

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 8, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Renee Pastor	Self-Insurance (Telephonic)
	J.R. Imes	ADOSH Supervisor
	Phil Murphy	Compliance Officer
	Billie Gingrass	Compliance Officer
	Yvonne Borunda	Legal Division
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Gareth Walters and Keith Williamson with Dynamic Systems, Inc.; Art Gage and Debra Runbeck with Arizona Association of Lawyers for Injured Workers (“AALIW”); and Clawson Williams with Snell & Wilmer.

Approval of Minutes of May 25, 2017 Regular Meeting Minutes.

Commissioner Orchard moved to approve the Minutes of the May 25, 2017 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. Vice Chair Hennelly abstained. 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. 2C16/17-1873 Arizona Movers and Storage Inc.
2. 2C16/17-1878 Chan Cho, a single man, dba WABA Hair & Beauty Supply
3. 2C16/17-1938 Cutting Edge 4x4, LLC
4. 2C16/17-1789 Fender Bender Leasing, L.L.C.
5. 2C16/17-0699 GMA D’s LLC

6. 2C15/16-2191 Luv Biz Chicago, Inc., dba Meet the Matchmaker
7. 2C16/17-1601 Moe & K, Inc., dba Sky High Glass Gallery

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

1. Dole Food Company, Inc.
2. International Paper Company
3. Learjet Inc.
4. Textron, Inc.

Chairman Schultz noted that one of the proposed civil penalties is against an employer with 40 employees. He commended Dole Food Company on its exemplary safety record and experience modification rating.

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

Stakeholder Presentation.

Mr. Gage provided a brief summary of his workers' compensation experience and involvement with AALIW. He stated that AALIW opposes any reductions to the Physicians' & Pharmaceutical Fee Schedule and outlined the reasons for AALIW's position.

Ms. Runbeck joined the meeting.

Mr. Gage presented five ideas for the Commission's consideration. (1) Impose a stop loss of 5% per year for all codes subject to reduction in the Physicians' & Pharmaceutical Fee Schedule. (2) Add a code to the Physicians' & Pharmaceutical Fee Schedule to compensate treating physicians for preparing reports at the time of closure that contain an AMA disability rating, statement of limitations, and/or opinion regarding supportive care. (3) Add a code to the Physicians' & Pharmaceutical Fee Schedule to compensate treating physicians for conducting medical research. (4) Reorder the treatment process to have pain management physicians serve in a gatekeeping role to determine if surgery is necessary and whether alternative methods for treatment of pain are advisable. (5) Allow for an increased emphasis on subjective complaints of pain at the LEC stage of a claim.

Ms. Runbeck thanked the Commission for the opportunity to address the Commission. She provided additional information about AALIW and expressed a desire to work with the Commission and insurance carriers to have an effective workers' compensation system.

Commissioner Orchard thanked Mr. Gage and Ms. Runbeck. Commissioner Orchard, Mr. Gage, and Chairman Schultz discussed the idea of adding a code to the Physicians' & Pharmaceutical Fee Schedule for medical research and the benefits of such a code. Chairman Schultz discussed the process for adding codes to the Physicians' & Pharmaceutical Fee Schedule.

Commissioner LeMarr and Chairman Schultz discussed the status of updates to the Physicians' & Pharmaceutical Fee Schedule.

50 Heavy-Duty Cleaner/Degreaser) and suitable facilities for flushing of the eyes was not provided within the work area for immediate emergency use. (29 CFR 1910.151(c)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
TOTAL PENALTY - \$4,500.00	TOTAL FORMULA AMT. - \$4,500.00

Mr. Imes summarized the citations and proposed penalties.

Commissioner Orchard and Mr. Murphy discussed whether an eyewash station was present at the worksite.

Mr. Imes noted that the ADOSH report should be corrected to reflect: 57 years in business, 19 employees in the establishment, 10 employees covered by the inspection, and approximately 18000 employees nationwide. Commissioner LeMarr and Mr. Imes discussed the reason for the errors in the report.

Chairman Schultz and Mr. Murphy discussed abatement efforts and the absence of training violations.

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

Dynamic Systems, Inc.
331 S Price Rd
Chandler, AZ 85224

Referral
Years in Business: 29
Empl. Covered by inspection: 29

Site Location: 331 S Price Rd
Chandler, AZ 85224
Inspection No: T1999-1219553
Inspection Date: 03/23/2017

SERIOUS – Citation 1 - Item 1 –

- a) Manufacturing/Fabrication Shop: Three Dynamic Systems employees operated one Chicago Dreis & Krump MFG. CO. press brake, model 1012-R, serial number L-13423, that was lacking a point-of-operation guard to prevent the operator from placing any part of his body into the danger zone during operation. (29 CFR 1910.212(a)(3)(ii)).
- b) Manufacturing/Fabrication Shop: Three Dynamic Systems employees operated one Chicago Dreis & Krump MFG. CO. press brake, model 1012-R, serial number L-13423, that was lacking a barrier on the back of the Press Brake to prevent personnel from accidental contact with moving parts of the equipment. (29 CFR 1910.212(a)(3)(ii)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Mr. Imes summarized the citation and proposed penalty.

