

BWC Board of Directors

Governance Committee

Wednesday, April 29, 2009, 4:00 PM

William Green Building

30 West Spring Street, 2nd Floor (Mezzanine)

30 West Spring St.

Columbus, OH 43215

Members Present: Alison Falls, Chair
Larry Price, Vice Chair (arrived 2:19 PM)
William Lhota
James Hummel
Thomas Pitts (arrived 2:20 PM)

Members Absent: None

Other Directors Present: James Harris, James Matesich (arrived 2:18 PM)

Counsel Present: John Williams, Assistant Attorney General

CALL TO ORDER

Ms. Falls called the meeting to order at 2:01 PM and the roll call was taken.

MINUTES OF MARCH 19, 2009

The minutes were approved by unanimous roll call vote on a motion by Mr. Lhota, seconded by Mr. Hummel, as amended by revision of the "metal casting" paragraph on page 3 to read as follows: Mr. Harris made note of the use of the word "guard" compared to "safeguard". Mr. Harris emphasized and encouraged the utilization of the word "safeguard".

NEW BUSINESS / ACTION ITEMS

1. Changes to Agenda

Ms. Falls explained that due to commitments of several directors, the Administrator and senior staff before the Ohio Senate Insurance Committee, the meeting would recess at 3:00 and reconvene approximately 4:00. The amended agenda was approved by unanimous roll call vote on motion of Mr. Lhota, seconded by Mr. Hummel.

2. Introduction of Abe Tarawneh, PhD., Superintendent, Division of Safety and Hygiene

Tina Kiehmeyer, Chief of Customer Services, introduced Abe Tarawneh to the directors as Superintendent, Division of Safety and Hygiene. Mr. Tarawneh explained his perception of the role and expressed appreciation to his new colleagues. His goals for the Division focus on the reduction of frequency and severity of workplace accidents and injuries. This will lead to lower premiums and make Ohio a more attractive venue for employers. His vision is to make the Division a center for state of the art safety consulting and research services.

Ms. Falls asked Mr. Tarawneh to further define his concept of “state of the art”. Mr. Tarawneh stated this would draw on his previous experience in the private sector, citing in particular Liberty Mutual Insurance Company. Mr. Lhota pointed out the Ohio State Automotive Research Center with respect to ergonomics and repetitive stress, which Mr. Tarawneh indicated was well-known and respected by those in the safety field. He would definitely want to explore a collaborative relationship with OSU.

RULES FOR SECOND READING

1. Metal Casting, Rule 4123:1-7

Don Bentley, Director, Technical Support, Division of Safety and Hygiene, opened the presentation with respect to a review of 24 safety rules, beginning with changes to Rule 4123:1-7 regarding metal casting.

Pursuant to a discussion which began at the March Meeting, Mr. Harris questioned use of the word “guard” as opposed to the word, “safeguard”. Ms. Falls asked whether the definitional sections should be changed to include the terminology “over, under, around and through.” Mike Ely, Safety Technical Advisor, advised that particular terminology may be somewhat limiting, in that there are machines which use safety devices such as light curtains, rather than barrier guards which prevent contact “over, under, around and through”. Mr. Ely also noted that “safeguard” is a concept, which is used in the general duty clause covering workshops and factories, while a “guard” is the actual safety barrier or device.

It was determined that further investigation and discussion is warranted before approval of the safety rules scheduled for second reading, including those regarding steel making and laundering/dry cleaning. Full versions of the rules will be e-mailed prior to the May meeting. There will now be a second reading of six rules at the May meeting.

It was noted that full review of the workshop/factories section of the Administrative Code will be in August. Mr. Harris will attend the Safety & Hygiene group discussion meeting on May 5th.

With respect to Rule 4123:1-9 regarding steel making, manufacturing and fabricating, it was noted that per discussion at the March meeting, the applicable language was changed from “free from recognized hazards” to “safe from recognized hazards”.

