

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



A Limited Review of the Mississippi Workers' Compensation Commission

The Workers' Compensation Commission is somewhat unique in Mississippi state government in that its three commissioners work full time and are actively involved in the agency's operations. The nature of this structure and the chairman's and commission's insufficient management oversight have resulted in the problems described within this report.

For the last three calendar years, one Workers' Compensation commissioner has been absent from MWCC offices more often than the other two commissioners, attending conferences and making presentations, and has been less available to conduct the primary duties of the commission.

Also, in the summer of 2002, a current commissioner assisted an administrative judge with the drafting of six orders, three of which were appealed to the full commission. Such assistance could create an unnecessary appearance of bias or impropriety on the part of a commissioner who provides such assistance.

PEER found a lack of consistency and precision at the Workers' Compensation Commission regarding commissioners' and employees' compliance with state leave laws. In several instances, commissioners or employees did not take leave for time away for personal reasons or illness or a commissioner did not forward paperwork concerning an employee's requested leave. Also, the commission's chairman does not require the employees under his supervision to complete weekly timesheets. This lack of concern regarding accountability for employees' time worked results in overstated accrued leave balances (and possibly ultimate conversion of such to creditable service for retirement benefits), as well as inaccurate information with which to make management resource decisions.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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November 18, 2003

Honorable Ronnie Musgrove, Governor
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Members of the Mississippi State Legislature

On November 18, 2003, the PEER Committee authorized release of the report entitled **A Limited Review of the Mississippi Workers' Compensation Commission.**

A handwritten signature in cursive script that reads "Mary Ann Stevens".

Representative Mary Ann Stevens, Chair

This report does not recommend increased funding or additional staff.

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A Limited Review of the Mississippi Workers' Compensation Commission

Executive Summary

Introduction

In response to a legislative request, PEER sought to determine:

- the work responsibilities of Mississippi Workers' Compensation commissioners;
- whether each commissioner is carrying out his or her responsibilities; and,
- whether any of the commissioners assisted the administrative law judges in writing their orders that could be appealed to the full commission.

While conducting fieldwork for these project objectives, PEER learned that the commission has deficiencies regarding commissioners' and employees' compliance with state leave laws and time accountability. Therefore, this review addresses these topics in addition to those originally planned for the review.

Background

MISS. CODE ANN. § 71-3-85 (1) (1972) creates the Workers' Compensation Commission, consisting of three members who shall devote their entire time to the duties of the office. The Governor appoints commission members for six-year terms with the advice and consent of the state Senate. Section 71-3-85 states that the commission's chairman shall be the administrative head of the commission and shall have the final authority in all matters relating to assignment of cases for hearing and trial and the administrative work of the commission and its employees.

The Mississippi Workers' Compensation Commission has the following primary responsibilities.

- *Rulemaking*—The commissioners act as a body in the promulgation of rules and regulations and in adopting and approving the forms that govern the practice and procedure before the commission.
- *Adjudication*—The commissioners hear and determine workers' compensation cases or claims that come before the

commission. The commission has full power and authority to determine all questions relating to the payment of claims for compensation. This power is similar to that of a court of record. The commissioners, acting as a body, sit in review of the decisions of administrative judges when a party has requested an appeal or review of that decision. Once the commission reaches an agreement on a reviewed claim, the commissioner who has been assigned primary responsibility for that case is responsible for preparing an appropriate order to be issued by the commission.

- *Self-Insurance*—The commission regulates the practice of self-insurance by those employers or groups of employers that self-insure their liability for workers' compensation.
- *Medical cost containment*—The commission monitors medical fees, develops and maintains fee schedules, works with medical providers and payers to control medical costs, and provides dispute resolution mechanisms for disputes concerning medical fees, charges, and costs.

Conclusions

Unique Structure and Management Oversight of the Workers' Compensation Commission

The Workers' Compensation Commission is somewhat unique in Mississippi state government in that its members work full time and are actively involved in the agency's operations. The nature of this structure and the chairman's and commission's insufficient management oversight have resulted in problems described within this report.

PEER undertook this review in response to specific complaints regarding the commissioners' fulfillment of their work responsibilities. As evidenced by the conclusions of the report, the complaints had merit and the commission's operations are deficient in some areas. While the causes are unique for each deficiency, PEER believes that the overriding cause relates to the unique structure of the Workers' Compensation Commission and the chairman's and commission's insufficient management oversight of the agency's operations.

Regarding the commission's unique structure, the Workers' Compensation Commission is one of two appointed boards in Mississippi whose members must become actively involved in the day-to-day operations of the agency. The commission's enabling legislation envisions a full-time working board with commissioners who have a "hands on" approach in fulfilling their statutory duties and administering the commission's programs. As described in the report's conclusions, the commission's "hands on" nature has caused deficiencies, such as those resulting from all three commissioners being less available to conduct the commission's activities.

Regarding the commission's management oversight, the commission's chairman and commissioners have a responsibility to establish management controls to ensure the agency's

compliance with its enabling legislation. Although state law clearly assigns some responsibilities to the chair and others to the commission as a whole, the chairman's and commission's insufficient management oversight has caused deficiencies, such as those relating to noncompliance with state leave laws and lack of time accountability.

Responsibilities of Commissioners

For the last three calendar years, one Workers' Compensation commissioner has been absent from MWCC offices more often than the other two commissioners, attending conferences and making educational presentations, and has been less available to conduct the primary duties of the commission.

State law requires that commissioners "devote their entire time to the duties of the office." Judicial decisions have held that the three-person commission shall act in a body, with at least two commissioners agreeing before an award can be made. The absences of one commissioner have caused the remaining two commissioners to have to hear a large number of compromise settlement cases on some days.

Commissioners' Assistance to Administrative Judges

In the summer of 2002, a current commissioner assisted an administrative judge with the drafting of six orders, three of which were appealed to the full commission. Such assistance could create an unnecessary appearance of bias or impropriety on the part of a commissioner who provides such assistance.

The Workers' Compensation hearing process, whereby an administrative judge initially hears a case and makes a decision, with an appeal of the decision to a commission of three individuals, requires that there be impartiality, with no one individual being involved in both the initial hearing level as well as the appeal level.

Administrative judges at the Workers' Compensation Commission are assigned to one of four regions of the state to hear cases. They write orders at the conclusion of an evidentiary hearing to document their decision and adjudication of a contested workers' compensation claim.

Due to a backlog of cases, a current commissioner assisted an administrative judge in the writing of orders for at least six cases. The commissioner also participated in the appeal hearing and decision for one of these cases. A commissioner's involvement in preparing an order of an administrative judge possibly creates an appearance of bias or impropriety.

Compliance with Leave Laws and Accountability for Work Hours

PEER found a lack of consistency and precision at the Workers' Compensation Commission regarding commissioners' and employees' compliance with state leave laws. In several instances, commissioners or employees did not take leave for time away for personal reasons or illness or a commissioner did not forward paperwork concerning an employee's requested leave. Also, the commission's chairman does not require the employees under his supervision to complete weekly timesheets. This lack of concern regarding accountability for employees' time worked results in overstated accrued leave balances (and possibly ultimate conversion of such to creditable service for retirement benefits) as well as inaccurate information with which to make management resource decisions.

Recommendations

1. The Workers' Compensation Commission chairman should analyze how the commissioners and commission staff are accomplishing the duties of the commission—rulemaking, adjudication, approval of self-insurance programs, and medical cost containment—to determine whether all responsibilities are being accomplished as required by law. The chairman should ensure that he, the commissioners, and the commission as a whole are fulfilling the responsibilities delineated in CODE Sections 71-3-85, 71-3-93, 71-3-99, 71-3-47, and any other statutes that apply to responsibilities of the Workers' Compensation Commission, commissioners, chairman, or staff.

The chairman should also ensure that the commission prepares and adopts minutes recording all formal administrative actions of the commission (e.g., personnel decisions, budget adoption). The commission should also maintain formal attendance and recusal records of all full commission hearings.

2. The Workers' Compensation Commission chairman should consult with the other members of the commission regarding the equitable distribution of work that must be carried out by the three commissioners. Should the chairman determine that the commission and its staff have excess capacity with which to accomplish tangential responsibilities such as educational and outreach activities, the chairman should determine how those efforts can best be carried out in light of the commission's regular workload.

If the commission determines that it has a need to educate and inform various constituencies about Mississippi workers' compensation laws and procedures, the commission should delegate such function to an employee whose absence from the office would not impede the full commission's work schedule. Also, when setting the annual budget, the commission should establish a budget for training and outreach activities that one or more of the commissioners will be responsible for executing. In the future, outreach activities should be limited to those that

the commission as a body has deemed to be necessary and appropriate.

Commissioners should limit their absences from MWCC offices for any reason (except illness) to days on which the commission typically has a lighter workload—i.e., Thursdays and Fridays.

