



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

January 11, 2022

A business meeting of the Maine Workers' Compensation Board of Directors was conducted on Tuesday, January 11, 2022 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 10:02 a.m. with 31 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 12/14/2021 Board of Director's Business Meeting

Director Burroughs MOVED TO ACCEPT THE MINUTES OF THE 12/14/2021 BOARD MEETING AS WRITTEN; Director Wallace seconded. **MOTION PASSED 7-0.**

III. SUBCOMMITTEE REPORTS

1. Personnel Subcommittee

Director Picard reported that the Personnel Subcommittee met over two days last week to consider and interview the eight applicants for the Administrative Law Judge position that will be vacant in the Lewiston office. The Personnel Subcommittee is unanimous in their recommendation.

Director Picard MOVED TO APPOINT LINDSEY SANDS TO THE POSITION OF ADMINISTRATIVE LAW JUDGE FOR AN INITIAL TERM TO END MARCH 1, 2025 WITH THE RESTRICTION THAT SHE NOT HEAR ANY NORMAN, HANSON

& DETROY CASES FOR A PERIOD OF THREE YEARS. THIS RESTRICTION APPLIES TO CASES AT THE FORMAL AND APPELLATE LEVEL; Director Wallace seconded. **MOTION PASSED 7-0.**

The subcommittee also discussed an upcoming case that involves the spouse of a Board employee. The Board will need to hire a contract ALJ to hear the case. There has also been discussion regarding the hiring of an outside workers' compensation attorney on a contract basis to assist with the advocate division while some of the newly hired advocates complete training and pass the Maine Bar exam.

Executive Director Rohde thanked Directors Picard and DeWolfe for their efforts on the subcommittee.

IV. EXECUTIVE DIRECTOR REPORT

1. Portland Press Herald Op-ed

Executive Director Rohde reported that he, Laura Fortman, the Maine State Chamber of Commerce, and the AFL co-signed an op-ed piece that was published in response to the Portland Press Herald's article on the not-guilty verdict in the Cumberland County case of *State of Maine v. Shawn Purvis*. The purpose of the op-ed was to inform the public about the importance of properly classifying employees. Additionally, Seanna Crasnick has been working with the Department of Labor to streamline information sharing between the agencies regarding classification of employees.

2. Administrative Week

The Board will take an administrative week from 1/31-2/4/22 to conduct file audits. This has been scheduled during an Appellate week to minimize the impact on the scheduling of formal hearings.

3. Medical Fee Schedule

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

4. Personnel

ALJ Timothy Collier is retiring at the end of this month after many years of dedicated State service. ALJ Kate Rooks will move to the Portland office and a new ALJ will be hired for Lewiston.

5. COVID-19

The City of Portland has enacted an indoor mask mandate which affects our offices in Portland. The Portland City council will review the mandate every 30 days.

6. PTSD Report

The PTSD report was submitted to the Labor and Housing Committee (LBHS). Executive Director Rohde will present the report and respond to questions at the LBHS committee meeting tomorrow. A live stream of the meeting is available through the committee's webpage.

V. GENERAL COUNSEL REPORT

1. Law Court

General Counsel Richard Hewes reported the Law Court issued a decision in *Desgrosseilliers v. Auburn Sheet Metal* on December 16, 2021. The question presented on appeal was whether an employee was required to give notice of his occupational disease claim to his former employer's insurer when the employer was incorporated but then went out of business. The decision says the Act does not obligate the employee to give notice to the former employer's insurer. The employee was obligated by §301 of the Act to give notice to an official of the incorporated business or to an employee appointed to receive notice of the injury.

2. Pending Section 213 Hardship Appeal

The hardship petition pending before the Board has been dismissed without prejudice due to the death of the employee.

VI. OLD BUSINESS

No old business was carried over to this meeting.

VII. NEW BUSINESS

1. 3rd Quarter 2021 Compliance Report

Carrie Ellis presented a draft of the 3rd Quarter 2021 Compliance report. Except for NOCs, the numbers are all still below benchmarks. This is the third quarter in a row with below benchmark compliance. As previously discussed in the last Board meeting, focused audits will be conducted to help improve compliance. It benefits everyone in the workers' compensation system to meet the reporting benchmarks.

Executive Director Rohde noted that some companies are missing their marks by a wide margin. Those will be the first targeted audits conducted.

Director Burroughs MOVED TO ACCEPT THE 3rd QUARTER COMPLIANCE REPORT AS WRITTEN; Director Gaudette seconded. **MOTION PASSED 7-0.**

2. Legislation

Executive Director Rohde noted there are still three bills sitting at appropriations, LD 305, LD 575, and LD 1430, from last session. There has been no movement on these bills to report.

As previously discussed, there are two new bills for workers' compensation. LD 1879 would remove the sunset provision for the PTSD presumption, which is in §201 (3-A) (B) of the Act.

LD 1881 involves medical marijuana use in workers' compensation. The summary indicates that a decision, agreement, or lump sum settlement could not prohibit an employee from being a medical marijuana patient. Executive Director Rohde noted he

has reached out to the bill's sponsor, Rep. Dillingham, but has not been able to have a conversation yet about the gist of the bill. Neither bill has been scheduled at this time for public hearing. As we know from the *Burgoin* case, the Board cannot require payment for medical marijuana as it is still illegal at the federal level. Executive Director Rohde will attend the LBHS hearing when it is scheduled and testify neither for nor against the bill.

VIII. ADJOURNMENT

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

The meeting formally adjourned at 10:24 a.m.