

**MINUTES OF THE ILLINOIS WORKERS' COMPENSATION COMMISSION
COMMISSION REVIEW BOARD MEETING
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH STREET
CHAIRMAN'S CONFERENCE ROOM
HELD ON APRIL 25, 2012 at 10:00 AM**

Present at the meeting were:

Chairman Mitch Weisz
Arbitrator Milton Black
Robert Hanaford, Attorney, Robert H. Hanaford, Ltd
Arbitrator Douglas Holland
Velisha Haddox, Office of the Governor

Participating via Teleconference were:

Commissioner Mario Basurto
Commissioner David Gore

IWCC staff present at the meeting were:

Carolyn Parks, Executive Director of the Commission
Darrell Widen, Deputy General Counsel
Kendra Gartzka, Legal Intern
Ron Rascia, General Counsel

Chairman Mitch Weisz called the meeting to order at 10:10 am and noted that a quorum was present. There was a motion by Arbitrator Holland, seconded by Velisha Haddox, and unanimously carried to approve the minutes from meetings held on January 25, 2012.

Chairman Weisz called on Executive Director Carolyn Parks to report on developments since the last meeting. Ms. Parks indicated that fewer complaints had been communicated. In fact she stated there was only a single communication complaining about the actions of an Arbitrator. She forwarded the correspondence to Darrell Widen. There were 37 inquiries in total.

Ms. Parks ~~also~~ stated that also she receives inquiries from the Governor's Office of Constituent Affairs, to which Commission responds. These are included in the total number of 37 inquiries. She indicated that while many of these inquiries were from *pro se* litigants, there were also a substantial number of inquiries from litigants represented by attorneys. Ms. Parks opined that litigants would likely have fewer complaints and inquiries sent to the Commission if they were better informed of the appeal process. Many of the inquiries/complaints regard the disposition of cases that were no longer within the jurisdiction of the Commission. She stressed that it would probably be most important to provide such information to *pro se* litigants.

Ms. Parks specifically related the communications of a Petitioner, who had made inquiries after the case was appealed to the Court system. General Counsel Ron Rascia expanded on the discussion, indicating that he had a lengthy conversation with that Petitioner and explained the inability of the Commission to reopen cases. He appeared satisfied with the explanation. Mr. Rascia indicated that the Commission should respond to such inquiries even if they do not rise to the level of a formal complaint under the Rules of the Commission.

Deputy General Counsel, Darrell Widen, then expanded on the communication complaining of the actions of an Arbitrator initially mentioned by Ms. Parks. In that matter, the communication was basically a *pro se* motion, even though she was represented by counsel, for the Commission to change Arbitrators because the complainant believed the assigned arbitrator was biased against her. The case was adjudicated on the 19(b) petition and petitioner appealed to the Commission. The Commission affirmed the decision but struck extraneous comments made by the Arbitrator, and remanded the case for further proceedings. Mr. Widen informed the Board that he wrote the complainant_a letter informing her that the motion was improper because she had an attorney of record. In addition, the Commission could not reassign cases simply because of unsubstantiated claims of bias. The proper procedure would be to file the motion before the Arbitrator and if the Arbitrator denied the motion, that could be a basis for review if the petitioner were dissatisfied with the final outcome. Mr. Widen also indicated that he personally talked with the complainant_on at least two occasions, and while she remained dissatisfied with the progress of her case, she seemed satisfied with the explanation of the Commission regarding her inquiry.

Arbitrator Milton Black informed the Board that there is some case law that helps to clarify the criteria upon which Arbitrators or Commissioners should be disqualified. Arbitrator Black briefly outlined three relevant cases, and recommended that these cases be consulted in possibly drafting appropriate rules or policies regarding disqualification or reassignment. Mr. Rascia then interjected that under Circuit Court rules some basis for disqualification must be specifically pled. He agreed that this situation should be addressed in the on-going review of the rules of the Commission.

Upon inquiry from Velisha Haddox regarding the current policy of the Commission, Mr. Widen indicated that disqualification was based primarily on the economic interest of the Arbitrator or Commission, but that reassignment of Arbitrators was done at the discretion of the Chairman.

Chairman Weisz then noted that it was important for the Commission to be vigilant against forum shopping, whereby litigants seek a more sympathetic arbitrator. However, he believed that that problem would be less applicable to *pro se* litigants because they would likely not have the sophistication regarding the process and reputation of particular Arbitrators to be able to manipulate the process. In the current climate of scrutiny, he would not take issue with Arbitrators allowing motions to recuse based on unsubstantiated allegations of bias, and he would let Arbitrators be aware of that position. If a litigant sincerely believes a particular Arbitrator is biased, the Chairman believed that Arbitrator would probably prefer to recuse himself to avoid any appearance of impropriety.

Chairman Weisz then asked Ms. Parks whether she believed any of the other inquiries received from the Governor's Office of Constituent Affairs would be particularly instructive. She related one inquiry in which a petitioner complained of not having a hearing on his 19(b) petition for several months. Because this petitioner was represented by counsel, the Board members considered in reality this complaint involved the actions of the petitioner's attorney, who did not schedule the hearing date, even though this communication was directed to the Commission. Ms. Parks also related the inquiry of a woman who inquired about the claim of her son. Mr. Rascia noted that he had the file and was preparing a response. The essence of the complaint is that her son had received a settlement of about \$300,000, but she was told that if the case were a regular tort case, it would be worth \$1.5 million. Ms. Parks also related a complaint that a petitioner complained that her 2002 case has not been resolved. The Commission had awarded benefits but the respondent appealed throughout and the case was pending before the Appellate Court and out of the jurisdiction of the Commission.

Chairman Weisz informed the Board that Secretary Kimberly Janas has completed the first draft of amended rules regarding the operation of the Commission Review Board. Chairman Weisz indicated that he had recommended to Secretary Janas that the rules more closely resemble those used by the Attorney Registration and Disciplinary Commission in addressing complaints. He also related that the current provision that complaints be forwarded to the Board within 15 days was impracticable and unnecessary because the Board would now meet at least quarterly. He noted that the new rules would clarify the current process by which the Executive Director makes the initial response to an inquiry and also provide a report to the Board at its quarterly meeting.

Arbitrator Holland then suggested that the Executive Director's response should be previewed by the legal department. Ms. Parks indicated she and the legal department already cooperated on responses, but agreed that greater interaction between her and the legal department, which also receives inquiries from the Governor's Office of Constituent Affairs, would help to ensure coordinated responses and to reduce unnecessary duplication of effort. It was agreed that the Office of the Executive Director would be official repository of all complaints and inquiries.

Chairman Weisz indicated that even though the Board had no official role in approving rules he welcomed any input the members could provide because these amendments would affect the operation of the Board. Ms. Haddox moved to adjourn, which was seconded by Arbitrator Black. The meeting adjourned.