3. Commissioners should avoid providing assistance to administrative judges in the preparation of final orders. If an administrative judge needs assistance in preparing a final order, another administrative judge, the commission's chief counsel, or contract legal staff should provide such assistance.
4. The current MWCC commissioners should immediately review available commission and personal records to determine the number of days since their appointments as commissioners that they have been away from MWCC offices for personal reasons or illness without having taken personal or major medical leave. The commissioners should complete the paperwork to take the appropriate leave and submit it to the MWCC payroll office so that the proper deductions may be made from their leave balances.
5. The State Auditor should conduct an audit of the MWCC's leave records to ensure that the commissioners (as well as all other employees) have properly accounted for their time away from MWCC offices. Should the State Auditor determine that the commissioners have not complied with the state's leave laws by taking leave for days in the past on which they were absent, he should recommend that the commissioners take appropriate corrective action. Within six months, the State Auditor should conduct a follow-up audit and consider taking appropriate legal actions provided in MISS. CODE ANN. § 7-7-211 (1972) if the commissioners have not claimed leave for their time away from MWCC offices for personal and non-business reasons.
6. The MWCC chairman should direct Commissioner Quarles's secretary and the MWCC Executive Director to review all available agency and personal (such as calendars and log books) records to determine any other days on which the secretary was absent from work but did not take leave. Should other dates be identified, the chairman should direct that the secretary complete the appropriate paperwork for submission to Commissioner Quarles for approval. Also, the MWCC administrative staff and payroll office should amend their absentee reports and the state payroll system to document the deduction of leave from the secretary's accrued leave balance for any leave used but not documented.
7. The Workers' Compensation Commission should direct its Executive Director to develop a comprehensive standard operating procedures manual that documents administrative processes of the commission. Once

developed and adopted by the full commission, the commissioners and executive director should conduct periodic training sessions regarding such processes. The chairman should regularly remind division directors of their responsibilities to ensure MWCC employees' strict compliance with administrative policies and procedures.

8. The MWCC chairman should direct all employees, including those specifically assigned to the chairman's office, to complete weekly timesheets for submission to their direct supervisors. MWCC supervisors should routinely reconcile the timesheets with signed leave forms when compiling the monthly absentee reports.
9. The MWCC chairman should direct the three employees who attended an out-of-town funeral on June 16, 2003, to complete the appropriate paperwork to document their absence from the office. The MWCC administrative staff and payroll office should amend their June absentee reports and the state payroll system to document the deduction of one day of personal leave from each of the three employees' accrued leave balances.
10. As part of the commission's time accountability system, the MWCC chairman should immediately develop a time accountability system for administrative judges and court reporters. At the very least, the chairman could re-institute the "Administrative Law Judge Activity Report" utilized by a previous chair, which documented the judge's location by day of the week as well as the cases heard during those days. As other MWCC employees are required to do, administrative judges and court reporters should be required to sign their time reports verifying their work locations and activities. Also, the MWCC chairman should encourage administrative judges and court reporters to conduct as much of their work as possible from MWCC offices, where they have access to administrative support, the commission's chief legal counsel, and an in-house law library. Chairman Smith should encourage administrative judges and court reporters to work from home or other locations only when absolutely necessary and pre-cleared by him.

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A Limited Review of the Mississippi Workers' Compensation Commission

Introduction

Authority

The PEER Committee authorized a limited review of the Mississippi Workers' Compensation Commission, focusing on the commissioners' work responsibilities and their fulfillment of such responsibilities. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972).

Problem Statement

PEER received a request from a legislator regarding whether one of the three Workers' Compensation commissioners was not regularly available at commission offices to conduct the work of the commission. The legislator believed that if this were the case, the commissioner's absences could affect the workload of the remaining two commissioners in carrying out the work of the commission. The legislator also wished PEER to verify whether the same commissioner had assisted an administrative law judge in writing final decisions that potentially could be appealed to the full commission for affirmation or reversal.

Scope and Purpose

PEER sought to determine:

- the work responsibilities of Mississippi Workers' Compensation commissioners;
- whether each commissioner is carrying out his or her responsibilities; and,
- whether any of the commissioners assisted the administrative law judges in writing their orders that could be appealed to the full commission.

While conducting fieldwork for the project objectives listed on page 1, PEER learned that the commission has deficiencies regarding commissioners' and employees' compliance with state leave laws and time accountability. Therefore, this review addresses these topics in addition to those originally planned for the review.

Method

In conducting this review, PEER:

- reviewed relevant sections of state laws, commission rules, and procedures;
- interviewed current and former commission members and staff; and,
- analyzed administrative and payroll information and commission files.

Background

Creation of the Workers' Compensation Commission

MISS. CODE ANN. § 71-3-85 (1) (1972) creates the Workers' Compensation Commission, consisting of three members who shall devote their entire time to the duties of the office. The Governor appoints commission members for six-year terms with the advice and consent of the state Senate. Section 71-3-85 states that one member of the commission shall represent employers, one shall represent employees, and one shall be an attorney with at least five years' active practice in Mississippi. Also, this section states that the chairman shall be the administrative head of the commission and shall have the final authority in all matters relating to assignment of cases for hearing and trial and the administrative work of the commission and its employees.

Presently, the Workers' Compensation Commission consists of the following individuals:

Commissioner	Appointment Date	Representation
Ben Barrett Smith, Chairman	01/01/00	Employers
Barney Schoby*	01/22/97	Employees
Lydia Quarles	01/01/01	Attorney

* Governor Ronnie Musgrove recently appointed Commissioner Barney Schoby for a second term that began on January 1, 2003.

Responsibilities of the Workers' Compensation Commission

The Mississippi Workers' Compensation Commission has the following primary responsibilities.

- *Rulemaking*—The commissioners are charged with acting as a body in the promulgation of rules and regulations and in adopting and approving the forms that govern the practice and procedure before the commission. These rules and regulations are codified as the *General and Procedural Rules of the Commission* and were last updated effective April 1, 2001. The commission carries out its rulemaking responsibility infrequently.
- *Adjudication*—As provided for generally in MISS. CODE ANN. § 71-3-85 (1972), the commissioners are charged with the responsibility of hearing and determining cases or claims that

come before the commission. State law provides the commission with full power and authority to determine all questions relating to the payment of claims for compensation. This power is similar to that of a court of record, including the power to compel the attendance of witnesses and the production of documents that are deemed relevant to the determination of claims for compensation.

- Pursuant to MISS. CODE ANN. § 71-3-47 (1972), the commission has delegated to the eight administrative judges the responsibility to conduct initial hearings on claims and make written decisions based on the evidence presented and applicable law. The commissioners, acting as a body, sit in review of the decisions of administrative judges when a party has requested an appeal or review of that decision. Once the commission reaches an agreement on a reviewed claim, the commissioner who has been assigned primary responsibility for that case is responsible for preparing an appropriate order to be issued by the commission.
- *Self-Insurance*—As provided for in MISS. CODE ANN. § 71-3-75 (2) (1972), the commission is charged with the responsibility of regulating the practice of self-insurance. Employers or groups of employers desiring to self-insure their liability for workers' compensation are required to obtain prior approval from the commission. The commission reviews such requests, makes a decision whether to approve them, and continually monitors those approved self-insurers, pursuant to procedures and rules adopted by the commission for this purpose.
- *Medical cost containment*—The commission is responsible for monitoring medical fees, developing and maintaining fee schedules, working with medical providers and payers to control medical costs, and providing dispute resolution mechanisms for disputes concerning medical fees, charges, and costs.

Daily Responsibilities of the Commissioners

The commissioners have the following primary responsibilities each week.

- *Monday*—The three commissioners typically set aside Monday as the day for conducting review hearings, which are held when a party to a claim has requested an appeal from the decision of an administrative judge. If requested, the commission sets aside time for each party, usually through their attorney, to appear before the three commissioners and present oral arguments in support of their respective positions. The commissioners then confer privately to consider the arguments presented, to review the evidence presented at the hearing before the judge, and to attempt to reach a decision on the proper outcome of the case. The number of hearings held each Monday varies, but usually does not exceed six hearings.

- The commission usually uses the Monday conferences to discuss other cases that have been presented for review, but where oral arguments were not requested by either of the parties. These particular cases are reviewed solely on the written record without the benefit of oral argument.
- *Tuesdays and Wednesdays*—Except for cases when all three commissioners are out of the office attending a conference or other similar event, the commissioners set aside Tuesdays and Wednesdays for the consideration and review of proposed compromise (“9(i)”) settlements. (Compromise settlements are commonly known as “9(i)”) settlements, which refers to the section of the bill that created such settlements, House Bill 351, 1948 Regular Session.) In some workers’ compensation cases, the injured worker and his or her employer agree on a “compromise settlement” without the need to have the case heard by an administrative judge in a “court” setting. In such cases, the commission utilizes a walk-in policy whereby parties to a workers’ compensation claim who desire to settle their differences by agreement can come to the commission during regular hours any Tuesday or Wednesday. (See the Appendix on page 33 for further details regarding these settlements.)
- *Thursdays*—The commission schedules hearings and conferences on self-insurance matters primarily on Thursdays of each week, although such hearings may be held on other days of the week. The commission conducts self-insurance hearings infrequently.
- *Fridays*—Commissioners use Fridays to conduct meetings among the commissioners. Commissioners also use Fridays to prepare for Monday review hearings, to consider mail-in compromise “9(i)”) settlements, to prepare and/or review orders on matters presented to the commission, and to deal with any other matters or issues that require attention.

Staffing of the Workers’ Compensation Commission

MISS. CODE ANN. § 71-3-93 (1972) authorizes the commission to appoint officers and employees necessary to administer the state’s workers’ compensation laws. Specifically, the law authorizes the commission to appoint not more than eight administrative judges and an executive director. According to the agency’s FY 2003 appropriation bill, the commission has seventy-six full-time, permanent employee positions.

Organizationally, these positions are located within eight major divisions—chairman’s office, docket room, executive director’s office, business office, data processing, legal, claims, and commission secretary. Presently, twenty-eight employees are assigned to the chairman’s office, with twenty-one employees, primarily administrative judges and court reporters, reporting

directly to Commissioner Ben Barrett Smith, the commission's chairman. Commissioner Barney Schoby and Commissioner Lydia Quarles also have secretaries who report directly to them.