RULES FOR FIRST READING

1. Elevators, Rule 4123:1-11

Mr. Bentley presented a first reading of various changes to the safety rules concerning elevators. Input was received from industry, management and employer groups, including the Ohio Department of Commerce, the National Association for Elevator Safety Authority International, the National Elevator Industry Inc., and the International Union of Elevator Constructors. All stakeholders were satisfied with proposed changes.

Mr. Lhota referenced the "Elevator World Inc. Safety Handbook" manual. Mr. Bentley responded that this was a collection of best practices, and also that as a privately owned and copyrighted document, it would be inappropriate to reference this manual in the rule.

It was unanimously approved on a motion by Ms. Falls, seconded by Mr. Hummel, to recess the meeting at 3:04 PM.

The meeting resumed at 4:07 PM. Roll call was taken and all committee members were present except for Mr. Lhota.

2. Rehabilitation of Injured and Disabled Workers, Rule 4123-18

Freddie Johnson, Director, Managed Care Services, and Karen Fitzsimmons, Rehabilitation Policy Unit Manager, presented changes to Rules 4123-17 and 4123-18 per five-year rule review. This encompasses seventeen rules, thirteen of which were revised and four rescinded.

Rule 4123-17-55 was rescinded because transitional work grants no longer exist, although the services remain. This also applies to Rule 4123-18-06.

Rule 4123-18-01 now contains language moved from Rule 4123-18-15, which is being rescinded, concerning preparing the annual rehabilitation report. This will add clarity to the purpose and intent of the rehabilitation process. Per a question from Chairperson Falls, it was explained that further rule changes are still being looked at to insure quality and access of care, and eliminate conflict and/or self-dealing perceptions when MCO's utilize affiliated rehabilitation providers. Mr. Johnson was uncertain of the time frame for this review, but emphasized they did not want to delay implementation of these current rule changes. Mr. Price suggested this be a future agenda item.

Several rule changes are for grammatical purposes, clarity and consistency. Other substantive changes were identified as follows:

- Rule 4123-18-03 clarifies eligibility and feasibility requirements with respect to return to work as the primary objective of rehabilitation

- Rule 4123-18-04 clarifies when living maintenance payments begin, clarification of a medical hold, and appeal time frames.
- Reasons for rehabilitation plan closure have been moved from Rule 4123-18-04 to Rule 4123-18-05(E). Mr. Pitts asked whether an injured worker has recourse if a plan is not meeting his/her needs. Ms. Fitzsimmons stated that there is always an ability to appeal plan closure to the Industrial Commission. This creates a clear path of dispute resolution as opposed to leaving the plan open indefinitely.
- Rule 4123-18-09 increases the maximum amount paid for rehabilitation treatment of a non-allowed condition to \$2,000.00. This is generally used to treat psychological conditions not related to the work injury.
- Rule 4123-18-16 states that a self-insured employer shall offer rehabilitation services equal to or greater than those available to state fund employers. A copy of the rehabilitation plan must be provided to the injured worker and their representative.
- Rule 4123-18-21 clarifies the process and documentation needed to receive living maintenance wage loss. Per a question from Mr. Pitts, the return-to-work hierarchy was explained, with the goal being to return the injured worker to the appropriate job, not just any job.
- Rule 4123-18-22 is rescinded as the BWC rehabilitation center no longer exists.

Mr. Pitts asked whether with respect to SI employers, consideration might be given to changing the wording of 4123-18-16(A) to “must” rather than “shall” with respect to offering comparable rehabilitation services. Mr. Johnson replied that the objective is to protect the injured worker and the integrity of the system. If further changes need to be made to achieve this, they will be explored.

The directors expressed appreciation to the staff for addressing these important issues.

