

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, October 21, 2021 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Scott P. LeMarr	Commissioner (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)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Confirmed by roll call, there were no additional attendees identified on the telephone.

Approval of Minutes of October 7, 2021 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the October 7, 2021 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr 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 Proposed Civil Penalties Against Uninsured Employers.

1. 2C21/22-0006 A1-C Construction LLC \$1,000

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

1. DG Retail, LLC
2. FedEx Ground Package System, Inc.
3. Federal Express Corporation DBA FedEx Express
4. Ruan Transportation Management Systems, Inc.

Chairman Schultz noted the very enviable experience modification factors of .90 for FedEx Ground Package System, Inc. and .97 for Federal Express Corporation DBA FedEx Express. Chairman Schultz moved Ruan Transportation Management Systems, Inc to a later agenda.

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

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.

Grajeda and Lachapel – Mr. Testini noted that the standard 25% contingency fee was agreed upon by the parties. At the time Mr. Grajeda was hired, the carrier had issued a closing notice stating the applicant suffered no permanent impairment and required no supportive medical maintenance benefits. Mr. Grajeda protested the closure and litigation ensued with four hearings resulting in a decision to award the applicant supportive medical maintenance benefits and finding the applicant sustained an unscheduled permanent impairment. The Claims Division awarded the applicant a monthly entitlement of \$610.55. Mr. Grajeda protested the award and the representation terminated shortly thereafter. Mr. Grajeda provided an accounting and affidavit showing 19.2 hours of work for which he would charge a client \$300 an hour. Based upon the hours worked Mr. Grajeda would be owed \$5,760 and has received \$2,594.84 in fees so the outstanding balance is \$3,165.16. In the alternative to the hourly fee structure Mr. Grajeda could recover 25 % of the monthly entitlement for a period of 120 months for a total of \$18,316.50 minus the fees already received resulting in \$15,721.66. The Legal division is recommending that the former formula be used in this case, thereby awarding Mr. Grajeda \$3,165.16

Chairman Schultz noted it sounds like an incredibly reasonable request on the part of Mr. Grajeda who accomplished a very successful outcome on behalf of this client.

Commissioner LeMarr moved to adopt the Findings and Award granting attorney's fees and to allow electronic signatures of the Award and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action regarding Penalty Levels for Serious and Non-Serious Citations.

Mr. Atencio stated the discussion point is based on OSHA's maximum/minimum penalty amounts for both serious and non-serious. The majority of maximum/minimum penalty levels for Occupational Safety and Health standards are largely codified in Arizona statutes and not subject to administrative discretion per A.R.S. §23-418. The Commission will take steps to adopt the minimum penalty levels in the most current OSHA FOM, which is FOM 164 for serious at \$975 and non-serious at \$0 citations.

Chairman Schultz confirmed this was just for notice and no action needed to be taken.

Mr. Porter noted that we need the Commissioners approval, not a formal resolution, but approval from the Commission in general that would authorize Mr. Atencio to communicate to Federal OSHA that we have adopted the adjustment to the minimum citation penalty level for serious and non-serious, which are \$975 minimum for serious and \$0 minimum for non-serious and those

are the two that are not statutorily set and the only two areas the agency has discretion to update on its own. We are asking the Commission to approve Mr. Atencio to pursue that action which would simply entail Mr. Atencio write a letter to Federal OSHA know that have adopted those minimum penalty levels in those two areas.

Chairman Schultz asked the Commissioners if they had any concerns about giving Mr. Atencio approval to notify Federal OSHA. Hearing none, Chairman Schultz noted that Mr. Atencio had the approval of the Commission.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics for the fiscal year-to-date. He started with Accounting's three metrics: Assets Processed Complete and Accurate, Special Fund EFT (Electronic Fund Transfer) Payments to injured workers, and Monthly Financial Report Processing.

Chairman Schultz congratulated the Accounting Division. He is constantly amazed how the team has taken to and adopted AMS and continually strives for improvement and continually sets stretched goals and then exceed those stretched goals. He asked Mr. Ashley to express the appreciation of the Commission for a job not just well done, but completely above and beyond at the next manager's meeting and thanked Mr. Ashley for his leadership, in terms of setting those standards. It also shows that AMS works at making the agency a much more productive agency.

Mr. Ashley added the point of the Arizona Management System and the benefit to the state is for it to be sustainable into the future and something that as a state enterprise we have been building at the ICA. The Accounting Division does so much more in addition to the functions they have to perform that you may not expect in a regular Accounting Division of a state agency and will pass along the compliments.

Mr. Testini noted with respect to the direction for Mr. Atencio, while we had assent from the Commissioners, we did not have a vote and it would be best if on the record we had a vote.

Commissioner LeMarr moved to approve ADOSH to notify Federal OSHA that we adopt the minimum penalty levels in the most current FOM for serious and non-serious which are \$975 for serious and \$0 for non-serious, but otherwise we are not changing any of the other minimum and maximum because they are all statutory. Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions

Ms. Dimas confirmed Commission meeting dates through December 2021. Commissioner LeMarr noted that he may not be available on November 4 and did not want to jeopardize not having a quorum and would be available if necessary. Vice Chair Hennelly will be returning next week and will confirm his availability for November 4.

Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 1:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary