

Council on Worker's Compensation
Meeting Minutes
201 E. Washington Avenue
GEF-1 Building
Madison, Wisconsin
April 11, 2023

The Department of Workforce Development (DWD) provided public notice of the meeting under Wis. Stat. § 19.84.

Members present: Ms. Bloomingdale, Mr. Buchen, Ms. Frank, Mr. Kent, Mr. Nettum, Mr. Peters (Chairperson), Mr. Schwanda, Mr. Streff, Mr. Tindall, and Ms. Ver Velde.

Excused: Mr. Fugina, Ms. Johnson, Mr. Large, and Ms. Zarecki.

Staff Present: Mr. Aiello, Ms. Brown, Mr. Dipko, Ms. Halsey, Ms. Lake, Ms. McCormick, Mr. O'Malley, Ms. Przybylo, and Mr. Spencer.

HCPAC Members Present: Mr. Bartell, Dr. Floren, Dr. Gertel, Dr. Goldberg, and Dr. Von Shilling-Worth

- 1. Call to Order/Introductions:** Mr. Peters convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 10:05 a.m. in accordance with Wisconsin's open meetings law and called roll of the WCAC members. Staff and attendees introduced themselves.
- 2. Approval of the Minutes:** A motion was made by Ms. Bloomingdale to approve the minutes of the March 9, 2023, meeting. Ms. Ver Velde seconded the motion. The minutes were unanimously approved without correction.
- 3. Correspondence:** Mr. O'Malley reported one piece of correspondence was received since the last WCAC meeting. The correspondence was a handwritten letter from Ms. Barbara Wasmund which was forwarded to Mr. O'Malley by Attorney John Neal. In her letter Ms. Wasmund requested the WCAC to consider changing the law to allow supplemental benefits to be paid to injured workers who are paid compensation for permanent and total disability (PTD) from the Second Injury Fund. At this time, the law does not permit payment of supplemental benefits to injured workers who are receiving compensation for PTD from the Second Injury Fund. Ms. Wasmund is currently the only worker in this situation. Mr. O'Malley explained that most permanently and totally disabled workers with injuries occurring before January 1, 2003, are eligible to receive supplemental benefits. However, the Worker's Compensation Act does not include language that authorizes the payment of supplemental benefits in cases where PTD benefits are being paid by the Second Injury Fund.
- 4. PTSD Bills 2023 SB-113 & 2023 AB-115:** Mr. O'Malley provided an update on Senate Bill 113 (SB-113) and its companion bill, Assembly Bill 115 (AB-115). SB-113 was introduced by Senator Andre Jacque and relates to changing the conditions of liability for worker's compensation benefits for emergency medical responders, emergency medical services practitioners, volunteer firefighters, correctional officers, emergency dispatchers, coroners, coroner staff, medical examiners and medical examiner staff. SB-113 extends the post-traumatic stress disorder (PTSD) coverage that was previously provided to law enforcement

and full-time firefighters to these additional employees. Senator Jacque appeared at the public hearing on December 15, 2022, to testify about this bill. At the public hearing Senator Jacque stated that the bill would be introduced in the current session.

Mr. O'Malley was not aware if the proposed bill from Senator Jesse James extending the same PTSD coverage, as provided to law enforcement and full-time firefighters, to public safety answering point dispatchers and communicators had been introduced as of the date of the meeting. Senator James discussed his proposed bill with the WCAC at the meeting on March 9, 2023.

5. Recommended Changes to Minimum PPD Ratings in s. DWD 80.32 Wis. Admin. Code:

Mr. Peters introduced this discussion and requested Mr. O'Malley to explain the process. Mr. O'Malley stated that a paper had been developed by the committee to explain the process and recommendations related to updating the minimum permanent partial disability (PPD) ratings. The title of the paper is Analysis for Updating Minimum Permanent Partial Disability Ratings. The paper was distributed to the WCAC members and attendees at the meeting.

The current project to update the minimum PPD ratings was initiated with the creation and passage of s. 102.44 (4) (m), Wis. Stats., contained in 2015 Wis. Act 180, which became effective on March 2, 2016. That provision requires the Worker's Compensation Division (WCD) to promulgate administrative rules establishing minimum permanent partial disability ratings for amputation levels, losses of motion, sensory losses, and surgical procedures resulting from injuries for which permanent partial disability is claimed. The WCD is also required to review and revise the minimum PPD ratings at least once every eight years.

