

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 26, 2015 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair (telephonic)
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	ADOSH Director
	Karen Axsom	Labor Director
	Melinda Poppe	Chief Administrative Law Judge
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, Commission lobbyist, Kathy Hunt and Carol Clark with Pleasant Valley Fire District, Bryan Chambers, Deputy Gila County Attorney for Pleasant Valley Fire District, Judy Ellis, Rebecca Orahoad, Michael Dragon of Meineke Car Care Center, and Jason Weber of Snell & Wilmer.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
 1. 2C13/14-1242 Agape Care Home of Scottsdale, LLC
 2. 2C14/15-1359 Affordable Assisted Living, L.L.C.
 3. 2C14/15-0053 Couture Transports, LLC, dba Azlimo.com
 4. 2C13/14-1055 James E. Vieh, P.L.C.
 5. 2C13/14-0507 Jeffrey Saunders & Carol Saunders, H/W, dba Saunders Painting
 6. 2C13/14-1127 Navigator Pilot Car, Inc.
 7. 2C13/14-1013 Virgil Marchis & Gabriela Marchis, H/W, dba Arabian Views Assisted Living One

- b. Approval of New Employment Agency License Application.
 1. Jennifer Greene dba Higher Calling Coaching

Chairman Parker stated that agenda item a. 4. would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Mr. Sanders, second of Mr. Hennelly.

Andrew Wade advised that a. 4. James E. Vieh, P.L.C. has obtained workers' compensation insurance and staff is recommending a reduced penalty of \$500.00, instead of staff's previous recommendation of a \$1,000.00 civil penalty. The Commission unanimously assessed

the recommended penalty of \$500.00 against James E. Vieh, P.L.C. on motion of Mr. Hennelly, second of Vice Chair Strickler.

Discussion and/or Action regarding Legislation.

Scott Butler summarized recent activity at the Legislature and reported on items of interest to the Commission including House Bills 2297, 2335, and 2438. Ms. McGrory added that HB 2297 appears to be moving and she explained how the bill as written would restrict rulemaking beyond the Governor's Executive Order and would adversely impact the operations of the agency. She explained that she raised these concerns with one of the Governor's Policy Advisors. Mr. Sanders asked Mr. Butler to recap HB 2331. Mr. Butler summarized the current status of the bill.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

Ms. McGrory summarized a meeting she had at the Governor's Office concerning the Commission's request for an exemption from the rulemaking moratorium for the evidence based medical treatment guideline process.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH) Discrimination Complaints.

14-6444-08 – Complainant Request for Reconsideration
Rebecca Orahod vs. Pleasant Valley Fire District

In response to a question from Chairman Parker, Ms. McGrory described the reconsideration process. Mr. Wade concurred with her summary. William Warren presented a summary of the request for reconsideration submitted by Ms. Orahod. Mr. Warren explained that ADOSH reviewed the information provided by Ms. Orahod and determined that there was no new or additional evidence that would warrant reconsideration of the prior decision of the Commission. Mr. Sanders referred Mr. Warren to Ms. Orahod's November 22, 2014 letter wherein she stated she was not informed of the prior Commission meeting when the Commission considered her complaint. Mr. Warren responded that Ms. Kruee did call Ms. Orahod to advise her of that meeting. Chairman Parker asked Ms. Orahod if she wanted to address the Commission.

Ms. Orahod thanked the Commission for the opportunity to speak. She explained that the initial investigator recommended that her claim be pursued. She complimented the investigator for performing a thorough investigation. She explained that she disagreed with what others had told the investigator and she stated that some of the representations to the investigator were not based in fact and were unwarranted. Ms. Orahod explained that she had reluctantly accepted the opportunity to become the Fire Chief after the previous Fire Chief was dismissed and she commented on the problems she felt were present. She stated that her talking about spending money led to personal attacks on her and comments that she could not work within the budget. She explained that she was not aware of all of the lapses when the budget was created and the Board did not want to release any reserve money. She added that the Fire District has experienced various issues and breakdowns with the trucks and equipment that could have been avoided with simple maintenance throughout the years that should have been included in the budget. She explained that she took a stand that a fire department has no right to take public money if it fails to

take care of business and preserve lives and property. She noted that she was fired for taking this stand. She thanked the Commission and again complimented the investigator.

Chairman Parker stated that there are two others that have requested an opportunity to speak and asked if they would like to add anything. Mr. Bryan Chambers stated he would. Mr. Chambers stated that the Fire District agrees with the Commission's decision and that this matter should not be reconsidered. He explained his position that the complaint was not timely filed and why that results in the Commission not having jurisdiction to consider the complaint. Chairman Parker asked Mr. Chambers to state his name and relationship to the Board. He identified himself as Bryan Chambers, Deputy Gila County Attorney, Civil Bureau Chief, and stated he represents the Pleasant Valley Fire District Board.

Mr. Sanders asked if he could see the documents Mr. Chambers was holding and Mr. Chambers handed the documents to Mr. Sanders. Mr. Sanders stated that the documents are date stamped 9:50 a.m. on January 17, 2014. Mr. Sanders noted that the original packet presented the complaint as filed with ADOSH on January 8, 2014. Mr. Warren briefly reviewed the investigation file, acknowledged that Ms. Orahoad's complaint was date-stamped January 17, 2014, and stated that ADOSH treated the complaint as having been filed on January 8, 2014. He noted that date may have been from a telephone conversation. Chairman Parker commented the Commission would address the jurisdiction question later, if necessary. Mr. Chambers referred to the OSHA discrimination statute, described his interpretation of the statute, and referred to other information about the filing of complaints. Chairman Parker explained that ADOSH would not have proceeded without having confirmed a timely complaint, and that the Commission will address jurisdiction if needed. He asked if there were any other questions for Mr. Chambers. There were no questions and Chairman Parker thanked Mr. Chambers.

Chairman Parker noted the second request to speak and asked if Ms. Clark would like to make any comments. Ms. Clark identified herself as Carol Clark, Vice Chair for the Pleasant Valley Fire Department. She stated that she was here to answer any questions that the Commission may have. Chairman Parker asked if there were any questions for Ms. Clark. There were no questions and Chairman Parker thanked Ms. Clark.

Chairman Parker summarized the procedural posture of the matter and noted that Ms. Orahoad has requested the Commission to reconsider the decision not to pursue her complaint further. He asked if there was any discussion. Mr. Sanders commented on his extensive review of the entire investigation file before the original decision and that he had reviewed the file again. He explained how seriously he takes these matters. He explained that there is nothing in any of the additional materials that would make him want to change the prior decision. Chairman Parker asked if there were any other questions or discussion. He asked if there was a motion for reconsideration. Hearing none, Chairman Parker explained that the original decision of the Commission not to pursue the matter will stand. He thanked those who attended and stated he appreciated the extra insight that was provided.

14-2919-02 – John Furman vs. MD Automotive, LLC dba Meineke Car Care Center
#4291

William Warren presented a summary of Mr. Furman's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to establish the elements necessary to pursue in court. Chairman Parker asked for the date of the

free of recognized hazards condition. He commented on a written hazard assessment for mowing a residential yard. Chairman Parker asked Mr. Warren if the employees had eye protection, hand protection, and hearing protection available. Mr. Warren responded those PPE items were available. Chairman Parker stated there is a motion to approve Citation 2, Item 1 and asked Mr. Warren to describe the other two non-serious citations. Mr. Warren explained that Citation 2, Item 2 is proposed for a violation of CFR 1910.303(g)(1)(i), a blocked electrical panel, and Citation 2, Item 3 is proposed for a violation of CFR 1910.303(b)(7)(i), an open breaker panel. Chairman Parker stated the two non-serious citations were without a penalty so the motion is for a total penalty of \$500.00. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$500.00 on motion of Mr. Sanders, second of Mr. Hennelly.

Chairman Parker stated that Vice Chair Strickler will be recusing herself from consideration of the next item.

Apache County, Chinle Road Yard	Planned	
M.P. 445 Hwy 191	Years in Business:	136
<u>Chinle, AZ 86503</u>	Empl. Covered by inspection:	22
Site Location:	M.P. 445 Hwy 191	
	Chinle, AZ 86503	
Inspection No:	J7272-1013757	
Inspection Date:	11/25/2014	

SERIOUS – Citation 1 - Item 1 – Vehicle Maintenance Building: A Rotary two-post automotive lift model number SPO12, serial number BAI99B0190, did not have an annual maintenance inspection performed on it within the past 12 months. (A.R.S. § 23-403(A))

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
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SERIOUS – Citation 1 - Item 2 – Building maintenance shop: A Jet 8” bench grinder, model number JBG-8A, serial number 0124233, did not have the sanding belt guarded and the pulleys completely enclosed to prevent accidental contact with rotating parts, pinch parts and in-going nip points. (CFR 1910.212(a)(1)).

Div. Proposal - \$1,800.00	Formula Amt. - \$1,800.00
TOTAL PENALTY - \$4,050.00	TOTAL FORMULA AMT. - \$4,050.00

Mr. Warren summarized the citation and proposed penalty as listed. Following discussion, Mr. Hennelly moved for approval of the citation with the recommended penalty of \$4,050.00 and Mr. Sanders seconded the motion. The motion passed with three votes in favor. Vice Chair Strickler did not participate in the discussion or the vote.

Discussion and/or Action regarding Selection of Questions for Administrative Law Judge Interviews. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1), (A)(2), and (A)(3) to Obtain Legal Advice and to Discuss the Interview Questions.

Chairman Parker stated that it would be appropriate to move into Execution Session to discuss interview questions. He asked if there was anything to discuss in open session, before moving into Executive Session. Ms. McGrory replied to the question and described the materials that would be supplied to the Commissioners related to the interviews. Chairman Parker asked Mr. Hennelly if he would be in person or appearing through video conferencing for the interviews. Mr. Hennelly responded that he would likely attend by video conferencing. Ms. McGrory briefly described the process for the video conferencing.

Chairman Parker as if there was a motion to move into Executive Session. The Commission unanimously voted to move into Executive Session to discuss the interview questions for the administrative law judge positions on motion of Mr. Sanders, second of Mr. Hennelly. Executive Session Minutes are kept separately.

Upon return to General Session, Chairman Parker commented on the starting time for the interviews. Ms. McGrory explained who would be present for the interviews.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

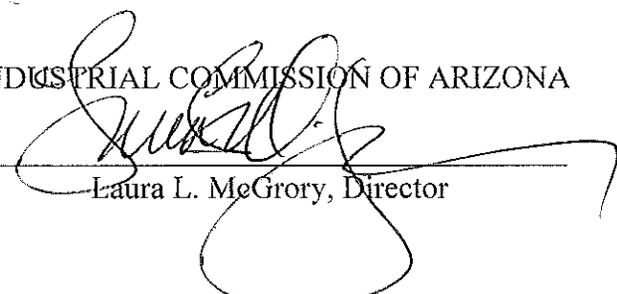
Ms. McGrory stated there is a retirement resolution for Steven Weberman, an Industrial Hygienist from ADOSH, who is retiring after 27 years of service.

Chairman Parker confirmed the Commission meeting dates already scheduled March 3 and March 4. Ms. Dimas confirmed the meeting schedule for March 19, 26, April 9, 23 and 30, 2015. Chairman Parker confirmed the dates for scheduled for May of May 6, 14, and 28. There were no requests to change the dates.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:24 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary