

REGULAR MEETING OF THE
OKLAHOMA WORKERS' COMPENSATION
COMMISSION

APPEALS

Friday, January 26, 2024
9:00 a.m.
Commission En Banc Courtroom
1915 N. Stiles Ave.
Oklahoma City, Oklahoma
www.wcc.ok.gov

AGENDA

- CALL TO ORDER**.....Commission’s Chair, Chairman Russell
- ROLL CALL**.....Presiding Appellate Officer, Commissioner Tilly
- BUSINESS**.....Presiding Appellate Officer, Commissioner Tilly

STATEMENT OF COMPLIANCE BY CHAIRMAN

THE FOLLOWING MATTERS ARE PRESENTED FOR CONSIDERATION AND ACTION, IF ANY, DEEMED APPROPRIATE BY THE COMMISSION

A. MINUTES:

- The drafted Minutes of the Special Appeals Meeting of January 5, 2024 were considered for approval.

Motion: Commissioner Biggs made a motion to approve the Special Appeals Meeting of January 5, 2024, minutes.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: MINUTES APPROVED

B. Appeal Hearings before the Commission En Banc from Orders Issued by the Commission’s Administrative Law Judges

1. Kendall Jobe v. City of Tulsa (OWN RISK #10435), File #CM3-2019-01638K

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Michael R. Green appeared for the Claimant and Travis R. Colt appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take this case under advisement.

Second: Commissioner Tilly

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: TAKEN UNDER ADVISEMENT

2. **Ronald Hewitt v. NW OK Mechanical LLC and Stonetrust Commercial Ins. Co., File #CM3-2022-02895M**

Respondent filed an appeal from the order issued by Administrative Law Judge McMillin. James G. Devinney appeared for the Claimant and Travis R. Colt appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

3. **Scott Byrd v. MITF, File #CM3F-2022-06888Y**

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Bret Unterschuetz appeared for the Claimant and Travis R. Colt appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

4. **Peggy Wallenstein v. Nortek Air Solutions LLC and Everest Premier Insurance Company, #CM3-2022-07142H**

Claimant filed an appeal from the order issued by Administrative Law Judge McMillin. Tim Kent appeared for the Claimant and Chad R. Whitten appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and

authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

5. **Shana Stone v. Southwest Airlines Co. and Indemnity Insurance Co. of North America, File #CM3-2019-04356A**

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Mitchell E. Shamas is the attorney of record for the Claimant and H. Grady Parker Jr. is the attorney of record for the Respondent.

Motion: Commissioner Biggs moved to continue this case to the next available docket.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: CASE CONTINUED

6. **Lisa Cudjo v. Oklahoma Department of Veterans and the State of Oklahoma, File #CM3-2021-04094A**

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. James G. Devinney appeared for the Claimant and Preston G. Hanner appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

7. **Charles Caul v. Shelton Redi Mix LLC and Ins. Co. of the West, File #CM3-2023-00661K**

Respondent filed an appeal from the order issued by Administrative Law Judge Lawyer. Kathryn Black appeared for the Claimant and David Custar appeared for the Respondent.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take this case under advisement.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: TAKEN UNDER ADVISEMENT

C. Commission Consideration of Adoption of Final Order in the Following Cases:

1. Allan Hare v. MITF, File #CM3F-2019-04761J

Claimant filed an appeal from the order issued by Administrative Law Judge Curtin. Ray Lahann is the attorney of record for the Claimant and Stefan Wenzel is the attorney of record for the Respondent.

This case came on for Oral Argument on November 18, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

The Commission considered the adoption of the following order in the above referenced case:

This matter comes before the Commission on its *sua sponte* inquiry to determine the need for a stay of appellate proceedings. The instant case involves the same jurisdictional issue raised by the Multiple Injury Trust Fund in *Stricklen v. Multiple Injury Trust Fund*, No. 120,753, which is pending certiorari review by the Oklahoma Supreme Court. In the interest of judicial economy, the Commission finds a stay of appellate proceedings is necessary. It is therefore **ORDERED** that Petitioner's appeal is hereby **STAYED** pending final resolution in *Stricklen* or until further order of the Commission.

Motion: Commissioner Tilly moved to approve a stay of this case pending a resolution in *Stricklen v. Multiple Injury Trust Fund*, No. 120,753.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

2. James Crittenden Jr. v. MITF, File #CM3F-2019-07602A

Claimant filed an appeal from the order issued by Administrative Law Judge Blodgett. McCaffrey & Associates are the attorneys of record for the Claimant and Michael A. Fagan is the attorney of record for the Respondent.

This case came on for Oral Argument on November 18, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

The Commission considered the adoption of the following order in the above referenced case:

This matter comes before the Commission on its *sua sponte* inquiry to determine the need for a stay of appellate proceedings. The instant case involves the same jurisdictional issue

raised by the Multiple Injury Trust Fund in *Stricklen v. Multiple Injury Trust Fund*, No. 120,753, which is pending certiorari review by the Oklahoma Supreme Court. In the interest of judicial economy, the Commission finds a stay of appellate proceedings is necessary. It is therefore **ORDERED** that Petitioner's appeal is hereby **STAYED** pending final resolution in *Stricklen* or until further order of the Commission.