Section DWD 80.32 of the Wisconsin Administrative Code contains the minimum PPD ratings. The minimum PPD ratings had not been thoroughly reviewed or updated since the early 1990's. The Worker's Compensation Division (WCD) began a project to update the minimum PPD ratings in the fall of 1992 and worked on this project in 1993. The last major revisions to the minimum PPD ratings became effective on July 1, 1994. Since 1994 the only change was the addition of a PPD rating of 7.5% to the body as a whole per level for implantation of a spinal disc which became effective in 2007.

A number of doctors from the Health Care Provider Advisory Committee were requested to assist in reviewing s. DWD 80.32 of the Wisconsin Administrative Code to update the minimum PPD ratings. To begin the project members of the committee and staff from the WCD created a survey with 168 questions. Questions in the survey were grouped together by body part. In about May 2017 the survey was distributed in an electronic format to doctors who treat or examine injured employees. Doctors were requested to respond to the questions in the survey that were in their areas of specialty or expertise. There was a good response to the survey.

The committee conducted a thorough line by line review of the responses to the survey and s. DWD 80.32 of the Wisconsin Administrative Code. The committee determined that some minimum PPD ratings in s. DWD 80.32 of the Wisconsin Administrative Code required no changes as noted on pages 2, 3 and 4 of the paper. The committee also recommended a number of changes to the current minimum PPD ratings. Some of the recommendations included decreasing the minimum PPD ratings for certain body parts and conditions, increasing the minimum ratings for some body parts and conditions, and also included some new minimum ratings for specific body parts and conditions.

The current project to update the minimum PPD ratings began in 2017. Meetings with the committee were held every calendar quarter since that time. Mr. O'Malley expressed appreciation to all of the doctors who assisted with this process. Mr. O'Malley referred to page 25 of the paper that listed the medical professionals who participated in the project and thanked all of the contributors who assisted with the revision process.

Some members of the WCAC requested to receive a copy of the survey. The WCD will provide a copy of the survey to the members of the WCAC. The survey is available electronically and will be provided to anyone who wishes to review it.

One or two doctors were involved in drafting the questions for a survey that was used when the minimum PPD ratings were last updated in the early 1990's. After that survey was completed and the responses were compiled by WCD staff there was no further involvement in the process by the doctors. Where there was consensus in the responses to questions on the survey, WCD staff made recommendations without further input from doctors. The current project in updating the minimum PPD ratings was a much more involved and thorough process than what had been done in the past.

Mr. Salvi reviewed the recommended changes of the minimum PPD ratings with the WCAC. Mr. Salvi mentioned the WCD had the assistance of the Wisconsin Medical Society in publicizing the existence of the survey. The majority of doctors in the state had access to the survey and could have responded to it. Mr. Salvi noted that in a state like Wisconsin where any physician can offer treatment to an injured worker it is important to avoid overwhelming the physician with something like the AMA guidelines which is a book over an inch thick providing details on many ratings. In contrast, Wisconsin has a 25-page publication utilized by doctors that contains all of the minimum PPD ratings which is much easier to digest and is more functional in managing their patients who have had a work injury.

Mr. Salvi led a lengthy discussion of the proposed changes contained within the paper. The WCAC members had a number of questions that Mr. Salvi was able to answer about the functioning of limbs.

Responding to the feasibility of minimum PPD ratings for joint replacements Dr. Gertel (appearing virtually) commented that knee replacements involve major surgery, a great deal of pain, long recovery, with the joint never the same with permanent structural changes. While the joint may feel better than it did before the operation there are many things the person cannot do that they could before the operation and will not have normal function. Depending on activity level a knee replacement will last only for a few years. The current rating system is antiquated, was developed at a time when many orthopedic procedures did not exist and has gaping holes. The recommendations cover more common procedures and will help insurance companies and attorneys with fewer disputes and litigation.

Dr. Floren (appearing virtually) commented that the committee tried to keep the ratings fairly uniform. He described his process in evaluating permanent disability. He agreed with Dr. Gertel that following a joint replacement the joint is never normal. There is an impairment when people cannot move arms or legs in certain ways resulting in a loss of range of motion. These ratings reflect advances in science.

Mr. Salvi also discussed nerve functions, range of motion, and what constitutes impairment from the perspective of a physician. Mr. Kent and Ms. Bloomingdale thanked the committee members for all of their hard work during this process.

6. **Other Business:** No other business was addressed.
7. **Adjournment:** A motion was made by Ms. Bloomingdale to go into a closed session under s. 19.85(1)(eg), Wis. Stats., to deliberate items on the agenda and to adjourn the meeting from closed session. The motion was seconded by Ms. Ver Velde. The motion passed unanimously. Mr. Peters announced the closed session, statutory authority, and the nature of business to be considered. The open session of the meeting was adjourned at approximately 12:00 p.m. The Worker's Compensation Advisory Council's next meeting is scheduled for May 23, 2023.