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STATE OF CALIFORNIA
Department of Industrial Relations
Division of Workers' Compensation

PUBLIC HEARING

Monday, January 7, 2008
Hiram Johnson State Building Auditorium
455 Golden Gate Avenue
San Francisco, CA

Richard Starkeson
Industrial Relations Counsel
Chairperson

Destie Overpeck
Chief Counsel

Norman Delaterre
Workers' Compensation Administrative Law Judge

Maureen Gray
Regulations Coordinator

Reported by: Janet Zengel

1 PUBLIC HEARING

2 SAN FRANCISCO, CALIFORNIA

3 MONDAY, JANUARY 7, 2008; 10:05 A.M.

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5 CHAIRPERSON STARKESON: Good morning. Thank you for
6 coming here today. This is a hearing on the Division of
7 Workers' Compensation's proposed amendments to regulations on
8 financial or -- excuse me, ethical standards for workers'
9 compensation administrative law judges. I'm Richard Starkeson,
10 an attorney for the Administrative Director, Carrie Nevins.
11 The Administrative Director is unable to be present today, and
12 I'm conducting this hearing on her behalf.

13 Also here on the podium with me is Workers'
14 Compensation Administrative Law Judge Norman Delaterre, who is
15 here representing the Court Administrator, Keven Star. And to
16 my far right, Destie Overpeck, Chief Counsel for the Division
17 of Workers' Compensation. Also, from the Department is Maureen
18 Gray who is sitting in the second row over there on the far
19 left-hand side of the auditorium where she has been assisting
20 people for these beginning periods to get people signed in on
21 the sign-in sheets.

22 We do have sign-in sheets on the far left-hand
23 auditorium wall, and if anybody is not signed in, please do so.
24 We're very grateful to Maureen Gray, our regulations
25 coordinator, for organizing this hearing today.

1 The hearing will continue as long as there are people
2 present who wish to comment on the regulations but it will
3 close at 5:00. It's doubtful the hearing will continue that
4 long since there aren't too many people here this morning. If
5 the hearing continues through the lunch hour, we'll take at
6 least an hour's break for lunch. Written comments will be
7 accepted until 5 p.m. at the Division offices at the 17th floor
8 at 1515 Clay Street in Oakland.

9 The purpose of this hearing is to receive comments
10 from the public on proposed amendments to the regulations and
11 the Administrative Director welcomes any comments that you may
12 have about regulations or the proposed regulations. The
13 proposed amendments to the regulations have been developed in
14 consultation with the Court Administrator, Keven Star, and
15 consultation has also been made with the Commission on Judicial
16 Performance. All of your comments, both given here today or
17 those submitted in writing, will be considered by the
18 Administrative Director in determining whether or not to adopt
19 these regulations as written or to change them.

20 Please restrict your comments to the subject of the
21 regulations matter and to any suggestions you have for changing
22 the proposed regulations. Since it's a small group we may
23 answer questions if people have them. Otherwise we don't
24 intend to enter any discussions about the subject. So when you
25 come up to give your testimony please give your business card

1 workmen comp case, and I am self-represented, and I'm at the
2 Oakland facility. And when I look at certain rules that I've
3 looked on here two words really caught my attention. As I
4 spoke with, I believe, the Judicial Council in regards to the
5 word misconduct, and that word I believed was actually the last
6 trailing word for any ethical violations. The word misconduct
7 allows for any disciplinary action to be taken and if it's
8 deleted, as it was explained to me, the workmen comp works
9 different than the Judicial Council, then we have a problem.

10 Now, in regards to the word referee, which these
11 two words are what's really caught my attention out of the
12 whole, you know, the rules because it's really complicated for
13 me and I'm sure those who've done their homework can work
14 through the guideline. But as I understand it, and if I'm
15 wrong I stand to be corrected, I have no problems with it. But
16 during the process of workmen comp case, and I'll use mine as
17 an example before I get to the word referee. I go to home
18 base, that means to file a case in the workmen comp system.
19 After I file the case it goes to first base which involves an
20 employer, the employer's insurer, and the employer's health
21 care provider. And in this particular case it involves State
22 Compensation Insurance Fund.

