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## **WORKERS' COMPENSATION REVIEW COMMITTEE**

Thursday, August 25, 2022  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Scott Meyer, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Scott Meyer, JoNell A. Bakke, Curt Kreun; Representatives Mary Schneider, Greg Stemen

**Member absent:** Representative Dan Ruby

**Others present:** See [Appendix A](#)

**It was moved by Representative Stemen, seconded by Senator Kreun, and carried on a voice vote that the minutes of the March 29-30, 2022, meeting be approved as distributed.**

### **CLAIM REVIEW**

The committee reviewed two workers' compensation claims brought to the committee by injured workers for the purpose of determining whether changes should be made to the statutes relating to workers' compensation as provided for under North Dakota Century Code Section 54-35-22. For each of the claim reviews, the committee received a summary by Ms. Patsy Peyerl, Constituency Services, Workforce Safety and Insurance, of the injured worker's claim; a presentation by the injured worker of the claim and issues; and a response by a representative of Workforce Safety and Insurance (WSI).

#### **Tracy Jund**

##### **Claim Summary**

Chairman Meyer called on Ms. Peyerl to provide a summary of Mr. Tracy Jund's workers' compensation claim. Ms. Peyerl noted:

- Mr. Jund filed a claim with WSI for injuries that resulted from a motor vehicle accident while he was on patrol and was struck by an oncoming drunk driver. Mr. Jund was employed as a deputy sheriff with the North Dakota Association of Counties in Ransom County at the time of the accident. Mr. Jund sustained multiple orthopedic injuries.
- WSI accepted the claim on November 12, 2008, and paid full temporary total disability benefits starting October 18, 2008. Mr. Jund alternately received temporary total disability and temporary partial disability benefits from 2008 through 2010 and further extending into 2014.
- Beginning in 2009, Mr. Jund sought coverage for mental health conditions. Workforce Safety and Insurance issued a notice of decision on June 30, 2009, that WSI was not liable for Mr. Jund's psychological conditions of anxiety and depression because his psychological conditions predated his October 17, 2008, work injury. Mr. Jund previously was diagnosed for depression and anxiety.
- Mr. Jund appealed WSI's denial of his psychological conditions on July 13, 2009. In his appeal, Mr. Jund noted his treatment also addressed posttraumatic stress disorder. An administrative order denying the psychological condition was issued on August 5, 2009.
- A third party was determined to be at fault for Mr. Jund's October 17, 2008, work-related accident. Workforce Safety and Insurance issued an administrative order for subrogation on February 26, 2009. A third-party recovery was made in the amount of \$100,000.

- WSI restricted Mr. Jund to one treating provider for his opiate prescriptions. Mr. Jund contacted WSI on January 8, 2020, when he left a previous provider who he claimed created a dependency situation with his medications. Documentation on Mr. Jund's file supports the provider restriction was initiated by WSI due to concerns over Mr. Jund's medically verified opioid use disorder, which was in sustained remission. Mr. Jund continues to be restricted to one provider at the time of this hearing. Since the restriction was initiated by WSI, Mr. Jund contacted WSI several times regarding dispensing of and payments for prescriptions by other providers that fell outside the single designated prescriber.

### Mr. Jund's Testimony

Chairman Meyer called on Mr. Jund to review his claim and discuss the issues related to his claim. Mr. Jund noted:

- WSI did not consider and evaluate the posttraumatic stress the work injury caused him.
- WSI's physician reviewed his medical file but did not consult him in person.
- WSI's subrogation interest does not help injured workers.
- WSI's claim process was designed to protect WSI and employers. The process was not fair or equitable.

### Workforce Safety and Insurance Response

Chairman Meyer called on Mr. Timothy Wahlin, Chief of Injury Services, Workforce Safety and Insurance, to respond to the issues raised by Mr. Jund. Mr. Wahlin noted:

- Under Section 65-01-09, WSI is subrogated to the rights of the injured worker to the extent of 50 percent of the damages recovered, up to a maximum of the total amount WSI has paid or otherwise would pay in the future in compensation and benefits.
- Section 65-01-02 defines a "compensable injury" to include a mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least 50 percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury. A compensable injury does not include a mental injury arising from mental stimulus.
- WSI is a payor and does not treat or diagnose an injured worker.

### Debra Biffert

#### Claim Summary

Chairman Meyer called on Ms. Peyerl to provide a summary of Ms. Debra Biffert's workers' compensation claim. Ms. Peyerl noted:

- Ms. Biffert filed a claim with WSI for injuries that resulted from a motor vehicle accident that occurred on November 19, 2019. Ms. Biffert was providing rural mail delivery service at the time of the accident. Ms. Biffert sustained a concussion, a cerebral hemorrhage, a retinal injury to her right eye, a fracture of the sternum, and a left hand fracture. As a result of her injuries, WSI accepted the claim on December 11, 2019, and paid full disability benefits starting November 20, 2019.
- Due to the work injury and resulting permanent restrictions, Ms. Biffert was not able to return to work with her employer. Vocational services were assigned. While Ms. Biffert was provided a full physical medical release on February 11, 2020, by Dr. Cote, Dr. Shilman indicated a permanent restriction of no commercial driving due to her area of reduced vision in the right eye.
- WSI issued a notice of vocational case managers report on September 29, 2020. Workforce Safety and Insurance issued the administrative order to affirm the vocational order awarding temporary partial disability benefits upon completion of a vocational plan. The order was issued on January 15, 2021. Ms. Biffert contacted the Decision Review Office on January 26, 2021, to request assistance on the vocational order. The Decision Review Office issued a certificate of completion with no change in the decision on February 16, 2021.
- Before the Decision Review Office closure, Ms. Biffert contacted WSI asking what would occur on her claim if she did not complete the required work search for temporary partial disability benefits. Ms. Biffert formally submitted a request to WSI on January 25, 2021, withdrawing from the required good-faith work search as mandated by her vocational plan. Workforce Safety and Insurance issued a notice of intent to discontinue disability benefits on January 27, 2021, for withdrawing from the required work search process. Workforce Safety and Insurance issued a final 21-day payment of temporary partial disability benefits through February 17, 2021. Ms. Biffert did not appeal this final notice of intent to discontinue disability and it became final.

**Ms. Biffert's testimony**

Chairman Meyer called on Ms. Biffert to review her claim and discuss the issues related to her claim. Ms. Biffert provided testimony ([Appendix B](#)) regarding her claim.

**Workforce Safety and Insurance Response**

Chairman Meyer called on Mr. Wahlin to respond to the issues raised by Ms. Biffert. Mr. Wahlin noted:

- Section 65-01-09 provides WSI is subrogated to the rights of the injured worker or the injured worker's dependents to the extent of 50 percent of the damages recovered, up to a maximum of the total amount WSI has paid or would otherwise pay in the future in compensation and benefits for the injured worker.
- Section 65-01-16 provides WSI may issue a notice of decision for any decision made by informal internal review and shall serve the notice of decision on the parties by regular mail. An injured worker has 45 days from the day the notice of decision was mailed by WSI in which to file a written request for reconsideration.

**PERFORMANCE EVALUATION**

Mr. Malcolm Dodge, Vice President of Risk Services, Sedgwick Claims Management Services, Inc., provided a report ([Appendix C](#)) on the WSI performance evaluation. He noted:

- The performance evaluation features two elements and the report consists of an executive summary, sections pertaining to each element, recommendations, and WSI's responses to the recommendations.
- The first element relates to COVID-19 claims management practices subject to three executive orders issued by Governor Doug Burgum.
- The second element pertains to industry and employer assistance. Within this element, Sedgwick reviewed practices tied to the identification of recurring incident trends pertaining to both industries and individual employers, various analyses and reports provided by WSI, training and education, and trends among 1<sup>st</sup>-year workers.
- WSI concurred with all findings and recommendations provided by Sedgwick.

