

STATE OF NEVADA
Board for the Administration of the
Subsequent Injury Account for Self-Insured Employers
Meeting Minutes for December 18, 2019

On December 18, 2019, a meeting of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers was convened. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102, in the Executive Video Conference Room, at the offices of the Division of Industrial Relations ("DIR"). Participating in person, in the DIR offices, were Chairman Amy Wong and member Suhair Sayegh. Participating by phone were Vice-chairman Cecilia Meyer and member Sharolyn Wilson. In accordance with the Nevada Open Meeting Law, each Board member participating in the meeting either had before her all written materials to be considered during the deliberations or was obliged to refrain from voting if not in possession of the materials.

1. Roll Call.

Chairman Amy Wong called the meeting to order. Participating in person, in the DIR offices, were Chairman Amy Wong and member Suhair Sayegh. Participating by phone were Vice-chairman Cecilia Meyer and member Sharolyn Wilson. A quorum of the Board was present to conduct the Board's business, as all four members of the Board were in attendance.

Present in person at the meeting was Vanessa Skrinjaric, Compliance Audit Investigator, DIR, Christopher A. Eccles, Esq., DIR legal counsel, Aaron Shipley, Esq., McDonald Carano and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Board legal counsel. Also present on the phone was Kasey McCourtney, CCMSI.

The City of Sparks matter was recorded by Court Reporter, Shannon Taylor, by teleconferencing from Carson City, Nevada.

2. Public Comment.

There was no public comment.

3. Approval of the Posting of the Agenda.

Chairman Wong called this matter to be heard. It was moved by Cecilia Meyer, seconded by Suhair Sayegh, to approve the posting of the Agenda for the meeting.
Motion adopted.

Vote: 4-0.

4. Approval of the Agenda.

Chairman Wong next called this item to be heard. It was moved by Sharolyn Wilson, seconded by Cecilia Meyer, to approve the Agenda. **Motion adopted.**

Vote: 4-0

5. Approval of Minutes for November 19, 2019 and December 5, 2019.

November 19, 2019: Chairman Wong called this matter next. It was moved by Cecilia Meyer, seconded by Sharolyn Wilson, to approve the minutes as read. As Suhair Sayegh was not present for a part of the meeting of November 19th, she abstained from voting on the minutes. **Motion adopted.**

Vote: 3-0-1. (Sayegh abstaining).

December 5, 2019: Chairman Wong called this matter next. It was moved by Cecilia Meyer, seconded by Sharolyn Wilson, to approve the minutes as read. **Motion adopted.**

Vote: 4-0.

6. Action on the recommendation of the Administrator of the Division of Industrial Relations, for denial of the following request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers. The following request(s) for reimbursement, which the Board will hear *de novo*, is/are contested case(s) which will be adjudicated pursuant to the Nevada Administrative Procedures Act, NRS 233B.010, et. seq. Continued from a previous meeting.

a. 13475C802927

City of Sparks

Chairman Wong called this matter to be heard. The insurer and employer for this matter is the City of Sparks. The matter was submitted by the third party administrator, CCMSI. The Administrator recommended denial of this request pursuant to NRS 616B.557 for post-traumatic stress disorder. The amount of reimbursement requested was \$190,699.48. The amount of reimbursement after costs were verified was \$58,454.17.

Kasey McCourtney, CCMSI appeared on behalf of the employer, as did Aaron Shipley, Esq., of McDonald Carano. Christopher A. Eccles, Esq., of the DIR, appeared on behalf of the Administrator, DIR, as did Vanessa Skrinjaric, the Administrator's liaison to the Board.

As CCMSI was the third party administrator for her employer, the City of Henderson, Amy Wong advised that she did not believe this created a conflict of interest and would participate in the hearing of this claim.

Similarly, because CCMSI was the third party administrator for this claim, Cecilia Meyer advised that CCMSI was the third party administrator for her employer, Carson City. She did not believe this presented a conflict of interest and would, therefore, hear this claim.

Because CCMSI was the third party administrator for this claim, Sharolyn Wilson advised that CCMSI was the third party administrator for her employer, Washoe County. She did not believe this presented a conflict of interest and would, therefore, hear this claim.

Amy Wong then advised that the law firm of McDonald Carano represented her employer, the City of Henderson, in workers compensation matters. She stated that she did not consider this a conflict of interest and would participate in the disposition of this matter.

Also, Sharolyn Wilson stated that the McDonald Carano law firm also represented her employer, Washoe County, with workers compensation issues. She did not believe this created a conflict of interest and she, too, would participate in the disposition of this case.

Aaron Shipley presented the case for the City of Sparks, the self-insured employer, in this case, assisted by Kasey McCourtney, CCMSI. Christopher Eccles presented on behalf of the Administrator, along with the Administrator's liaison, Vanessa Skrinjaric. The Administrator recommended claim denial, believing the combined effects rule of NRS 616B.557(1) was not satisfied.

The injured worker suffered from PTSD and an acute stress syndrom. The question the case presented was whether the condition, post the original reason for the claim, was either attributed to a progressive deterioration of the original condition and, thus, there was only one injury or condition or whether, the deterioration in the injured worker's condition following an incident of October 13, 2013, could be attributed to the latter incident of October incident. The Administrator rejected the claim on the grounds that the subsequent condition was attributed to the natural progression of the original PTSD and acute stress syndrom. In other words, according to the Administrator, there was only one condition and, therefore, since a single condition cannot combine with itself to substantially increase the compensation paid the injured worker, NRS 616B.557(1) could not be satisfied, requiring a rejection of the claim.

