

Injured Employee Partial Permanent Disability Payment Working Group

MEETING MINUTES

Tuesday, November 28, 2023

12:00 PM in on Zoom and YouTube Live

The meeting was called to order at 12:00 PM by Chairman, Rep. Quinn

The following task force members were present:

Members: Ackert T. 008; Conley C. 040; Bud Drapeau; Colette Griffin; Colin Hoddinott; Marie Gallo-Hall; Nathan Shafner; Joseph Passaretti; Quinn M. 082; Brooke Foley

Absent were: Bill Beckert; Sampson R. S16; Sanchez E. 024; Kushner J. 024

Guests:

Remarks by the Chairs:

Representative Quinn calls the meeting to order and welcomes everyone to the Injured Employee Partial Permanent Disability Payment Working Group meeting. Following this, he asks Co-Chair Conley if she has any initial remarks.

In her opening remarks, Representative Conley welcomes the committee to today's meeting.

Approval of Minutes – November 14th:

Representative Quinn asked for a motion to approve the minutes from the November 14th meeting. A motion is made by Representative Conley and seconded by Representative Ackert. A vote was taken, and the motion passed.

Presentations and Discussions on Legislative Proposals:

A brief acknowledgement is made by Representative Quinn that the committee was sent an initial proposal discussing modifications to 31- 308 A & B. The purpose of these modification is to amend the numbers of compensation weeks regarding specific body parts in the current statute. As well as amending 31-308 A. He yields his time to the creators of the proposed modifications and asks them to begin discussion.

Attorneys Bud Drapeau and Nate Shafner begin by discussing their proposed changes to the Permanent Partial Liability statute. Nate Shafner explains that these changes were made with the consideration of their many years of practice working with this statute. It is his intention to reflect the contentions of practitioners and judges who have concerns about the pitfalls within the Workers Compensation Act. He states that if this act were adopted it would grant judges greater discretionary powers allowing them to provide better resolutions for claimants. He points out that their proposals serve as a helpful starting point for this group's ideas about statute modification. He explains that his goal is to present the claimants perspective and identify their issues so that they can address them. Additionally, he believes the business communities prospective is equally important to provide alternative prospectives and concerns to this discussion.

Bud Drapeau shares that his and Nate Shafners goal was to accurately identify pressing issues from the injured workers perspective. He adds that this was intended to incite conversation.

Representative Quinn states that he initially proposed this legislation with primarily focusing on the 308 A benefits. He then asks the other members about their feelings towards adjusting the statute to include a 208-week cap or PPD weeks (4 years of benefits).

Nate Shafner shares that upon examination as to whether a balance existed within the 208 Weeks cap he noticed that commissioners have the latitude of awarding a maximum 208 weeks for disfigurement or scar injuries. In the 1993 amendments, CT legislature set the maximum benefit rate to 208 weeks deeming a higher cap to be necessary in this instance. Following this precedent, he believes this 31-308 B limit should be applied to 31-308 A limits as well. He continues that PPD week rates could also be utilized. It could provide a minimum rate of 208 weeks or be greater than that that in some instances. In cases of back injuries, heart issues, or traumatic brain injury (TBI) benefits can exceed 208 weeks as very few permanency ratings for the back exceed 208 weeks. Moreover, back related injuries can receive a 40% rating of 169 weeks, therefore he believes 208 weeks should be the maximum in some cases. He agrees that the commissioner should be allowed to award a higher number of weeks. His argument for increasing judges' discretion is that they should award higher than the current rate but, lower than the rate prior to 1993.

In addition, Representative Quinn notes that someone with a 10% rating will receive 37.4 weeks in addition to 37.4 weeks in 308 A benefits. As a result, this proposal would permit commissioners to authorize additional benefits for 308 A up to 208 weeks. Payments that claimants have already received are not included in this calculation.

Nate Shafner agrees with the statements made by Representative Quinn. As an example, he presents the hypothetical situation of a roofer with a back rating of 10%. As a result of their 10% rating, they are unable to return to work. It is also prohibited for them to climb or lift. Because there may be a loss in wages, he believes that a judge should be able to award 37.4 weeks of compensation. It is possible to award 2-3 years of benefits if the injured employee attends a training program. He believes this is an excellent topic to begin discussing the possibility of increasing rates beyond the maximum limitations and correlating them to the specific number of weeks. In this manner, the accommodations can be priced higher than the rate.

Additionally, he discusses reinstating rules that were used after the 1993 Workers Compensation Reform, commonly known as the Frankel Rule. Before the 1993 reform of workers' compensation, this was used to determine best practices.

A question is raised by Representative Quinn regarding mentions of immigration status in 31-308 A. He is unsure whether immigration status has been addressed in this statute. Nevertheless, he recounts his experiences with undocumented injured workers who have been denied benefits in disproportionate numbers. As a matter of policy, he argues that either the committee should address the issue in the proposal or it should be referred to the courts.

In response, Nate Shafner argues that undocumented workers should be entitled to 308 A benefits. These inequities certainly need to be discussed and amended by a governing body. In spite of this, he is not certain whether it should be discussed in the legislature or even by this working group. During their residence in the United States, undocumented workers may gain some legitimate work status (either through federal legislation or state recognition). He further states that this is a legislative policy decision that needs to be addressed, but that it is likely outside the scope of this committee.

As Representative Quinn explains, he originally intended to include language in 308 A that would permit undocumented workers to receive benefits regardless of their immigration status. As a result, he anticipates an increase in disability claims related to post-traumatic stress disorder and how it is utilized by emergency services workers. He considers whether we should establish a separate category for PTSD or whether we should remain with the brain rating.

Bud Drapeau acknowledges the importance of Representative Quinn's inquiry. An important topic to note is discussion about identifying ratings for the various systems.

Many systems such as the Neurological and cardiovascular systems mirror the AMA guidelines. He cites that it can become problematic if a statute does not follow guidelines. He believes in the case of PTSD; it is sensible to leave it as a brain rating. As a result, he is open to discussing alternative courses of action.

It may not be necessary to define this concept as Representative Quinn indicates. Permanency ratings have just begun to be discussed by the committee. As a next step, he asks the businesses to present their viewpoints on the issue. From the business viewpoint, judges may view these changes as an "automatic entitlement" rather than a use of their discretion up to a certain number of weeks. He suggests that the group could address this issue by adding specific language to the statute defining who is eligible for these benefits. In addition, it facilitates the exchange of alternative viewpoints and ideas.

Brooke Foley explains that she proposes aligning closely with the committee charge. To determine whether an issue needs to be amended, she believes that foundational data is necessary. Her request is for data, statistics, and more detailed reports regarding inequities in the CT benefits award in comparison to other states. Additionally, she states that formulating a proposal without this statistical basis could be challenging.

In response to Brooke Foley's claim, Representative Quinn asserts that there may not have been any data available in 1993 when the limit cap was first established. Nate Shafner confirms that there is no legislative history on the 1993 amendments.

In response to Representative Quinn's point, she is specifically requesting information on how Connecticut is under-awarding benefits in comparison to surrounding states. In addition, she reiterates how important it is to follow the charge, which is the public act that established the working group.

In response to Brooke Foley's request, Representative Quinn has agreed to work on sourcing the information.

Marie Gallo-Hall mentions that Justin Moulton, a member of NCCI, had contacted her following the previous meeting of the working group. He sent Maria an email containing an attachment that she will share with clerk Nate Kalechman. Following this, the contents of Justin Moulton's email will be shared with the group.

Representative Quinn asks if other members have some preliminary comments on this

Chairman Quinn was presented with a parenthetical by Nate Shafner. He requests clarification concerning the new CT insurance premiums that were announced earlier this month by the governor's office. In turn, he asks Brooke Foley if these claims are true. Unfortunately, she does not have any information about this trend at this time.

Representative Quinn suggests that if the rates have decreased due to the pandemic, and less people are working in-person there may be less opportunity for physical injuries to occur. However, he prefers to refer to insurance companies for confirmation.

Joseph Passeretti introduces himself and begins by discussing the issues with modifying 31-308 A. He states that the system has a certain level of tolerance for drastic change. He believes judges will only award the maximum entitlement if these modifications are adopted. He feels that the proposal is an overreach. He feels it is problematic to increase the number of weeks from 11.7 308 A to 208 weeks. As well as, increasing 15.5 weeks to 208 weeks. In 1964, the legislature decided that 104 weeks was too many weeks for an employer to distribute. Therefore, he feels increasing the allotted number of weeks to upwards of 208 weeks is unfounded. Additionally, he continues that benefits are supposed to have a relationship to the reduction in earning capacity within a statutory framework. Where governing bodies measure what injured employees, incomes are prior to awarding benefits. So, the concept that an individual's earning capacity does not increase financially, just by virtue of a statutory precept is untrue. He disagrees with paying claimants the full base rate and ignoring loss of earning measurements. For instance, this logic presupposed that a 5% rate loss for a finger entitles that individual to 208 weeks of benefits.

Bud Drapeau, in response to Joseph Passeretti, reminds members that this is a situation in which the employer has not been able to accommodate the limitations imposed by the work injury. In his practice, he has not seen the statute 31-313 enforced. As long as light duty is available before MMI, 31-313 requires that employers provide it. The author wonders if CT should extend 31-313 beyond MMI to require employers to accommodate these restrictions so that employees can return to work. There are now more federal and state laws on employment, however he states he is unfamiliar with many of them.

Representative Ackert recalls two instances in which injured workers with the ability to climb ladders were provided with light duty work. As the employer, he provided accommodations that followed permanent restrictions.

In response, Bud Drapeau states that he has seen employees provide accommodations to restrictions in the past. However, he has seen an instance where light duty was available to injured workers, and employers did not offer it to them, which resulted in a hearing. During a period of treatment or rehabilitation as a result of physical incapacity, the employees are transferred to suitable work for three months or 31-313. In his understanding, employers are required to provide light duty if it is available prior to maximum medical improvement.

Representative Quinn asks Brooke Foley about his earlier remarks regarding higher premiums. He asks that when an insurance company decides on the amount they will

charge for premium worker's compensation. Do insurance companies allocate money based on the premium for the coverage of PPD benefits or post-specific 308 benefits during this decision process?

Brooke Foley states that many factors are taken into account during this process. It is determined by the level of risk associated with the individual's job.

Marie Gallo-Hall inquires impartially about these body part amendments. She asks whether this will serve as a "catch-all" for listed body parts. Her main concern is the reliability of this new methodology and whether it will result in a lack of compliance with actual schedules. Furthermore, she inquires whether this will be an expansion of the scheduled body parts or if it will be unregulated.

Bud Drapeau explains that they were trying to create a list of all the body parts. Later, he realized that this was not possible due to the number of included body parts. As a result, he decided to recreate a previous catch-all that addressed the unscheduled body parts.

According to Nate Schafer, he is willing to work on finding common ground on many of the proposed changes. His belief is that the group can explore mechanisms that will limit some discretionary powers as well as alleviate some of the concerns of the group.

Colette Griffin agrees with the comments made by Brooke Foley and Joseph Passaretti. It would be more comfortable for her if she could have access to baseline data regarding the comparison rates of surrounding states. Before considering modifications to the statute, she believes there needs to be an established issue.

Nate Shafner inquires of Colette Griffin whether she has heard any complaints regarding insufficient ratings over the years. The injured worker should not be required to bear the majority of the costs and consequences associated with retaining businesses in Connecticut. Additionally, he indicates that both Bud Drapeau and himself do not have statistical information and cannot provide data on state comparisons. In their practice of workers' compensation defense, they can share their experiences and claimant cases.

As Colette Griffin confirms, she has heard these complaints frequently, however, she argues that systemic issues must be addressed rather than individual complaints. Her objective is to increase business retention in CT and encourage organizations to continue doing business in this state.

In order to better understand the language amendments, Representative Ackert requested the committee discussion to be shifted. It is important for him to ensure that the group is in agreement with these changes.

Representative Quinn states that they have made a simple revision to the titles. The title of commissioner has been changed to administrative law judge.

Representative Conley discusses the burden placed on claimants. Injured workers who are unable to return to full duty have accepted their claims and are permanently disabled. It is not possible for these workers to work in their field or trade. How does the government assist that individual in obtaining full-time employment? Rather than the injured worker bearing the costs, another entity should do so. It may not be the employer or the insurance company. Even so, she appreciates the proposal, and believes that the workers' compensation system would like to be more able to provide permanent injured individuals with the necessary skills in order to remain productive, taxpaying citizens.

Representative Quinn asks if any other members would like to share.

Representative Quinn reiterates that the committee is able to gather comparative data regarding CT's performance compared to the surrounding states. It may be constructive to investigate how surrounding states handle permanency ratings and how they assign ratings to different body parts. Members of the group are encouraged to share or receive additional documents in order to include them on the agenda of the next meeting.

Representative Quinn asked for a motion to adjourn today's meeting. A motion is made by Representative Ackert and seconded by Representative Conley. A vote was taken, and the motion passed.

Announcement of Time and Date of Next Meeting:

Tuesday December 12th, at 12:00pm

Adjournment:

This meeting was adjourned at 1:01 PM

Nate Kalechman

Ana Allen

Task Force Administrator

Minutes Prepared by