

**WORKER'S COMPENSATION ADVISORY COUNCIL
PERMANENT TOTAL DISABILITY COMMITTEE
MEETING MINUTES
GEF-1 BUILDING
MADISON, WISCONSIN
September 18, 2012**

Members present: Mr. Aiello, Mr. Beiriger, Ms. Connor, Mr. Kent

Staff present: Ms. Goetz; Ms. Halsey; Mr. O'Malley

Others present: Attorney Weir

1. Call to Order/Introductions:

Mr. Aiello convened the Worker's Compensation Advisory Council (WCAC) Permanent Total Disability Committee meeting at approximately 10:00 a.m. in accordance with Wisconsin's open meetings law. All attendees introduced themselves.

2. Approval of Minutes:

Mr. Kent moved to approve the minutes of the June 28, 2012 meeting without correction; seconded by Mr. Beiriger.

3. Discussion of Eight Research Items Identified at the June 28, 2012 meeting:

Mr. Aiello stated that Mr. O'Malley would be arriving at a later time during the meeting in order to discuss the issues facing the WC Division with respect to fulfilling Research Items 1 and 2. Mr. Aiello apologized that he could not fulfill Research Item 3 because there was no issue code in the WC database that corresponds to PTD. Attorney Weir pointed out that the Loss of Earning Capacity (LOC) field on the WC Division's Certification of Readiness (COR) form could be used to track PTD as an issue in litigation.

After Mr. Aiello's admission that there was no readily available information on Research Item 6 a discussion ensued around the funding of benefit increases (without additional assessments on employers or insurers) that retroactively affect PTD claimants, which jurisdictions had some sort of automatic Cost of Living Adjustment (COLA) for PTD claimants, do jurisdictions without a COLA increase benefits for PTD claimants and if so how is that done and for jurisdictions with an automatic COLA, how long has that been in place. Out of this discussion came a new research item. (SEE BELOW, first bullet point).

The discussion moved on to Research Item 5 and its five attending charts. Mr. Aiello admitted that he may have made a mistake by counting as PTD those claimants who had been on two years or more of continuous TTD or TTDNON without a return to work date as of 9/12/12. All present agreed that the data generated would be more useful if the TTD and TTDNON claimants were not included, i.e. *not* counted as PTD claimants. This generated a second new research item. (SEE BELOW, second bullet point).

There was a brief discussion on a very general level about the WISBF, revenue in, expenditures out and medical costs. Research Item 8 then came under brief discussion and a new research item was identified (SEE BELOW, third bullet point). Mr. O'Malley joined the meeting in order to discuss Research Items 1 and 2.

Mr. O'Malley handed out a printed list of all of the judicial issue codes that are used in the WC Division's database, and he pointed out that there is no code that specifically identifies PTD as a case issue. The issue code most often used for PTD is "primary compensation". Mr. O'Malley discussed that it would require a labor intensive manual review of files in order to get a count of how many claims there are for PTD and how many of them are statutory PTD. Ms. Connor replied that many cases claiming PTD settle before they go to hearing; Mr. O'Malley agreed.

Mr. Weir mentioned that we could look at incoming CORs that claim LOC at 100% and this would tell us about cases where PTD is an issue. Mr. Beiriger asked how many new PTD claimants enter the system per year and Mr. O'Malley estimated 30. Mr. Aiello stated that his research unveiled an average of 32 new PTD claimants entering the system every year from 1980 to 2011. Mr. Beiriger then discussed that if the PTD rate is indexed then there will be more claims for PTD. This in turn will increase both the number of settlements and the dollar amount of settlements, because PTD will now be "worth more." Out of this Mr. Beiriger began to sketch a new research item and it was hammered out by those present. The desire was to focus on trying to find out how many claims come into the WC Division for which PTD is a stated issue, how many of these settle out either as PTD or something else, how many of these go to hearing and what is the final outcome of that hearing. The point of the new research item is to count the number of incoming litigated claims for PTD vis-à-vis the total number of incoming litigated claims. (SEE BELOW, fourth bullet point).

It was decided that this new research item would be in lieu of the WC Division spending the staff time to pull old files in an attempt to execute a retroactive count of how many claims come in with PTD as a stated issue.

4. Timeline/Format of Future Meetings:

Mr. Aiello announced that he would be unavailable for several months at the beginning of the next calendar year. It was decided that scheduling another face-to-face meeting was not be necessary at this time. In addition to a monthly email informing the PTD Committee of incoming claims for PTD, Mr. Aiello will update the members via email as other research items are completed. When all research items are completed Mr. Aiello will arrange a conference call for the members.

5. Adjournment: The meeting was adjourned at approximately 12:30pm.

6. Newly Identified Research/Analysis items:

- Table 5 of the IAIABC/WCRI WC Law Survey 2012 identifies, among other things, jurisdictions that do and do not have a COLA for PTD claimants. A

- For jurisdictions that identified as having no COLA:
 - Is PTD in your jurisdiction limited to a statutory definition or do you allow LOC based PTD claims as well? Do you ever adjust the benefit level of PTD claimants in such a way that there is a retroactive increase in the benefit rate for some subset of PTD claimants, e.g. PTD claimants with a date of injury prior to a specified date? If YES, what mechanism was used to fund this increase (e.g. a fund similar to Wisconsin's WISBF, assessments on insurance carriers and/or employers, etc?).
- For jurisdictions that identified as having a COLA:
 - Is PTD in your jurisdiction limited to a statutory definition or do you allow LOC based PTD claims as well? How long has the COLA been in place? Before the COLA (or at its implementation) have you ever (or did you) have a retroactive increase in the benefit rate for some subset of PTD claimants, e.g. PTD claimants with a date of injury prior to a specified date? If YES, what mechanism was used to fund this increase (e.g. a fund similar to Wisconsin's WISBF, assessments on insurance carriers and/or employers, etc?). After implementing a COLA did you see an increase in the number of settlements? Did you see an increase in the dollar amount of settlements?
- Emendation of Research Item Number 5 from the June 28, 2012 PTD Committee meeting: subtract out all TTD and TTDNON claimants, recalculate the numbers and redo the charts.
- The PTD Committee wanted to know if any jurisdictions limit PTD to a statutory definition only, and thereby bar PTD claims based upon LOC. Mr. Aiello agreed to contact Greg Krohm and ask him if he has any information on this matter. If a jurisdiction is identified that limits PTD to a statutory definition the PTD Committee would like to see that language.
- Tracking of litigated claims for which PTD is a stated issue:
 - For a six month period record the claim number of every completed COR that comes into the WC Division with 100% LOC marked as an issue to be heard. In addition, record the claim number of any completed COR that states in any other manner that PTD is an issue to be heard. A monthly report will be given to the members of the PTD Committee regarding how many completed CORs came in stating PTD as an issue vis-à-vis how many completed CORs came in that did not state PTD as an issue.
 - After the six month period is over, the claims for which PTD was an issue to be heard will be followed for 12 months. Certain data will be collected:

