

California Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

Thursday, December 16, 1999

Los Angeles, California

In Attendance

Chair Kristen Schwenkmeyer
Commissioners Jill A. Dulich, Gerald O'Hara, Leonard C. McLeod Tom Rankin,
Robert B. Steinberg, Darrel "Shorty" Thacker, John C. Wilson
Executive Officer Christine Baker

I. Call to Order / Adoption of Minutes

Chairperson Schwenkmeyer called the meeting to order at 10:00 am and asked for a motion on the minutes of the November 18, 1999 CHSWC meeting. Commissioner Rankin moved to adopt the minutes, Commissioner Steinberg seconded, and the motion passed unanimously.

II. Discussion of the Labor Code Section 5814 Issue

Tom McBirnie Esq., Consultant
Frank Neuhauser, Survey Research Center, UC Berkeley

Mr. McBirnie first gave a brief background of the Labor Code Section 5814 project, which was launched to explore penalty assessments more fitting and appropriate to the length and type of delay.

CHSWC issued a call for information and received input from throughout the community. There were general criticisms of the statute that it was confusing, difficult to interpret and complicated to apply. Specific criticisms from the insurer and employer community indicated there was no clear standard of what constituted unreasonable conduct and that penalties imposed were disproportionate and unfair. Concern was also expressed regarding the possible effects of the *Stuart* and *Moore* decisions. Applicants and the applicants' attorneys view Section 5814 as ineffective as indicated by the number of penalty claims filed and imposed, and that also whenever an unreasonable delay occurs and continues, there is no further sanction.

At the Commission's direction, the project staff reviewed workers' compensation proceedings at the district office, reconsideration and appellate levels to determine the frequency that delay issues were raised and penalties assessed. A draft report was prepared containing proposed findings and recommendations. The most significant finding was that penalty petitions are raised in one out of four cases – indicating the possibility of substantial delays to injured workers, unnecessary expenses to employers and carriers, and a litigation cost to injured workers, to employers and to the system itself. It was also apparent that there is a higher number and frequency of penalty claims in Southern California than in Northern California.

After some discussion of the draft report, the Commission members considered the next step in the process.

MINUTES OF MEETING

Thursday, December 16, 1999 Los Angeles, California

CHSWC Vote

Commissioner Wilson moved that the Commission distribute the draft report to the community for comments. Commissioner Rankin amended the motion by moving to convene an Advisory Committee to review the public comments and submit recommendations. Commissioner Dulich seconded, and the motion passed unanimously.

III. Proposal for Legislative Language on Information for Injured Workers

Charles Lawrence Swezey, Esq., Legal Consultant
Juliann Sum, Esq., Labor Occupational Health Program, UC Berkeley

At the November 1999 CHSWC meeting, Juliann Sum reported that various laws and regulations had been identified as problematic with respect to workers' compensation benefit notices and discussed the suggestions for changes to the Labor Code to address those problems. The Commission voted to have project staff draft proposed statutory changes. Larry Swezey and Tom McBirnie, in consultation with Ms. Sum, prepared a draft report entitled "Recommendations – Information for Injured Workers" detailing the proposed legislative changes.

Mr. Swezey stated that the primary purpose of the proposed legislative changes was to make uniform the Labor Code provisions regarding notices to injured workers. The objectives of the proposed changes were to improve the information given to employees by employers prior to and soon after injury, information available at state Information and Assistance offices, information from claims administrators, the content and clarity of benefit notices, and the timing of some of the most problematic benefit notices.

CHSWC Vote

Commissioner Rankin moved that the Commission issue the draft report to the community and the public for written comment, then form an Advisory Committee to review the comments and recommend further action. Commissioners O'Hara and Thacker seconded, and the motion passed unanimously.

IV. Proposal for Study of DWC Judicial Function

Christine Baker, Executive Officer
Charles Lawrence Swezey, Esq., Legal Consultant

At the CHSWC meeting last month, the Commission members voted to have staff prepare a proposal for a study of the DWC judicial function. A draft proposal was submitted for their consideration.

Ms. Baker said that the draft proposal describes a study that would identify possible statutory changes to make the system work more efficiently and look at rules and practices of other jurisdictions that have addressed problems such as calendaring, casefile movement, proper

MINUTES OF MEETING

Thursday, December 16, 1999 Los Angeles, California

staffing ratios, and other issues of concern. Ms. Baker pointed out that the Commission does not currently have the funds in its budget to carry out this project – CHSWC would have to go to the Legislature in the form of a Finance Letter to request funds to complete the study.

CHSWC Vote

Commissioner O'Hara moved that the Commission request the funds from the Legislature so that it may engage in the proposed study of the DWC judicial function. Commissioner Wilson seconded, and the motion passed unanimously.

V. Update and Discussion Regarding Commission Studies and Projects

Christine Baker, Executive Officer

Ms. Baker discussed several proposals for possible future activities.

