

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 9, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Afshan Peimani	Staff Attorney
	William Warren	ADOSH Director
	Brian Downen	Compliance Officer
	Anthony Leyva	Compliance Officer
	Katherine Merems	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Jesse Caso with Liberty Roofing; David Howard, Diane Starkweather, and Jeff Starkweather with Starkweather Roofing; and Jason Weber with Snell & Wilmer.

Approval of Minutes of January 26, 2017 Regular Meeting and January 26, 2017 Executive Session Minutes.

The agenda item for approval of the Minutes of the January 26, 2017 regular session and January 26, 2017 executive session meeting was moved to the agenda of the next regular session meeting.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C16/17-0261 Donald Barr & Lauri Barr, husband and wife, dba Angels on Duty
2. 2C15/16-2594 Eddie's Tire Shop LLC

3. 2C16/17-0264 First USA Moving & Storage L.L.C., dba USA Moving & Storage
4. 2C16/17-0646 Victorian Trucking LLC

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Arizona Counties Workers' Compensation Pool
2. City of Chandler
3. City of Mesa
4. Regis Corporation
5. The Arizona School Alliance for Workers' Compensation, Inc.

Chairman Schultz noted the number of employees employed by Donald Barr & Lauri Barr, husband and wife, dba Angels on Duty. Commissioner LeMarr moved to approve the items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles discussed ongoing efforts to provide information to the Arizona Daily Star regarding ADOSH.

Mr. Charles provided an update on the status of the Commission's legislative bills regarding workers' compensation and ADOSH.

Chairman Schultz thanked Mr. Charles for his efforts and highlighted successful work to build a coalition to support the Commission's proposed legislation.

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

Fendon Law Firm and E. Sanchez

Ms. Peimani discussed Mr. Matt Fendon's Petition for Attorney's Fees and staff's recommendation that Mr. Fendon receive fees (as outlined in the proposed Findings and Award Granting Attorney Fees) for a period of ten years after the subject Loss of Earning Capacity Award is issued.

Chairman Schultz and Ms. Peimani discussed the terms of the proposed Findings and Award Granting Attorney Fees, the ten-year statutory limit on an award of attorney fees, and the stipulation entered into between the parties.

Commissioner Orchard moved to approve staff's recommendation that Mr. Fendon receive fees (as outlined in the proposed Findings and Award Granting Attorney Fees) for a period of ten years after the subject Loss of Earning Capacity Award is issued. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

REPEAT-SERIOUS – Citation 1 - Item 3 – Roof: Three employees utilized a 16 foot portable aluminium ladder to access the roof and the ladder side rails did not extend at least 3 feet above the upper landing surface that was accessed. (29 CFR 1926.1053(b)(1)).

Liberty Roofing, LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.1053(b)(1) which was contained in OSHA inspection number 1157538, citation number 1, item number 1 and was affirmed as a final order on September 22, 2016, with respect to a workplace located at 6565 E. Broadway Blvd., Tucson, AZ 85711.

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
TOTAL PENALTY - \$10,000.00	TOTAL FORMULA AMT. - \$10,000.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Commissioner LeMarr discussed the presence of fall protection equipment, the company's knowledge of the training standard, the company's fall protection training program, and admissions by the workers that they had not received fall protection training.

Commissioner LeMarr, Commissioner Orchard, and Mr. Warren reviewed the usage of harnesses by the workers, discussed photograph no. 5, and discussed the basis for employer knowledge.

Chairman Schultz and Mr. Warren discussed abatement of the company's prior citations regarding fall protection and fall protection training.

Chairman Schultz, Commissioner Orchard, and Mr. Warren discussed the company's training program, why the workers has not received fall protection training, and the classification of the training violation.

Commissioner LeMarr and Mr. Warren discussed whether the workers were trained in fall protection. Mr. Warren and Mr. Porter discussed the training records provided by the employer, various options for fall protection, and the ability to resolve disputes during the hearing process.

Chairman Schultz, Vice Chair Hennelly, and Mr. Warren discussed various options for fall protection on the project.

Mr. Caso discussed the phase of the project being performed at the time of the inspection and the use of fall protection equipment.

Commissioner LeMarr and Mr. Caso discussed the company's training program and the reason the workers on this site had not yet received fall protection training.

Commissioner Orchard moved to amend the citation and proposed penalties, as follows: (1) reduce the proposed penalty for Citation 1, Item 2 to \$2,000 (as a result of the employer's training program), for a total penalty of \$8,000.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Starkweather Roofing, Inc.
29455 N Cave Creek Rd
Ste 188-631
Cave Creek, AZ 85331

Referral
Years in Business: 20
Empl. Covered by inspection: 6

of his investigation, including information acquired regarding the use of a safety monitor at the project, and the basis for the proposed violations.

Commissioner Orchard and Mr. Warren discussed employer knowledge in the context of the proposed violations. Ms. Starkweather discussed the company's training records, training provided to the company's superintendent, the element of employer knowledge, and the defense of employee misconduct. Chairman Schultz and Ms. Starkweather discussed the ability for the company to raise the mentioned concerns during the hearing process. He reiterated the scope of the Commission's review.

Mr. Starkweather discussed his frustration regarding the costs involved in contesting a citation and the identity of the complainant. Chairman Schultz, Commissioner Orchard, and Mr. Warren discussed the rights of business owners to be represented by legal counsel.

Vice Chair Hennelly, Mr. Downen, and Mr. Warren discussed the basis for the proposed training violation and the requirements of the standard for a warning-line system.

Commissioner LeMarr moved to amend the citation and proposed penalties, as follows: (1) delete Citation 1, Item 2 (based on Starkweather's extensive training program). Commissioner Orchard seconded the motion and complimented Mr. Downen on his knowledge, professionalism, and desire to educate and promote safety with companies across the state. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley and Chairman Schultz discussed the current state of the Commission's outdated claims system, the planned upgrade to the system, and anticipated capabilities of the new system. Mr. Ashley, Commissioner LeMarr, and Vice Chair Hennelly discussed logistics of implementing the new system. Mr. Ashley estimated that the new system will be ready for testing in Spring of 2018 and running by Summer of 2018.

Mr. Ashley discussed the status of the ALJ recruitment process.

Chairman Schultz and Mr. Ashley discussed an upcoming second Commissioner Gemba walk.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced the AZAGC/ABA lunch event at the Capitol.

Ms. Dimas confirmed Commission meeting dates through March 2017, including a Commission meeting in Kingman, Arizona at the end of March 2017.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 2:27 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary