

Management-Labor Advisory Committee
Thursday, February 24, 2005
Labor and Industries Building, Conference Room 260

Committee Members Present:

Ken Hector, CNF Service Company, Portland, OR
Lon Holston, AFSCME, Grants Pass, OR
John Kirkpatrick, IUPAT District Council #5, Portland, 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
J.L. Wilson, NFIB, Oregon Chapter, Salem, OR

Committee Members Excused:

Diane Janzen, NorPac Foods, Inc., Lake Oswego, OR
Brad Witt, Oregon AFL-CIO, Salem, OR

Staff Present:

Maureen Bock, Workers' Compensation Board
Myrna Curzon, Director's Office
Cara Filsinger, Workers' Compensation Division
Reg Gregory, Workers' Compensation Division
Jerry Managhan, Workers' Compensation Division
John McCullough, Workers' Compensation Board
Dan McNally, Workers' Compensation Division
Jan Miller, Workers' Compensation Division
Roger Pearson, Workers' Compensation Board
Lou Savage, Director's Office
John Shilts, Workers' Compensation Division

APPROVAL OF MINUTES

Minutes of January 27, 2005 were approved as corrected at the February 10 meeting. A correction was made to the February 10, 2005 meeting notes to show that John Kirkpatrick was excused. A vote was taken and the following members voted aye: Ken Hector, Lon Holston, John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Lisa Trussell, and J.L. Wilson.

PTD Subcommittee Report

Mr. Shiprack made a recommendation that the committee work today to come to agreements so that the bill can pass through the senate and then make amendments in House.

John Shilts, Workers' Compensation Division

Reviewed two documents with the committee MLAC Subcommittee on PTD Recommendations for Amendments to SB386 2/24/05 and Draft amendments to ORS656.214

The recommendations from the subcommittee address the following:

1. The duration for continued payment of PTD benefits after PTD is rescinded is unclear. ORS 656.206 (6) (a)
2. The timeline for when continued PTD payment to the worker resumes after a notice of closure is unclear.
ORS 656.206 (6) (a)
3. The definition of medical and vocational material improvement is unclear.
4. The requirement for medical and vocational reports to include a personal observation of worker is unclear.
ORS 656.206 (6) (c)

5. The bill requires personal observation of a vocational evaluation, without giving the insurer the authority to require attendance. ORS 656.206 (c)
6. It is unclear if claims where PTD benefits are rescinded should go through the entire notice of closure process after the vocational program.
7. The process for reimbursement from Retroactive Program for benefits required to be paid subsequent to notice of closure is unclear.
8. The bill cross-reference requiring closures in accordance with ORS 656.268(5) appears too narrow.
9. Gainful employment
10. If a worker can work part-time, should there be an offset to the PTD benefit?
11. If a worker is receiving PTD benefits and working and has a new time loss injury, what benefit does the worker receive?

Additional items discussed: Worker's right to have medical examination and Income threshold based on family size.

Ken Hector proposed an additional recommendation that was added to the recommendations to be considered by the full committee the additional recommendation would be numbered as number 12.

12. Draft language to define regular work as the essential functions of the job and define essential functions as the primary tasks associated with the job.

Committee Discussion

9. Gainful Employment – a recommendation was made that a flat dollar figure be used that is equal to the dollar figure for the federal poverty level of a family of 3. In addition the committee could consider making it equal to or greater than the lesser of the federal poverty level of a family of 3 or 2/3 of their pre-injury wages.

10. Offset to the PTD if a worker can work part-time. Possible recommendation that combined earnings between PTD and wages cannot exceed pre-injury income.

11. New injury when a worker is working as well as receiving time loss benefits. Needs further discussion.

Process Discussion: Bob Shiprack recommended that the bill be moved forward with those recommendations where there is agreement and then amend in the House when consensus is reached on additional recommendations. Ken Hector expressed concern about sending forward a product on which the issues have not yet been fully worked out with bi-partisan support from both management and labor. Sheri Sundstrom asked that there be clarification at some time in future discussions on how item 11 would affect item 1 on settlement.

ACTION

A motion was made by Bob Shiprick to adopt the recommendations from the subcommittee numbered 1 through 8 with the change of setting the definition of gainful employment at a specific dollar figure equal to the federal poverty level of a family of 3. The motion was seconded by Lon Holston. A vote was taken and the following committee members voted aye: Bob Shiprack, JL Wilson, Sheri Sundstrom, Lisa Trussell, Mike O'Rourke, John Kirkpatrick, Lon Holston. Voting Nay: Ken Hector.

The PTD Subcommittee will meet again to discuss unresolved issues.

IME Review Draft Language

John Shilts presented draft proposed amendments to SB311 and a matrix that goes through proposed agreements. Mr. Shilts walked the committee through the language in the draft amendment.

Committee Discussion

Committee discussion centered on three unresolved issues: sanctions on providers, sanctions on worker, travel requirement.

Sanctions on physicians when diagnostics are not provided to IME doctor in timely fashion: John Shilts reported that the Workers' Compensation Medical Advisory has discussed this issue and has suggested that one option would be that examining physicians don't finish their report until they have seen diagnostics; however, this would affect the time frames in workers' comp. This could be done if the insurer could be held harmless for the delay. Unfortunately, the physicians are not always in control of the diagnostics. The recommendation would have to be for those diagnostics where the provider is in possession of the diagnostics and does not send them in a timely manner.

ACTION

A recommendation was made that authority be given to the department to determine by rule a sanction for not providing diagnostics in a timely manner. This would allow the department to involve the various stakeholders in the discussion through an advisory committee.

