

# Injured Employee Partial Permanent Disability Payment Working Group

## MEETING MINUTES

Tuesday, December 12, 2023

12:00 PM in on Zoom and YouTube Live

The meeting was called to order at 12:01 PM by Chairman, Rep. Quinn

The following task force members were present:

Members: Ackert T. 008; Conley C. 040; Bud Drapeau; Collette Griffin; Marie Gallo-Hall; Nathan Shafner; Joseph Passaretti; Quinn M. 082; Brooke Foley, Colin Hoddinott; Sampson R. S16; Sanchez E. 024;; Kushner J. 024

Absent were: Bill Beckert;

Guests:

### **Approval of Minutes – November 28<sup>th</sup>**

Motion made by Rep. Conley, seconded by Brooke Foley. Marie Gallo-Hall states that she found a couple of errors on page 5 and page 7. Joseph Passaretti and Colette Griffin state that their names were spelled incorrectly as well.

### **Continued Discussion on 31-308**

Rep. Quinn states he hoped to get comparative data but hasn't gotten it yet.

Nate Shafner states there are 51 different jurisdictions in the country, and it is very hard to compare because of how each jurisdiction operates. He states that every state has a way to extend benefits while Connecticut does not. He states unless you are pushing for lifetime benefits, the benefits end where they end, and they are less than other states. Nate goes through the differences between some states, New York and Massachusetts for example.

Brooke Foley gives a presentation related to workers compensation data. She agrees with Nate that it is very hard to compare data. She shows that CT is number 10 at the maximum amount that can be paid weekly for workers compensation, and Connecticut is number 4 in New England. She shows that 75% of after tax average weekly wage rate for base compensation rates. She shows PPD maximum weeks is 520. She states that Connecticut isn't insufficient and that she believes Connecticut is generous in comparison to other states.

Representative Quinn states that some states are the percentages based on net and not gross, which could make numbers higher than perceived in the presentation.

Bud Drapeau states the maximum total rate shown is for temporary total benefits and not permanent partial disability, which would be \$1,154.

Rep. Quinn begins discussion on the proposal from Bud and Nate. Rep. Quinn states he agrees with increasing payment for cervical spines, he isn't sure if it should be the back or the shoulder, but he believes it is more of an interplay between the neck and shoulder.

Rep. Conley states the 117 is low but notes that there was an error in 1993 and doesn't believe the intent was to be 117. She states she's heard from claimants and lawyers that it is low, and they believe it should be raised.

Bud states the neck had been 175 weeks prior to 1993. Rep. Quinn asks if that should be the number proposed.

Nate believes it should be between 117 and 175 weeks. He observes that other states have much higher weeks for body parts than Connecticut, he believes increasing the weeks make sense, but it should be somewhere in the middle in order for there to be a consensus.

Joe Passaretti states permanency in New York is more of an elusive figure and not comparable to Connecticut and that it shouldn't be used as a framework.

Joe says that the legislature rejected 175 and would need to see what's more palatable for the legislature. Likely would be the middle between 117 and 175.

Nate disagrees with Joe's understanding of the rejection by the legislature because there's no legislative history on it. Joe states that the only real thing that can be gathered is that they reduced benefits by 1/3.

Bud asks if it would be easier to use the term "restore" regarding going back to 175 weeks for the neck. Rep. Quinn says it might be, because you can point to how it used to be and then can make an argument on why it should be that number again.

Colette Griffin states that there could be an issue regarding restoration, because will it just go to restoring the neck or does it go for all body parts.

Rep. Ackert doesn't believe a "happy medium" is a solid approach, and case history would be of value for the legislature.

Sen. Kushner agrees with Rep. Ackert, that examples and case history would be beneficial. She states that there are things done in 1993 that the legislature is changing, because a lot of the changes in 1993 were done for cost savings more than anything. She states she would like to hear from people who were practicing or in the legislature at the time.