Commissioner LeMarr and Mr. Imes discussed the nature of the injury.

Mr. Walters provided some background about the company, discussed the company's safety and training program, and offered to answer questions.

Commissioner LeMarr and Mr. Walters discussed whether the press brake had been modified, whether it was operated according to manufacturer design, the warnings affixed to the brake, the availability and required use of pliers to avoid getting fingers to the point of operation, the mechanism of injury, whether the brake is operated from the back of the brake, whether guarding is necessary on the back of the brake, the status of the injured employee, and retraining the company is providing to the injured employee.

Commissioner Orchard and Mr. Walters discussed abatement efforts, including efforts to find appropriate guarding that does not infringe the operation of the brake.

Commissioner Krenzel moved to delete the proposed penalty, as a result of the company's good faith, including its strong safety program and the proactive efforts of the company. Commissioner LeMarr seconded the motion. Chairman Schultz and Mr. Porter discussed the nature of deleting the proposed penalty on the citation. Mr. Imes, Mr. Ashley, and Mr. Porter discussed the FOM's reduction criteria and the minimum penalty for a serious citation under the FOM.

Commissioner Orchard and Mr. Porter discussed the element of employer knowledge.

Commissioner Krenzel and Mr. Walters discussed whether the brake had been modified.

Commissioner Krenzel withdrew his motion and Commissioner LeMarr withdrew his second.

Commissioner Krenzel moved to reduce the proposed penalty to \$500.00 and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. Vice Chair Hennelly opposed the motion. The motion passed.

Gaylor Electric, Inc.	Planned
330 S River Dr	Years in Business: 30
Tempe, AZ 85281	Empl. Covered by inspection: 12
Site Location: 1840 E. Broadway Rd	
	Tempe, AZ 85282
Inspection No: A3807-1209707	
Inspection Date: 02/09/2017	

SERIOUS – Citation 1 - Item 1 – Switchgear: One employee of Pinpoint Staffing, LLC DBA Tech Trades was working at a height of approximately 7 feet 8 inches above the lower level and was not protected from falling by the use of a guardrail system, safety net system or personal fall arrest system. (29 CFR 1926.501(b)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 – Switchgear: One employee of Pinpoint Staffing, LLC DBA Tech Trades who was working at an approximate height of 7 feet 8 inches above the lower level was not trained to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

Executive Session under A.R.S. § 38-431.03(A)(3) to obtain legal advice regarding December 9, 2016 OSHA Inquiry.

The Commission went into Executive Session at 2:14 pm.

The Commission returned to regular session at 3:17 p.m. without Commissioner LeMarr (who needed to leave the meeting during the Executive Session).

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 provided an update on the Claims system modernization project, including receiving unanimous approval from the Internet Technology Approval Committee (“ITAC”) and plans to appear before the Joint Legislative Budget Committee (“JLBC”) on June 20, 2017.

Mr. Ashley and Mr. Porter discussed the status of rulemaking regarding the Fair Wages and Healthy Families Act, including next steps in the process. Mr. Porter discussed efforts to carefully consider comments submitted by stakeholders and the public and timing for a Notice of Supplemental Rulemaking.

Mr. Ashley discussed efforts to meet with stakeholders, including General Motors and the Arizona Food Marketing Alliance, to discuss The Fair Wages and Healthy Families Act and answer questions. He noted that the Commission’s online FAQs continue to be updated.

Mr. Ashley discussed Governor Ducey’s Emergency Declaration on the opioid overdose epidemic and the Commission’s role in addressing opioid use in the workers’ compensation community. Chairman Schultz noted Debbie Moak will be a keynote speaker at the Claims Seminar and discussed how the Commission is taking a visible role in working with the Governor’s Office on the opioid issue.

Mr. Ashley discussed the State’s Employee Engagement Survey, the Agency’s impressive engagement score, and high participation rate. He highlighted multiple questions for which the Commission received very high scores from employees. Chairman Schultz commended Mr. Ashley and Ms. Poppe on their accomplishments.

Mr. Ashley discussed the upcoming AMS audit with Chief Henry Darwin on Wednesday, June 14.

Mr. Ashley and Mr. Porter discussed efforts by the agency to identify suppliers, inputs, core processes, outputs, and customers (SIPOC) and the value of performing a SIPOC analysis. Mr. Ashley and Chairman Schultz discussed ideas for improving the “People” metrics on the agency’s huddle boards.

Mr. Ashley discussed the Commission’s upcoming AMS contest, including a mascot and AMS narrative competition. Lunch will be provided. Commissioner Orchard and Mr. Ashley discussed plans for the Commissioners to judge the competition.

Mr. Ashley discussed a complimentary email received from Debbie Baker with Valley Schools regarding Anthony Carnevale and Brandon Stowell with ADOSH Consultation.

Mr. Ashley discussed ADOSH consultation staffing and plans to move one of the vacant positions from Tucson to Phoenix which will be filled.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates for June 15 and 29, 2017. Commissioner Orchard and Vice Chair Hennelly noted they will not be available for either meeting.

Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting adjourned at 3:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary