

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, January 13, 2022 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	D. Alan Everett	Commissioner (Telephonic)
	James Ashley	Director (Telephonic)
	Gaetano Testini	Chief Legal Counsel (Telephonic)
	Jason M. Porter	Deputy Director (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	Steve Black	ADOSH Compliance (Telephonic)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Debbie Baker (Valley Schools Workers' Compensation Group); Darren VandeVoorde, Helen Singmaster, Joe Wisto, Elva Vivas and Ken Mueller (Raley's Arizona dba Bashas'); Kate Pokorski (Snell & Wilmer representing Raley's Arizona); Douglas Chappell (Drexel Heights Fire District); Corey Reeder, Kelly Johnson, Taylor Kloss and Amy Perez (AlSCO Uniforms); Chris Patton, Jessie Rudolf, Robert Dye and Aaron Hendricks (Diamond Plastics Corporations); Bob Hasulak (QuickFrames USA, LLC); and Christine Glover (Snell & Wilmer).

Approval of Minutes of December 16, 2021 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the December 16, 2021 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

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 Requests for Renewal of Self-Insurance Authority.
 1. Valley Schools Workers' Compensation Group
- b. Discussion and Action of Application for Self-Insurance Authority.

1. Raley's Arizona dba Bashas'

Chairman Schultz commented on the number of years that Valley Schools has been in business and the wonderful experience modification factor they maintain.

Chairman Schultz noted that Bashas' has been with us for many years and is well known. Ms. Pastor noted this is an initial application for self-insurance but they will be handling and administering all of Bashas' old claims as well. Chairman Schultz noted that often in an acquisition a new experience modification factor applies if there are other operations.

Commissioner Everett moved to approve the items on the Consent Agenda as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Chairman Schultz thanked Valley Schools Workers' Compensation Group and Raley's Arizona for joining and looks forward to their continued participation for self-insurance and welcomed Raley's and their new leadership team.

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.

Garza and Montenegro – Mr. Testini summarized that the Petitioner Mr. Garza was hired by the Respondent in June 2019 with respect to her April 2019 workers' compensation claim. The fee agreement allowed for the Petitioner to receive fees equal to 25% of the workers' compensation indemnity benefits, which is the standard of the industry. In July 2019 the claim was accepted as a no time loss claim and shortly thereafter the Respondent started receiving indemnity benefits. In December 2020 the ICA established the Respondent's average monthly wage at \$1,581.02 and the carrier issued a notice of claim status finding the Respondent stationary as of December 10, 2020, without permanent impairment. On December 31, 2020, the Petitioner requested a hearing challenging both the average monthly wage and the need for further active medical treatment. After numerous hearings the ALJ issued an award mailed on September 14, 2021 which found the Respondent was not entitled to further active medical treatment but also found Respondent's average monthly wage should be increased to \$3,627.41. On November 2, 2021 the attorney client relationship terminated. To determine the appropriate fees the Legal Division looked at two different approaches. first based upon the usual established hourly rate of \$185 the Petitioner would be due \$2,775 for the 15 hours of work completed. The second looked at the increase in benefits that the Respondent received as a result of the litigation and based on the increase in average monthly wage and period of time that the Respondent received indemnity benefits, the Respondent received an additional \$1,884.12. Based on the increase in indemnity benefits the Petitioner would be due 25% or \$471.03. It is the Legal Divisions recommendation that the Commission utilize the second method which provides a more equitable result.

Chairman Schultz and Mr. Testini discussed that since the claim is closed the benefits would be received by award if the claim was reopened from any future indemnity benefits that would be awarded to the Respondent and would be due to the Petitioner.

Vice Chair Hennelly moved to adopt the recommendation from the Legal Department for the Findings and Award granting attorney's fees in the amount of \$471.03 and to allow electronic

signatures of the Award and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Drexel Heights Fire District	Fatality/Accident	
5950 S Cardinal Ave	Years in Business:	67
<u>Tucson, AZ 85746</u>	Empl. Covered by Inspection:	12
Site Location:	3255 S Kinney Rd	
	Tucson, AZ 85713	
Inspection No:	FC-2022-T3633-0010	
Inspection Date:	11/18/2021	

SERIOUS – Citation 1 - Item 1 –

a) 3255 S Kinney Rd, Tucson, AZ, 85713: Employees were required to wear N95 filtering facepiece respirators and had not been fit tested. 29 CFR 19134(f)(1)

Div. Proposal - \$5,600.00	Formula Amt. - \$5,600.00
TOTAL PENALTY - \$5,600.00	TOTAL FORMULA AMT. - \$5,600.00

Mr. Atencio discussed the fatality inspection, summarized the citation and proposed penalty, and reviewed the photographs. Mr. Atencio noted that the Compliance Officer, Mr. Black was available for questions.

