

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, January 7, 2021 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	Steven J. Krenzel	Commissioner (Telephonic)
	James Ashley	Director (Telephonic)
	Gaetano Testini	Chief Legal Counsel (Telephonic)
	Jason M. Porter	Deputy Director (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	John “Danny” Acosta	ADOSH Compliance Officer (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Deborah Goodman (next of kin); Chuck Keller (representing City Of Mesa - Fleet Services); Brandi Taylor-Kelly (next of kin); Burt Rosenblatt and Ron Ozer (representing Brandi Taylor-Kelly); Travis Vance and Joel Turner (representing Construction Specifications Solutions dba Tumco LLC); Christy Mori (next of kin) and Ashley Quaresima (next of kin); Ahmed Najem and Larry Barnett (ALR Construction, Inc); and Ashleigh Machrol (Snell & Wilmer)

Approval of Minutes of December 10, 2020 Regular Meeting Minutes and December 17, 2020 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the December 10, 2020 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. Vice Chair Hennelly abstained. The motion passed.

Commissioner Krenzel moved to approve the Minutes of the December 17, 2020 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr abstained. 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.

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

1. Medtronic, Inc.
2. Regis Corporation

Chairman Schultz congratulated Medtronic, Inc. for their continued excellent safety record and excellent experience modification.

Commissioner Krenzel moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

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

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

Mr. Testini noted a request from a stakeholder to change the order of the ADOSH files, so the Commission will begin with the City of Mesa – Fleet Services.

City of Mesa – Fleet Services	Fatality/Accident	
6935 E Decatur St	Years in Business:	142
<u>Mesa, AZ 85207</u>	Empl. Covered by Inspection:	7
Site Location:	6935 E Decatur St	
	Mesa, AZ 85207	
Inspection No:	V4364 -1487321	
Inspection Date:	08/07/2020	

SERIOUS – Citation 1 - Item 1 –

- a) Bay 13: An employee was servicing an Avalanche brand street sweeper, model #M16 and serial #15M66SE109, without a Lockout/Tagout procedure in place to prevent the unexpected start-up of the equipment. 29 CFR 1910.147(c)(4)(i)
- | | |
|----------------------------|---------------------------------|
| Div. Proposal - \$2,500.00 | Formula Amt. - \$2,500.00 |
| TOTAL PENALTY - \$2,500.00 | TOTAL FORMULA AMT. - \$2,500.00 |

Mr. Atencio summarized ADOSH's investigation. ADOSH was not recommending a citation for the incident, however the compliance officer noted another issue, and discussed the citation and proposed penalty, and reviewed the photographs.

Commissioner LeMarr corrected the report to remove the reference to COVID-19 under Investigation Details.

Chairman Schultz and Mr. Atencio discussed that the same control panel is shown in photographs #3 and #6, and that the control panel is elevated and not near the cab. Mr. Atencio stated the equipment was already running and the victim was checking for leaks when the accident occurred.

Chairman Schultz asked if the equipment was checked and operating correctly. Mr. Atencio explained the information only includes the prior service record and the service being done at the time of the accident.

Chairman Schultz asked about the reference to the safety pin and if the safety pin was present at the time of the inspection. Mr. Atencio stated there is no mention if the safety pin was present.

Mr. Keller addressed the Chairman's questions and discussed the employer's abatement. After the accident the City of Mesa temporarily took all of the sweepers out of service. This sweeper was taken out of service for months until all inspections by interested parties were done. Unbeknownst to the City of Mesa until well after the accident, there was a previous similar accident in Georgia, which was investigated by Federal OSHA, however there were no alerts or warnings or other documentation communicated by Schwarze Industries to their customers about this issue. Yesterday the City of Mesa received a safety bulletin and instructions on how to "abate that switch" by putting on a cage type apparatus over that switch which would make the unintentional contact with the switch very difficult if not necessarily impossible. Post-accident they also trained their employees on the issues and sensitivities to this switch. As Mr. Atencio had described, the mechanical work was done, the deceased employee was simply operating the sweeper to make sure that the hydraulic hose he had replaced was not leaking anywhere so the machine needed to be in operation for him to see that the hose was under hydraulic pressure and not leaking. From what the employer can gather, the employee leaned into the duster to see if the hose was leaking. From all indication his thigh came into contact with the switch before he knew what happened, and the conveyor activated and pinched him between the hydraulic conveyor and the hopper. . He noted they believe, besides the actions they are taking, they will obviously address the safety bulletin and the directions from the manufacturer received yesterday. Unfortunately they did not take such actions sooner after the Georgia accident and then tragically another employee has lost his life as a result of that product issue.

Chairman Schultz noted the Commission appreciates the additional information and assumed that Mr. Keller will distribute that information further.

Mr. Keller confirmed they will be distributing the information and had a conversation with a representative of the City of Mesa yesterday and will discuss the appropriate actions given that safety bulletin and how to further provide the necessary safety training to the employees regarding that safety bulletin.

Chairman Schultz asked if there were others that would like to comment.

Mr. Rosenblatt noted there was one other piece of information that came out of the two inspections that Mr. Keller referenced. After the decedent passed away, that he thinks is important because the Commission asked a question about the safety pin, the Commission should also note that the Georgia lawsuit that is ongoing, they are alleging that these pins do not fit the area where they are intended to keep the conveyor from striking people as it did, in other words, they are the wrong size pin and they slip through and therefore if someone thought they were utilizing the safety pin, , the diameter is too small or too short and will slip through the hole and therefore even if the decedent in this case used the pin when he inadvertently hit his leg on the button, the way the pins were designed it still allowed the conveyor to pin him against the hopper.

