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MEETING NOTICE:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement will meet at **9 a.m., January 28, in Santa Fe, at Hotel Santa Fe, 1501 Paseo de Peralta.**

Download the agenda at: <http://www.worker-comp.state.nm.us/advisory.php> 72 hours prior to the meeting.

Health Care Providers' Fee Schedule now available online

New Mexico Workers' Compensation Administration Celebrates 30 Years

By Aileen O'Catherine

The WCA opened its doors to the public December 1, 1986. We will run a series of articles in each issue of the 2016 Quarterly Bulletin to commemorate 30 years as an agency.

The New Mexico Workers' Compensation Administration (WCA) celebrates its 30th anniversary in 2016. Created by the New Mexico Legislature via the Workers' Compensation Act (the Act) in 1986, the WCA was tasked with overseeing workers' compensation cases using mediators and judges who specialized in workers' compensation disputes.

Although New Mexico's first workers' compensation act became effective in 1929, the dispute resolution process for cases took place in the state's district courts, and only a formal trial could result in a final decision for employer and worker. By the mid 1980s, the slow and costly formal court process had created a perfect storm. Workers' compensation premiums had skyrocketed. Only a few companies were willing to underwrite insurance for injured workers' claims, and most employers couldn't afford to pay the premiums those companies charged.

The New Mexico Legislature intervened by creating an administrative body to consider workers' compensation cases, and the Workers' Compensation Administration was born. The legislature authorized preliminary staff and structure, so cases were ready to be heard as soon as the agency officially opened.

The first director of the WCA was Martin Chavez, a trial attorney who later went on to become a New Mexico State Senator and the mayor of Albuquerque (see interview with Martin Chavez on page 2). Chavez began organizing the WCA in the summer of 1986 in space borrowed from the New Mexico De-

partment of Labor, located at the Tiwa building on Broadway in Albuquerque. By October, the agency began looking for its own building. When it opened its doors on December 1, 1986, the WCA was located at 700 Fourth Street SW.

Judges at the WCA would be appointed by the director. The first two were appointed as of November 14, and were responsible for all the workers' compensation cases filed with the Administration. Though the shift from 56 district court judges to two administrative judges was huge, the determination and solid work ethic of those involved made it possible. In the first year of operations, it was not uncommon to see staff working from 7 a.m. to midnight to keep up with the heavy load. By 1987, the workload increased enough to appoint a third workers' compensation judge.

More changes were to come. In 1987, Gerald Stuyvesant became the second WCA Director. In 1988, the agency's first field office opened in Lovington, which would service southeastern New Mexico. In 1990, a fourth judge was added to the WCA. When the number of employees and the workload grew too large for the agency's Fourth Street location, the agency moved to a more spacious building at 1820 Randolph SE, in February of 1990.

Some of the same problems that had led to the formation of the WCA surfaced once more in 1990. Insurance availability was dwindling and premiums were on the rise. The New Mexico Legislature reached out to the business and labor communities



Martin Chavez, First Director of the WCA

By Aileen O’Catherine

The first director of the New Mexico Workers’ Compensation Administration (WCA) didn’t want the administration to start. In fact, he and other New Mexico trial lawyers who tried workers’ compensation cases fought hard to kill the bill that would change the tort-based system to an administrative court run by judges without a jury. New Mexico was the last state to convert from a district court to an administrative court for workers’ compensation. Martin Chavez and New Mexico’s trial lawyers found the tort system too lucrative to give up, so when a bill was introduced to the New Mexico Legislature in 1985 to begin such a system, they lobbied against it.

“We had a good thing and we lost,” said Martin Chavez, the New Mexico Workers’ Compensation Administration’s first director. Once the bill passed, “The governor called and said, ‘okay, you fought so hard to stop this agency, now I want you to make it a success.’ So that is how I came to the position.”

Chavez remembers the deep contention over workers’ compensation at the time. “There was a huge battle between insurance carriers and trial lawyers,” he said. Insurance carriers were paying large court settlements, and the fees for trial lawyers were about \$15,000 per case. At the time, New Mexico had the second highest workers’ insurance rates in the country, which meant

NM Workers’ Comp. Adm. Quarterly Bulletin

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The Bulletin is published in January, April, July and October by the Economic Research Bureau of the New Mexico Workers’ Compensation Administration. The Bulletin is available free of charge. Send changes of address and requests to receive the Bulletin to Diana Sandoval in the Public Information Office, New Mexico Workers’ Compensation Administration, diana.sandoval@state.nm.us.

Suggestions for articles are welcome; call Diana Sandoval-Tapia at (505) 841-6052. Recent issues of the Quarterly Bulletin can be viewed on the Internet at <http://workerscomp.state.nm.us/research/index.php>.

that employers were paying enormous amounts for workers’ compensation insurance through the few carriers in the state. It was an unsustainable scenario.

Then Governor Toney Anaya gave Chavez six months to get the agency up and running. The first administration was housed within and a division of what was then called the Department of Labor (now the Department of Workforce Solutions).

Chavez was tasked with creating positions, some of which didn’t exist in New Mexico personnel files. He had to come up with the agency’s infrastructure within a strict time period. “Within six months to have a new position written, published and go through the whole process of interviewing and hiring, and all the while you’re building out a space, tearing out walls and also trying to procure everything needed--it was a challenge.”

“We ended up with a tremendous team,” said Chavez. “That first crew was just really outstanding. We were really fortunate. It was a tight-knit team.”

Processes ran more smoothly with the WCA’s new administrative court system, which was less formal than the district courts. Cases were expedited. “Because in workers’ comp, it’s all about the employer and the employee,” said Chavez. “The employee gives up certain rights to sue and get more money, in exchange for an expedited and certain system. And the employer gets to an expedited process that addresses the employee’s needs directly.”

For Chavez, one of the best things to come out of workers’ compensation was the dramatic drop in costs, because it allowed employers to invest more in their businesses. “It was a shot in the arm for New Mexico companies, to have those comp rates go down. It also was the first formalized alternative dispute resolution process in New Mexico.”

Chavez is also proud of the WCA



Martin Chavez (l) talks to then Clerk of the Court Alex Maestas during a WCA visit in 2007

for being the first state agency built from scratch that was computerized. Having computers to expedite processes helped with the entire system overall, and helped cases run more smoothly. “And with the substantive changes to legislation two years later, which I carried as a senator, we went from the second highest workers’ comp rate in the country to the second lowest.”

Chavez served in the New Mexico State Senate after leaving the WCA. He helped pass the New Mexico Workers’ Compensation Act of 1990, which resulted in comprehensive workers’ compensation reform. He was part of the task force put together during a special legislative session. Prior to the special session, there had been attempts at reformation, but they didn’t hold up to special interests and internal fighting in the legislature. The task force consisted mainly of labor and business, with input from advisory members and experts brought in from around the country. That year, the legislature provided a loan to establish the New Mexico Mutual Casualty Company, a non-profit, public option that would create competition and full transparency, further helping workers’ compensation to stabilize.

Chavez went on to serve two terms as mayor of Albuquerque. Today, he works with cities to find better ways to operate buildings and infrastructure to make them technologically “smart.”

What is the Advisory Council?

The Advisory Council on Workers’ Compensation and Occupational Disease Disablement is a task force created by statute, comprised of six members, three representing workers and three representing employers. The primary role of the Council is to advise the governor and legislature on the status of the workers’ compensation system in New Mexico. The Advisory Council meets several times a year on an irregular schedule. Scheduled meetings of the Council are announced on the WCA website, <http://www.workerscomp.state.nm.us/advisory.php>

New Mexico Workers' Compensation Administration Turns 30 (continued)

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to work toward a collaborative solution. A special session was called with the Legislature, where changes were made to workers' compensation law.

The Legislature gave the WCA more responsibilities and designated it an independent agency. Now, along with its adjudication responsibilities, it would pursue workers' compensation fraud, regulate self-insured employers, provide safety guidance and inspections to certain employers, and provide assistance to workers and employers so that as much as possible, attorneys would be unnecessary.

The overall process was streamlined. A new early mediation hearing became part of the process, and cases had to be heard within 60 days of a case being filed. If the mediation process could not resolve the issues, the case was set for formal adjudication before a workers' compensation judge. The increased workload this brought about was sufficient to warrant hiring a General Counsel and a fifth judge. As a result of the new processes, in the first few years of its operation, the WCA was able to alleviate the large backlog of cases that had built up over the years.

In 1991, the Advisory Council on Workers' Compensation and Occupational Disease Disablement was established. The six council members were comprised of three members each from labor and business. The council monitors the workers' compensation system and presents needed changes to the New Mexico Legislature in the form of proposed legislation.

Because the legislature had added more responsibilities to the WCA, the agency soon outgrew the Randolph location, and in 1991, an additional office opened across the street at 2501 Buena Vista SE. The WCA's administrative court was located in the Randolph building and other staff worked out of the Buena Vista location.

The agency's third director, Stephen Kennedy, stepped into his role in 1995, and on October 27, 1997, the WCA moved to its current and permanent location at 2410 Centre SE. Through a decade of growth, the agency had begun to normalize, and daily operations had become more routine.

In the 2000s, the WCA further refined its programs and operations. One problem that demanded attention was how to help injured workers whose employers were uninsured. In October, 2003, the Uninsured Employers' Fund (UEF) was created to provide a safety net for injured workers whose employers failed to obtain workers' compensation insurance despite being legally required to do so. The Legislature also provided the UEF with a mechanism to recoup funds from non-compliant employers via the imposition of penalties in the way of fines.

The WCA continued to provide information about the law and WCA services. A business and public outreach team conducted educational seminars from 2003 to 2005, traveling statewide to establish the requirements of workers' compensation in the minds of New Mexican employers and residents. Television spots and local radio programs were just some of the methods used to advertise the WCA and the services it could provide.

By 2005, the WCA had six field offices outside of the main location in Albuquerque. Offices in Lovington, Las Cruces, Farmington, Las Vegas, Roswell and Santa Fe provided ombudsman and safety services as well as administrative courts with the capacity to teleconnect to Albuquerque. The field offices not only reduced the need for judges to travel from Albuquerque to other locations, but they also provided more immediate, personalized care to workers and employers through all corners of the state.

Throughout its years as an agency, the WCA has worked with its Advisory

Council to refine workers' compensation laws so that they reflect changes in the workforce. When making changes to the law, the WCA and the Advisory Council work with stakeholders so that the way forward is both informed and meaningful for all parties.

In 2015, the New Mexico Court of Appeals declared that the provision of the Act which excluded farm and ranch laborers from mandatory coverage was unconstitutional. As a result, WCA staff reached out to help farmers and ranchers understand the law and how to obtain coverage.

Like other government agencies, the WCA's operations and structure are budget dependent. The economic downturn of 2008 led to internal restructuring and the number of full time employees was downsized to today's current level of 123. At its peak around 2010, the number of staff had grown to 143.

Thirty years as an agency equates to a large number of judges, directors, ombudsmen, clerks, business specialists, economists, secretaries, compliance officers, technical specialists and other employees to execute operations. The staff *are* the Workers' Compensation Administration. They undertake the day to day resolution of cases and answer the many questions that arise each day. They sort the mail, schedule hearings and interpret data to make it meaningful.

Gloria Determan, who was hired by Martin Chavez to fulfill duties as a receptionist in 1986, is today an ombudsman in Roswell, and has seen the agency's many changes over the years. "Back then, we had perhaps a handful of employees," she said of the WCA's first days. "Mr. Chavez did a real good job of keeping us all focused and motivated for better times to come."

Happy 30th birthday, WCA! May you continue to create a better New Mexico for workers and employers.

WCA Welcomes New Safety Program Manager

The WCA welcomed Timothy Olivas as the agency's new Safety Program Manager on December 7, 2015. Olivas had his first career with the New Mexico National Guard, where he retired as a Lt. Colonel. With the Guard, he was based in many places in New Mexico, including Rio Rancho, Santa Fe, and Ft. Bliss. He also did temporary tours overseas in Japan, Europe and the Caribbean. His awards and decorations are numerous, and include the New Mexico Distinguished Service Medal and the New Mexico Medal of Merit for service at the 1980 New Mexico Penitentiary riot.

After retiring from the National

Guard, Olivas worked at the New Mexico Department of Transportation (NMDOT) Research Bureau, where he was a transportation security researcher as well as a program manager for their technology transfer program. After three years at NMDOT, he took an appointment as an intelligence researcher in the Governor's Office of Homeland Security. Just prior to coming to the WCA, Olivas spent 11 years at the Department of Homeland Security's Transportation Security Administration, as a program analyst for security and safety.

"I really enjoy doing safety," said Olivas, who feels he has a calling to make a difference in the field. He en-

joys helping those in the workforce reduce safety incidents and hazards, and feels fortunate to have been selected for the position at the WCA.

"There is a good staff here, a really good program," he said. "I think it's got a really good mission, to help businesses reduce workplace in-



Timothy Olivas

juries. That's what we're all about. That's what we're trying to do—make a difference and have an impact."

WCA Advisory Council Welcomes New Board Members, Proposes 2016 Legislation

The New Mexico Workers' Compensation Administration Advisory Council has two new members.

Taylor Horst was appointed to the council in April, 2015, and will serve through April, 2019. Horst is the risk management director for the New Mexico Association of Counties, and replaces Melinda Joy Pattison, who had served since October 2011. Horst represents business on the board.

Courtenay Eichhorst began his term in November 2015, stepping in for Dain Symes, a representative for labor who had served since January 2014. Eichhorst is a training center instructor for UA Local 412.

Some of the issues that the Advisory Council on Workers' Compensation and Occupational Disease Disablement has focused on for the 2016 session include intoxication and worker injuries; the effect of worker misconduct following

a work-place injury; employer liability for payment of medical cannabis; and the inclusion of all agricultural laborers in the mandatory coverage provision of the Workers' Compensation Act, a change that came about in June 2015 as a result of an appellate court ruling.

The Advisory Council's 2015 Annual Report is available online at http://www.workerscomp.state.nm.us/council/adv_pubs.php.

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