23 Now, we all know that there is a little problem there
24 with this 500, 600 million dollars that really just went out
25 the window somewhere but we know it's somewhere. And that's

1 very important because when you delete the word referee I need
2 to understand when I say what I'm saying so I'm saying it to
3 you guys so you guys can, you know, articulate your skills,
4 would the process that goes through workmen comp system itself
5 be considered like with the creatures of the state like the
6 State Compensation, workmen comp, all these are state agencies,
7 now would this affect the word referee giving them some sort of
8 way out of the back door for accountability. Because during
9 the process you have auditors, you have everybody, like I don't
10 know the system. I'm, I'm glad we have a system actually and
11 it's something that we need. But when I looked at the part of
12 the insurance company, the CDI, California Department of
13 Insurance, going to the DA's office and saying hey listen, you
14 got to get your budget in so we can start prosecuting fraud
15 cases, now in my case here, this is something I stumbled over,
16 believe me I've never been in this arena before, and I found
17 that after I got to first base then they have a proceeding
18 called AOE/COE on one end of it. As I understand, it's just
19 supposed to see if, one, if the employer exists, two, if the
20 employee worked for the employer, three, did the accident
21 really happen.

22 Now there is the line right there because then it
23 turns over, when you get down to the creature of the state then
24 the AOE/COE then turns to a task force for fraud workmen
25 compensation, not under the state but under the agency of the

1 state which is a creature of the state which is the State
2 Compensation Insurance Fund.

3 Now we already know what happened with the 500, 600
4 million. Okay. Now, the reason I'm looking at these things
5 because I believe that if we keep the trailing word misconduct
6 out of all respect for any ethical violations that may be
7 appropriate.

8 Now when we look at the word referee, during the
9 judicial process or the court process in workmen comp cases
10 there's a lot of different agencies that are involved and, for
11 instance, we'll use the California Highway Patrol. In my case
12 I was instructed to go to the Highway Patrol and file based on
13 one reason, the agencies of the state are creatures of the
14 state, that the CHP, California Highway Patrol, has
15 jurisdiction over the agencies, maybe not the way they function
16 but as a law enforcement agency I presumed that they were over
17 there. And so I got two separate file numbers --

18 CHAIRPERSON STARKESON: Mr. Glaude, can I just
19 interrupt you for a second?

20 MR. GLAUDE: Yeah.

21 CHAIRPERSON STARKESON: You said you were concerned
22 about the word referee in the pending regulations. The word
23 referee is being deleted because it's being substituted.
24 Another word is being substituted for that, administrative
25 workers' compensation law judge. And the reason for that is

1 because there is no longer, there are no longer referees so
2 there is no reason to have a word referee. There are no
3 referees for it to apply to, so the regulations only apply to
4 workers' compensation judges. They used to apply to referees
5 when there were referees but there aren't any referees anymore
6 so I think that you're probably not understanding the purpose
7 of deleting the word referee. So changing the word referee
8 does not make any change to the regulations themselves or how
9 they will be implemented.

10 MR. GLAUDE: Okay. I didn't know that. But my
11 question is, is that does the term referee also mean anyone,
12 doesn't matter who it is, anyone that has something to do with
13 the judicial process?

14 CHAIRPERSON STARKESON: Let me just try to answer
15 your question for you. The word referee might have many
16 different meanings in the legal world in different legal
17 contexts but in workers' compensation it no longer has any
18 meaning at all because there are no longer any referees. There
19 are referees in other legal arenas but we're only concerned
20 here with workers' compensation law.

21 MR. GLAUDE: Okay. Auditor, are auditors part of the
22 judicial process?

23 CHAIRPERSON STARKESON: Auditors are not part of or
24 subject to regulations that we're talking about so whether or
25 not auditors exist they probably do as far as State

1 Compensation Insurance Fund and many other privately owned
2 insurance corporations but they are not affected by these
3 regulations in any way, whether they are proposed regulations
4 or preexisting regulations, so they will have no effect on any
5 auditors.

