

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, May 22, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	ADOSH Director
	Kathleen McLeod	Claims Manager
	Jacqueline Kurth	Claims Department
	Michael Hawthorne	Chief Financial Officer
	Yvonne Borunda	Legal Division
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Stephanie Coulter of the Cavanagh Law Firm.

Approval of Minutes of May 15, 2014 Meeting

The Commission unanimously approved the Minutes as amended by Commissioner Parker of the May 15, 2014 General Session on motion of Ms. Oster second of Ms. Strickler.

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. 2C13/14-1871 Ammon M. Sprau II, ASM, & Jennifer Melvin, ASW, DBA AZ Spa Repair
2. 2C11/12-1405 Quick Stop Moving, LLC

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

1. Scottsdale Healthcare Corporation
2. Empire Southwest, LLC

3. ABF Freight Systems, Inc.
4. Intel Corporation

Chairman Parker asked if any agenda items needed to be removed from the Consent Agenda. Staff requested item 3(a)(1) be removed from consideration in its entirety. The Commission unanimously approved the remaining items on the consent agenda on motion of Mr. Sanders, second of Ms. Strickler.

Discussion and/or Action regarding Legislation

Ms. McGrory stated there was nothing to report at this time.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation

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Mr. Wade stated there was nothing new to report at this time.

Discussion and Action of ADOSH Proposed Citations and Penalties

Summit Cleaners at Pinnacle Peak, Inc. 7609 E. Pinnacle Peak Road, Ste 4 Scottsdale, AZ 85255	Complaint Yrs/Business - 10 Empl. Cov. By Insp. - 15
Site Location:	7609 E. Pinnacle Peak Road, Ste 4 Scottsdale, AZ 85255
Inspection No:	F3904-317620219
Inspection Date:	03/27/2014

SERIOUS – Citation 1 - Item 1 –

- a) The employer did not assess the workplace hazards involving hazardous chemicals (such as corrosives and flammables) that would necessitate the use of personal protective equipment. (1910.132(d)(1)).
- b) Laundering and dry cleaning area: Gloves used by an employee handling corrosive liquids had large holes and tears. (1910.132(e)).
- c) The employer did not provide training to an employee regarding the use of personal protective equipment when handling corrosive liquids and solvents. (1910.132(f)(1)).
- d) Dry cleaning and laundering area: The employer did not provide protective eye equipment to an employee that uses hazardous chemicals to launder and perform spot treatments to clothing, such as those containing hydrofluoric acid or trichloroethylene. (1910.133(a)(1)).
- e) Dry cleaning area: Employees were not provided facilities for quick drenching or flushing of the eyes and body for immediate emergency use when exposed to injurious corrosive materials. (1910.151(c)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Laundering, dry cleaning and pressing/ironing area: The employer did not keep the workplace clean to the extent that the nature of the work allows in that excessive amounts of dust and lint had accumulated on the ceiling structures, fixtures, floors, walls and other surfaces. (1910.141(a)(3)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – The employer did not provide training to markers or others in the facility that handled soiled clothing in regards to not touching the eyes, mouth, or any part of the body on which the skin has been broken by a scratch or abrasion, or not to touch or eat food until their hands have been thoroughly washed. (1910.264(d)(1)(iii)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 4 –

- a) The employer did not develop, implement and/or maintain a written hazard communication program for the workplace where employees work with chemicals such as those containing hydrofluoric acid, trichloroethylene and ammonia. (1910.200(e)(1)).
- b) Laundering area: A bottle containing ammonia was labeled, tagged or marked with the identity of the chemical that it contained. (1910.1200(f)(5)(i)).

There were three other instances of this violation.

- c) The employer did not have safety data sheets for each hazardous chemical used in the workplace such as corrosives (ammonia) and combustibles (aliphatic hydrocarbon). (1910.1200(g)(1)).
- d) The employer did not train the employees on the hazardous chemicals used in the workplace, such as corrosives and combustibles. (1910.1200(h)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,600.00

TOTAL FORMULA AMT. - \$3,600.00

Mr. Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker clarified the role of markers. Mr. Sanders asked about the use of respirators and Mr. Warren responded to Mr. Sanders' question. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,600.00 on motion of Ms. Strickler, second of Ms. Oster.

Discussion and/or Action pursuant to A.R.S. § 23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. § 23-1041(D)(8) for Calendar Year 2015.

Andrew Wade gave a brief historical background of the Commission's ministerial duty to adopt a maximum average monthly wage that will be used in setting the average monthly wage in

workers' compensation claims. Staff is recommending the Commission adjust the maximum average monthly wage, as directed by statute, to reflect the percentage increase in the *Bureau of Labor Statistics, Employment Cost Index for Wages and Salaries, for Civilian Workers, by Occupational Group and Industry, All Workers* as of December 2013 compared to December 2012 of 1.9% which results in an average monthly wage of \$4,337.82 for calendar year 2015. Ms. Oster asked where Arizona's maximum average monthly wage is compared to other states and Ms. McGrory and Mr. Wade responded to the question. The Commission unanimously set the maximum average monthly wage at \$4,337.82 for calendar year 2015 on motion of Ms. Oster, second of Ms. Strickler.

#### Discussion and Action of Request for Lump Sum Commutation.

Samuel Regalado – Kathy McLeod presented this lump sum petition with a recommendation for approval. Ms. McLeod explained the reasons for staff's recommendation and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved the lump sum commutation on motion of Mr. Sanders, second of Ms. Strickler.

#### Discussion and/or Action regarding Appointment of Assistant Commission Secretary.

Yvonne Borunda – Andrew Wade introduced Ms. Borunda and advised that she is the office manager in the Legal Department and explained her responsibility to certify records on appeal. The Commission unanimously appointed Yvonne Borunda as Assistant Secretary on motion of Mr. Sanders, second of Ms. Oster.

#### Discussion and Action regarding the Development and Implementation of a Process for the Use of Evidence Based Medical Treatment Guidelines, Where Appropriate, to Treat Injured Workers.

Ms. McGrory updated the Commission on the work of the Director's Advisory Committee on Evidence Based Medical Treatment Guidelines, explaining the Committee's underlying objectives. She presented the Committee's recommendations in two areas: where it is appropriate to use treatment guidelines, and which guideline was being recommended. She stated that the Committee reached a consensus that it should recommend the adoption of the Official Disability Guidelines (ODG) in the treatment and management of chronic pain and in the use of opioids for all stages of pain management of the injured worker. She explained that the committee worked with a group of pain specialists in the selection of the recommended treatment guideline and that these physicians would continue to work with the Committee. She stated that she supported the Committee's recommendations and requested that the Commission take action on these two recommendations. She explained that the Committee continues to work on other recommendations, and that more work needs to be done. She also explained that the Commission was invited by the Department of Health to participate in a funding opportunity through the CDC that is intended to advance state level interventions for preventing prescription drug misuse, abuse, diversion, and overdoses. She explained how the work of the Commission with regard to treatment guidelines that focus on the management of chronic pain and opioid use support key prevention strategies identified in the funding opportunity and that, subject to Commission action today to adopt the recommendations presented, she would provide language to DHS for them to include in the grant application. She described the language that would be provided to DHS. Ms. McGrory responded to questions regarding the selection of ODG, the dispute resolution process and the funding opportunity. Commissioner Sanders explained that he has been participating in the EBM meetings and expressed his support for the work of the Committee. Following further discussion, the Commission unanimously approved the recommendation to adopt the ODG Guidelines in the treatment and

management of chronic pain and in the use of opioids for all stages of pain management of the injured worker on motion of Mr. Sanders, second of Ms. Oster.

Announcements and Scheduling of Future Meetings

Ms. McGrory announced that the Commission's Chief Financial Officer Michael Hawthorne, is leaving the Commission and going to the Department of Corrections. She expressed her thanks to Mr. Hawthorne for his years of service to the Industrial Commission. She also presented three retirement resolutions for signature: Bill Cooper for 25 years of service, Judge Tom Ireson, Assistant Chief ALJ, for 32 years, and Judge Margaret Fraser for 22 years of state services.

Mr. Sanders wanted to let the EBM Committee know that the Commission is aware of how hard they are working.

Secretary Dimas reminded the Commissioners that the next meeting is scheduled for Wednesday, June 4, 2014, and confirmed the dates through August 2014.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 1:43 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura McGrory, Director

ATTEST:

  
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Kara Dimas, Commission Secretary