Motion: Commissioner Tilly moved to approve a stay of this case pending a resolution in *Stricklen v. Multiple Injury Trust Fund*, No. 120,753.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

3. James Randy Westlake v. MITF, File #CM3F-2022-01067X

Respondent filed an appeal from the order issued by Administrative Law Judge Lawyer. Ray Lahann is the attorney of record for the Claimant and Travis R. Colt is the attorney of record for the Respondent.

This case came on for Oral Argument on March 17, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

The Commission considered the adoption of the following order in the above referenced case:

This matter comes before the Commission on its *sua sponte* inquiry to determine the need for a stay of appellate proceedings. The instant case involves the same jurisdictional issue raised by the Multiple Injury Trust Fund in *Stricklen v. Multiple Injury Trust Fund*, No. 120,753, which is pending certiorari review by the Oklahoma Supreme Court. In the interest of judicial economy, the Commission finds a stay of appellate proceedings is necessary. It is therefore **ORDERED** that Petitioner's appeal is hereby **STAYED** pending final resolution in *Stricklen* or until further order of the Commission.

Motion: Commissioner Tilly moved to approve a stay of this case pending a resolution in *Stricklen v. Multiple Injury Trust Fund*, No. 120,753.

Second: Commissioner Biggs

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

4. Jerry Green v. MITF, File #CM3F-2015-07692A

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Susan Jones appeared for the Claimant and Jordan S. Ensley appeared for the Respondent.

This case came on for Oral Argument on April 21, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take preliminary

action to affirm the Administrative Law Judge's order and issue a supplemental order at a future date.

Motion: Commissioner Biggs moved to adopt the order as previously circulated.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER ADOPTED

5. Virgil Breeze v. Premium Transportation Group Inc. and XL Insurance America Inc., File #CM3-2021-06787E

Both parties filed an appeal from the order issued by Administrative Law Judge Inhofe. Daniel J. Talbot appeared for the Claimant and R. Jay McAtee appeared for the Respondent.

This case came on for Oral Argument on April 21, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

6. Fernando Colunga v. MITF, File #CM3F-2015-01300K

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Michael R. Green appeared for the Claimant and Jordan S. Ensley appeared for the Respondent.

This case came on for Oral Argument on May 19, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take this case under advisement.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to affirm the Administrative Law Judge's order and authorized the Commission's Presiding Appellate Officer to sign and file an order on behalf of the Commission.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ALJ ORDER AFFIRMED

7. **Travis Oakes v. City of Stillwater, File #CM3-2022-07536Y**

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Daniel J. Talbot appeared for the Claimant and John D. Valentine appeared for the Respondent.

This case came on for Oral Argument on July 21, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take preliminary action to reverse the denial of Respondent's motion to terminate TTD.

Motion: Commissioner Biggs moved to adopt the order as previously circulated.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER ADOPTED

8. **James Brock v. Starlight Express LLC and Compsource Mutual Ins. Co. (FKA COMPSOURCE OKLAHOMA), File #CM3-2021-04119R**

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Susan H. Jones appeared for the Claimant and Travis R. Colt appeared for the Respondent.

This case came on for Oral Argument on September 22, 2023. After reviewing the record, hearing oral arguments, and deliberating, Chairman Russell moved to preliminary action to reverse the order sustaining Respondent's request for dismissal of certain body parts and authorize the Commission's appellate counsel or other staff member to draft a proposed order findings and facts and conclusion of law to be considered for continued action at a future meeting.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

9. **Jimmy Mills v. Gary A. Crain Inc. and Imperium Insurance Co., File #CM3-2020-00795Q**

Claimant filed an appeal from the order issued by Administrative Law Judge Curtin. Daniel J. Talbot appeared for the Claimant and R. Jay McAttee appeared for the Respondent.

This case came on for Oral Argument on September 22, 2023. After reviewing the record, hearing oral arguments, and deliberating, Chairman Russell moved to take this case under advisement.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

10. Kevin Power v. Flow Testing Inc. and Compsource Mutual Ins. Co. (FKA COMPSOURCE OKLAHOMA), File #CM3-2020-02016R

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. J. Kord Hammert appeared for the Claimant and David J. Frette appeared for the Respondent.

This case came on for Oral Argument on September 22, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take this case under advisement.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

11. Rachel Fritz v. City of Tulsa (OWN RISK #10435), File #CM3-2019-06216R

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. Anthony Blair appeared for the Claimant and Jordan S. Ensley appeared for the Respondent.

This case came on for Oral Argument on December 1, 2023. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Tilly moved to take preliminary action to reverse the Administrative Law Judge's order on the TTD issue.

Motion: Commissioner Biggs moved to continue this order to the next appeals meeting.

Second: Chairman Russell

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: ORDER CONTINUED

ADJOURNMENT

Motion: Commissioner Biggs moved to adjourn the meeting at approximately 12:14 p.m.

Second: Chairman Russell.

Those Voting Aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

THE MOTION CARRIED: MEETING ADJOURNED.