6 MR. GLAUDE: I think, I think you really answered my
7 question on that. I guess the -- what I'm really leading to
8 is, is there anyone else besides administrative law judges that
9 are involved in the judicial process, besides, besides the
10 administrative director and the courts, you know, is there
11 anyone else, whether a creature of the state or state agency
12 or whatever, part of the judicial process in workmen comp
13 cases?

14 CHAIRPERSON STARKESON: I would have to say
15 officially there are only, in the workers' compensation
16 adjudication process there are only administrative law judges,
17 workers' compensation administrative law judges. And there are
18 other participants in the process such as attorneys but there
19 are no auditors involved in the workers' compensation process
20 and certainly there are no auditors that have anything to do
21 with the regulations we are talking about today. The subject
22 matter today is only the ethical rules for judges and nothing
23 else. So I guess I would like to ask you to kind of restrict
24 your comments, as I said in the very beginning, to the subject
25 matter and the subject matter is ethical rules for workers'

1 compensation judges.

2 MR. GLAUDE: Okay.

3 CHAIRPERSON STARKESON: That's all we're here to
4 hear.

5 MR. GLAUDE: Okay. Yeah.

6 CHAIRPERSON STARKESON: We don't have any power to
7 make decisions on anything else.

8 MR. GLAUDE: No, no, I understand that. The reason
9 why I was mentioning this is that if you have an administrative
10 judge that's sitting over proceedings then you're saying that
11 no one else has any sort of -- they're not involved in the
12 judicial process as, you know, as, you know, as someone who has
13 power, you know. For instance, like sometimes, you know --
14 okay, let's -- let me put it this way here. Maybe I'm not
15 directing exactly because what I'm looking at I'm looking at a
16 big picture, I'm not just focussing on just the administrative
17 law judge because I know, you know, when it comes down to
18 judges there's a lot of different things that goes on. And
19 when a judge sits down a judge has to look at the violations by
20 a party as well as the non violations by a party in a case.
21 But during that process there is a -- I guess, I guess because
22 of the fact that I am actually involved in a case and I see it
23 that it may not make sense to you. But I mean -- okay.

24 CHAIRPERSON STARKESON: Mr. Glaude, you're obviously
25 continuing to make comments here but none of the comments

1 you're making are relevant to the proceedings that we're
2 talking about which are workers' compensation law judge ethical
3 standards, so if you have further questions I'll be happy to
4 answer them after the hearing if you'd like. I'll stick around
5 for a few minutes and talk to you.

6 MR. GLAUDE: Okay, that's great.

7 CHAIRPERSON STARKESON: The comments you're making
8 here are just not relevant to what's the subject matter.

9 MR. GLAUDE: Okay. So, all right, so I want to get
10 to the administrative law judge now. Okay. With the
11 administrative law judge they have certain rules that they go
12 by; is that correct?

13 CHAIRPERSON STARKESON: They are subject to the Code
14 of Judicial Ethics and the rules of the administrative director
15 and also they have to enforce the workers' compensation law.

16 MR. GLAUDE: Okay. Thank you.

17 CHAIRPERSON STARKESON: We have a sign-up sheet here
18 and there is no one else indicated on the sign-up sheet as
19 someone wishing to speak. Is there anyone else in the audience
20 who wishes to speak to these regulations?

21 Okay. No one having raised their hand or made any
22 other oral comment to that we will at this time be closing the
23 record because there are no more comments to be made. So if
24 anyone does have any comments they have not submitted they can
25 still submit them until 5 p.m. today at the Division offices at

1 the 17th floor, 1515 Clay Street in Oakland.

2 So on behalf of the Administrative Director and the
3 Court Administrator I'm thanking you all for your attendance
4 and the input you had this morning.

5 And again, thanks to our staff which is Maureen Gray,
6 our regulations coordinator, for setting up these hearing
7 proceedings. And so now our hearing is closed.

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9 (The proceedings adjourned at 10:20 a.m.)

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