Rep. Quinn asks if people were grandfathered in when that 1993 changed. Marie states it was based on when the injury happened (if it happened in 1989 you get the weeks charged for the body part in that time, 175 for example). Rep. Quinn observes that the reverse would likely happen if they made the change back, that people would be stuck with the 117 if they were injured prior to the reversion.

Joe states you would likely want to stick to the date of injury rule, benefits changed retroactively get into constitutional concerns and have a negative impact to the state.

Rep. Quinn asks again if the group is supportive of reverting back to 175. Rep. Conley says it should be submitted as 175 and OFA can weigh in if they think it will have a significant cost impact.

Joe expresses the same concern that Colette Griffin has. Joe states he'd be much more satisfied with the 175 change if the working group looked at the other body parts that changed in 1993 as well.

Rep. Quinn states he doesn't necessarily want to use 1993 as the framework because it then opens the door to unlimited 308a, which would likely be going too far.

Rep. Conley states that the 1993 changes weren't entirely permanent because of the recent changes to PTSI, and that the revisitation of these laws would be beneficial.

Nate states maybe to allow discretion for judges to award more for certain cases. Colette states the problem with discretion is litigation ends up happening. Nate agrees that it could exist, but there is discretion in 308a and asks how often litigation happens

there and suggests it is minimal. Colette believes there was much more litigation on 308a before it was how it is today.

Joe explains the Osterlind case, and that by amending 31-300 so that a claimant's costs in pursuit of a finding of Osterlind their expert testimony is paid for.

Rep. Quinn moves on to the skin proposal and asks the group their thoughts on the changes.

Nate states the skin is the largest organ of the body and that it isn't specifically covered in 308b, and that if something was to be paid on this there should be a range. Nate states after 1993 you can't get an impairment rating for a skin, unless it causes unemployability via disfigurement, but you must link it to earning capacity.

Nate believes that the legislature appoints the judges to exercise discretion, and that there can be checks and balances to limit discretion, but he doesn't believe people should be afraid of giving judges the ability to have discretion.

Bud states individuals left with disfigurement are left with nothing to compensate them.

Rep. Conley notes surgery scars by the cervical that leaves them with significant disfigurements.

Joe states the Supreme Court dealt with the skin issue a couple of times, and that they concluded an individual who was burned had rights under 308b, and that the doctors caring for the individual had to essentially vouch for the patient.

Rep. Quinn moves on to the hand proposal and asks the group their thoughts on the changes. There were no thoughts on the changes.

Rep. Quinn moves on to the catch all changes and asks the group their thoughts.

Nate thinks this change is important, he believes judges should have discretion to award something above and beyond what they are permitted. He believes this would solve a lot of the bottle ups. He believes there should be certain parameters to go above and beyond, and that there should be a limitation on how much is awarded. He believes it creates a remedy for the injured worker and predictability for a judge to articulate why they are doing it and allows the parties to work on an agreement.

Joe states that he doesn't believe the legislature always wants our judges to exercise unbridled discretion and uses the example of sentencing guidelines. Joe states the requirements and pre-conditions to become a WCC judge are not uniform. He states at the appellate level, the standard of review is abuse of discretion. He believes adding

unchecked discretion to both seasoned and new judges is too dangerous. He states settlement demand numbers have impacts on insurability, and those numbers have impacts on premiums, and when premiums go up employers leave.

Bud states the discretion here only addresses cases where the body part isn't listed as a scheduled body part, so this would only target a few cases in his opinion (the intestines for example). He doesn't believe the discretion here wouldn't be the same as 308a.

Rep. Quinn moves on to the extended 308a benefits proposal and asks if anyone has comments on it. No one from the group has any comment.

Rep. Quinn states that he welcomes anyone else to submit an alternative proposal, and that he hopes to get to a point soon where an agreed upon proposal is finished.

**Announcement of Time and Date of Next Meeting:**

Tuesday January 2<sup>nd</sup>, at 12:00pm

**Adjournment:**

This meeting was adjourned at 1:14 PM

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Nate Kalechman

Ana Allen

Task Force Administrator

Minutes Prepared by