

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, December 5, 2019 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner (Telephonic)
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self Insurance (Telephonic)
	Janine Locke	Special Service Manager
	Ruby Tate	Claims Manager
	Jessie Atencio	ADOSH Director
	Lisa Padgett	Labor Investigations Supervisor
	Victoria Kamm	Labor Investigator
	Jennifer Krainski	Labor Investigator
	Mary Cummings	Labor Division
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 2:00 p.m. once a quorum was present. Also in attendance were Deb Baker (Valley Schools Workers' Compensation Group); Raul Diaz and Rodrigo Diaz (DG Farm Labor) and Shanlie Blair (Snell & Wilmer).

Approval of Minutes of November 21, 2019 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the November 21, 2019 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

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a. Approval of Requests for Renewal of Self-Insurance Authority.

1. Valley Schools Workers' Compensation Group

Chairman Schultz commended the Valley Schools Workers' Compensation Group for being financially strong and well reserved, with an excellent safety record and an experience modification that has been declining each year since 2015. Chairman Schultz congratulated Ms. Baker on her safety record.

Vice Chair Hennelly moved to approve Valley Schools Workers' Compensation Group and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Safety Committee Update and Topic Discussion.

Ms. Locke reviewed the Industrial Commission's threat assessment program and process for threat assessments and collection of information. This was recognized as a best practice in the VPP Audit.

Mr. Ashley explained the efficiency and timeliness in which incidents are responded to and action taken.

Chairman Schultz noted it was similar to the hospital protocols.

Discussion & Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Ms. Tate requested that Donald Denmon be appointed as Special Assistant to the Industrial Commission to be authorized as the Assistant Claims Manager for the Commission. She noted Mr. Denmon's background for the position.

Vice Chair Hennelly moved to appoint Donald Denmon as Special Assistant to the Industrial Commission of Arizona and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Youth Employment Penalty.

CL1819-0148      3-G Construction Co., Inc.

Ms. Padgett summarized the Labor Department's investigation, which included findings of various violations of A.R.S. § 23-231(a)(5), (a)(7) and (a)(13). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$600.00.

Vice Chair Hennelly praised the write up as very thorough and noted there were two other juveniles working, but by law they were allowed. Chairman Schultz felt this citation highlights why the regulation is in place.

Vice Chair Hennelly moved to approve issuance of a Civil Penalty in the amount of \$600.00 to 3-G Construction Co., Inc. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Discussion and/or Action of Appeal of Arizona Division of Occupational Safety and Health Initial Negative Determination regarding Discrimination Complaint under ARS 23-425.

1.      19-3633-12      Soliz v. Moheb, DMD, Inc. P.C.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH Initial Negative Determination regarding Discrimination Complaint.

Mr. Atencio summarized the investigation findings, which were based upon interviews with the Complainant, other employees, and the employer. ADOSH also conducted a safety inspection, and reviewed documents.

ADOSH argued the information submitted for appeal by the Complainant failed to provide new information to alter the original findings of insufficient evidence to establish a prima facie allegation as required.

Vice Chair Hennelly reviewed the timeline and confirmed that no new evidence has been submitted since September. Mr. Atencio explained the efforts ADOSH has undertaken to communicate with the Complainant.

Chairman Schultz found it compelling that the employer acted exactly as they should by immediately having inspections done to assure a safe work place, and that the Supervisor and other people who were working in the same area did not have any issues. There was no evidence of asbestos or mold, but the complainant refused multiple overtures to discuss the situation and the employer offered alternative working areas during the investigation.

Vice Chair Hennelly moved that ADOSH dealt adequately with all factual issues in the investigation, the investigation was conducted fairly in accordance with the applicable laws and concurred with the findings of ADOSH of no merit to the complaint for the appeal. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) to Discuss Appeal of Arizona Division of Occupational Safety and Health Initial Negative Determination regarding Discrimination Complaint under ARS 23-425.

