Service Company, Portland, OR
Lon Holston, AFSCME, Grants Pass, OR
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR
Sheri Sundstrom, Hoffman Construction Company, Portland, OR
Lisa Trussell, Associated Oregon Industries, Salem, OR
Brad Witt, Oregon AFL-CIO, Salem, OR

Committee Members Excused:

Diane Janzen, NorPac Foods, Inc., Lake Oswego, OR
J.L. Wilson, NFIB, Oregon Chapter, Salem, OR

Staff Present:

Nancy Bieber, Workers' Compensation Division
Teri Bledsoe, Director's Office
Jerry Managhan, Workers' Compensation Division
Mike Manley, Information Management Division
Jan Miller, Workers' Compensation Division
Meg Reinhold, Workers' Compensation Division
Lou Savage, Director's Office
John Shilts, Workers' Compensation Division
Cory Streisinger, Director's Office
Mike Taylor, Small Business Ombudsman
Travis Wall, Injured Worker Ombudsman

REVIEW MINUTES FROM MAY 26, 2004 AND SEPTEMBER 16, 2004 MEETINGS

Bob Shiprack called the Management Labor Advisory Committee meeting to order at 1:04 p.m.

John Kirkpatrick made the motion and Sheri Sundstrom seconded to accept the minutes for the May 26, 2004 and September 16, 2004 meetings as submitted. A vote was taken the following voted aye on the motion: Ken Hector, Lon Holston, John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Lisa Trussell, and Brad Witt.

PTD SUBCOMMITTEE REPORT

The PTD Subcommittee recently met on November 30, 2004 and agreed upon recommendations for the full committee to consider.

John Shilts submitted a written report of the PTD Subcommittee recommendations. The following recommendations were made concerning the rescind process:

1. If an insurer rescinds permanent total disability benefits and the worker appeals, the insurer must continue to pay a worker their benefits until the reconsideration process with the director is completed or a hearing is held by the Worker's Compensation Board Hearings Division and an order is issued upholding the rescinding of benefits. If the insurer's rescind prevails at either of these levels, the insurer is reimbursed by the Workers Benefit Fund for an overpayment.

Management Labor Advisory Committee Minutes

December 2, 2004

Page 2

2. A worker who has been in permanent total disability status for more than ten (10) years may not have benefits rescinded unless ordered by the Workers' Compensation Board Hearings Division. For these workers, insurers must issue a notice of closure rescinding benefits and request a hearing by the Workers' Compensation Board Hearings Division. The insurer must continue to pay benefits until an order is issued by the Hearings Division affirming the notice of closure. If the insurer prevails and benefits are rescinded, the insurer is reimbursed by the Workers Benefit Fund for an overpayment.
3. The worker must demonstrate material improvement in vocational or medical capacities during a reevaluation of their permanent total disability benefits in order for the insurer to determine that benefits can be rescinded.
4. Any medical or vocational evaluation used to justify a rescind must include an interview or examination of the worker where the evaluator personally observes the worker.
5. If a worker's permanent total disability status is rescinded by the insurer or an Administrative Law Judge (ALJ), they are automatically eligible for vocational assistance benefits per ORS 656.340.

The subcommittee recommends that the gainful employment threshold be based on:

The Federal Health and Human Services (HHS) poverty guidelines, based on family size.

Staff is still researching the subcommittee's request to define "material improvement" for option #3.

Staff also provided a draft of language of the proposed amendments for the committee to review. John Shilts reviewed with the committee the recommended proposed statutory changes to ORS 656.206, Section 1.

There was discussion of what claims these changes would apply to. The committee will consider an effective date for these new amendments.

John Kirkpatrick made the motion and it was seconded by Lon Holston to accept the PTD Subcommittee recommendation and to ask Legislative Counsel for language drafting. The vote was taken and the following voted aye: Ken Hector, Lon Holston, John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Lisa Trussell, and Brad Witt.

Ken Hector who served on the PTD Subcommittee wanted on the record that the PTD Subcommittee did not have option #2 available at their last meeting to review, but it makes the most sense.

VOC REHAB DISCUSSION

John Shilts explained to the committee there was some miscommunication between his office and Legislative Counsel which resulted in the initial draft of the bill not including one aspect of the concept recommended by the Voc Rehab Subcommittee and the full committee. A dash one amendment will be prepared.

WORKERS' COMPENSATION DIVISION IME STUDY REPORT

Jan Miller of the Workers' Compensation Division presented oral and written testimony to the committee regarding the IME Study Report provided.

Management Labor Advisory Committee Minutes

December 2, 2004

Page 3

Nathan Johnson, Research Analyst from Information Management Division, explained the methodology used for the survey. He assured the committee that the surveys were statistically valid.

Mike Clampitt, Disability Analyst with the Medical Arbitrator Program for Workers' Compensation Division, reviewed statistics from the written testimony.

Ken Hector expressed his appreciation for their work to all those involved with this study. There have been concerns brought forward to MLAC about the IME situation and now the committee has information to make substantive suggestions. It was recommended to move forward in a prompt fashion due to the legislative session starting in January 2005.

Action:

An IME Subcommittee was formed consisting of Lon Holston, Brad Witt, Ken Hector, and Sheri Sundstrom. The following IME Subcommittee meetings were scheduled:

- Tuesday, December 14, 2004, 1:00 p.m.
- Wednesday, December 15, 2004, 8:00 a.m.
- Thursday, January 6, 2005, 8:00 a.m.

WORKERS' COMPENSATION DIVISION – EVALUATION OF CLAIMS REPORTING

Meg Reinhold, Workers' Compensation Division, presented a review to the committee regarding SB 914 which was passed last session, requiring the Department to evaluate reporting claims to the Department. After gathering and considering the input of internal and external stakeholders, the Department's objective is to streamline reporting requirements, administrative overhead, and reduce paperwork, while preserving necessary or important data and information. Meg Reinhold submitted a written report detailing the Department's work.

WORKERS' COMPENSATION CASES

Mr. Krishna Balasubramani from the office of Sather Byerly and Holloway, LLP, presented to the committee proposed legislative changes in regards to hearing loss claims. Mr. Balasubramani requested the committee to review two Oregon Court of Appeals decisions.

A letter to MLAC from Krishna Balasubramani and Deborah Sather was submitted which detailed their request of MLAC. Also submitted from both Balasubramani and Sather was a written proposal for MLAC to consider.

PRESENTATION OF LEGISLATIVE CONCEPTS

■ *Oregon Trucking Association*

Bob Russell from the Oregon Trucking Associations (OTA) presented a legislative concept for MLAC to consider in regarding to whether owner operators are subject workers for workers' compensation purposes. There seems to be a lot of confusion in Oregon. In most situations, trucking owner operators meet the definition of independent contractor for state and federal income tax and unemployment taxation, however, the situation is far less clear regarding workers' compensation. The Workers' Compensation Division also submitted a bill and fiscal analysis.

This proposal was submitted to Legislative Counsel and draft language will be available sometime in January 2005. When draft language is available, it will be brought to MLAC for their review.

PUBLIC TESTIMONY

Dr. Joe Eusterman – Testified regarding a proposed legislative concept that was presented at the last MLAC meeting that would allow an MCO to refuse or terminate authorization of a PCP. Dr. Eusterman also submitted written testimony and he urged the committee to carefully assess this legislative concept.

Staff is not aware of the status of this legislative concept and those who were proposing it were to get language drafted and bring it back for MLAC to consider. MLAC has not taken a position on this concept at this time.

MISCELLANEOUS

Lisa Trussell had a question for the Workers' Compensation Board in regards to a situation surrounding when an Administrative Law Judge excuses themselves from a case and the reason why a rule is needed for this.

John McCullough, Presiding Administrative Law Judge for Workers' Compensation Board (WCB), was available to address Lisa Trussell's question. WCB recently conducted a hearing and received public comments and there is some disagreement as to if there is a need to make any change in this rule. This rule has been in effect for over 20 years.

Roger Pearson, Managing Attorney for WCB, who was the hearings officer for the hearing that was conducted, addressed MLAC regarding this situation. A petition was submitted to provide that an ALJ should be compelled to disclose the reason for excusing themselves from a hearing. Currently there is an internal management process followed and an ALJ can excuse themselves at any time. The case is then reassigned. With the internal process, the entity is identified and this information is provided to the docking section to ensure the ALJ is not assigned to future cases that would involve this entity. No details are received as to the reason for the conflict. At the recent hearing, it was apparent there were concerns about details being made available and the possible ramifications. WCB decided to deny this request for change and not proceed with the rulemaking process and an advisory committee will be created to address the concern about the rule.

This situation is of interest to a few MLAC members and they would like to be kept apprised of how it is addressed..

ADJOURNMENT

Meeting was adjourned at 3:23 p.m.