

2023 Engrossed SB No. 2296
House Government and Veterans Affairs Committee
Testimony of Art Thompson, Director
Workforce Safety and Insurance
March 16, 2023

Mr. Chairman and Members of the House Government and Veterans Affairs Committee:

On behalf of the Workforce Safety and Insurance Board of Directors (WSI), I appear today to oppose Engrossed Senate Bill No. 2296. The Board's opposition to this bill is its potential to frustrate the administrative appeal process, create inconsistent decisions, increase appeals, and ultimately increase costs for all participants.

WSI, employers, and injured employees subject to North Dakota workers' compensation laws participate in the administrative hearing process on a consistent basis to resolve disputes. In fiscal year 2022, WSI referred 140 requests for administrative hearing services to the Office of Administrative Hearings (OAH). Ultimately, 94 administrative hearings were completed. Under existing law, all decisions issued by administrative law judges (ALJ's) in WSI matters are final decisions. In other words, WSI cannot modify an ALJ's decision like other agencies.

WSI submits the administrative appeal process generally works well. This long-standing appeal process includes laws and procedures that are generally known by the legal professionals who practice in this area. There is also established case law to guide decision making. Interestingly, the proposed legislation does not address a systemic issue identified within the administrative appeal process utilized by administrative agencies. Rather, it is the sudden imposition of a new standard that has limited understanding and application.

The North Dakota Supreme Court has long held an administrative agency's interpretation of a statute is entitled to some deference. The Court has done so for good reason. Agencies apply the law on a daily basis and agency personnel have developed expertise on how the law is consistently applied to various situations. This expertise is especially critical in specialized, technical areas like workers' compensation insurance law. Deference to an agency's reasonable interpretation of a statute to accomplish its functions is logical to ensure consistent and predictable application of the law.

Under this bill, judicial deference will not be allowed by a judge in appeals that proceed beyond the administrative hearing level. Only 0.6% of all decisions issued by WSI resulted in advancement to an administrative hearing (fiscal year 2022). WSI litigation rates are one of the lowest in the nation. WSI fears this inconsistent standard will incentivize appeals by parties who seek to have the law reviewed under a more favorable standard, increasing costs to all parties.

Furthermore, it is unclear what this standard means and how the proposed language will be applied to appeals in WSI matters. It appears WSI could be interpreting a statute, regulation, or rule reasonably, but if the judge ultimately is required to interpret the law "against increased agency authority", WSI's reasonable interpretation could be rejected. This unprecedented language may further result in unpredictable and inconsistent rulings on appeal—awarding benefits when they are not intended, and not awarding benefits when they are intended.

As a result, the WSI Board of Directors requests a “Do Not Pass” recommendation on Engrossed SB 2296. This concludes my testimony and I would be happy to answer any questions you may have at this time.