Vice Chair Hennelly asked if there was information providing some tie between the fitting issue and the actual exposure of the individual to COVID on the job. Chairman Schultz noted he wanted to ask if tracing was done, if any other employees had COVID in or around that time, and if we know if the employee was exposed to COVID in the community from other family members or the community outside of work.

Mr. Atencio noted that the fire district did their own assessment and determined that this was work related and that is why ADOSH has the file. He noted that fit testing has to be done when it comes to ensuring the seal is correct on the face and to prevent any type of whatever you are protecting the employee from crossing over the barrier.

Mr. Black noted that OSHA has taken the position that for respirators to be effective, an employer needs to have a respirator protection program to ensure certain factors are there to make sure the respirators work right and fit testing is one of them, without doing the fit test you cannot tell if the employee had the correct style and size of respirator that can actually do what the respirator is rated to do. That is a general principal of respirators that ADOSH enforces, not only for COVID but for all places where respirators are required by an employer.

Chairman Schultz asked the representative from Drexel Heights Fire District, Mr. Chappell if he would be willing to respond to questions. Chairman Schultz wanted to verify that Drexel believed the exposure did occur from the employee attending to a person in the course of work that was positive with COVID. Mr. Chappell noted the assumption was based on two things, the

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz thanked Mr. Atencio for pointing out a range of ways that an employer can create administrative controls, as simple and inexpensive as signage or markings on the floor that indicate danger zones or where people should stand and, in this case, fixing the foot pedal outside of the zone to be able to reach the machine.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Hasulak commented that the employee did return to work on a limited basis per his doctor, and the company put him to work at something they hoped would not strain him, but started feeling the pain and went back to the doctor. He did come back with no restrictions.

Mr. Hasulak also noted there were a number of issues and wondered when he would address those. Chairman Schultz explained the process to Mr. Hasulak.

Mr. Hasulak wants to have a safe environment, and this inspection has raised some questions for him regarding what is adequate guarding. He has talked to the experts in the field who have done the maintenance and they said there is no guarding for the gray press brake because it is mechanical and not hydraulic. He would like to get an explanation on what is adequate guarding.

Mr. Atencio noted that what the industry experts are telling him is right, there are no guards for this when it comes to a big press brake, but explained the point of operation guarding, with distances and what the employee is supposed to do to prevent them from putting their hand in the machine.

Chairman Schultz also noted that ADOSH has two parts, compliance and consultation. Mr. Atencio will give Mr. Hasulak more information. Chairman Schultz noted it sounds like Mr. Hasulak wants what the Commission wants and that is a safer workplace.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted that shortly before the Commission Meeting, it was announced that the U.S. Supreme Court has blocked Federal OSHA's COVID vaccine mandate for large workplaces. This was a very definitive stay of that mandate but it also allowed the CMS vaccine mandate for workers at federally funded healthcare facilities to take effect.

Mr. Ashley noted that he and Mr. Atencio toured an organization called New Freedom which is located at the former Sheraton Hotel at Peoria Avenue and I-17 who are doing an important job of recidivism reduction work for recently released inmates. Those who choose to be a part of this program upon their release, with a capacity of 400 individuals at this location, enter a 90-day program for men and women to help them integrate back into society and back into the workforce. He noted the several services that they provide to help get people back on track. The program also helps with workforce certifications and Mr. Atencio will be putting together a plan where we can assist by teaching OSHA 10-hour classes at no charge which will help the roofing industry, the

home building industry and almost every industry in need of workers, as we have a significant labor demand in Arizona and some industries were also struggling pre-COVID.

Chairman Schultz noted that it sounded amazing and he was sorry his schedule did not allow him to join, but asked Mr. Atencio to get him, and any other members of the Commission that are interested, involved to see the program. It is a wonderful extension of the work ADOSH is already doing at the prisons. We want to be a positive force in furthering the economy of Arizona and this is another way to help get people back to work and to work safely and to give folks opportunities. The skills and certifications give them a leg up on others in applying for virtually any sort of position.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics for the fiscal year-to-date. He reviewed the two metrics for Legal: WC Insurance Obtained and Approved Settlements.

Chairman Schultz noted it is about the education of what we are trying to do and would like to see every issue resolved through settlement, it would save on resources all around, and applauds what they are doing and the focus and the concept of setting goals, you do not get anywhere if you do not start out with a goal and work towards that goal.

Ms. Dimas confirmed Commission meeting dates through March 2022.

Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 3:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary