

Meeting Notes (Quorum Not Present)
Management-Labor Advisory Committee
Thursday, February 10, 2005
Labor and Industries Building, Conference Room 260

Committee Members Present:

Bob Shiprack, Oregon Building Trades Council, Tualatin, OR
J.L. Wilson, NFIB, Oregon Chapter, Salem, OR
Ken Hector, CNF Service Company, Portland, OR
Lisa Trussell, Associated Oregon Industries, Salem, OR
Diane Janzen, NorPac Foods, Inc., Lake Oswego, OR
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR

Committee Members Excused:

Brad Witt, Oregon AFL-CIO, Salem, OR
Lon Holston, AFSCME, Grants Pass, OR
Sheri Sundstrom, Hoffman Construction Company, Portland, OR
John Kirkpatrick, IUPAT District Council #5, Portland, OR

Staff Present:

Cory Streisinger, Director's Office
Lou Savage, Director's Office
Myrna Curzon, Director's Office
Maureen Bock, Workers' Compensation Board
John McCullough, Workers' Compensation Board
Roger Pearson, Workers' Compensation Board
John Shilts, Workers' Compensation Division
Jerry Managhan, Workers' Compensation Division
Travis Wall, Injured Worker Ombudsman
Kevin Willingham, Workers' Compensation Division
Jan Miller, Workers' Compensation Division

Approval of January 27, 2005 Minutes

Correction on pg 2 - correct spelling for Hasina Squires. Ken moved approval of Jan 27 minutes as corrected. The following members voted to approve the minutes as corrected: Ken Hector, Lisa Trussell, Mike O'Rourke, J.L. Wilson, and Bob Shiprack.

IME Subcommittee Report

Ken Hector gave the committee a report on testimony given to the Senate Commerce Committee. The IME recommendations will be put on the next agenda to discuss those items not yet finalized for full committee decision.

Agenda Change

JL Wilson recommended that HB 2408 and SB 386 be moved to the top of the agenda to accommodate testimony from insurers who have conflicts. In addition, SB 433 was removed

from the agenda since the committee voted on the concept on January 6th and the printed bill language is identical to the language as considered on January 6th.

HB 2408

Randy Elmer, Oregon Trial Lawyer's Association

HB 2408 is a resurrection of HB 3161 from the 2003 session. OTLA's desire is to continue to be a part of the discussion and is willing to work with the committee to find common ground between HB 2408 and SB 386.

Jerry Managhan and John Shilts, Workers' Compensation Division

WCD provided a written analysis to the committee and gave information on the changes that this bill would make. The written analysis is part of the permanent record.

Randy Elmer, offered additional explanation of what the bill does with respect to standard of review.

SB 386

John Shilts and Jerry Managhan, Workers' Compensation Division

WCD provided a written overview of the changes made by SB 386 as well as discussion items that may need to be considered by the committee dated February 10, 2005. The written overview is part of the record.

Chris Davie, SAIF Corporation

Mr. Davie provided written testimony to the committee. The testimony focused on the following areas that may be unresolved: 1) continued payment of benefits after PTD is rescinded, 2) rescissions after 10 years of benefit, 3) conditions for rescinding PTD awards 4) personal observation of worker 5) vocational benefits 6) definition of gainful employment. SAIF supports the concepts presented by MLAC but feels that there are issues that need to be cleaned up. Mr. Davie suggested a work group or possible draft amendments to be considered by the committee

Judy Johnson, Liberty NW

Ms. Johnson provided written testimony to the committee and focused her testimony on the definition of gainful employment. Liberty NW proposed that the committee use as an alternative the threshold as identified by Social Security law.

Linda Barno, Oregon Self Insurers Association

Presented written testimony to the committee regarding the following: definition of gainful employment, material improvement, medical/vocational examination, and vocational assistance.

Committee Discussion:

The committee discussed procedure for continued discussion of the PTD. The subcommittee will meet next week for a work group on this bill.

HB 2294

Chris Moore and Linh Vu, Oregon State Bar Workers' Compensation Executive Committee
Legislative Subcommittee

Mr. Moore testified regarding WCB procedures regarding jurisdiction in new or omitted condition claims. This bill is intended to clarify the law in those claims. In addition, the bill would allow appeal of Board's Own Motion decisions.

HB 2404

Randy Elmer and Chris Moore, Oregon Trial Lawyer's Association

Testified regarding due process that current reconsideration process does not allow. This bill would allow the non-medical testimony of both parties at the hearing. This bill was in contemplation of the hearings moving to the Workers' Compensation Board.

Linda Barno, Oregon Self Insurers Association

Presented written Testimony to the committee identifying changes that the bill would make and identifying support or opposition to each change identified.

Chuck Lundeen, Liberty NW

Mr. Lundeen, representing Liberty NW testified in support of opening the hearings to testimony from both employers and workers.

BH 2405

Randy Elmer and Chris Moore

Draft amendments were presented to the committee. The draft language was prepared with input from Chris Davie, SAIF Corporation. Would make a change that would have the insurer/Self-Insured Employer process the claim. A change to subsection 6 would make it clear that compensation would not be due and payable until the paying agent receives a report of a worsened condition.

HB 2406

Randy Elmer and Chris Moore

Re reimbursement of costs when claimant prevails. Mr. Moore suggested that this bill could resolve some of the problems with the IME situation with respect to bias of the physician.

Linda Barno

Testified that she feels current checks and balances are sufficient.

John Shilts, Workers' Compensation Division

This bill tries to extend the possibility that workers' fees and expenses would be paid for when there is litigation and the worker prevails.

Roger Pearson, Workers' Compensation Board

Provided a written analysis to the committee. The Board is not taking a position on the bill. If this bill were to prevail then the Board would prepare rules. When an ALJ makes a decision the ALJ would direct the carrier to pay. When there is a dispute on the fees and expenses then the matter could be appealed to the board.

SB 132

Marc Zolton, Bureau of Labor and Industries

Currently farm labor contractors are required to provide coverage but not required to provide proof of coverage. The bill would require proof of coverage.

John Shilts, Workers' Compensation Division

WCD provided a written analysis. As written the bill would require workers' compensation coverage for some workers who are currently not required to have coverage, i.e. farm labor contractors who are currently considered independent contractors. The intent as we understand it is not to require additional workers' compensation coverage. There may need to be a change in the language to accomplish that intent. WCD will work with BOLI on the language.

Public Testimony

Chuck Lundeen, Liberty NW

LNW currently has a concept at Leg Counsel that deals with the length of time that it takes for cases that go to litigation. Currently waiting 6-9 months to get these cases back on the docket. Would address 656.283. The currently statute does not address timeframe for a hearing to be brought back on the docket after being postponed. LNW is proposing a timeframe of 120 days to get the case back on the docket. Draft Language on the concept was presented to committee members.

Bob Shiprack asked if WCB collects data on why cases are postponed.

John McCullough, Presiding ALJ Workers' Compensation Board

WCB does not have data; however, the main reasons seen are incomplete case preparation and unavailability of attorneys or witnesses.

Dr. Joseph Eusterman, Western Occupational and Environmental Medicine Services, Commented on the presentation of the IME subcommittee. Mr. Eusterman discussed the concept of bias in the IME system. Reemphasized that physician selection should be done by WCD and a fee schedule should be in place. Dr. Eusterman also testified about the definition of objective findings.

Next Meetings

PTD Subcommittee meeting

2/15 3:00 p.m.

Full MLAC meeting:

2/24 8:30 a.m.