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1. 19-3633-12 Soliz v. Moheb, DMD, Inc. P.C.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

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Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Cohills Building Specialties, Inc.  
3825 E Anne St  
Phoenix, AZ 85040

Site Location: 3825 E Anne St  
Phoenix, AZ 85040  
Inspection No: I7246 -1423452  
Inspection Date: 8/15/2019

Fatality/Accident  
Years in Business: 33  
Empl. Covered by Inspection: 6



NON-SERIOUS – Citation 2 - Item 1 –

a) Facility: The log and summary of recordable injuries and illnesses for the years 2016, 2017 and 2018 were not provided by the establishment. 29 CFR 1904.40(a)  
Div. Proposal - \$600.00 Formula Amt. - \$1,000.00  
TOTAL PENALTY - \$3,600.00 TOTAL FORMULA AMT. - \$4,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Vice Chair Hennelly acknowledged that we do not know precisely what happened, except there is proof the worker drove through the ditch, hitting the pump trailer, abandoned the tractor, started walking then collapsed. Vice Chair Hennelly and Mr. Atencio discussed the tractor being turned off and in the field.

Chairman Schultz and Mr. Atencio discussed the higher greater assessment and the probability factors and training related to how this occurred.

Chairman Schultz asked the representative of DG Farm Labor if they wanted to comment or answer questions. Chairman Schultz and Rodrigo Diaz (Mr. Atencio interpreted) discussed how long the employee worked for the employer, and the training during the day. Mr. Diaz noted they now have a consultant, Abel Almanza who is providing general training for safety, they are doing more training following the accident to ensure safety and have specific training on the equipment they are using for all of their employees. They also discussed the OSHA 300 log and the record keeping requirement.

Mr. Atencio and Mr. Diaz discussed if he knew what happened. Mr. Diaz noted they are providing training and any recommendations from ADOSH that they are doing something about it.

Chairman Schultz noted it seems that driving in and out of the ditch in the middle of the night may be the result of falling asleep or being tired, since no drugs or alcohol was detected, which would cause you to weave and not react more quickly when you hit the ditch, wondering what kind of training could have prevented this. Mr. Atencio noted it is difficult for ADOSH to say how much training you need, and only point back to one standard, do they have the training they need and can it be verified in some way.

Mr. Diaz explained they now utilize the tractor for this activity solely in the daytime. The employees doing watering management at night are in trucks and not driving the tractors at night.

Vice Chair Hennelly moved to amend Citation 1, Item 1 by proposing a 20% reduction based on the abatement the company has done and modification to their practice. Citation 2, Item 1 remain as proposed, for a total penalty of \$3,000. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

ALR Construction, Inc.  
1719 ½ 22<sup>nd</sup> Ave  
Phoenix, AZ 85009

Site Location: 15240 N Cotton Ln  
Surprise, AZ 85388

Referral  
Years in Business: 22  
Covered by Inspection: 4



Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley highlighted Mr. Laky's submission for the ICA's VPP one year certification accomplishment which was selected for the quarterly Good Government Award presented by the Governor's Office, which will be presented on Tuesday.

Ms. Dimas presented a retirement resolution for Steven R. Welker, Labor Division Director. She noted Mr. Welker's twelve years of state service.

Ms. Dimas presented a retirement resolution for John Graft, Elevator Inspector in the ADOSH Division. She noted Mr. Graft's seven years of state service.

Ms. Dimas presented a retirement resolution for Malia Tina McCoy, Accounting Specialist I in the Accounting Division. She noted Ms. McCoy's thirteen years of state service.

Ms. Dimas presented a retirement resolution for Bruce Hanna, State Industrial Hygienist in the ADOSH Division. She noted Mr. Hanna's twenty years of state service.

Ms. Dimas also noted the Associated General Contractors (AGC) Christmas Open House on December 10, and the Commissioners were invited. Mr. Ashley noted the AGC will also be holding a January 14, 2020 Safety Meeting and would like to have Commissioner representation as well.

Ms. Dimas confirmed Commission meeting dates through January 2020.

Mr. Ashley noted that the Administration Division will be having its holiday lunch on Monday and invited the Commissioners.

Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 3:20 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  \_\_\_\_\_  
James Ashley, Director

ATTEST:

  
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Kara Dimas, Commission Secretary