



Stakeholder Meeting Minutes

January 28, 2022

Call to Order: The meeting convened at 9:00 a.m. with the following participants:

Isabel A. M. Cole	Debra Hatzialexiou	Robert Silber
Jack S. Eng	Sarah Jackson	Lonnie Ladenburg
Mark Jaffe	Lionel Greaves IV	Chris Bishop
Brian Watkins	Sarah Kortokrax	Ryan Miller
Christopher Swanson	Leslie Johnson	Richard Clyne
Lynn Hendrickson	Jane Dale	Mark Riker
Bob Liston	Katherine Mason	Jay Raish

Meeting Representatives: Member Eng reminded participants that you can have a substitute, whether for one meeting or a permanent replacement. Email jay.raish@biia.wa.gov to make a change.

Chair Update: Chair Pro Tem Jaffe reported we have not heard from the Governor's office since we got a letter extending his pro tem assignment. We know Chair Williams has had a few meetings with the Governor's office and we believe another is scheduled next week. As soon as we hear something from the Governor's office we will send an announcement via our listserv.

Reopening: Member Eng reported we do not have a specific date to reopen because we cannot anticipate the new COVID variants. When we are ready to reopen we will give 60-day notice. We won't open everything at once, we'll start with BIIA-owned facilities.

Mr. Bishop: are you still doing studies on how to reopen, such as filtration, Plexiglas, etc., or is everything on hold? We are prepared in our main offices with PPE, etc. We are just waiting for the variants to clear for a safe time to open. We are also waiting for the Governor's Reopening Plan Version 17.

Mr. Silber: there is always discussion about when we do reopen, who will be allowed in, vaccinated, etc. The state gives us direction in each version of the plan, and we'll follow whatever is directed in the latest version of the plan. We'll communicate ahead of time so everyone is aware who can come in. In all probability when we reopen it will be hybrid to accommodate those who are uncomfortable appearing in person.

Rulemaking: Chief Legal Officer Watkins reported we are contemplating:

- Housekeeping changes to remove "structured" from Claim Resolution Settlement Agreement
- Add videoconference proceedings reference to the telephonic proceedings rule
- Addressing WISHA discrimination appeals
- Strengthening confidential and privileged nature of mediation conferences

If you have early feedback email brian.watkins@biia.wa.gov

Mr. Bishop: are you looking ER 408? Yes, we will be mindful of it in any rule we draft.

Fiscal Notes: CLO Watkins reported on fiscal impact statements—these are the items we are being asked to provide information about to the legislature. We only issue when OFM requests them. This year 2022 cutoff calendar says 2/3/22 is the last day to pass bills out of committee. No legislation is proposed by the BIIA. We have been asked to prepare fiscal notes on:

- Recording of IMEs
- WISHA L&I discretion for director to waive or modify penalties
- Attending providers
- Attorney and witness fees in employer court appeals
- TLC calculation for unmarried workers
- Exception to permit payments more than 60 days before a reopening application
- Transportation Network Companies and Drivers
- Clarifying workers' comp. presumption for personnel at radiological hazardous waste facilities
- Warehouse distribution centers

Mr. Bishop encouraged a close look at the presumption modification as it is likely to cause a lot of new litigation.

BIIA CLE: Member Cole reported we are cautiously optimistic about holding a live CLE at the Tacoma Convention Center on October 21, 2022. Mr. Ladenburg asked if we'll change it to online if we can't hold it live? Yes, we are taking that into consideration.

PDO Timelag: This was asked at the last meeting. The December average was down to 28 days. If you have a specific issue with an overage PDO give the judge's Assistant Chief a call. The AC will be discreet.

Ms. Mason complimented Judge Kysar for the fastest PDO she's received in 20 years, 36 days from last event. She further asked what counts as a PDO in this statistic of 28 days? All PDOs, we don't differentiate between PDO dismissing for failure to present evidence or substantive PDO. Also, note that

the timelag starts when the entire record is in, not from the date of the last event.

The number of consolidated cases has grown. Even if we consolidate for hearing and PDO, it counts as multiple PDOs. It is also why we are struggling with case assignments. We have some TLC cases with 15-20 appeals.

Dismiss PDOs are issued within 1-3 days. Complex WISHA and assessment cases are counted in the same category and those often take a longer time. In general, PDOs are expected to be issued within 60 days of completion of the record (all transcripts and depositions received).

Ms. Mason: how far along does it get when the disposition is categorized as a PDO? Is a voluntary dismissal a PDO? No, that is an agreed order. A dismissal for failure to present evidence is a PDO because it is still a contested case. Mr. Silber: it would be helpful if there was a way to differentiate it.

Mr. Bishop: there is a difference in the timelag that is being reported and what litigants are experiencing. Has the pandemic slowed down the PDO process? Is there a better way to address it? We give clients expectations of when orders will be received, then we get the frustration from the clients. I have always heard there is a 30-day turnaround getting a board proceeding transcribed. Can we shave that time down to 20 days? It creates a delay in starting the case. The court reporters attorneys use for depositions can turn around a transcript quickly.

We can take a look at the transcript received timelines—we usually we have the transcripts before the depositions are in. We have a limited number of court reporters. The pandemic has had some effect because we continued a lot of cases and they piled up so a lot of cases came ready to be written at the same time. Regarding the transfer you can file a notice of disqualification asking that it not be reassigned for PDO.

Mr. Miller: I'm all for making sure we can get PDOs in a predictable manner if we can. Historically I have always been concerned with staunch case completion per the litigation order and judges being inflexible and not granting continuances even when all the parties agree. In recent years there has been a more collaborative spirit and we are not losing focus on the human element involved. I want to be sure that by emphasizing PDO issuance we don't end up putting the screws to the litigants. In the event a worker's need is not being met, maybe we can fast-track a case, rather than perhaps creating a staunch adherence to case completion deadlines.

The current board is in full agreement that the concerns and needs of the litigants are being met. In the event you need to expedite a case, we can assign it to a judge who can do so.

Mr. Ladenburg: I have a PDO here received 89 days from the date of the last dep taken, although I know when the dep was filed. The PDO was also issued by a different judge.

Mr. Bishop: of course we are also concerned with quality PDOs and we are not trying to rush that process by any means.

Mr. Clyne: the main thing is that we can express to litigants what they can expect. I usually say 60-90 days.

Mr. Silber: because there is a misconception over when that review has started, when the case is sent to the judge to write the PDO, send a letter to the parties.

Ms. Mason: when a statistic is so different from what we experience, that is where some of the frustration comes from. Maybe we can address the disconnect.

Mr. Miller: I really want to make sure that the board doesn't feel pressured that it has to get things done sooner and it ends up trickling down to the way it used to be. Rather than having the onerous task of mailing when the record is complete, maybe tell parties if you can't meet the 60 days and let them know when they can expect the PDO. Most people are okay waiting if they know what to expect.

Member Cole: When you average a case that only takes a day or two it will skew the average. Median measure is a good idea. As a board member I want to know that we are giving out accurate information.

Mr. Miller: have a link on the website that lays out various timelines.

We do our CLE and it is geared towards the law. Maybe we need a section with board employees and we can field questions ahead of times and provide a session on how the board works from the time the appeal comes in to how it goes out.

We will take a look at individual judges and see if there is a pattern and we'll review all of your suggestions.

Exhibits: Chair Pro Tem Jaffe reported we had numerous inquiries throughout the pandemic about getting exhibits admitted. Do any of you want to get together and give us some suggestions to consider?

Notices of Disqualification: Acting Chief Swanson reported we are revising our outdated macro. You should see updated orders next week.

Accommodations: CLO Watkins reported the courts say GR 33 applies to the BIIA. In 2021 we were ordered to provide an attorney for a woman who experiences bouts of dystonia. The attorney withdrew after the PDO was issued. We are now looking for an attorney who is willing to review the file and file a Petition for Review. We will issue a Request for Proposal in about 2 weeks. If you want more information please contact Brian.

Can an interested attorney review the record before bidding? Yes.

Stakeholder Q&A:

Ms. Mason: our folks have expressed frustration and confusion about all the different ways notice is provided about hearing judge. People especially don't like the preassignment, where the hearing judge is noted at the bottom of the mediation notice. Mr. Miller: for some reason the preassignment is easy to overlook. If you are going to continue using that process, please take a look at the formatting of that notice.

We will look at the preassignment process and the notices.

Ms. Mason: when is the next judicial survey? We will be doing a survey, we chose to delay it because of the pandemic and we had so many new judges we wanted to wait until they got more experience.

Next meeting: Member Eng: we value these meetings and appreciate all of your comments. We want to make it as easy possible to proceed before the BIIA. The target date for the next meeting is April 29, please email jay.raish@biia.wa.gov if you have conflicts.

Adjournment: The meeting was adjourned at 11:30 a.m.

Respectfully submitted,

/s/

Jay Raish,
Confidential Secretary