Evidence was accepted, argument was made, documents were reviewed, statutes reviewed and Board members deliberated during the longest hearing of the year. The Board elected to reject the Administrator's recommendation, save and accept the recommendation that payment for a service dog should be rejected as a verified cost. The Board also questioned along with the Administrator, the vocational rehabilitation payment. The Board was of the mind to give the City of Sparks the opportunity to prove up reimbursement on that element of the claim.

Accordingly, it was moved by Suhair Sayegh, seconded by Sharolyn Wilson, to reject the Administrator's recommendation and, therefore, to approve the claim and direct payment in the amount of \$58,454.17. It was further moved and seconded that the Board approved

the Administrator's recommendation to deny reimbursement for a service dog in the amount stated in the summary of verified costs, as stipulated to by Kasey McCourtney. It was finally moved and seconded to continue the matter as to the question of reimbursement of the cost of vocational rehabilitation, giving the employer the opportunity to present more proof on this issue. **Motion adopted.**

Vote: 4-0.

b. 170380000131

Venetian Casino Resort

Chairman Wong next called this matter to be heard. The insurer for this matter is the Las Vegas Sands. The employer for this matter is the Venetian Casino Resort. The matter was submitted by the third party administrator, Sierra Nevada Administrators.

The Administrator recommended denial of this request pursuant to NRS 616B.557 (1) and NRS 616B.557 (4) for the left wrist. The amount of reimbursement requested was \$29,624.38. The amount of reimbursement after costs were verified was \$25,640.99.

Board counsel advised that he had received, the day before this hearing, a brief letter from Kim Price, Esq., Lewis Brisbois Bisgaard & Smith, LLP. The letter advised that the applicant was withdrawing its appeal of this matter. To be clear, Board counsel telephoned Mr. Price to confirm the contents of his letter. Mr. Price advised that, indeed, the applicant was not pursuing this claim any further, allowing the tentative denial of the claim to stand. Board counsel advised that the Board would act, then, accordingly on Mr. Price's letter. Being informed of the representation of claim withdrawal according to Mr. Price, it was moved by Suhair Sayegh, seconded by Cecilia Meyer, to accept the withdrawal of the claim and to dismiss the appeal with prejudice, leaving the Board's tentative denial as the final order in this case. **Motion adopted.**

Vote: 4-0.

7. Board Legal Counsel Contract. Discuss Options for Board Representation, Reaffirm Action Already Taken, Consider Advising Authorities of Board's Position on Legal Counsel, and Necessity of Independent Legal Counsel.

Board legal counsel advised that he did not think there was a cause of action to bring suit to force the State to allow the Board to retain independent, outside counsel to avoid the obvious conflict of interest that is presented when a member of the attorney general's office represents the Administrator and a member of the attorney general's office, another State employee, is assigned to represent the Board. They might well be arguing against each other as might have occurred, today, when the Board rejected the recommendation of the Administrator.

The Board is not of the mind to allow the issue of outside legal counsel to die without further pressing its view that it requires outside, independent legal counsel to represent it instead of a state employee, creating, as indicated, this patently obvious conflict of interest if two State employees are on opposite sides of the question as would have occurred this date, if the Board was not represented by outside legal counsel.

The Board, therefore, was in accord to direct the Chairman, with the help of Board counsel, to write directly to the Governor, protesting the decision to deny the Board independent legal counsel, and to allow the Board Chairman to sign the letter of protest to the Governor without further review by the Board. To facilitate this protest, the Board also was in accord to cancel the meeting for January 2020.

It was accordingly moved by Suhair Sayegh, seconded by Cecilia Meyer, to cancel the January 2020 meeting. It was moved by Cecilia Meyer, seconded by Suhair Sayegh, to direct the Chair to send a letter of protest to the Governor, without requiring further Board approval and with the assistance of Board counsel. **Both motions were adopted on a vote of 4-0.**

Board legal counsel stated that in the event this was his last meeting as legal counsel to the Board, he advised, it was a privilege, pleasure and great learning experience representing the Board. The Board has been blessed with great leadership, including present company, Pat Walquist, Vicki Robinson, RJ LaPuz, and Tina Sanchez, to name but a few. Board counsel wished the current Board well.

8. Additional Items.

a. General Matters of Concern to Board Members Regarding Matters Not Appearing on the Agenda.

There were no general matters discussed.

b. Old and New Business.

There was no old or new business discussed.

c. Schedule of Next Meeting.

The January 2020 meeting is cancelled. The following dates for Board meetings have been scheduled in advance but are subject to change at any time: February 19, 2020, March 18, 2020, April 15, 2020, May 20, 2020, June 17, 2020, July 15, 2020, August 19, 2020, September 16, 2020, October 21, 2020, November 18, 2020 and December 16, 2020.

9. Public Comment.

There was no public comment.

10. Adjournment.

It was moved by Suhair Sayegh, seconded by Cecilia Meyer, to adjourn the meeting. **Motion adopted.**

Vote: 4-0

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