Conclusions

Unique Structure and Management Oversight of the Workers' Compensation Commission

The Workers' Compensation Commission is somewhat unique in Mississippi state government in that its members work full time and are actively involved in the agency's operations. The nature of this structure and the chairman's and commission's insufficient management oversight have resulted in the problems described within this report.

As stated in the "Problem Statement" section of this report on page 1, PEER undertook this review in response to specific complaints regarding the commissioners' fulfillment of their work responsibilities. As evidenced by the conclusions on pages 9 through 29, the complaints had merit and the commission's operations are deficient in some areas.

While the causes are unique for each deficiency, PEER believes that the overriding cause relates to the unique structure of the Workers' Compensation Commission and the chairman's and commission's insufficient management oversight of the agency's operations.

Unique Structure of the Workers' Compensation Commission

The Workers' Compensation Commission is one of two appointed boards whose members work full time and must become actively involved in the operations of the agency.

The commission's enabling legislation envisions a full-time working board with commissioners who have a "hands on" approach in fulfilling their statutory duties and administering the commission's programs.

MISS. CODE ANN. § 71-3-85 authorizes and empowers the Workers' Compensation Commission to adjudicate workers' compensation claims and administer the programs of the commission. The day-to-day operations of the commission are somewhat unique in Mississippi state government. The Workers' Compensation Commission is one of only two appointed, multi-member boards whose members work full time and must become actively involved in the operations of the agency. (The State Parole Board has a structure similar to that of the Workers' Compensation Commission.) Most state agencies are either directed by a single appointee (e.g., the Department of Finance and Administration) or are governed by part-time boards whose members are not expected to devote their entire efforts to public service and are paid per diem and mileage for their services (e.g., State Personnel Board). The commission's enabling legislation envisions a full-time working board with commissioners who have a "hands on" approach in fulfilling their statutory duties and administering the commission's programs. As described in the

following conclusions, the commission’s “hands on” nature has caused some deficiencies, such as those resulting from commissioners being away from MWCC offices and less available to conduct the commission’s activities.

Chairman’s and Commission’s Insufficient Management Oversight

The Workers’ Compensation Commission chairman and commissioners have a responsibility to establish management controls to ensure the agency’s compliance with its enabling legislation.

With respect to carrying out the administrative responsibilities of the MWCC, state law clearly assigns some responsibilities to the chairman and others to the commission as a whole.

As with any other state agency, the Workers’ Compensation Commission must have management controls and processes in place to ensure the agency’s accomplishment of its statutory and programmatic purposes. Such controls must be developed, implemented, and monitored by agency managers—i.e., the chairman and commissioners. As described in the following conclusions, the chairman’s and commission’s insufficient management oversight has caused some deficiencies, such as those relating to noncompliance with state leave laws and lack of time accountability.

The lack of appropriate management oversight should not be attributed to confusion over delineation of responsibilities. With respect to carrying out the administrative responsibilities of the Workers’ Compensation Commission, state law clearly assigns some responsibilities to the chairman and others to the commission as a whole. MISS. CODE ANN. Section 71-3-85 (1972) specifically provides the following with respect to the powers of the chair:

The chairman shall be the administrative head of the commission and shall have the final authority in all matters relating to assignment of cases for hearing and trial and the administrative work of the commission and its employees, except in the promulgation of rules and regulations wherein the commission shall act as a body, and in the trial and determination of cases as otherwise provided.

Except for the chairman, the commission’s enabling legislation makes no provision for a single commissioner to assume and perform administrative responsibilities on behalf of the commission.

Some sections of the Workers’ Compensation Commission’s enabling legislation assign some administrative responsibilities to the commission as a whole. For example, MISS. CODE ANN. § 71-3-93 (1972) directs the commission to appoint administrative judges and staff, while MISS. CODE ANN. § 71-3-99 (1972) requires the commission to estimate annually the expenses of the commission’s administrative activity for budgetary purposes and for setting assessments against insurers. MISS. CODE ANN. § 71-3-85 (1972) requires the commission to adopt forms required for the administration of the workers’ compensation law. Non-administrative responsibilities of rulemaking are clearly assigned to the commission as a whole, including responsibility for promulgating rules governing the adjudication of claims as provided for in MISS. CODE ANN. § 71-3-47 (1972).

Except for the chairman, the commission's enabling legislation makes no provision for a single commissioner to assume and perform administrative responsibilities on behalf of the commission. Thus, a single commissioner may not carry out administrative acts in the name of the commission absent specific direction from the chairman, the commission as a whole, or from the authority of a rule duly adopted by the commission as provided for in MISS. CODE ANN. § 71-3-85 (1972).

Responsibilities of Commissioners

Commissioners' Fulfillment of Work Responsibilities

For the last three calendar years, one Workers' Compensation commissioner has been absent from MWCC offices more often than the other two commissioners, attending conferences and making educational presentations, and has been less available to conduct the primary duties of the commission.

State Law Mandates Full-Time Commissioners

State law requires that commissioners "devote their entire time to the duties of the office." Judicial decisions have held that the three-person commission shall act in a body, with at least two commissioners agreeing before an award can be made.

As stated on page 3, MISS. CODE ANN. § 71-3-85 (1) (1972) creates the Workers' Compensation Commission consisting of three members "who shall devote their entire time to the duties of the office." Judicial decisions have held that the commission is the "trier of fact" in compensation cases and notes that state law provides for hearings to be held before a three-person commission, with at least two commissioners agreeing before an adjudication of the facts and an award can be made. Further, judicial decisions state that the commission shall act in a body.

As appointed officers, MWCC commissioners are considered to be full-time employees of the state. The requirement that commissioners "devote their entire time to the duties of the office" means that they are to have no other employment interest or activity that would distract them from the work of the commission—i.e., rulemaking, adjudication, approval of self-insurance programs, and medical cost containment.

In summary, the commissioners conduct the work of the commission—rulemaking, adjudication, approval of self-insurance programs, and medical cost containment—by accomplishing the following activities during a routine workweek.

- Monday—The full commission conducts appeal hearings of decisions made by administrative judges.
- Tuesday and Wednesday—Each commissioner hears walk-in 9(i) settlements proposed by claimants and/or employers. (Commissioners also hear walk-in 9(i) settlements and process

mail-in 9(i) settlements on days other than Tuesday and Wednesday.)

- Thursday—The full commission conducts hearings on self-insurance matters if such hearings are needed and scheduled. Otherwise, commissioners prepare for the upcoming week’s appeal hearings or perform administrative duties.
- Friday—Commissioners prepare for the upcoming week’s appeal hearings or perform administrative duties.

No Equitable Sharing of Responsibilities

For the last three years, one commissioner has been absent from MWCC offices more often than the other two commissioners (attending conferences and making educational presentations) and has been less available to conduct the primary duties of the commission.

For the last three calendar years, the Workers’ Compensation commissioners have not equitably shared in fulfilling the commission’s responsibilities. Due to her efforts to carry out personally a portion of the commission’s five-year strategic plan, Commissioner Quarles has been absent from MWCC offices more often than the other two commissioners, attending conferences and making educational presentations, and has been less available to conduct the primary duties of the commission.

With regard to the commissioners’ attendance at full commission hearings conducted on Mondays, Commissioner Smith and Commissioner Schoby were in attendance for an average of 98% of hearings conducted by the commission during the last three calendar years. As illustrated in Exhibit 1, page 11, these two commissioners were absent from full commission hearings very few times, ranging from no absences to an absentee rate of 8%. In comparison, Commissioner Quarles, while attending an average of 89% of the full commission hearings conducted over the last three years, had absentee rates higher than those of the other two commissioners. For example, in CY 2002, Commissioner Quarles was absent from 27% of the appeal hearings held on Mondays by the full commission.

Regarding the commissioners’ availability on Tuesdays and Wednesdays, Commissioner Smith and Commissioner Schoby were regularly available on Tuesdays and Wednesdays during the last three calendar years to hear and approve walk-in 9(i) settlement cases. As presented in Exhibit 2, page 11, both commissioners were present at MWCC offices and available to hear walk-in cases an average of 96% of Tuesdays and Wednesdays. Conversely, Commissioner Quarles had an absentee rate as high as 41% in CY 2003 (as of April 30) for walk-in 9(i) settlement cases on Tuesdays and Wednesdays. (In determining the commissioners’ absentee rates, PEER analyzed the commission’s computerized 9(i) “settlements assigned” database. PEER assessed the accuracy of the information in the database through interviews with commissioners and MWCC staff and reviews of available supporting data, such as case files, written

summaries, and personal calendars. While any database could potentially contain inaccuracies due to human error, PEER believes the commission's "settlements assigned" database to be sufficiently accurate to determine the commissioners' absences from MWCC offices.

During the last three calendar years, all three commissioners had perfect attendance for the twelve self-insurance hearings conducted by the full commission on Thursdays. (The commission conducted five hearings in CY 2001, five hearings in CY 2002, and two hearings, to date, in CY 2003.)

Exhibit 1: Commissioners' Attendance at Full Commission Hearings, March 27, 2001, through April 30, 2003

Calendar Year	Hearings Held	Commissioner Smith			Commissioner Schoby			Commissioner Quarles		
		Present	Absent	Absentee Rate	Present	Absent	Absentee Rate	Present	Absent	Absentee Rate
2001	90	83	7	8%	86	4	4%	79	11	12%
2002	83	82	1	1%	83	0	0%	79	4	5%
2003	26	26	0	0%	26	0	0%	19	7	27%

SOURCE: PEER analysis of MWCC full commission hearing records.

Exhibit 2: Commissioners' Attendance on Tuesdays and Wednesdays to Hear 9(i) Walk-in Compromise Settlement Cases, March 27, 2001, through April 30, 2003

Calendar Year	Days Available	Commissioner Smith			Commissioner Schoby			Commissioner Quarles		
		Days Present	Days Absent	Absentee Rate	Days Present	Days Absent	Absentee Rate	Days Present	Days Absent	Absentee Rate
2001	74	66	8	11%	73	1	1%	57	17	23%
2002	97	93	4	4%	96	1	1%	64	33	34%
2003	32	30	2	6%	32	0	0%	19	13	41%

SOURCE: PEER analysis of MWCC "9(i)" database.

Absences Due to Commissioner's Efforts to Educate

Although the commission's five-year strategic plan has historically included a goal to expand its outreach efforts through educational conferences, state law contains no specific requirement that the commission educate others regarding workers' compensation.

As required by MISS. CODE ANN. § 27-103-155 (1972), the Workers' Compensation Commission, like other state agencies, submits a five-year strategic plan to the Joint Legislative Budget Office and Department of Finance and Administration as part of its annual budget request. Historically, the Workers' Compensation Commission has included in its strategic plan a goal of expanding its information outreach through participation in educational conferences and programs. The plan specifically mentions participation in the Mississippi Workers' Compensation Educational Conference, which is held annually.

While state law requires the commission to adopt and publish detailed rules and regulations for implementing the state's workers' compensation laws, no specific requirement exists that the commission conduct educational efforts regarding such.

The Workers' Compensation commissioners have not equitably shared in fulfilling the commission's responsibilities primarily because of Commissioner Quarles's personal efforts to fulfill the commission's information outreach. Commissioner Quarles states that she was not always present at MWCC offices on Tuesdays and Wednesdays due to her efforts to "stay in communication with the constituencies of this commission and to educate those constituencies, the workers' compensation bar and the public at large about the work of the commission, the law that governs workers' compensation in Mississippi, and the best ways to make the workers' compensation system in this State work to achieve the ends for which it was created."

Commissioner Quarles states that her communication efforts have been a goal and intention of hers since she interviewed with Governor Musgrove prior to being appointed as a commissioner. By her own estimation, Commissioner Quarles has prepared for and spoken at more than sixty educational meetings or conferences since her swearing-in as a commissioner on March 23, 2001. PEER conservatively estimates that Commissioner Quarles has been absent from MWCC offices fifty-one workdays speaking at such conferences, exclusive of travel time during work hours to and from the conferences. By contrast, Chairman Smith was a speaker at only five conferences during CY 2002 and CY 2003, while Commissioner Schoby spoke at only one conference in CY 2003.

While Commissioner Quarles believes that the commission should proactively attempt to educate various constituencies regarding workers' compensation law, her efforts to achieve the task personally have caused her to be absent from MWCC offices and less available for the work of the commission. Such actions seem contrary to the requirement that the commission act as a body and under the administrative direction of the chairman. While MISS. CODE ANN. Section 71-3-85 (5) (1972) requires the commission to adopt and publish detailed rules and regulations for implementing the state's workers' compensation laws, no specific requirement exists that the commission conduct educational efforts regarding such.

Absences Require Other Commissioners to be Available to Conduct the Primary Duties of the Commission

The absences of one commissioner have required the remaining two commissioners to be available to hear a large number of compromise settlement cases on some days.

When a commissioner is absent from full commission hearings, the perspective of his or her particular constituency or area of expertise is not brought to bear on final decisions made by the commission.

Commissioner Quarles's absences from MWCC offices necessitate Commissioner Smith and Commissioner Schoby being available to conduct the primary duties of the commission. In the absence of a commissioner during an appeal hearing, the remaining two commissioners must agree in order to adjudicate the case and determine an award. By failing to be present consistently for full commission hearings, Commissioner Quarles places the remaining two commissioners in a position of "having to agree" or face a deadlock. (Failure of the two commissioners present at a full commission hearing to agree on a decision would allow the administrative judge's decision to stand.) While PEER has no evidence of Commissioner Quarles's absences causing deadlocks between the other two commissioners, the potential for such exists.

By appointment to the Workers' Compensation Commission, each commissioner is designated to represent a certain constituency or area of expertise—e.g., employers (Commissioner Smith), employees (Commissioner Schoby), and an appointee with five years of experience as an attorney (Commissioner Quarles). When a commissioner is absent from full commission hearings, the perspective of his or her particular constituency or area of expertise is not brought to bear on final decisions made by the commission.

As depicted in Exhibit 2, page 11, Commissioner Smith and Commissioner Schoby are required to carry the bulk of the commission's walk-in 9(i) settlement cases due to Commissioner Quarles's absences. The primary reason for walk-in settlements is to allow a commissioner to approve settlements that have been agreed upon by all parties so that an injured worker may begin receiving compensation. While the caseload of walk-in settlements varies from week to week, the absence of a commissioner causes the remaining two commissioners to hear a significant number of cases—occasionally as high as twenty-eight cases—on some days.

Commissioners' Assistance to Administrative Judges

In the summer of 2002, a current commissioner assisted an administrative judge with the drafting of six orders, three of which were appealed to the full commission. Such assistance could create an unnecessary appearance of bias or impropriety on the part of a commissioner who provides such assistance.

Lack of Bias is Essential to Due Process

The Workers' Compensation Commission hearing process, whereby an administrative judge initially hears a case and makes a decision, with an appeal of the decision to a commission of three individuals, requires that there be impartiality, with no one individual being involved in both the initial hearing level as well as the appeal level.

A fundamental requirement of due process is that adjudicators should not be biased. By being biased, it is meant that they have pre-judged a claim or cause of action. Lack of bias is a requirement of the administrative process as well as the judicial process. Administrative proceedings must afford a party a fair and impartial hearing without any suspicion of unfairness or prejudice. See *Dean v. Public Employees Retirement System*, 797 So. 2d 830 (Miss. 2000).

In view of recent court decisions, administrative adjudicators such as Workers' Compensation commissioners should take all necessary steps to ensure that their procedures do not allow persons who sit on appeals to have played any role in the initial decision of an administrative judge.

Participation of a hearing officer, such as an administrative judge, or other adjudicator, such as a commissioner, in both an initial hearing and an administrative appeal is viewed as a denial of a fair and impartial adjudication in Mississippi. In several recent cases, the appeals courts of Mississippi have held that impermissible bias rising to the level of a denial of due process occurs when physician members of a disability retirement review board also served on the board to which an aggrieved party made an appeal; see *Public Employees Retirement System v. Dishmon*, 797 So. 2d 888 (Miss. 2001) and *Public Employees Retirement System v. Allen*, 834 So. 2d 50 (Miss. App. 2002). In view of these decisions, administrative adjudicators such as Workers' Compensation commissioners should take all necessary steps to ensure that their procedures do not allow persons who sit on appeals—i.e., the commissioners—to have played any role in the initial decision of an administrative judge. By its design, the Workers' Compensation hearing process, whereby an administrative judge initially hears a case and makes a decision, with an appeal of the decision to an impartial commission of three individuals, requires that there be impartiality, with no one individual being involved in both the initial hearing level as well as the appeal level.

Assignment of Administrative Judges to Regions and the Writing of Orders

Administrative judges at the Workers' Compensation Commission are assigned to one of four regions of the state to hear cases. They write orders at the conclusion of an evidentiary hearing to document their decision and adjudication of a contested workers' compensation claim.

The Mississippi Workers' Compensation Commission employed administrative Judge Cindy Wilson on May 15, 2001. Upon her employment, the commission assigned Judge Wilson to Quad D, which consists of sixteen counties in southwest and south Mississippi. (The commission has divided the state into four regions—quads—with two administrative judges assigned to each region. Judges serve in a region for a two-year period and are then rotated to another region.) In addition to rural areas, this region includes the cities of Biloxi, Gulfport, Long Beach, Picayune, McComb, and Natchez, some of which are Mississippi's more populous cities.

Administrative judges write orders at the conclusion of an evidentiary hearing to document their decision and adjudication of a contested workers' compensation claim. While the commission has not adopted a standard format for judges' orders, the orders typically consist of the following components: issues for decision; summary of the relevant evidence, including medical and/or expert witness testimony; decision; and, order. Effective July 1, 2001, the commission adopted guidelines that require that all administrative judges' orders on hearings on the merits of a case be mailed from the commission to interested parties within 120 days of the date of the hearing. (The commission selected the standard of 120 days after considering Mississippi Supreme Court rules on this issue, as well as taking into consideration travel required of the judges and the lack of a law clerk to assist them with necessary research.)

A Commissioner Assisted an Administrative Judge with Writing Orders

Due to a backlog of cases, a current commissioner assisted an administrative judge in the writing of orders for at least six cases. The commissioner also participated in the appeal hearing and decision for one of these cases.

As a newly appointed administrative judge, Judge Cindy Wilson became delinquent in writing her orders after conducting hearings. According to Judge Wilson, at the height of her backlog, she was delinquent on writing orders for at least fifteen contested workers' compensation cases. In an effort to assist Judge Wilson to become current with her orders, Commissioner Lydia Quarles states that she functioned as a "law clerk and typist" for writing the following orders:

- *Dabney vs. Texas Transmission Corporation and Liberty Mutual Insurance Company*

- *Maccullagh vs. Mississippi Department of Mental Health/South Mississippi Retardation Center and Mississippi State Agencies Workers' Compensation Self-Insured Group*
- *Sprague vs. C. F. Gollott & Son Seafood, Inc. and Hartford Accident & Indemnity Company*
- *Anderson vs. Dolgencorp, Inc.*
- *Jack Knight vs. Washington County Board of Supervisors and National Fire Insurance Company of Hartford*
- *Vernon L. Kitchens vs. Jerry Vowell Logging and Mississippi Loggers Self-Insured Fund*

On these six cases, Commissioner Quarles reviewed the files for the hearings, as well as Judge Wilson's handwritten notes regarding the information submitted by all parties and testimony presented during the hearings. After reviewing this information, Commissioner Quarles wrote a summary of relevant evidence for each of the six orders. Judge Wilson incorporated the relevant evidence summaries into the orders and drafted the findings of fact, issues for decision, decision, and order components of each final order.

