

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, April 21, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Bill Wright	Asst. Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Others in attendance included Alexis Burns; Cathy Vines of SCF Arizona; Chris Garland of ASIA; Chic Older of the Arizona Medical Association; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of April 6, 2011 Meeting

The Commission unanimously approved the Minutes of April 6, 2011 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion &/or Action regarding Use of Fee Discount Agreements in the Arizona Workers' Compensation System and Recommended Changes to the Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Laura McGrory provided the Commissioners with a copy of the public comments received and a memorandum summarizing the comments and response of the workgroup. She introduced work group members attending the Commission meeting, Chris Garland, Cathy Vines and Chic Older, and thanked them for their hard work and input. She advised that the work group met to review the comments received and are not recommending changes to the proposed language previously presented to the Commission. Ms. McGrory and the work group members responded to questions from the Commissioners including the cost issue raised by American Insurance Association. Ms. McGrory and the work group members explained that this issue was taken into consideration by the workgroup and that consideration of cost was the reason why some information was not added to the EOR requirements. They also explained why the work group believed that the proposed language will reduce costs as a result of improved efficiency and fewer disputes and appeals. In response to other questions, they explained that the workgroup discussed at length what information should be included in an EOR and whether timeframes should be included. They explained that, in response to what the Commission asked them to do, the goal was to increase transparency in the process by providing information to providers regarding the use of network discounts. Adding language and requirements beyond this was considered outside the scope of the Commission's request. Ms. McGrory explained that

the workgroup recognizes that some of these issues may need to be addressed down the road and that the group is willing to consider further work if the Commission would like them to do so.

Following further discussion, the Commission unanimously adopted the recommended language on motion of Mr. McCarthy, second of Ms. Strickler. Chairman Delfs thanked the work group members for their valuable time and expertise. Ms. McGrory requested clarification on the effective date of this change. The Commissioners agreed that the effective date would be what is reflected in the Minutes of March 3rd. If that issue is not addressed in the minutes, then it would be 90 days from the date the information is posted on the Commission's website.

Discussion & Action of Proposed OSHA Citations and Penalties

K & V Drywall, LLC
9202 W. San Miguel Ave.
Glendale, AZ 85305

Complaint
Yrs/Business – 2
Empl. Cov. by Insp. – 3

Site Location: 1516 W. Van Buren St., Phoenix, AZ 85007
Inspection #: N4762/315419275
Insp. Date: 03/11/11

SERIOUS – Citation 1, item 1 – The employer did not prohibit employees from drinking from a common container (1926.51(a)(4).

(No inspection history in the past three years).

Div. Proposal - \$75.00

Formula Amt. - \$75.00

SERIOUS – Citation 1, item 2 – Three employees were working on a vertical panel metal canopy roof attached to a building, without the use of a guardrail system, safety net system, or personal fall arrest system to prevent a 8' 5½" fall (1926.501(b)(1).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Three employees working at heights greater than 6' and exposed to falls were not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards (1926.503(a)(2)(viii).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – A stairway or ladder was not provided where a break in elevation of 19" or more existed (1926.1051(a).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – The employer did not provide ladder training in the recognition and avoidance of unsafe conditions associated with the use of portable ladders, as a 6' trestle scaffold was being used by employees to access the 7'11" edge of the canopy roof during stucco patching operations (1926.1060(a)(1).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,075.00

TOTAL FORMULA AMT. - \$3,075.00

Bill Wright summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,075.00 on motion of Mr. Parker, second of Ms. Oster.

Knox Associates, Inc.
1601 W. Deer Valley Road
Phoenix, AZ 85027

Planned
Yrs/Business – 15
Empl. Cov. by Insp. – 105

Site Location: 1601 W. Deer Valley Road, Phoenix, AZ 85027
Inspection #: I7163/315297739
Insp. Date: 02/11/11

SERIOUS – Citation 1, item 1 – A lathe was lacking a chuck guard (1910.212(a)(1)). There were two other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 2 – An abrasive wheel bench grinder was lacking a work rest (1910.215(a)(4)). There was another instance of this violation.

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS – Citation 1, item 3 – Workers and other persons adjacent to the welding area were not protected from the rays by curtain shields (1910.252(b)(2)(iii)).

Div. Proposal - \$1,400.00

Formula Amt. - \$1,400.00

SERIOUS – Citation 1, item 4 – A spot welder was lacking a guard where there is a possibility of the operator's fingers being under the point of operation (1910.255(b)(4)).

Div. Proposal - \$1,400.00

Formula Amt. - \$1,400.00

TOTAL PENALTY - \$4,650.00

TOTAL FORMULA AMT. - \$4,650.00

Mr. Wright summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,650.00 on motion of Ms. Oster, second of Mr. McCarthy.

PMG Masonry, Inc.
2204 E. Hartford Avenue
Phoenix, AZ 85022

Unprogram Related
Yrs/Business – 10
Empl. Cov. by Insp. – 3

Site Location: 36601 N. Mule Trail Road, Carefree, AZ 85258
Inspection #: I7163/315247221
Insp. Date: 01/07/11

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 1a – One supported scaffold was not designed by a qualified person (1926.451(a)(6)).

Citation 1, item 1b - One employee was working on a supported scaffold 3' wide, 10' long and 20' above ground that did not have the working level of the scaffold fully planked to prevent a fall (1926.451(b)(1)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – One employee was working from a supported scaffold 3' wide, 10' long and 20' above ground that was lacking standard guardrails on all open sides and ends to prevent a fall (1926.451(g)(4)(i).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – One employee was working on a supported scaffold 3' wide, 10' long and 20' above ground without training by a qualified person in the hazards associated with working on scaffolding (1926.454(a).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – One employee was working on a canopy roof 10' wide, 20' long and 22' above the ground without utilizing a fall protection system to prevent a fall (1926.501(b)(1).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – One employee was working from a supported scaffold 3' wide, 10' long and 20' above ground and was tied off to the guardrail system (1926.502(d)(23).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 6 – One employee was not instructed in the recognition and avoidance of fall hazards associated with working at elevated heights of 6' or more above the ground (1926.503((a)(1).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Wright summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,500.00 on motion of Mr. Parker, second of Mr. McCarthy.

Discussion regarding ADOSH Participation in OSHA's National Heat Awareness Campaign

Ms. McGrory advised that ADOSH will be participating in a national heat awareness campaign. Mr. Wright explained some of the methods that will be used to distribute the information. Mr. Parker and Mr. Delfs discussed the impact of this issue on fire fighters and law enforcement. Mr. Parker stated this issue has merit and is an area in which Arizona should be on the leading edge.

Discussion & Action regarding Resolution Honoring Fallen and Injured Arizona Employees

Ms. McGrory explained that April 28th is Worker's Memorial Day. She presented a resolution to the Commission for their consideration in recognition of this day and what it stands for. Ms. Strickler and Mr. Parker suggested adding language to the Resolution that encourages employers/employees to work together to improve workplace safety. The Commission unanimously adopted the Resolution with the additional language on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-1119	Ana's Haven, LLC dba Ana's Haven Adult Homecare
2C10/11-1159	Cookie Enterprises, L.L.C. dba Ladies Workout Express
2C10/11-1357	Eddie Pizza & Lounge, L.L.C. dba Eddie's Pizza Lounge
2C10/11-1370	High Speed Enterprise, Inc. dba Subway
2C10/11-1699	Sun Horizon Specialized, LLC
2C10/11-1422	Warren T. Hankins & Tammy L. Hankins, Husband & Wife dba Mohave Centre For Plastic Surgery, Inc.

Andrew Wade advised that with regard to the above listed employers, a compliance investigation confirmed that they were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), he recommended civil penalties of \$1,000.00 be assessed against employers #1119, 1159, 1357, 1370 and 1422 and a civil penalty of \$10,000.00 against employer #1699. Mr. Wade provided information regarding each of the employers and responded to questions from the Commission. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #1119, 1159, 1357, 1370 and 1422 and a civil penalty of \$10,000.00 against employer #1699 on motion of Mr. McCarthy, second of Ms. Strickler. With respect to employer #1699, Mr. Parker noted that subsequent civil penalties at \$10,000.00 each are possible by statute and asked if an injunction action would be pursued against this employer. Mr. Wade responded to the question and described the anticipated enforcement actions against this employer.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission

Ms. McGrory and Mike Hawthorne reviewed the Administrative Fund cash flow analysis and responded to questions from the Commissioners. Ms. McGrory and Chairman Delfs acknowledged and thanked Mr. Hawthorne and his team for the great work that the Accounting Division has been doing.

Ms. McGrory updated the Commissioners on the outcome of the Special Fund audit and the status of the MIS projects underway at the Commission.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that the Legislature adjourned yesterday, April 20, 2011 and she expected Scot Butler to attend the next Commission meeting to provide a summary of the Legislative session. She summarized legislation of interest to the Commission and explained that July 20, 2011 was the general effective date for the legislation enacted this session.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, April 27th. The Commission scheduled further meetings for May 12th and 19th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:

Teresa Hilton
Teresa Hilton, Commission Secretary