

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on January 26, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Dick Thomas, Division of Workers Compensation

Others attending:

See attached list.

Chairperson Brownlee opened the meeting asking if there were any bill introductions. With no bill introductions Chairperson Brownlee introduced Dick Thomas representing the Kansas Department of Labor's Division of Workers Compensation.

Mr. Thomas stated he was appearing on behalf of the Director of the Kansas Department of Labor's Division of Workers Compensation, Paula Greathouse. Chairperson Brownlee asked Mr. Thomas when the annual report would be available. Mr. Thomas stated it would be finalized this week and after that it would be published to the website which usually takes about two weeks. Chairperson Brownlee asked Mr. Thomas if he could go over the data in the annual report and he stated the Secretary would not allow any information released until the report is finalized. Mr. Thomas stated he would make a copy as soon as it was on the website and deliver it to Chairperson Brownlee. Chairperson Brownlee recognized Senator Barone who asked Mr. Thomas questions regarding the medical fee schedules for Workers Compensation and if they had been updated in December 2005. Mr. Thomas stated the medical schedules had been updated but he did not have that information and would refer Senator Barone's requests to Dr. Tracy. The discussion continued with the Committee. The Committee had many concerns regarding the medical fee schedule. Senator Reitz joined the discussion with his concerns along those same lines and requested that Mr. Thomas have Dr. Tracy come before the Committee to discuss the medical schedules in detail.

Upon on the conclusion of the discussion with the Committee, Mr. Thomas gave a brief update on the Kansas Department of Labor's Division of Workers Compensation. (Attachment 1) After finishing the update, Mr. Thomas presented the *Kansas Workers Compensation Legal Flow documentation*. (Attachment 2). The Committee had concerns regarding who would be liable if an insurance company refused to pay for treatment after the insurance company had been ordered by a Workers Compensation Administrative Law Judge to do so. Mr. Thomas stated if an insurance company refused treatment a claim should be made with the Insurance Commissioner and they could invoke sanctions on the insurance company. The Committee asked Mr. Thomas if he could outline how that process worked with the Insurance Commissioner and he stated he did not have that information. Upon conclusion of Mr. Thomas' review, Chairperson Brownlee stated that she would send a letter to Sec. Garner for an update on the trends in Workers Compensation over the past three years and would like for the Secretary to come before the Committee and present that information.

Meeting adjourned at 9:05 a.m. with the next meeting scheduled for Friday, January 27, 2006.

KANSAS

DEPARTMENT OF LABOR
Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

Testimony before the
Senate Commerce Committee
Richard Thomas, Administrator, Public Resource Section
Kansas Department of Labor, Division of Workers Compensation
26 January 2006

Chairwoman Brownlee and Chairman Jordan and members of the Committee:

I appreciate your invitation to appear before this committee to update you on the Kansas Department of Labor's Division of Workers Compensation.

I am Richard Thomas, Administrator of the Public Resources Section of the Division of Workers Compensation.

The Kansas Division of Workers Compensation is a Division of the Kansas Department of Labor under Secretary Jim Garner. Paula Greathouse is the Director of the Division of Workers Compensation and I am here today on her behalf.

The Division of Workers Compensation has three Sections: the Public Resource Section, the Operations Section, and the Legal Section. The Public Resource Section includes the Ombudsman, Rehabilitation, Seminars Planning, Application and Research units. The Operation Section includes the Business and Accounting, Coverage and Compliance and the Technology units. The Legal Section is made up of the Judicial, Medical Services, Fraud and Abuse, and the Mediation Unit. There is also a Workers Compensation Board that hears appeals of decisions made by the Administrative Law Judges.

The Division of Workers Compensation has several projects that are currently ongoing to make the system more accessible to our internal and external customers. These projects include:

Electronic Data Interchange (EDI) has been an ongoing project to allow accidents reports and subsequent reports to be filed electronically with the Division. The result is more accurate and timely filing of accident reports. This results in the Division being able to have a more accurate record of the types of accidents occurring in Kansas. EDI is not mandatory in Kansas but the Division is now receiving approximately 35 percent of the reports electronically.