For at least six cases, a commissioner wrote summaries of relevant evidence, which were incorporated into the orders.

According to commission records, parties involved in the cases appealed three of the six orders—*Dabney*, *Knight*, and *Kitchens*—to the full Workers' Compensation Commission for its review of the administrative judge's decision. Only Commissioner Ben Barrett Smith and Commissioner Barney Schoby signed the commission's orders for two of the cases—*Dabney* and *Kitchens*. However, Commissioner Smith, Commissioner Schoby, and Commissioner Quarles signed the commission's order for the remaining appealed case (*Knight*), indicating that all three commissioners had heard the appeal and had agreed upon a final decision. In this one case, Commissioner Quarles participated in both the compilation of the administrative judge's order and the commission's decision on the appeal of that order.

Current and former MWCC employees believe that Commissioner Quarles assisted Judge Wilson with writing more than the six orders acknowledged by the commissioner and judge. Some employees estimate that Judge Wilson received assistance with the writing of as many as ten to twenty orders. While PEER has no evidence of such extensive assistance, the pervasive belief among MWCC employees that a significant amount of assistance was provided seems to be indicative of a less than appropriate relationship between the commissioner and administrative judge.

Potential for Bias Existed

A commissioner's involvement in preparing an order of an administrative judge possibly creates an appearance of bias or impropriety.

A commissioner's involvement in preparing an order of an administrative judge could create a reversible error if claimants or employers appealed such orders to the circuit court.

MWCC administrative judges acknowledge that Quad D is perceived to be a very litigious region of the state with regard to workers' compensation cases. Also, Judge Wilson believes that due to her being hired as a new administrative judge, lawyers who practice workers' compensation law in the region, primarily those located in Harrison County, encouraged their clients to contest their workers' compensation claims to determine how the "new" judge would rule. Judge Wilson attempted to honor attorneys' requests for hearings, continuances, and other such motions while handling a heavy caseload in Quad D. As a result of all of these actions, Judge Wilson became delinquent in writing orders for the cases that she had heard and a commissioner became involved in assisting with the backlog.

A commissioner's involvement in preparing an order of an administrative judge possibly creates an appearance of bias or impropriety in the opinion of claimants and their attorneys. Such involvement could also possibly create a reversible error if claimants or employers appealed such orders to the circuit court.

Compliance with Leave Laws and Accountability for Work Hours

PEER found a lack of consistency and precision at the Workers' Compensation Commission regarding commissioners' and employees' compliance with state leave laws. In several instances, commissioners or employees did not take leave for time away for personal reasons or illness or a commissioner did not forward paperwork concerning an employee's requested leave. Also, the commission's chairman does not require the employees under his supervision to complete weekly timesheets. This lack of concern regarding accountability for employees' time worked results in overstated accrued leave balances (and possibly ultimate conversion of such to creditable service for retirement benefits) as well as inaccurate information with which to make management resource decisions.

While examining whether each commissioner was carrying out his or her work responsibilities, PEER examined their number of absences from MWCC offices. As discussed on page 13, the number of absences of each commissioner affects the workload of the other commissioners.

As part of this review, PEER determined that the three Workers' Compensation commissioners do not take leave, as required by state law, when they are absent from MWCC offices. Through interviews with MWCC staff, PEER determined that some other commission employees also do not take leave when they are absent from work. In fact, there is a common perception, at least among the staff interviewed by PEER, that some commission staff frequently fail to comply with state leave laws. This perception is

supported by the situations described below on pages 18 through 25.

Also, while examining whether any commissioner had assisted an administrative judge in writing his or her orders, PEER analyzed the workload and daily activities of the commission's eight administrative judges. PEER found that the commission does not have a timekeeping system to monitor the judges' work activities. Upon further examination, PEER determined that the commission does not require some other employees, primarily those assigned to the chairman's office, to account for their work time. Pages 25 through 29 contain a discussion of the commission's lack of accountability for work time.

Commissioners' and Employees' Compliance with State Leave Laws

Contrary to state law, the current members of the Mississippi Workers' Compensation Commission have not taken personal or major medical leave for time away from MWCC offices for personal reasons or illness. Such unused leave will be converted at the time of their separation from state service to creditable service in computing the commissioners' retirement benefits.

State Leave Laws

State law provides for employees' accrual of personal and major medical leave and determines when such leave should be used. The law also requires all organizations to keep accurate leave records.

State law (MISS. CODE ANN. § 25-3-93 [1972] and MISS. CODE ANN. § 25-3-95 [1972]) provides that employees and appointed officers of the State of Mississippi shall be allowed credit for personal and major medical leave. Both of these sections define accrual rates of such leave based on an employee's tenure as a public employee. Personal leave may be used for vacations and personal business, as well as the first day of an illness. Major medical leave may be used for illness or injury of an employee (or an immediate family member) after the employee has used one day of personal leave.

Upon an employee's termination from state service, MISS. CODE ANN. § 25-3-93 (4) (1972) provides that the employee may be paid for not more than thirty days of accumulated personal leave. Unused personal leave in excess of thirty days and all unused major medical leave shall be counted as creditable service for the purposes of the retirement system.

MISS. CODE ANN. § 25-3-97 (1972) requires all organizations to keep accurate records of the leave accumulated and taken by the officers and employees of the organization.

Workers' Compensation commissioners earn and are to use personal and major medical leave in the same manner as other state employees.

As stated on page 3, MISS. CODE ANN. § 71-3-85 (1) (1972) creates the Workers' Compensation Commission, consisting of three members who shall devote their entire time to the duties of the office. Such appointment makes the commissioners full-time employees who are eligible to receive state employee benefits, such as personal and major medical leave, health insurance, and retirement.

All provisions of state law relative to personal and major medical leave apply to the three Workers' Compensation commissioners.

The state's leave laws apply to employees and appointed officers of the State of Mississippi. For leave purposes, MISS. CODE ANN. Section 25-3-91 (1972) defines "employee" as "a person appointed to a position in the state service or nonstate service as defined in Section 25-9-107, for which he is compensated on a full-time permanent or provisional basis, a temporary basis, or a part-time basis." Section 25-9-107 includes within the definition of "nonstate service" members of boards and commissioners appointed by the Governor, Lieutenant Governor, or the State Legislature. Therefore, all provisions of law relative to leave would apply to the three Workers' Compensation commissioners, who are appointed to their positions by the Governor. Neither PEER nor the commissioners themselves could find any CODE section that exempts the commissioners from compliance with the state's leave laws.

According to MWCC payroll records, the three current commissioners had the following leave accrual balances (in days) as of August 31, 2003.

Commissioner	Personal Leave	Major Medical Leave	Total
Ben Barrett Smith	63	40	103
Barney Schoby	128	73	201
Lydia Quarles	97	100	197

Commissioners' Failure to Use Accrued Leave

Although Workers' Compensation commissioners earn leave in the same manner as other state employees, the current commissioners have not taken leave for time away from the office for personal reasons or illness.

Although they have each been away from the office for personal reasons or illness since their appointments, none of the current commissioners has taken leave as required by state law nor has had such leave deducted from accrued balances.

From January 2001 through August 2003, commissioners were absent a total of 93 days without taking leave.

According to information available to PEER (such as personal calendars, work logs, and interviews with MWCC staff), during CY 2001 through CY 2003 (as of August 31) the commissioners have been absent from the MWCC offices without taking personal or major medical leave for at least the following amounts of time. (The value of the days absent is based on the commissioner's hourly rate of pay.)

Commissioner	Days Absent	Value of Days Absent
Ben Barrett Smith	27	\$10,374
Barney Schoby	7	\$2,629
Lydia Quarles	59	\$22,160

All three commissioners state that they were informed by MWCC administrative staff at the beginning of their terms that they are not required to take personal or major medical leave for time away from MWCC offices for personal reasons or illness. (For at least one commissioner, Lydia Quarles, who served as an administrative judge prior to her appointment as a commissioner, this was a departure from her previous practice, when she completed paperwork to claim leave for time away from the office for non-business reasons.) MWCC staff also report that it was common practice for former commissioners to be away from MWCC offices for non-business reasons without taking any type of leave. For example, two commissioners, one who served in the late 1980s and another who served during the late 1990s, did not take any personal or major medical leave during their terms. Another commissioner, who served during the mid-1990s, took a limited amount of leave during the first year of his term, but did not take any leave during the remaining years, although he reportedly was absent from MWCC offices almost every Friday.

The commissioners' failure to take leave when away from the office for personal reasons or illness creates a condition in which the commissioner receives "free" retirement credit.

Any reasonable reading of Mississippi's leave laws would allow one to conclude that employees who earn personal or major medical leave are expected to use such leave for illnesses or other absences from the office. As described on page 18, employees who do not use all of their accrued personal or major medical leave prior to their termination from state service have their leave balance (for which they did not receive a lump-sum payment for up to thirty days of personal leave) converted to creditable service for the computation of retirement benefits. A commissioner's failure to adhere to state leave laws—a failure to take leave for personal reasons or illness—creates a condition in which the commissioner receives, in essence, "free" retirement credit. This clearly is not a situation or condition envisioned by the Legislature when it adopted leave laws allowing appointed officers to accrue leave and then requiring them to use it for personal business or illness.