Proposal - Policies and Strategies to Help Injured Workers Return to Sustained Employment

Ms. Baker said that the Commission's last Annual Report recommended that specific policies and strategies be developed to assist injured workers in returning to work. The Institute of Industrial Relations and the Center for Occupational and Environmental Health at UC Berkeley have put together a proposal to assist in developing practical strategies to promote injured workers' prompt return to work in sustained employment.

Project staff would work closely with Commission staff to analyze legal and policy issues, evaluate perspectives, assess needs in the workers' compensation community, and uncover the practical implications of research conducted to date. The project would then draft "practical messages" for future educational materials, pilot test those draft messages, and recommend strategies for future work by the Commission. This proposed project would assist in the Commission's efforts to reduce uncompensated wage loss and would enhance the upcoming CHSWC Forum on Workplace Health and Safety in November 2000.

CHSWC Vote

Commissioner O'Hara moved that the Commission engage in a project to develop practical policies and strategies to promote injured workers' prompt return to work in sustained employment. Commissioner Dulich seconded, and the motion passed unanimously.

Ongoing Project: California Study Group on Young Worker Health and Safety

Last year, the Commission funded the California Study Group on Young Worker Health and Safety with the understanding that its progress would be reviewed. Ms. Baker asked if the Commission wished to continue funding this project.

MINUTES OF MEETING

Thursday, December 16, 1999 Los Angeles, California

CHSWC Vote

Commissioners O'Hara and Thacker moved that the Commission continue funding the California Study Group on Young Worker Health and Safety. Commissioners McLeod and Rankin seconded, and the motion passed unanimously.

CHSWC Forum on Workplace Health and Safety

Last month, CHSWC voted to host a public Forum on Workplace Health and Safety that was initially tentatively scheduled for November 2000. Ms. Baker stated that a date in February 2001 might be more feasible, given the Commission's workload.

Issue: Baseball Arbitration

At the last meeting, the Commission voted to issue the report on Baseball Arbitration but deferred consideration on other issues. Ms. Baker asked if the Commission wished to consider recommending repeal of Labor Code Section 4065?

CHSWC Vote

Commissioner Rankin moved that the Commission recommend repeal of Labor Code Section 4065. Commissioner O'Hara seconded, and the motion passed unanimously.

Proposal: WC Benefits in Overall Economic Perspective

Commissioner Rankin suggested a project whereby Commission staff would analyze workers' compensation benefit costs in relation to the larger California economic picture. Benefits would be evaluated relative to inflation, the Consumer Price Index, percentage of payroll, Gross California Product, and other appropriate economic indicators. Commissioner Wilson suggested that the study include an analysis of the impact by industry.

CHSWC Vote

Commissioner Rankin moved that the Commission engage in a study of workers' compensation benefit costs in relation to economic indicators. Commissioner O'Hara seconded, and the motion passed unanimously.

VI. Other Business / Public Questions / Comments

Public Comments

Uros Jelacic

Uros Jelacic, an injured worker, wanted to comment on the report regarding the Labor Code 5814 issue. Since the Commission had voted earlier in the meeting to release the draft report for

MINUTES OF MEETING

Thursday, December 16, 1999

Los Angeles, California

public comment, Mr. Jelacic was requested to follow that feedback procedure and submit his comments in writing.

Other Business

CHSWC Meeting Schedule

Ms. Baker presented a revised draft schedule for Commission meetings in the year 2000. The schedule is attached and is incorporated into these minutes.

VII. Election of CHSWC Chair for 2000

Chairperson Schwenkmeyer opened the floor for nominations for the Chair of the Commission for 2000. Commissioner O'Hara nominated Commissioner Tom Rankin for the position and Commissioner McLeod seconded the nomination. There were no other nominations and Commissioner Rankin was voted in unanimously as the CHSWC Chair for 2000.

VIII. Presentation of Certificate of Appreciation to Kristen Schwenkmeyer

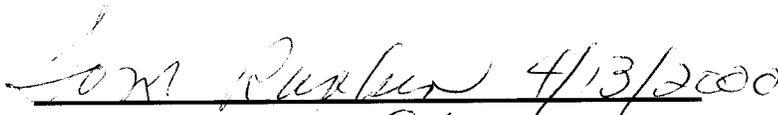
On behalf of the Commission, Ms. Baker presented Kristen Schwenkmeyer with a Certificate of Appreciation for her services as CHSWC Chair for 1999. Ms. Schwenkmeyer expressed her gratitude for the recognition.

Adjournment

Chairperson Schwenkmeyer adjourned the meeting at 11:41 am.

Approved:

Respectfully submitted,



Tom Rankin, Chair *CP* Date



Christine Baker, Executive Officer

Attachments

CHSWC 2000 Meeting Schedule (revised December 22, 1999)