Travel requirement: SB 311 as currently proposed would put "and place" back in statute.

The IME subcommittee is recommending that if there is an objection to time or place that there be a process to file the objection in a timely manner filed with the department through the director's office. When the insurer/self-insured employer sends the notice to the worker of the scheduled IME it would contain language notifying the worker of the right appeal the time or the place of exam to the director.

ACTION

A recommendation was made that the worker be given the right to appeal both the time and the place to the director of the Director of DCBS. The insurer/ self-employed insurer would be required to give the worker notice of the right to appeal.

Ken Hector noted the need for a correction on page 4 of draft language. Ask Leg Counsel if Section 4 should say section 5 is made part of this 2005 act.

Monetary penalty on the worker for no show, no phone call, no good reason: There was discussion about whether the monetary penalty would change the current suspension of benefits. The subcommittee recommendation was that the monetary penalty be in addition to the suspension of benefits to address those workers who are not on time-loss benefits.

JL Wilson asked that representatives of the IMEA Association come to the table to testify and answer questions.

Hasina Squires IMEA

Ms. Squires recommended that in the draft the references to physicians should be changed to say providers.

Mr George Goodman, attorney representing IMEA

There was discussion about utilization of suspension of benefit to motivate worker to show up to the IME. Only workers receiving benefits are workers on time loss. A high percentage of workers are not on time loss. Can have a flat fee sanction on a worker or discretion for the department to determine by rule the fee that would be assessed. Mr. Goodman recommended that regarding diagnostic studies have the department certify all providers in the system, which would also include providers doing the diagnostic studies. The provider could be removed from the certified list if they demonstrate a repeated problem with providing diagnostics in a timely manner.

Committee Discussion:

If the issue is to give the worker an incentive to attend the IME there was a recommendation to take the penalty out of future benefits.

Ed Johnson – disabled worker

Expressed concern about assessing a penalty against workers who because of the injury are unable to attend.

ACTION

Bob Shiprack made a motion to give director authority to establish by rule a penalty on the worker for failing to attend an IME without good cause and without notifying the insurer in a timely manner to be charged against future benefits. The penalty would not apply to those workers on time loss. The motion was seconded by Lon Holston. A vote was taken. The following members voted aye: in favor all

Public Testimony

Ed Johnston, Disabled Worker

Mr. Johnston reviewed the history of his injury and claim with the committee. He provided a copy of SB804 and asked that the committee consider the bill.

Earnest Delmazzo, Injured Worker Alliance

Discussed what he felt were misconceptions of earlier discussion regarding why the PTD subcommittee was formed. He also testified regarding HB2404 stating that he felt that the two senate bills that deal with the same issue address it more clearly. Discussed procedural due process requirements that were addressed by legislation in 2001 and 2003. Mr Delmazzo feels that it is important that an evidentiary hearing take place.

ACTION

A motion was made by Bob Shiprack to approve the recommendations of IME subcommittee in addition to the three recommendations made today regarding sanctions for no show, sanctions for not providing diagnostics and addressing the issue of travel and move the recommendations as an amendment to SB311. In addition, a letter would be sent to Senator Prozanski giving information on the three issues resolved today. Lon Holston seconded the motion. A vote was taken and the following members voted aye: Bob Shiprack, JL Wilson, Ken Hector, Lisa Trussell, Sheri Sundstrom, Mike O'Rourke, John Kirkpatrick, and Lon Holston.

Work Session

SB132

Require farm labor workers to provide proof of workers compensation coverage. BOLI has assured the committee that the bill has been amended to just require proof of coverage.

ACTION

A motion was made by Bob Shiprack to approve the bill as conceptually amended, seconded by Lisa Trussell. A vote was taken and the following committee members voted aye: Bob Shiprack, JL Wilson, Ken Hector, Lisa Trussell, Sheri Sundstrom, Mike O'Rourke, John Kirkpatrick, and Lon Holston.

HB2405

Aggravation Claims

ACTION

A motion was made to approve the bill by Ken Hector, seconded by Bob Shiprack. A vote was taken and the following committee members voted aye: Bob Shiprack, JL Wilson, Ken Hector, Lisa Trussell, Sheri Sundstrom, Mike O'Rourke, John Kirkpatrick, and Lon Holston.

HB2294

The committee asked for information from Workers' Compensation Board regarding impact on the Board.

Roger Pearson, Managing Attorney Workers' Compensation Board

The bill would have no impact on the board only substantive change is regarding appeals, allowing appeal from all parties. There would be no impact on the board, but there may be more appeals to the court.

ACTION

HB 2294 was held over for further discussion and possible consideration at a future meeting.

HB2406

Bob Shiprack asked that for the record Management would identify issues that they have with this bill. The following issues were discussed by members representing management: The issue addressed by this bill was that the workers could not afford to get medical exams they needed prior to hearing. That issue was addressed in part by implementing the Worker Requested Medical Exam (WRME). The WRME is not being fully utilized. There are also cost implications with this bill. The members representing management indicated that they have been clear going forward that if they were going to make changes this session that would have a cost impact it would be regarding PTD.

Upcoming Legislation

Committee members were given a summary of legislation that has not yet been reviewed by MLAC. JL Wilson reminded the committee members that they have the opportunity to bring any bills to the agenda. The procedure is to call Lou or DCBS staff.

Update on Voc Rehab

Amendments are being drafted by Leg Counsel to remove the stay.

Next Meeting

Undetermined. Staff will have to coordinate with members.

PTD Subcommittee Meeting scheduled for March 3, 2005 at 1:30 p.m.