

OKLAHOMA WORKERS' COMPENSATION COMMISSION
SPECIAL MEETING MINUTES
FEBRUARY 6, 2024 10:30 A.M.

STATEMENT OF OKLAHOMA OPEN MEETING ACT COMPLIANCE

Notice of this Special Business Meeting was filed with the Secretary of State's office in compliance with the Open Meeting Act.

The agenda was posted at least 24 hours in advance of the meeting, in compliance with the Open Meeting Act. It was posted on the Commission website and at 1915 N. Stiles Ave., Oklahoma City, Oklahoma, the Commission's principal office.

MINUTES OF THE FEBRUARY 6, 2024, SPECIAL BUSINESS MEETING OF THE
OKLAHOMA WORKERS' COMPENSATION COMMISSION

The members of the Oklahoma Workers' Compensation Commission met at 1915 N. Stiles Ave., in the En Banc Courtroom, Oklahoma City, Oklahoma, on February 6, 2024.

Members present: Chairman Jordan Russell, Commissioner Tilly, and Commissioner Scott Biggs.

Others Present: Sharon Smith, WCC; Ian Steedman, WCC; Lauren Hammonds Johnson, WCC; Tava Jones, WCC; and Christine O'Donnell, FAIR Health.

Chairman Russell expressed appreciation for those in attendance. After the roll was taken, Chairman Russell found a quorum present and called the meeting to order at 10:30 a.m.

A. Commission Business Meeting

1. Discussion and Possible Action to Approve Minutes

The drafted minutes of the January 25, 2024, Regular Meeting of the Commission will be considered for approval.

Commissioner Biggs moved to approve the Minutes. Commissioner Tilly seconded the motion. Those voting aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

The motion carried.

2. **Proposed Executive Session Pursuant to 25 O.S. § 307(B)(4) to Confidentially Discuss *Andrews v. Oklahoma Workers' Compensation Commission*, Case No.: 21-cv-609-R (W.D. Okla.)**

A. **Motion and vote to enter into Executive Session.**

Commissioner Biggs moved to enter Executive Session. Commissioner Tilly seconded the motion. Those voting aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

The motion carried.

B. **Discussion in Executive Session.** The Commission discussed only the topic stated in this agenda item.

C. **Motion and vote to reconvene in Open Session.**

Commissioner Biggs moved to exit Executive Session. Commissioner Tilly seconded the motion. Those voting aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

The motion carried.

D. **Motion and vote on Possible Action.**

Commissioner Biggs moved to authorize General Counsel to take whatever action necessary to finalize the dismissal, with prejudice, as discussed in executive session. Commissioner Tilly seconded the motion.

The motion carried.

3. **Discussion of Draft 2024 Medical Fee Schedule and Possible Action to Approve Proposed Changes to Initial Draft**

Christine O'Donnell, representative of FAIR Health, was recognized virtually via Zoom, presented, and answered questions of the Commission.

Commissioner Tilly moved to approve the proposed initial draft, with the changes discussed, for the purposes of publication and public comment. Commissioner Biggs seconded the motion. Those voting aye: Chairman Russell, Commissioner Tilly, and Commissioner Biggs.

The motion carried.

B. 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: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Tilly 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: Commissioner Biggs

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

THE MOTION CARRIED: ALJ ORDER AFFIRMED

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: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Tilly 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: Commissioner Biggs

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

THE MOTION CARRIED: ALJ ORDER AFFIRMED

4. 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 Tilly moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

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

THE MOTION CARRIED: ORDER CONTINUED

5. 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 Tilly moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

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

THE MOTION CARRIED: ORDER CONTINUED

6. 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 McAtee 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 Tilly moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

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

THE MOTION CARRIED: ORDER CONTINUED

7. 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 Tilly moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

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

THE MOTION CARRIED: ORDER CONTINUED

8. 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 Tilly moved to continue this order to the next appeals meeting.

Second: Commissioner Biggs

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

THE MOTION CARRIED: ORDER CONTINUED

9. 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.

This case came on for Oral Argument on January 26, 2024. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Tilly moved to take this case under advisement.

Motion: After reviewing the record, hearing oral arguments, and deliberating, Commissioner Tilly 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: Commissioner Biggs

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

THE MOTION CARRIED: ALJ ORDER AFFIRMED

10. 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.

This case came on for Oral Argument on January 26, 2024. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Tilly moved to take this case under advisement.

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

Second: Commissioner Biggs

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

THE MOTION CARRIED: ORDER CONTINUED

ADJOURNMENT.....Chairman Russell

Commissioner Tilly moved to adjourn. Commissioner Biggs seconded the motion. Those voting aye: Those voting aye: Chairman Russell, Commissioner Tilly, Commissioner Biggs.

The motion carried, and the meeting adjourned at 11:02 a.m.