Chairman Schultz extended his condolences to Mrs. Taylor-Kelly, fatalities are just such a tragedy and we feel your loss.

Mr. Rosenblatt noted it is very sad that the safety bulletin did not come after the first death, because this death would have been prevented.

Commissioner LeMarr asked Mr. Atencio if he was aware of the alleged manufacturing defect before today if there would be a different conclusion for the citation if the Commissioners would remand back to ADOSH. Mr. Atencio noted it would not, the lack of procedures for locking and tagging out the street sweepers is different from what took place, which is why it was not tied to the conclusion if there were that procedure in place that would never have happened, but the employee should never have been there in the first place.

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

Auto Company XIII, Inc.
dba AutoNation Honda Chandler
1150 S Gilbert Rd
Chandler, AZ 85286

Fatality/Accident	
Years in Business:	7
Empl. Covered by Inspection:	5

Site Location:	1150 S Gilbert Rd Chandler, AZ 85286
Inspection No:	R2410 -1482602
Inspection Date:	07/09/2020

Mr. Atencio summarized ADOSH's investigation and reviewed the file. ADOSH was not recommending a citation for Auto Company XIII, Inc. dba AutoNation Honda Chandler.

Vice Chair Hennelly and Mr. Atencio confirmed the number of employees covered by the inspection, where the victim worked, was five. .

Vice Chair Hennelly asked whether the events that followed on June 18 where the employee texted the company that he was not feeling well, but because he had no fever he was able to work the next four days would be precluded under the new protocols.

Mr. Atencio responded that the employee and employer acted consistent with the protocols that were in place at the time.

Vice Chair Hennelly noted there should have been follow up by the employer to inquire of the details why the employee did not feel well.

Chairman Schultz asked Ms. Goodman if she would like to share any comments.

Ms. Goodman explained that her husband told his employer that he was not feeling well but confirmed he did not have a fever. The employer instructed her husband that, depending on how he felt the following day, they could use him at work. The next morning he felt that he just had a cold, which is why he went to work. During his two days off his symptoms increased and he took a

Mr. Najem commented that he was going through the meeting agenda and his one question is at the very bottom there was CFR1926.651(k), Citation 2, Item 1, for 5608 N 109th Ave, Phoenix, he has not had a project there and not sure what citation this was and they do not have a record of it.

Mr. Atencio noted there is time to issue and bring back to the next Commission Meeting. He would correct any discrepancies and errors that they have.

Commissioner Krenzel moved to remand the file back to ADOSH for further review. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion, Action and Potential Resolution regarding Final Rulemaking Title 20, Chapter 5, Article 10: Wage Claims.

Mr. Testini noted on April 30, 2020 the Commission authorized the Legal Division to file a Notice of Proposed Rulemaking with the Office of the Secretary of State to Amend Title 20, Chapter 5, Article 10: Wage Claims to modernize the rules, streamline and eliminate redundancies in the wage claim investigation process and bring R20-5-1006(A)(3) into compliance with A.R.S. § 23-356. The Notice of Proposed Rulemaking was filed and published October 23, 2020. On November 30, 2020 a public hearing was held with no written or oral comments received and no changes have been made to the proposed amendments. The Legal Division and the Labor Division request authorization to proceed with the final rulemaking by filing the final rulemaking packet with the Governor's Regulatory Review Counsel for approval, and upon approval file the final rulemaking with the Secretary of State. He requested this authority through resolution and for electronic signatures from the Commissioners.

Vice Chair Hennelly moved to approve final rulemaking for Title 20, Chapter 5, Article 10: Wage Claims and to authorize the Legal Division to proceed with final rulemaking with electronic signatures. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted that a research White Paper for price and methodology in workers' compensation pharmaceutical reimbursement, which also outlines the importance of pharmaceutical access by injured workers, was produced by Myers and Stauffer CPAs and had been posted on the MRO page on the ICA website in December.

Mr. Ashley provided some statistics and data related to experience the agency has had related to administering COVID-19 workers' compensation claims from a cross section of industries.

Chairman Schultz noted the numbers were much lower than what he would have anticipated.

Mr. Ashley noted there are likely others in the pipeline that have not reached the data extraction point.

Mr. Ashley noted that Mr. Testini has been appointed to the IAIABC, the International Association of Industrial Accident Boards and Commissions, Research and Standards Committee for 2021, which exists to identify objective, accurate and comparable approaches to working with data from multiple jurisdictions; provide tools, information and research that helps jurisdictions identify best practices in the fields of occupational health, medicine, disability management, indemnity benefits and rehabilitation; establish benchmarks that gauge progress towards the goals of effective workers' compensation systems; and periodically survey and compile information that allows meaningful comparison of workers' compensation systems so that jurisdictions are able to evaluate their own system performance in relation to other jurisdictions. Congratulations to Mr. Testini.

Mr. Ashley shared feedback received from a safety professional working with a company called ITC Manufacturing, a local valley company working in the production of wire mesh decking, about their good experience with two ADOSH Compliance Officers, Chandler Everett and Scot Forler.

Mr. Ashley also noted that the monthly list of civil penalties the Labor Division assessed under \$500 was included in the packet, similar to the list provided by ADOSH for those under \$2,500 which are handled administratively by Mr. Atencio. The ones over \$500 will come before the Commission for review and approval.

Ms. Dimas confirmed Commission meeting dates through February 2021.

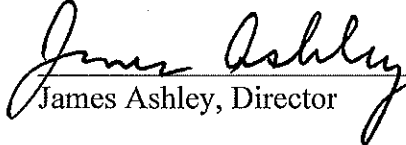
Public Comment.

There was no other public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary