

**MEMORANDUM**

**TO:** Aniko Nagy, Ohio Bureau of Workers' Compensation

**FROM:** Christopher Smyke, Regulatory Policy Advocate

**DATE:** March 2, 2018

**RE:** **CSI Review – Claims Procedure Rules (OAC 4123-3-15, 4123-3-15.1, and 4123-3-32)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of one new and two amended rules proposed by the Ohio Bureau of Workers' Compensation (BWC). The rule package was submitted to the CSI Office on February 2, 2018 and the comment period remained open until February 26, 2018. No comments were received during this time.

These rules are being proposed in response to House Bill 27 of the 132nd General Assembly, which amended ORC 4123.57 to vest BWC with the authority to dismiss, rather than suspend, C-92 applications; address the backlog of suspended C-92 applications; and to waive the 90 day exam requirement for temporary total (TT) compensation. The new rule, Ohio Administrative Code (OAC) 4123-3-15.1, outlines the procedure and requirements for BWC to dismiss an injured worker's C-92 application, as well as the worker's right to notification from BWC of a possible C-92 dismissal and to refile the application. The amended rules include language to support the new dismissal rule, as well as several new paragraphs empowering BWC to waive the TT 90 day medical exam and allowing any employer to object to the waiver.

BWC sought feedback to the proposed rules from the Ohio Association for Justice, the Ohio Chamber of Commerce, the Ohio Manufacturers Association, and the Ohio Self-Insured

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Association. One comment was received, suggesting that BWC include the right of an injured worker to appeal a dismissal of a C-92 application with the Industrial Commission. After reviewing this comment, BWC decided to incorporate the suggestion into the proposed rules. No comments were received during the CSI public comment period.

The proposed rules affect injured workers, employers, and the legal representation of both parties. The BIA notes that the adverse impact of the rules chiefly falls upon the injured worker, rather than the employer, as the rules now provide a route for C-92 applications to be dismissed. The BIA justifies the new rule and amendments as necessary to align BWC regulations with the recently amended statute ORC 4123.57. In addition, the rules are necessary to establish a uniform process for the payment of benefits.

Following review of the draft rules and BIA, the CSI Office has determined the purpose of the rules is justified.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Ohio Bureau of Workers' Compensation should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Emily Kaylor, Lt. Governor's Office