



Stakeholder Meeting Minutes

May 21, 2021

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

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

Harassment Policy and Complaint Procedure: Member Cole advised that you can find the [Anti-Discrimination, Harassment and Sexual Harassment Policy](#) and [Complaint Procedure](#) on the "About Us" page of our internet site.

Governor's Roadmap to Recovery: Chief, Administrative Services Liston reported that we received Version 9 of the Governor's document on May 17. All agencies have to comply with specific guidelines set by the Governor's office, OFM, L&I, and DOH. Ultimately, they want to provide quality public service and reduce and prevent COVID-19 infection. For facility readiness, some things we have to consider are HVAC, air quality, and water systems. We will use portable HEPA filters throughout facilities and will install higher quality HVAC filters where we can. We will flush our water systems, reduce seating because of social distancing requirements, and conduct more cleaning of high-touch areas. We will provide PPE and install sneeze guards. We will be required to institute a screening process and minimize occupancy. We will have to examine our scheduling process so we don't have multiple events scheduled at the same time.

Mr. Bishop asked if masks will be required for vaccinated people? Yes, until we are told otherwise.

Mr. Silber asked, if there is someone who doesn't want to appear live, can they still appear by Zoom? Chief Judge Jaffe responded that video and telephone will be a permanent part of our procedures. The IAJ will probably hold a conference to work through it if the parties disagree. It will be at the judge's discretion. Reference *In re Peter Kim*, BIIA Dec., 00 21147 (2002) and our WACs regarding telephone testimony.

Access to Justice: Chair Williams reported we were able to get a lawyer to comply with the one superior court order we have to appoint counsel: Yukiko Stave of Tukwila. The fact that it was so hard for us to find someone highlights how the access to justice issues are not going to go away. In looking at how we come back we have to be mindful of access to justice and marginalized groups. Were they adversely impacted or was it easier to access our proceedings by Zoom?

Administrative Rulemaking: – Acting Chief Legal Officer Watkins reported on new session laws:

- [SB 5046](#), effective April 16. Allows lump-sum Claim Resolution Settlement Agreements.
- [SB 5115](#), effective May 11. Prima facie presumption that infectious or contagious diseases that are transmitted through respiratory droplets or aerosols, or through contact with contaminated surfaces and are the subject of a public health emergency are occupational diseases under RCW 51.08.140 during a public health emergency. Can be rebutted by a preponderance of the evidence. Costs of the claim don't affect state-fund employer experience ratings. For self-insured employers, when calculating assessments due to the Department for which total claim costs are the basis, self-insured employers and self-insurance hospital groups may deduct the cost of payments made under this section from the total of all claim costs reported.
- [SB 5190](#), effective May 11. OD presumption for healthcare workers who contract COVID-19. Can be rebutted only by clear and convincing evidence. Otherwise similar to above.
- [ESHB 1097](#)
 - Effective July 25, employer appeals from orders of immediate restraint issued by DOSH now go to superior court.
 - Effective July 1, 2022, adds anti-retaliation provisions to protect employees who file WISHA complaints; both employers and employees may appeal to the BIIA if they don't agree with the action taken by the Department after the Department acts or doesn't act on retaliation complaints.

We are conducting our own rulemaking, detailed on our [rulemaking page](#). We did not propose a rule change regarding what happens when two board members do not agree on the disposition of an appeal. In *In re Herbert Thomas*, BIIA Dec., 42,061 (1973), the Department order stands. We considered changing it to say that the IAJ's ruling would stand. That issue is on appeal to the Court of Appeals under *Department of Labor & Indus. v. Criss*, Div. II 55059-8-II.

Stakeholder Q&A: Chief Judge Jaffe noted that two of our proposed WAC changes came specifically from the last stakeholders meeting. Mr. Ladenburg suggested auto-stay and dismissal of CRSA-related appeals. You have to file the CRSA to get the automatic stay. A lot of the motions we currently receive

are anticipatory filings of CRSA. The active appeal will automatically be dismissed when CRSA approved.

Mr. Ladenburg reported he received a CRSA order containing language that said they hadn't included a statement that claimant would dismiss. Chief Judge Jaffe advised that if you haven't filed yet, cover yourself by putting in language that the appellant will dismiss upon expiration of the revocation period.

Chief Judge Jaffe reported:

- We had universal agreement from stakeholders that they wanted to be able to file affidavits of prejudice if a PDO was reassigned for writing. We can't always guarantee it but we will try to reassign it to the original hearings judge.
- At the last meeting stakeholders raised Zoom etiquette. We are continually training the judges. If you have further concerns please contact Chief Judge Jaffe.
- In April judges attended training from former judge Jack Nevin on updated rules of evidence. Reminder that these rulings are discretionary, so file a motion for interlocutory review if you feel the decision affected the case.
- We received a question about our plan to transition to electronic notice. We are a ways away from that. We do as much electronically as we can, but we will still send notice by hard copy. Mr. Greaves noted that the AGO is highly interested in receiving notice electronically and would be happy to partner with the BIIA when the time comes.
- We received a question about how many IAJ FTEs we have so the AGO can balance mediation paralegals. This is moving target, we have several people retiring so we are trying to fill positions. We continually look at appeals. Right now appeals are down. We have some judges who do only mediation, some only review, and some who do both. Because of the issues with paralegals we try not to expand mediation runs even though we have wanted to in the past.

Mr. Silber asked if there is a trend regarding CRSAs being rejected or has the language that Debra put out been sufficient? The answer is that 95% of the time the language has been sufficient with the transition to allowing a single payment. What was hanging people up was the SSA offset, which will no longer factor in to a single-payment CRSA. For the most part parties pivoted and most of the CRSAs coming in are single payments.

Mr. Silber commented it is great that parties can amend a CRSA before it is final. What about the other way, where the Board sees that there is an administrative issue, such as longevity. Is there a way that the Board could come to the parties and advise them of the issue that needs to be amended?

Chief Judge Jaffe noted we have not discussed it but it's a good point and we will consider it.

Mr. Greaves noted we are still seeing modifications to OAP language. Chief Judge Jaffe acknowledged this has been raised before and we have reminded the judges. We will remind the judges today that any modifications must be cleared with the parties.

Hiring: Member Eng noted that we tried to hire an executive director in early 2020 but were unable to complete the process before the hiring freeze took effect. We will look into this again, and we also will eventually need to hire a permanent Chief Industrial Appeals Judge.

Next meeting: Member Eng suggested Aug 20 or a Friday in September. If you have any conflicts with those days email jay.raish@biia.wa.gov. Reminder, if you cannot make it substitutions are allowed.

Adjournment: The meeting was adjourned at 11:00 a.m.

Respectfully submitted,

/s/

Jay Raish,
Confidential Secretary