The MWCC commissioners' practice of not taking leave for non-business absences is a departure from accepted practice of other appointed officials.

By analogy, the positions of MWCC commissioners are similar to the position of the Chairman of the State Tax Commission, who is a full-time appointee of the Governor. According to staff of the State Tax Commission, the present chairman accrues leave and takes leave when he is away from the Tax Commission office for non-business reasons. The MWCC commissioners' practice of not taking leave for non-business absences is a departure from accepted practice of other appointed officials.

Contrary to state law, three MWCC employees were absent from work on June 16, 2003, for the entire day to attend the out-of-town funeral of an MWCC employee's relative without taking personal leave.

Supervisors Did Not Require Employees to Take Leave to Attend a Funeral

PEER could locate no signed leave forms for the three employees to document their time away from the office on June 16.

Three MWCC employees were absent from work on Monday, June 16, 2003, for the entire day to attend the funeral of an MWCC employee's relative without taking personal leave. Two of the employees met at the MWCC building the morning of June 16 and traveled to Madison, Mississippi, to meet the third employee. The three employees then traveled together to north Mississippi for the 10 a.m. funeral service. Reportedly, the three employees arrived back in Jackson at approximately 4 p.m.

PEER could locate no signed leave forms for the three employees to document their time away from the office on June 16. Also, the June "Monthly Absentee Reports" for the three employees do not contain entries to document their use of personal leave days to attend the out-of-town funeral.

Reportedly, MWCC has a practice of allowing employees to attend funerals without taking leave. Because MWCC does not have written leave policies, PEER could not determine the existence of such a practice.

As stated on page 18, state law provides employees with personal and major medical leave that can be used for non-business reasons and illness. Also, MISS. CODE ANN. § 25-3-95 (3) (1972) states that "an employee may use up to three (3) days of earned major medical leave for each occurrence of death in the immediate family requiring the employee's absence from work." State law also requires agencies to keep accurate records of the leave accumulated and used by the officers and employees of the agency.

Lack of Written Policies Regarding Leave Procedures

The commission lacks written policies addressing procedures for taking leave.

Reportedly, MWCC has a practice of allowing employees to attend funerals without taking leave. Because MWCC does not have any written leave policies, PEER could not determine the existence of such a practice. However, any such practice reasonably would not apply to an absence of an entire day to attend an out-of-town funeral and would be in violation of state leave laws.

Leave Balances are Incorrect

Because they did not take leave as required, these employees' accrued leave balances are overstated.

Because these employees did not take leave for their absence from the office on June 16, their accrued personal leave balances are incorrect and overstated by at least one day. Also, the employees' absence from the office to attend a funeral without taking personal leave is in direct conflict with the state's leave laws, which make provision for the taking of major medical leave to attend the funeral of a family member only. Otherwise, an employee must use personal leave to be away from the office to attend a funeral service.

Between March 25, 2002, and June 30, 2003, a commissioner's secretary took at least 141 hours (eighteen days) of personal and major medical leave for which the commissioner did not forward leave forms to the appropriate MWCC staff for processing. As a result, MWCC staff did not deduct the hours used in the state payroll system, resulting in the secretary's accrued leave balances being overstated.

Employee Submitted Leave Requests to her Supervisor

The employee submitted her leave requests to her supervisor, but the commissioner did not forward the paperwork to the appropriate person.

As illustrated in Exhibit 3, page 24, MWCC's process for requesting and recording leave is similar to that of other agencies in that employees request in advance to take leave, the respective supervisor approves the leave, and the administrative staff records the leave for payroll purposes. For all employees located within the chairman's office, Commissioner Smith's secretary is the collection point for leave forms signed by each employee's direct supervisor. The chairman's secretary uses the signed leave forms to compile an absentee report at the beginning of each month for the prior month's leave activity.

Between March 25, 2002, and June 30, 2003, Commissioner Quarles's secretary took at least 141 hours (eighteen days) of personal and major medical leave for which Commissioner Quarles did not forward leave forms to Commissioner Smith's secretary. Commissioner Quarles's secretary used 117 hours of personal leave and twenty-four hours of major medical leave.

Commissioner Quarles's secretary was accustomed to the administrative process for taking leave, as evidenced by her taking leave in her previous position at MWCC. Prior to her transfer to her present position, Commissioner Quarles's secretary worked in the MWCC docket room, a position she held since her initial employment in July 1988. During her tenure in the docket room, she took leave and had such leave deducted from her accrued balances after completing the appropriate paperwork. For example, for the three calendar years prior to her

While in a previous position at MWCC, Commissioner Quarles's secretary had taken leave and had such leave deducted from her accrued balances after completing the appropriate paperwork.

transfer to Commissioner Quarles's office, the secretary took sixty-eight personal leave days and thirty-five major medical days.

State law provides personal leave for vacations and personal business and major medical leave for the illness or injury of an employee or immediate family member. State law also requires agencies to keep accurate records of the leave accumulated and used by the officers and employees of the agency.

Lack of Written Policies

The commission lacks written policies addressing procedures for taking leave and accounting for time worked.

The primary reason that Commissioner Quarles's secretary took leave but did not have such leave deducted from her accrued balances is the commissioner's failure to forward her secretary's forms to Commissioner Smith's secretary for recording and processing. Commissioner Quarles acknowledged to PEER that when her secretary submitted the paperwork to take leave, she signed the form and then "put it in my drawer."

Commissioner Quarles said that nobody had explained the leave approval and recording process to her. Although Commissioner Quarles did not manage any agency personnel during her eight years as an administrative judge, she obviously understood the agency's leave approval process. During those years, she took personal and major medical leave and apparently understood the process of completing the appropriate paperwork, submitting it to her supervisor (the MWCC chairman) for approval, and having the leave deducted from her accrued balances as documented on her monthly pay stub.

MWCC has no standard operating procedures manual that documents administrative processes, such as requesting and recording leave. Within recent years, the only information provided to MWCC staff regarding leave and work hours has been in the form of informational memoranda from the executive director.

Commissioner Quarles's secretary also took leave but did not have such leave deducted from her accrued balances due to the commission's lack of a standard operating procedures manual that documents administrative processes, such as the requesting and recording of leave. MWCC staff contend that they rely on the State Personnel Board's handbook to give their employees guidance regarding leave provisions. While the handbook provides a good description of state employment benefits, it cannot and does not contain procedural information for each agency. Within recent years, the only information provided to MWCC staff regarding leave and work hours has been in the form of informational memoranda from the executive director.

Exhibit 3: Mississippi Workers' Compensation Commission, Process for Requesting and Recording Leave

Employee completes a leave request form in advance of taking leave



Employee submits leave form to his/her supervisor at the time leave is requested and the supervisor signs the form



Supervisor retains the signed leave form in his/her possession until the beginning of the next month



Using their employees' weekly timesheets and approved leave forms for the preceding month, the supervisor completes a "Monthly Absentee Report" at the beginning of the current month. The absentee report is a spreadsheet on which the leave that has been used by each employee is recorded.



The supervisor submits his/her "Monthly Absentee Report" and originals of signed leave forms to the MWCC payroll office



For each MWCC division, the payroll office reconciles the "Monthly Absentee Report" with the signed leave forms to ensure the accuracy of the absentee report



Payroll office, after completing the reconciliations and requesting the supervisors to make any needed corrections on the "Monthly Absentee Report" and submit a revised report, uses the report to enter each employee's leave information into the State Payroll and Human Resources System (SPAHRS)



Payroll office keeps on file the current fiscal year's absentee reports and signed leave forms for each division

SOURCE: PEER staff interviews of MWCC administrative and payroll staff.

Also, Commissioner Quarles's secretary took leave without having it properly recorded because the MWCC chairman does not require employees within his office to complete weekly timesheets, as all other commission employees are required to do (see page 24). Division directors use weekly timesheets, along with signed leave forms, to compile monthly absentee reports that are submitted to the payroll office for deduction of used leave. It was impossible for Commissioner Smith's secretary to include accurate information regarding Commissioner Quarles's secretary on monthly absentee reports because she was not responsible for knowing the secretary's whereabouts and did not have access to the signed leave forms that documented the secretary's time away from MWCC offices.

Finally, the state's payroll system reports an employee's personal and major medical leave balances on the employee's pay stub (deposit advice). Commissioner Quarles's secretary should have known, by looking at her monthly pay stubs, that her leave was not being correctly deducted and should have reported the error to the MWCC payroll office. MISS. CODE ANN. § 25-3-97 (1972) states that "all organizations shall keep accurate records of the leave accumulated and used by the officers and employees thereof."

Leave Balances are Incorrect

Because of the lack of appropriate paperwork, the employee's accrued leave balances are overstated.

Because her personal and major medical leave were not properly recorded, Commissioner Quarles's secretary's accrued leave balances were incorrect and overstated at least by 141 hours. Upon termination of employment, the secretary would be eligible to receive payment for up to thirty days of personal leave, some of which possibly could be leave that she had technically taken but not had deducted. After PEER's inquiry regarding the leave of Commissioner Quarles's secretary, MWCC administrative staff obtained the signed leave forms and made the proper deductions in the state payroll system for the 141 hours of used leave.