During the past year, Kansas became one of the first five states to have access to online searches for insurance coverage. We have partnered with the National Council of Compensation Insurance (NCCI) to bring this access to Kansas. This system is on the Department of Labor web site. Customers can utilize the site to research which insurance company is responsible for an employer on any date of accident, any time day or night. In the past, the customer had to call the Division to search for the employer's insurance company. The Division will be adding self insured employers and eventually the employers in the approved group pools to the web site.

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Attachment 1-1

The Medical Fee Schedule is now available on the KDOL web site so the medical providers and payers can enter the appropriate medical code and obtain the amount allowed for that code. The Medical Fee Schedule is updated every other year and the current schedule was published in December.

The Legislative changes of the last session are also online and the entire Kansas Workers Compensation Laws & Regulations will soon be available on line.

The Division has expanded the availability of Mediation and two employees of the Public Resource Section are now certified mediators. This is a pilot project to assist the Workers Compensation Board and Administrative Law Judges to refer specific cases for an attempt to mediate or consult on cases where there might be an opportunity to reach a compromise and allow those cases to be removed from the Docket.

The Division continues to expand on the opportunities to offer presentations and technical assistance to KDOL's customers. Speakers on various topics concerning workers compensation are available. These efforts are coordinated by Carol Cast with the Division.

To better promote the free workplace safety programs offered by KDOL, the Industrial Safety and Health Section is now a standalone division within the Kansas Department of Labor. Steve Zink has been appointed the Director of the Industrial Safety and Health Division. He has more than 20 years of experience in the safety and health fields and has developed and provided safety and health consultation services to a wide range of companies and industries across the U.S.

The Division of Workers Compensation is in the initial stages of an Imaging Project that will help to reduce the amount of paper files and reports by utilizing a digital imaged file to replace paper and an outdated microfilm system. This will save storage space for the Division and reduce search time for the Research unit. It will initially be a "store and retrieve" system with the ultimate goal of entering the records into the Division's database system. This will be an ongoing project.

Again, thank you for the opportunity to be here this morning. I would happy to stand for any questions you may have.

KANSAS WORKERS COMPENSATION LEGAL FLOW

EMPLOYER NOTIFIED OF AN INJURY

- K.S.A. 44-520 -Ten (10) day notice of injury, (75) days after accident for just cause
- K.S.A. 44-557 -Report filed with Director within (28) days after receipt of such knowledge
- K.S.A. 44-520a -Written claim for compensation within 200 days of accident or last paid compensation
- K.S.A. 44-5,101 -Informational material
- K.S.A. 44-5,102 -Distribution of informational K-WC 27/270

EMPLOYEE CONTACTS OMBUDSMAN

- K.S.A. 44-5,111 -Ombudsman Program {IF DISPUTE EXISTS...}

MEDIATION

- K.S.A. 44-5,117 -Mediation is available at anytime during a workers compensation claim {IF DISPUTE EXISTS...}

PRELIMINARY HEARING FILING PROCEDURE

- K.S.A. 44-534 -Application for Hearing filed (E-1)
- K.S.A. 44-534(b) -No proceeding for compensation unless application on file within (3) years of date of accident or within (2) years of date of last payment of compensation---whichever is later
- K.S.A. 44-534a(a)(1) -Application for Preliminary Hearing (E-3)
- Seven (7) day written notice {IF DISPUTE EXISTS...}

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PRELIMINARY HEARING HELD

- K.S.A. 44-534a -ALJ shall give (7) days notice by mail to the parties of the date set for such hearing
- K.A.R. 51-3-5a -TTD and Medical decided
- K.S.A. 44-512a -Award of ALJ rendered within (5) days
- File for motion hearing if service of written demand not made within (20) days from date of service of such demand
- Entitled to civil penalties and all past due compensation shall become immediately due and payable
- K.S.A. 44-551 -Appeal to WC Board
- Any Party has within (10) days to make written request to the WC Board. (Intermediate Saturdays, Sundays, and Holidays shall be excluded in the time computation)
- Board's findings or awards shall be issued within (30) days from date arguments were presented by the parties
- K.S.A. 44-534a(a)(2) -Board will only consider limited issues defined as jurisdictional on review of preliminary findings

{IF DISPUTE EXISTS...}

**REGULAR HEARING STAGE
PRE-HEARING SETTLEMENT CONFERENCES**

- K.S.A. 44-534 -Application for Hearing filed (E-1)
- ALJ shall proceed with notice to all parties within (20) days
- K.S.A. 44-523 -Each party is allowed (30) days after hearing to complete their case
- Award not entered within (30) days, Director may assign matter to Assistant Director or to a special ALJ, or party may request assignment
- Not less than (10) days prior to full hearing an ALJ shall conduct a prehearing settlement conference to explore the possibility that the parties may resolve issues and reach a settlement prior to the first full hearing
- K.S.A. 51-3-8 -Pre-trial stipulations

{IF DISPUTE EXISTS...}

<p style="text-align: center;">REGULAR HEARING HELD</p>
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| <p>K.S.A. 44-523
K.S.A. 44-551</p> | <ul style="list-style-type: none"> -See above Statute -Appeal to WC Board -Any party has within (10) days to make written request to the WC Board (Intermediate Saturdays, Sundays, and Holidays shall be excluded in the time computation) -Board's findings or awards shall be issued within 30 days from date arguments were presented by the parties |
| <p>K.S.A. 44-512a</p> | <ul style="list-style-type: none"> -Service of demand within (20) days from date of service of such demand -Entitled to civil penalties and all past due compensation shall become immediately due and payable <p style="text-align: right;"><i>{IF RULING IS DISPUTED...}</i></p> |

<p style="text-align: center;">POST AWARD MEDICAL</p>
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| <p>K.S.A. 44-510 (k)</p> | <ul style="list-style-type: none"> -Application for hearing filed (E-4) -Hearing heard by the assigned ALJ -Application must be given priority setting by the ALJ---only superseded by preliminary hearings -Parties shall meet and confer prior to the setting of the hearing -Prehearing settlement conference shall not be necessary -Parties must be given opportunity to present evidence (including testimony) -ALJ may award treatment back to entry of underlying award, but treatment cannot relate back more than six (6) months following the application for post award treatment -ALJ may award attorney fees and cost on claimants behalf per K.S.A. 44-536(g) -ALJ findings subjected to full review by the Board -Board review shall receive priority setting (superseded only by preliminary hearings) -Board must make a decision within thirty (30) days from the time the review is submitted |
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REVIEW & MODIFICATION OF AWARDS

- K.S.A. 44-528 -Application for hearing filed (E-5)
 -ALJ may appoint one or two health care providers to examine the employee and report to the ALJ
 -ALJ shall hear all competent evidence offered
 -ALJ may modify award or reinstate a prior award by increasing or diminishing the compensation subject to the limitations provided by the Workers Compensation Act
- K.A.R. 51-19-1(c) -The number of reviews shall be limited to not more than once during any six month interval, except in highly unusual circumstances
- K.A.R. 44-528(d) -The effective date for the increase or decrease in the functional impairment or work disability shall be the effective date that the actual increase or decrease occurred, except no modification awards more than (6) months prior to the application.

WORKERS COMPENSATION BOARD

- K.S.A. 44-551 -Appeal to WC Board
 -Any party has within (10) days to make written request to Board
- K.S.A. 44-534a(a)(2) -Review of preliminary hearing should set forth disputed issues
- K.S.A. 44-556(a) -Board's findings or awards shall be issued within (30) days from date arguments were presented by the parties
- K.S.A. 44-551(b)(2)(B) -Board does not rule in (30) days----party can request ALJ start award

{IF LEGAL DISPUTE EXISTS...}

KS COURT OF APPEALS

- K.S.A. 44-551 -Review by the Board shall be a pre-requisite to judicial review
- K.S.A. 44-556 -Any party may appeal from a final order of the Board by filing an appeal with the court of appeals within 30 days of the date of the final order
 -Such review shall be upon question of law
- K.S.A. 44-534a(a)(2) -Decision of Board on review of preliminary order is not subject to further judicial review

{IF LEGAL DISPUTE EXISTS...}

KS SUPREME COURT

KA 20-3018

-Petition for review of Court of Appeals decision within (30) days after Court of Appeals decision
-Review of any such decision discretionary with the Supreme Court

KA 20-3016

-Cases pending in Court of Appeals may be transferred to

KA 20-3017

-Supreme Court upon motion of Court of Appeals or a party. However, Supreme Court may accept case for review or may decline.