**REPORTS****Case Processing Standards and Policies**

Mr. Timothy J. Dawson, Director, Office of Administrative Hearings, provided a quarterly statistical report ([Appendix D](#)) regarding the results under the case processing standards and policies.

Ms. Jodi Bjornson, General Counsel, Workforce Safety and Insurance, presented testimony ([Appendix E](#)) regarding the statistical information of the results under the case processing standards and policies. She noted WSI is pleased with the reduced number of days it takes for a decision to be issued by the Office of Administrative Hearings, the efforts the Office of Administrative Hearings has made to improve efficiency are appreciated, and the improvements have worked well.

**Current and Completed Pilot Programs**

Ms. Bjornson provided a report ([Appendix F](#)) on the status of current and completed pilot programs. She noted:

- A pilot program may address one or more of WSI's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services.
- The injured worker assistance program was implemented as a pilot program in the spring of 2015 and program benefits include behavioral health and financial counseling services for injured workers and their family members.
- WSI implemented a computer pilot program last year to assist in providing access and opportunity to injured workers who do not have a home computer, have no financial means to obtain a computer, and are limited to access of public use computers, either by proximity or physical restriction due to their work injury.
- WSI commenced implementation of the alternative neutral evaluation pilot program last year. The program provides for a Bismarck physician, trained in orthopedic medicine, to conduct a neutral medical evaluation of an injured worker in those claims containing conflicting medical opinions.

**Safety Grant Report**

Ms. Jane Wick, Supervisor, Loss Control and Special Programs, Workforce Safety and Insurance, provided a report ([Appendix G](#)) on compiled data relating to safety grants issued under Chapter 65-03.

### Bill Draft

Mr. Christopher S. Joseph, Senior Counsel, Legislative Council, reviewed a bill draft [\[23.0049.01000\]](#) repealing the reports provided to the committee. Committee members questioned whether there are mechanisms remaining in place for the information in the reports to be received. He noted:

- Legislators may request information and status updates related to WSI's pilot programs and safety grants from WSI.
- WSI provides the information in the reports to the Legislative Assembly during the legislative session and to the Legislative Audit and Fiscal Review Committee when requested.
- The bill draft does not repeal any program or safety grant, the bill draft removes the requirement that WSI provide status reports on its pilot programs and safety grants to the Legislative Management.

**It was moved by Senator Kreun, seconded by Representative Stemen, and carried on a roll call vote that the bill draft [\[23.0049.01000\]](#) repealing the reports provided to the Workers' Compensation Review Committee be approved and recommended to the Legislative Management.** Senators Meyer, Bakke, and Kreun and Representative Stemen voted "aye." Representative Schneider voted "nay."

### COMMITTEE DISCUSSION

Mr. Joseph reviewed a bill draft [\[23.0048.01000\]](#) repealing the Workers' Compensation Review Committee. The committee discussed whether the purpose for the statutory enactment of the committee had been met and the other available options in place to audit WSI for satisfactory performance.

**It was moved by Senator Kreun, seconded by Representative Stemen, and carried on a roll call vote that the bill draft [\[23.0048.01000\]](#) repealing the Workers' Compensation Review Committee be approved and recommended to the Legislative Management.** Senators Meyer and Kreun and Representative Stemen voted "aye." Senator Bakke and Representative Schneider voted "nay."

**It was moved by Representative Stemen, seconded by Senator Kreun, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management.**

**It was moved by Senator Kreun, seconded by Representative Stemen, and carried on a voice vote that the committee be adjourned sine die.**

No further business appearing, Chairman Meyer adjourned the committee sine die at 3:00 p.m.

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Christopher S. Joseph  
Senior Counsel

ATTACH:7