Commission's Practices on Accountability for Work Hours

Although other MWCC employees must complete weekly reports to account for their time worked, Chairman Smith does not require those under his supervision to do so. Even though nine of the employees under Chairman Smith's supervision complete timesheets voluntarily, the eight administrative judges and eight court reporters, whose job responsibilities require them to travel to off-site locations, do not do so. Thus, these sixteen employees are not held accountable for their time spent during work hours.

Statutory Requirements for Work Day

MISS. CODE ANN. § 25-1-98 (1972) states that "a workday for a state employee in a full-time employment position shall be eight

(8) hours in duration at a minimum exclusive of time off for meals.” The section also requires the appointing authority to develop work schedules that ensure that each full-time employee works a full workday.

While some MWCC employees might not work eight-hour days every workday, the commission needs a time accountability system to ensure that they work the cumulative number of hours per pay period to satisfy the workday requirements of state law.

Because the commission’s appropriation bill authorizes only permanent, full-time employee positions for the agency, the agency must have a time accountability system to ensure that the employees adhere to state law regarding a workday. Such a system is especially important given the flexible work schedules of administrative judges and court reporters that require them to exceed the traditional eight-hour workday on some days due to lengthy hearings. While these employees might not work eight-hour days every workday, a time accountability system must ensure that they work the cumulative number of hours per pay period to satisfy the state’s workday requirements of Section 25-1-98.

Administrative Judges and Court Reporters are Under the Chairman’s Supervision

The commission’s eight administrative judges and eight court reporters, who are under the chairman’s supervision, travel to off-site locations to conduct hearings.

As noted on page 5, the commission presently has seventy-six employee positions assigned to eight operational divisions. The “chairman’s office” is one such division and includes twenty-seven employees who ultimately report to Chairman Ben Barrett Smith. (Four of the twenty-seven employees have mid-level supervisors to whom they report on a day-to-day basis.) Except for the commission’s eight administrative judges and eight court reporters who are assigned to the “chairman’s office” and travel to off-site locations to conduct hearings, MWCC employees perform their job duties at the commission’s office in Jackson, Mississippi.

A typical workweek of an administrative judge involves being in the Jackson office on Mondays and Fridays to conduct hearings and/or process paperwork. A judge usually travels to an offsite location within his or her assigned region on Tuesdays, Wednesdays, and Thursdays to convene monthly motion days and conduct evidentiary hearings regarding disputed workers’ compensation claims. Administrative judges do not accrue compensatory time—overtime—although a workday may extend beyond the traditional eight-hour day due to lengthy hearings. The commission’s eight court reporters rotate among the administrative judges on a weekly basis and accompany them to hearing sites to record the proceedings.

Once a hearing has concluded, the administrative judge is responsible for considering the evidence and testimony presented and writing an order of his or her final decision. Unless a judge’s order is appealed to the full commission, court reporters are not required to produce verbatim transcripts of hearings conducted by administrative judges.

Chairman's Office Staff Do Not Complete Timesheets

Chairman Smith does not require the employees within his division to document their time worked weekly. Although nine of the employees under his supervision complete timesheets voluntarily, the administrative judges and court reporters do not.

Although MWCC has no written policies regarding recording of time worked, MWCC supervisors require their employees to complete weekly timesheets. However, the commission's chairman does not require employees within his division to complete timesheets.

Although no written policies exist regarding recording of time worked, MWCC supervisors require their employees to complete for each workweek an "employee timesheet" that records an employee's arrival and departure time, as well as time taken for a lunch period and leave. At the end of each week, the employee and supervisor sign the sheet, which is retained by the supervisor for use in compiling the division's monthly absentee report to document leave taken by division employees.

However, Chairman Smith does not require the twenty-seven employees within his division to complete weekly timesheets. Nine of the employees under his supervision complete such timesheets voluntarily and submit them to their supervisor. However, the eight administrative judges and eight court reporters, who travel frequently to off-site locations to conduct and record hearings, do not account for their time spent during work hours. Thus, within a single agency with seventy-six employee positions, fifty-one employees are held to the accountability standard of reporting their activities during work hours, nine employees are not required to be accountable but do so voluntarily, and sixteen employees have no accountability for their time spent during working hours.

According to MWCC administrative staff, Chairman Smith told employees within his division that they are only required to complete forms for leave taken and are not required to complete weekly timesheets. With regard to administrative judges, Chairman Smith considers them to have nontraditional, flexible work schedules and to be similar to chancery and circuit judges who perform their duties with no direct oversight. Chairman Smith contends that he supervises the time management of administrative judges by reviewing their weekly hearing schedules. MWCC has no policies requiring administrative judges to report to the central office when they are not traveling to an off-site location or actually conducting a hearing within their region. Chairman Smith states that he has instructed court reporters to work eight-hour days and to work from MWCC offices on Mondays and Fridays.

Lack of Timesheets Compromises Employees' Time Accountability

The lack of accountability for time worked could result in overstated accrued leave balances as well as inaccurate information with which to make management resource decisions.

Chairman Smith's decision to not require employees within his division to complete weekly timesheets has had two primary

effects. First, by not requiring administrative judges to complete weekly timesheets, Chairman Smith acknowledges that he really does not know their whereabouts during work hours. Although he relies on the judges' weekly hearing schedules to determine their whereabouts, the schedules are not a reliable predictor of the judges' locations. For example, Chairman Smith, as well as the administrative judges interviewed by PEER, states that cases set for hearing could be settled prior to the judge leaving for a hearing, while the judge is en route to the hearing location, or "on the steps of the courthouse" once all parties convene for the hearing. In those cases, the judge's hearing schedule would no longer accurately document his or her whereabouts. When scheduled cases are settled prior to the formal hearing, an administrative judge is free to return to Jackson, work in a hotel room or home, or perform other duties, which could include personal errands.

Although the chairman relies on the judges' weekly hearing schedules to determine their whereabouts, the schedules are not a reliable predictor of the judges' locations. For example, due to cancellations, pre-hearing settlements and similar reasons, during CY 2002 and the first six months of CY 2003, MWCC administrative judges heard only 12% of their scheduled cases.

To determine the degree to which weekly hearing schedules could be used to account for the administrative judges' work time, PEER compared hearings scheduled for CY 2002 and January through June 2003 with those actually held by administrative judges during those periods. Due to cancellations, pre-hearing settlements and similar reasons, during CY 2002 and the first six months of CY 2003, MWCC administrative judges heard only 12% of 1,858 and 937, respectively, scheduled cases. Therefore, the judges' weekly hearing schedules were not an accurate predictor of their actual work locations.

While PEER recognizes that administrative judges have responsibilities other than conducting hearings, such as telephonic conferences, signing orders, legal research, and writing orders, the potential exists that they could avoid taking personal leave by using their "down" time from cancelled or settled hearings for personal errands and business. PEER certainly has no reason to question the professional ethics or personal integrity of the commission's eight administrative judges. However, without a time accountability system for judges, the chairman has little information with which to make management resource decisions on behalf of the commission—e.g., could the judges handle a greater caseload? could the commission's current caseload be handled by fewer judges?

A similar situation exists with court reporters who accompany the administrative judges to hearings. When scheduled hearings are canceled or settled prior to the formal hearings, the court reporters have no work to do at the hearing location and are free to return to the MWCC's offices or home. As stated on page 26, court reporters produce a transcript of a hearing only if a party to a case appeals the judge's decision to the full commission. During CY 2002, the commission's eight court reporters produced 113 transcripts of cases appealed to the full commission, an average of approximately one transcript per month for each court reporter. Considering that during CY 2002 each judge heard only approximately two cases per month that had to be machine recorded by a court reporter and each reporter only transcribed approximately one hearing per month, the reporters had a portion of their time for which they were not required to account.

The second effect of Chairman Smith not requiring employees within his division to complete weekly timesheets involves the accuracy of the agency's leave records. Chairman Smith's secretary is responsible for completing the division's monthly absentee report to document leave used by each employee during the month. In all other MWCC divisions, the employee responsible for this task can reconcile the employees' weekly timesheets with their signed leave forms to complete the absentee report. Because employees assigned to the "chairman's office" do not complete weekly timesheets, the chairman's secretary has to rely on an employee's signed leave form as her only source information to complete the absentee report. Without a cross-check of information—weekly timesheets and signed leave forms—it is possible that an employee could be absent from MWCC offices without having such absence properly recorded as leave.

The ultimate effect of administrative judges and court reporters potentially using work hours to accomplish personal errands or business for which leave should be taken is that the employees' leave balances continue to accrue and be overstated. Judges and court reporters could receive payment for up to thirty days of accrued leave at their termination from the commission or such leave could be credited to their retirement accounts.

Recommendations

Unique Structure and Management Oversight of Workers' Compensation Commission

1. The Workers' Compensation Commission chairman should analyze how the commissioners and commission staff are accomplishing the duties of the commission—rulemaking, adjudication, approval of self-insurance programs, and medical cost containment—to determine whether all responsibilities are being accomplished as required by law. The chairman should ensure that he, the commissioners, and the commission as a whole are fulfilling the responsibilities delineated in CODE Sections 71-3-85, 71-3-93, 71-3-99, 71-3-47, and any other statutes that apply to responsibilities of the Workers' Compensation Commission, commissioners, chairman, or staff.

The chairman should also ensure that the commission prepares and adopts minutes recording all formal administrative actions of the commission (e.g., personnel decisions, budget adoption). The commission should also maintain formal attendance and recusal records of all full commission hearings.

Responsibilities of Commissioners

2. The Workers' Compensation Commission chairman should consult with the other members of the commission regarding the equitable distribution of work that must be carried out by the three commissioners. Should the chairman determine that the commission and its staff have excess capacity with which to accomplish tangential responsibilities such as educational and outreach activities, the chairman should determine how those efforts can best be carried out in light of the commission's regular workload.

