

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, July 26, 2018 – 1:00 p.m.

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| Present: | Dale L. Schultz | Chairman |
| | Joseph M. Hennelly, Jr. | Vice Chair |
| | Steven J. Krenzel | Commissioner (Telephonic) |
| | James Ashley | Director |
| | Stacey Rogan | Assistant Chief Legal Counsel |
| | Trevor Laky | Legislative Affairs Chief / Public Information Officer |
| | Renee Pastor | Self Insurance |
| | Jessie Atencio | ADOSH Interim Director |
| | Greggory Morgan | Assistant Claims Manager |
| | Guy Testini | Administrative Law Judge |
| | Kara Dimas | Commission Secretary |

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were BamBi Johnson with Arizona State Trailer Sales, Inc. dba Little Dealer Little Prices; Andy Samarripas with Ironwood Bed Frames & Mattresses LLC; Michael Fassett with Snell & Wilmer.

Approval of Minutes of July 19, 2018 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the July 19, 2018 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel 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 Proposed Civil Penalties Against Uninsured Employers.
 1. 2C-17/18-0622 - Michael Joseph Halliday, Jr. dba, Gold Canyon Painting
 2. 2C-17/18-0745 - Owan Incorporated, dba Frontier Truck Sales
 3. 2C-18/19-0043 - The Outpost General Store, LLC

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. Encompass Health Corporation fka Healthsouth Corporation
 2. Pilot Travel Centers LLC
 3. Van Tuyl Group, LLC dba Berkshire Hathaway Automotive, Inc.

Vice Chair Hennelly and Commissioner Krenznel requested the removal of Item (b)(1) (Encompass Health Corporation fka Healthsouth Corporation) from the Consent Agenda.

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

Approval of Requests for Renewal of Self-Insurance Authority.

Encompass Health Corporation fka Healthsouth Corporation – Vice Chair Hennelly discussed his concerns with the poor experience modification factor. Ms. Pastor discussed their 12 year experience modification history. She also noted that there was a decrease in 2017 and that several large claims should come off. She noted she anticipated it will continue to decrease. Vice Chair Hennelly and Ms. Pastor discussed consultation services, the increased security deposit, and the ability to review it in six months. Ms. Pastor noted that a new experience modification factor would not be available until February or March.

Chairman Schultz noted the Commission's option are to accept the recommendation of staff to authorize renewal or withdraw their authorization for self-insurance.

Ms. Pastor discussed the reason for increasing the security deposit. Vice Chair Hennelly and Ms. Pastor discussed the adequacy of the deposit and the possibility of auditing their reserves.

Chairman Schultz noted they appear financially stable and his concern is how to get them to provide a safer working environment for their employees.

Chairman Schultz noted if they do not take action to improve their experience modification he will not vote to continue their self-insurance authorization next year. The self-insured employers are expected to have better than industry average experience modification, not worse. Ms. Pastor noted their totals have leveled off from the prior years and their program could be working but we are not seeing the net affect yet.

Vice Chair Hennelly and Ms. Pastor discussed whether a review in six months would be reconsideration of their authority. Chairman Schultz noted authority is granted a year at a time.

Vice Chair Hennelly moved to approve the renewal of self-insurance authority, to double the bond amount per the staff recommendation, and ask for an update in six months. Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenznel 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.

SERIOUS – Citation 1 - Item 5 –

- a) Production area: One employee operated a Central Machinery 6 inch and 9 inch Combination Sander, model number unknown and serial #358451738, with an exposed in-going nip point between the rotating belt and pulley. 29 CFR 1910.219(a)(2)
- | | |
|----------------------------|---------------------------------|
| Div. Proposal - \$750.00 | Formula Amt. - \$750.00 |
| TOTAL PENALTY - \$3,300.00 | TOTAL FORMULA AMT. - \$4,500.00 |

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

The Commissioners did not have any questions.

Mr. Samarripas discussed their safety program and noted that it is now written instead of verbal. He noted photograph 15 showed abatement of photograph 13. He commented that they have fixed, repaired, and gone throughout the entire shop. They have spent approximately \$8,000 and the employees now participate in the safety program.

Chairman Schultz noted that is what the Commission likes to hear.

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

Discussion and Action of Request for Lump Sum Commutation. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(2) and (A)(3) to discuss or consider records exempt by law from public inspection or to consult with its attorneys for legal advice.

Sammy Contreras – Ms. Rogan discussed Mr. Contreras' lump sum commutation petition and staff's recommendation for approval.

Chairman Schultz and Vice Chair Hennelly noted it was a straight forward petition.

Vice Chair Hennelly moved to approve the proposed lump sum commutation and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Stephen Shaw – Ms. Rogan discussed Mr. Shaw's lump sum commutation petition and staff's recommendation for approval.

Chairman Schultz noted that both of these lump sum petitions meet the test of improving the financial condition of the person who is going to receive the proposed lump sum. In this case, the Applicant is back to work. It is not a replacement of current income, it is for a permanent partial disability.

Commissioner Krenzel moved to approve the proposed lump sum commutation and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz, Mr. Ashley, and Ms. Dimas discussed allowing for an electronic signature for Commissioner Krenzel.

Vice Chair Hennelly moved to allow for an electronic signature and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley provided an update on pending rulemaking noting that the Attorney General's Office cleared the rulemaking for Silica. He noted ADOSH and Mr. Atencio have worked extensively with the stakeholder community to prepare them for the new standards on Silica and will continue to work closely with them through the transition period. Chairman Schultz pointed out that this is a very pervasive new standard and will have broad implications in construction and other industries. He noted the approach was diligent and cautious.

Mr. Ashley provided an update regarding staff and noted that Gaetano "Guy" Testini will fill the Chief Counsel position and introduced Mr. Testini. He noted it is a great opportunity to continue the work that Mr. Porter has done. He noted Mr. Testini's extensive background and experience in workers' compensation, his appointment to the Board of Governors for the State Bar, his service as a professor at Grand Canyon University, as a Judge Pro-Tem with Maricopa County Superior Court, and being well known and respected in the stakeholder community. The Commissioners welcomed him.

Mr. Ashley noted the selection of Anthony Grandlich as Interim MIS Division Manager and his role to take the lead on many technology projects that are currently underway throughout the agency. Chairman Schultz noted he appreciated Mr. Grandlich stepping up. Mr. Ashley noted some of the important projects currently in the MIS Division.

Mr. Ashley noted the Boiler Inspection Chief is leaving the state and the Commission is actively recruiting to fill the important position, noting that he will continue to serve in a part-time capacity to certify inspections completed by third party inspectors. Mr. Ashley and Chairman Schultz discussed the success of the third party inspectors.

Chairman Schultz, Mr. Ashley and Mr. Atencio discussed the ICEA "Jail and Bail" activity.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the next out of town Commission outreach trip will be to Safford in September. Chairman Schultz, Mr. Ashley, and Mr. Atencio discussed Graham County being part of the Public Entity Partnership Program ("PEPP").

Ms. Dimas confirmed Commission meeting dates through September 2018.

Mr. Atencio noted the next Safety Summit will be in Prescott at Embry-Riddle on August 15 and 16, 2018.

Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:58 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary