



STATE OF MAINE
WORKERS' COMPENSATION BOARD
Board of Directors' Business Meeting

December 14, 2021

A business meeting of the Maine Workers' Compensation Board of Directors was conducted on Tuesday, December 14, 2021 via Zoom.

PRESENT: John Rohde (*Executive Director/Chair*), Ron Green, Glenn Burroughs, Lynne Gaudette, Penny Picard, Richelle Wallace, and Serina DeWolfe (*Directors*), and Richard Hewes (*General Counsel*).

I. CALL TO ORDER

Executive Director Rohde called the meeting to order at 10:01 a.m. with 28 people participating remotely. Executive Director Rohde reviewed the Zoom meeting platform and procedures. Board members and staff introduced themselves for the recording. Voting is to be conducted by roll call vote instead of a show of hands.

II. APPROVAL OF MINUTES

1. Draft Minutes of 11/9/2021 Board of Director's Business Meeting

Director Burroughs MOVED TO ACCEPT THE MINUTES OF THE 11/9/2021 BOARD MEETING AS WRITTEN; Director Wallace seconded. **MOTION PASSED 7-0.**

III. SUBCOMMITTEE REPORTS

1. Personnel Subcommittee

Director DeWolfe reported that the Personnel Subcommittee met on December 7th to review the applications for the mediator position in the Caribou office and the committee recommends that James Jandreau be hired. Director Picard noted that the mediator position in Caribou has been vacant for some time now. Mr. Jandreau has previously worked for the Board in the Advocate Division as a paralegal in Caribou and is familiar with Workers' Compensation procedures and laws.

Director Picard MOVED TO APPOINT JAMES JANDREAU AS A MEDIATOR FOR THE WORKERS' COMPENSATION BOARD IN THE CARIBOU OFFICE; Director DeWolfe seconded. **MOTION PASSED 7-0.**

IV. EXECUTIVE DIRECTOR REPORT

1. ALJ Position

Executive Director Rohde reported the Personnel Subcommittee will interview the candidates with the goal of having a recommendation for the Board at the January meeting. The posting for this position closes at the end of business today.

2. Medical Fee Schedule

The Medical Fee Schedule will be updated, as it is annually, to reflect changes from Medicare. The update will be effective January 1, 2022.

4. Legislation

Three bills were submitted to the Legislative Council to be recommended for consideration by legislators during the Second Regular session of the 130th Legislature. The Council voted to allow two of the bills, An Act To Support Law Enforcement Officers, Corrections Officers, E-9-1-1 Dispatchers, Firefighters and Emergency Medical Services Persons Diagnosed with Post-traumatic Stress Disorder and An Act To Clarify the Laws Related to the Use of Medical Marijuana and Workers' Compensation, to be considered by the legislature. The Council voted down the third bill, An Act To Protect Access to Workers' Compensation Benefits. That proposed measure will not be considered by the legislature at its Second Regular Session, which will begin in January.

5. COVID-19

The Board has resumed tracking COVID-19 claims on a weekly basis due to a rise in cases. COVID related First Reports of Injury (FROI) have plateaued at about 250-300 cases per month. More COVID cases are being denied, but only one has progressed to the hearing stage so far. The Board will continue to monitor the disposition of COVID claims.

6. Portland Press Herald

Executive Director Rohde reported the Portland Press Herald (PPH) published an article on December 9th about misclassification of workers in response publicity about that issue following the recent not-guilty verdict in the Cumberland County case of *State of Maine v. Shawn Purvis*. hearing. Mr. Purvis is a Scarborough roofing contractor who was criminally charged when a roofer fell on a job and died. Mr. Purvis was found not guilty of the workplace manslaughter charge. However, a newspaper article suggested that a class of employees in Maine, referred to as “rooftop cowboys”, are properly classified as independent contractors, not employees. It is concerning that employers may get the sense, when reading this article, that they can have these “cowboys” working for them and are not responsible for their safety. Mr. Purvis is still facing a civil action by OSHA.

Deputy General Counsel Seanna Crasnick testified in both the criminal and OSHA proceedings on this case - in part because an independent contractor predetermination had been issued to Mr. Purvis. Predeterminations are issued to an individual and are “portable” meaning they can be used from job to job. Overall, the concern is the PPH gives a poor impression of the law regarding an employer’s responsibility to properly cover the people working for them.

V. GENERAL COUNSEL REPORT

1. Personnel

The Advocate Division has hired Malin McWalters to fill the attorney advocate vacancy in the Portland Advocate office. This position became vacant when Shawn Walsh was promoted to Senior Staff Attorney.

2. Pending Section 213 Hardship Appeal

General Counsel Hewes has been in touch with the lawyers in this case. This petition is working its way towards a final resolution.

VI. OLD BUSINESS

1. 2022 Meeting Schedule

The proposed 2022 Board Meeting schedule was reviewed. The September meeting is to be determined in conjunction with Comp Summit. Director Green noted that the November meeting does not fall on the second Tuesday as that is Election Day. The meeting will be held on November 15th instead.

Director Green MOVED TO ADOPT THE PROPOSED SCHEDULE FOR 2022;
Director Burroughs seconded. **MOTION PASSED 7-0.**

VII. NEW BUSINESS

1. PTSD Study

In 2017 a presumption of compensability was added to 39-A M.R.S.A. § 201 (3-A) (B). A report is due to the Legislature on January 1st with an analysis of the effect that the presumption has had on claims. Executive Director Rohde thanked Ann Willette and Michelle Pelletier from the Maine Municipal Association, Beatrice Turner from the State of Maine Workers' Compensation Division, and, Director Green, and Lindsay Lizzotte and General Counsel Hewes from the Board, for their work on the study. The report shows that early intervention and treatment are important tools in these cases. The report also shows that the presumption has not made more claims compensable. The number of claims overall has increased, but number of claims pursued has decreased. The data shows costs paid are about the same pre and post presumption. Data was reviewed from the four year period before the presumption and the four year period after the presumption. Previous Executive Director Paul Sighinolfi testified in favor of the PTSD presumption at the 2017 legislative hearing and claims data gathered by the board seems to be in line with the goals that Director Sighinolfi outlined in his legislative testimony.

The Labor and Housing Committee may schedule a day to review reports. The Board will be notified if the report is scheduled for review.

VIII. ADJOURNMENT

Director Wallace MOVED TO ADJOURN; Director Green SECONDED. **MOTION PASSED 6-1.** (*Director Burroughs opposed.*)

The meeting formally adjourned at 10:32 a.m.