If the commission determines that it has a need to educate and inform various constituencies about Mississippi workers' compensation laws and procedures, the commission should delegate such function to an employee whose absence from the office would not impede the full commission's work schedule. Also, when setting the annual budget, the commission should establish a budget for training and outreach activities that one or more of the commissioners will be responsible for executing. In the future, outreach activities should be limited to those that

the commission as a body has deemed to be necessary and appropriate.

Commissioners should limit their absences from MWCC offices for any reason (except illness) to days on which the commission typically has a lighter workload—i.e., Thursdays and Fridays.

3. Commissioners should avoid providing assistance to administrative judges in the preparation of final orders. If an administrative judge needs assistance in preparing a final order, another administrative judge, the commission's chief counsel, or contract legal staff should provide such assistance.

Compliance with Leave Laws and Accountability for Work Hours

4. The current MWCC commissioners should immediately review available commission and personal records to determine the number of days since their appointments as commissioners that they have been away from MWCC offices for personal reasons or illness without having taken personal or major medical leave. The commissioners should complete the paperwork to take the appropriate leave and submit it to the MWCC payroll office so that the proper deductions may be made from their leave balances.
5. The State Auditor should conduct an audit of the MWCC's leave records to ensure that the commissioners (as well as all other employees) have properly accounted for their time away from MWCC offices. Should the State Auditor determine that the commissioners have not complied with the state's leave laws by taking leave for days in the past on which they were absent, he should recommend that the commissioners take appropriate corrective action. Within six months, the State Auditor should conduct a follow-up audit and consider taking appropriate legal actions provided in MISS. CODE ANN. § 7-7-211 (1972) if the commissioners have not claimed leave for their time away from MWCC office for personal and non-business reasons.
6. The MWCC chairman should direct Commissioner Quarles's secretary and the MWCC Executive Director to review all available agency and personal (such as calendars and log books) records to determine any other days on which the secretary was absent from work but did not take leave. Should other dates be identified, the chairman should direct that the secretary complete the appropriate paperwork for submission to Commissioner Quarles for approval. Also, the MWCC administrative staff and payroll office should amend their absentee reports and the state payroll system to document the deduction of leave from the secretary's accrued leave balance for any leave used but not documented.

Commission's Practices on Accountability for Work Hours

7. The Workers' Compensation Commission should direct its executive director to develop a comprehensive standard operating procedures manual that documents administrative processes of the commission. Once developed and adopted by the full commission, the commissioners and executive director should conduct periodic training sessions regarding such processes. The chairman should regularly remind division directors of their responsibilities to ensure MWCC employees' strict compliance with administrative policies and procedures.
8. The MWCC chairman should direct all employees, including those specifically assigned to the chairman's office, to complete weekly timesheets for submission to their direct supervisors. MWCC supervisors should routinely reconcile the timesheets with signed leave forms when compiling the monthly absentee reports.
9. The MWCC chairman should direct the three employees who attended an out-of-town funeral on June 16, 2003, to complete the appropriate paperwork to document their absence from the office. The MWCC administrative staff and payroll office should amend their June absentee reports and the state payroll system to document the deduction of one day of personal leave from each of the three employees' accrued leave balances.
10. As part of the commission's time accountability system, the MWCC chairman should immediately develop a time accountability system for administrative judges and court reporters. At the very least, the chairman could re-institute the "Administrative Law Judge Activity Report" utilized by a previous chair, which documented the judge's location by day of the week as well as the cases heard during those days. As other MWCC employees are required to do, administrative judges and court reporters should be required to sign their time reports verifying their work locations and activities. Also, the MWCC chairman should encourage administrative judges and court reporters to conduct as much of their work as possible from MWCC offices, where they have access to administrative support, the commission's chief legal counsel, and an in-house law library. Chairman Smith should encourage administrative judges and court reporters to work from home or other locations only when absolutely necessary and pre-cleared by him.

Appendix: “9(i)” Workers’ Compensation Settlements

Commissioners’ Consideration of Compromise 9(i) Settlements

Potentially, workers’ compensation cases are contentious when an injured worker and an employer dispute the facts of and a reasonable compensation due from an injury. In such cases, the parties involved must have their case considered by an administrative judge, who makes a final decision of fact and determines an appropriate amount of compensation. In other workers’ compensation cases, the injured worker and his or her employer agree on a “compromise settlement” without the need to have the case heard by an administrative judge in a “court” setting.

Almost half of a commissioner’s workweek involves the consideration and approval (or disapproval) of compromise settlements between claimants and employer/insurance carriers, as provided for in MISS. CODE ANN. § 71-3-29 (1972). The commission’s Procedural Rule 15 states that settlements will be considered at the offices of the commission on Tuesday or Wednesday of each week by either the commission or an administrative judge. Judges may consider settlements at other times and places within their assigned territories. (Compromise settlements are commonly known as “9(i)” settlements, which refers to the section of the bill that created such settlements, House Bill 351, 1948 Regular Session.)

According to Rule 15, the commission will explore all proposed compromise settlements and examine medical reports to determine if the amount of the proposed settlement appears fair and reasonable. If the commission or administrative judge considers that a proposed settlement is not accurately reported, or is not in the best interest of the claimant, then approval for the settlement will be withheld. If the commission or administrative judge finds nothing objectionable about the terms or amount of the proposed settlement and is satisfied that the claimant understands its import and effect, and further believes that it would be in the claimant’s best interest, a compromise settlement will be approved.

Procedure for Walk-in 9(i) Settlements

In accordance with Rule 15, claimants and employers, as well as their legal representatives, may appear at the commission’s offices in Jackson to have their compromise settlements heard by the commission. (Such hearings are commonly known as “walk-in” 9(i) settlements. Claimants and employer/carriers can also ‘mail-in’ their compromise settlements for consideration by the

commission.) Procedurally, the parties enter the lobby of the commission's offices, where the legal representatives register to be heard by the commission. The MWCC receptionist notifies the file room of an impending hearing so that the claimant's file can be retrieved. After the file has been accessed, the receptionist contacts a commissioner's secretary to determine whether the commissioner has time available to consider the compromise settlement. The receptionist uses a rotating system, whereby she contacts Chairman Smith first to conduct a settlement hearing, Commissioner Schoby second, and Commissioner Quarles third. If a commissioner is involved with another settlement hearing and cannot hear another case when the claimant and employer arrive in the lobby, the receptionist contacts the next commissioner on the list.

As required by Rule 15, the commissioner who hears the compromise settlement reviews the case file and considers the proposed settlement. If the claimant is unrepresented, the commissioner also interviews the claimant to determine his or her understanding and acceptance of the offer. If the commissioner approves a compromise settlement for lump sum payment or indemnity benefits settlement only (excluding medical benefits), the commissioner's secretary produces a computer-generated order containing the specifics of the settlement. The commissioner who conducted the compromise settlement hearing signs the order and the commissioner's secretary submits the order to the other two commissioners to obtain their approval of and signature on the order. Two commissioners must sign a compromise settlement for it to become official.

SOURCE: PEER analysis of interviews of MWCC staff; MWCC's *General and Procedural Rules*

Agency Response



Mississippi Workers' Compensation Commission

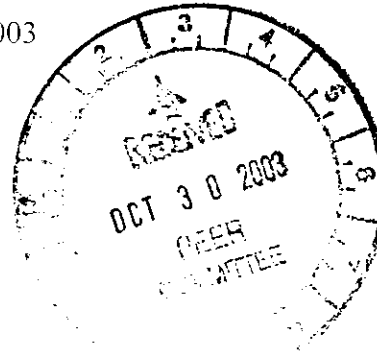
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October 29, 2003

Mr. James Barber
Deputy Director
PEER Committee
PO Box 1204
Jackson, MS 39215-1204



Dear Mr. Barber,

Set forth below is my response to the nine (9) recommendations as contained in the PEER Executive Summary:

Recommendation No. 1:

Steps will be undertaken forthwith by the undersigned as Chairman to comply with the directives as set forth therein.

Recommendation No. 2:

Noted and will be strictly adhered to.

Recommendation No. 3:

The undersigned, as Chairman and Commissioner, will immediately undertake to comply with this directive as same applies to him personally.

Recommendation No. 4:

I find no fault with this recommendation and will assist fully with the State Auditor's office and/or employees.

Recommendation No. 5:

Steps will be taken forthwith by the undersigned, as Chairman, to comply with the directive as set forth therein.

Recommendation No. 6:

The Executive Director of the Commission will be instructed as recommended and the other directives as contained in Recommendation No. 6 shall be followed.

Recommendation No. 7:

Steps will be taken forthwith by the undersigned, as Chairman, to comply with the directives as set forth therein.

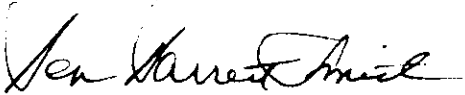
Recommendation No. 8:

Steps will be taken forthwith by the undersigned, as Chairman, to comply with the directives as set forth herein.

Recommendation No. 9:

Steps will be taken forthwith by the undersigned, as Chairman, to develop a time accountability system for administrative judges and court reporters. In addition thereto, the undersigned will immediately issue a memo to those 16 employees strongly encouraging compliance with the remaining suggestions in Recommendation No. 9.

Respectfully submitted,



Ben Barrett Smith, Chairman

Editor's Note: The Chairman of the Workers' Compensation Commission submitted this response to the PEER Committee before reviewing the final version of the Committee's report. He chose not to submit a revised response.

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