3. Rubber and Plastics, Rule 4123:1-13

Mr. Bentley reviewed changes proposed to these safety rules for consistency purposes. Input was solicited from several stakeholders, and provided by Ohio Polymer, Inc. and the United Steelworkers. The word “calendar” is expanded to include all metal rolls, which conforms to the applicable American National Standards Institute standard. The directors had no questions.

4. Window Cleaning, Rule 4123:1-17

Mr. Bentley reviewed changes to these safety rules, in particular adding the use of harnesses and suction cups, and reduction to static loads. Stakeholder input was solicited but only one employer provided input. Per a question from Ms. Falls, Mr.

Bentley explained that the rule applies to both commercial and residential window cleaners.

5. Miscellaneous Provisions, Rule 4123-5

Mr. Johnson and Kim Robinson, Director of Policy, presented several rule changes affecting claims policy. The proposed rules were sent to the Ohio Association for Justice (members Phil Fulton and Bob Kendis), the Ohio State Bar Association Workers' Compensation Committee and the Ohio Self-Insured Association. BWC adopted the recommendation of Messrs. Fulton and Kendis that Rule 4123-5-18(D) be amended to allow claimants to file equivalent forms containing the same information as a C-84 form.

Other substantive changes included rescission of Rule 4123-5-02, moving the language of that provision to other rules in Chapter 3 dealing with armed services claims, and amending Rule 4123-5-20 to further clarify that a wage advancement agreement must be filed within thirty days of the date the agreement begins.

DISCUSSION ITEMS

Calendar

Ms. Falls noted that based upon discussion at today's meeting, the May meeting would contain a second reading of eight rules. She also discussed the launch of the Administrator's review on April 29, clarifying that finalizing the review is a function of the Board, not the Governance Committee.

ADJOURNMENT

Mr. Price moved to adjourn the meeting at 5:20 PM, seconded by Mr. Hummel.

Prepared by Jill Whitworth, Staff Counsel April 30, 2009

BWC BOARD OF DIRECTORS

GOVERNANCE COMMITTEE

Wednesday, April 29, 2009, 12:00 P.M.

WILLIAM GREEN BUILDING

30 WEST SPRING ST., 2nd FLOOR (MEZZANINE)
COLUMBUS, OHIO 43215

Members Present: Alison Falls, Chair
Larry Price, Vice Chair
James Hummel
William Lhota

Members Absent: Thomas Pitts

Other Directors Present: Chuck Bryan, David Caldwell, Ken Haffey, James Harris,
James Matesich, Bob Smith

Counsel Present: Ron O'Keefe, Fiduciary Counsel

CALL TO ORDER

Ms. Falls called the meeting to order at 12:00 PM and the roll call was taken. Ms. Falls noted Mr. Pitts was absent in order to comply with an Ohio Ethics Commission Opinion dated July 30, 2007. That opinion stated that a Director who receives compensation to represent clients on matters before the BWC is disqualified from any matters before the Board that directly affect an individual official or employee of the BWC. Accordingly, a Director who is an attorney representing clients before the BWC is disqualified from participating in the evaluation of the Administrator's performance. Mr. Pitts is an attorney who represents clients before the BWC.

AGENDA

The agenda was approved unanimously on motion by Ms. Falls and seconded by Mr. Lhota.

EXECUTIVE SESSION

Upon motion by Ms. Falls, seconded by Mr. Hummel, the committee unanimously voted to enter Executive Session to discuss personnel matters.

Upon motion by Ms. Falls, seconded by Mr. Price, the committee unanimously voted to close the Executive Session to discuss personnel matters.

ADMINISTRATOR'S REVIEW

Upon motion by Ms. Falls, seconded by Mr. Lhota, the Committee unanimously voted to recommend the Board approve the process and form dated April 29, 2009 to complete the Administrator's review.

ADJOURN

Upon motion by Mr. Lhota, seconded by Mr. Hummel the Committee unanimously voted to adjourn at 1:50 pm.

Prepared by Donald C. Berno, Board Liaison
May 4, 2009