

MINUTES

METROPOLITAN EMPLOYEE BENEFIT BOARD

IN LINE OF DUTY COMMITTEE

March 23, 2021

The Metropolitan Employee Benefit Board's In Line of Duty Committee met on Tuesday, March 23, 2021 via teleconference at approximately 9:30 a.m.

Committee Members present: Chair: Harold Finch, II; Vice-Chair: Christine Bradley; Members: Shannon B. Hall and Jeremy Moseley. Alternate: Edna J. Jones

Others present: Christina Hickey, Metro Human Resources and Nicki Eke, Attorney, Metro Legal Department and Dr. Gill Wright, Civil Service Medical Examiner.

Christina Hickey called the meeting to order and stated that the first order of business will be a roll call to establish a quorum and the electronic meetings requirement.

Christina Hickey stated that as a result of the COVID-19 pandemic, the Governor issued Executive Order No. 16 (extended by Executive Order 78), authorizing Boards to meet and conduct their essential business by electronic means if the Board determines that meeting electronically is necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak. This Executive Order #78 will expire on April 28th. Ms. Hickey stated that there needs to be a motion before considering items on the Agenda and the Board would need to determine by roll call vote that the meeting agenda constitutes essential business of the Board and meeting electronically is necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak. She also stated that each time a Board member, staff or other participant who is using audio only participation wishes to speak he or she shall identify themselves in a manner reasonably calculated to permit the public to ascertain the identity of the person speaking.

The Committee members were in agreement to have the meeting electronically.

Ms. Hickey also stated that each time a Board member, staff or other participant who is using audio only participation wishes to speak he or she shall identify themselves in a manner reasonably calculated to permit the public to ascertain the identity of the person speaking.

Election of Committee Chair.

At this time, Christina Hickey opened the floor to nominations for Committee Chair.

Christine Bradley nominated Harold Finch for Committee Chair. Shannon Hall seconded. Shannon Hall nominated Christine Bradley for Vice Chair. Harold Finch seconded and the Committee approved without objection.

Christina Hickey noted that these are only recommendations that will be voted on at the April Board meeting.

The Human Resources staff submitted the following for the Committee's consideration and appropriate action:

1. In line of duty medical care appeal - Employee from the Fire Department.

The employee was on the call.

Tracey Harvey, Davies Claim Solutions, was also on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that in December of 2019 a claim was denied for a migraine as they are not work related. She stated that there is no diagnosis of high blood pressure, which would open up the avenue for a presumption claim. She also stated that to date they have not been provided any medical records to support the claim.

There was some discussion regarding a diagnosis of hypertension and filing a presumption claim.

The employee addressed the Committee regarding the incident that led to filing the claim.

After further discussion regarding there being no diagnosis of hypertension for a presumption claim, Christine Bradley moved to uphold the denial of the claim.

Mary Young, Firefighters Union, stated that the individual is seeking payment for the treatment he received at the emergency room.

There was some discussion regarding the initial treatment being covered by Davies if it is a work related incident and this was not a compensable claim, what the 101/201 Forms states and supplying additional medical records.

There was also some discussion of initial treatment being covered at the injury on duty clinic versus elsewhere and the employee staying at work with those symptoms.

Jamie Summers, Fire Department, stated that this is a typical situation and if it is recommended that someone seeks out medical care it is encouraged.

Jeremy Moseley made another motion to table this item until additional medical records can be reviewed.

Dr. Gill Wright, Civil Service Medical Examiner, (CSME), noted that this employees symptoms started at home and he decided to come to work.

Shannon Hall seconded the motion to uphold the denial of the claim and the Committee approved with Jeremy Moseley opposed.

Jeremy Moseley's motion was nulled.

2. In line of duty medical care appeal - Employee from the Fire Department.

The employee was on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that the employee filled out a 101 Form citing stress after a call involving an accident and has sought treatment. She stated that in reviewing the medical records it appears as though there are several stressors/incidents as well as other issues and did not meet the criteria.

The employee addressed the Committee regarding the incident and getting help.

There was also some discussion of some of the prior incidents.

Mark Young, Firefighters Union, addressed the Committee regarding the individual getting treatment and counseling.

There was some discussion regarding treatment, which can be provided by the employees insurance, assistance programs and the injury on duty program, and the legal criteria for psych claims.

After further discussion of what is considered extraordinary and unusual, Jeremy Moseley moved to approve this claim as compensable. Christine Bradley seconded and the Committee approved without objection.

3. In line of duty medical care appeal - Employee from the Fire Department.

The employee was not on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that this is a partial denial. She stated that the initial claim for the injury (foot fracture) was approved, however, the employee filed another claim as a result of the surgery from the initial injury. Ms. Harvey stated that after reviewing the causation letter he was diagnosed with arthritic changes in addition to other issues and not compensable.

After some discussion of the initial compensable injury not being related to the other issues, Jeremy Moseley moved to uphold the denial of the claim. Harold Finch seconded and the Committee approved without objection.

Christina Hickey noted that there are no appellants present at the Sonny West Conference Center.

4. In line of duty medical care appeal - Employee from Police Department.

The employee and Jack Byrd, Attorney, were on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that this employee was involved in a car accident on his way to work while driving his unmarked police car. She stated that after reviewing the information regarding the accident there is no coverage for injuries arising from an employees conduct as he was not on a call. She stated that when they started looking at willful misconduct this claim meets the parameters that. She stated that in order to show willful misconduct the following must be confirmed; 1) the employees actual not just constructive notice of a workplace rule; 2) the employees understanding of danger involved in violating the rule; 3) unrefined enforcement of the rule; and 4) the employees lack of a valid excuse for violating the rule. She stated the claim was denied based on willful misconduct as the act was intentional, purposeful and deliberate.

Jack Byrd, Attorney, addressed the Committee regarding the claim. He stated that the information submitted is incorrect, he was never issued a citation or anything else and it was not an intentional act.

The employee discussed the incident with the Committee.

There was some discussion regarding willful misconduct, training that employees receive to be able to drive a Metro vehicle, the crash report, intent and his documented negligent driving history.

William Watkins, Police Department, stated that the employee has had 5 chargeable accidents on his driving history.

After some discussion of willful misconduct and a negligent crash and the employee being charged for this accident, Harold Finch moved to uphold the denial of the claim. Christine Bradley seconded and the Committee approved with Jeremy Moseley opposed.

5. In line of duty medical care appeal - Employee from the Police Department.

The employee was not on the call.

Tracey Harvey stated that there were two bills proposed in Tennessee related to Covid-19, however, they failed to create a rebuttable presumption that an employee who contracts Covid-19 as an occupational disease arising out of in the course of the employment if 10 or more employees are at the same location contract it. She stated that the Senate bill 8007 failed on August 11, 2020 and the House bill 8008 was introduced the day before it failed in the Senate and was referred to a Committee and she does not know where Tennessee stands on making Covid-19 a presumption for first responders and healthcare workers. Ms. Harvey stated that under the Tennessee Workers Compensation statute that we follow as a loose guide TCA 50-6-301 provides that occupational diseases means all diseases arising out of and in the course of the employment. It should only be deemed to arise out of the employment if; 1) it can be determined to have followed as a natural incident of the work as the result of the exposure occasioned by the nature of the employment; 2) it can be fairly traced to the employment as the proximate cause; 3) it has not originated from a hazard to which workers would have been equally exposed outside of the employment; 4) its incidental to the character of the employment and not independent of the relation of the

employer and employee; 5) it originated from a risk connected with the employment and flowed from that source as a natural consequence though it need not have been foreseen or expected prior to its contraction; and 6) there is a direct causal connection between the conditions under which the works performed and the occupational disease. Ms. Harvey stated that after doing some checking a lot of hospitals are not covering employees if they are diagnosed. She also stated that the injury on duty clinic does not allow Covid people and it was determined that people who contracted Covid would follow the City and State mandated guidelines for testing. She also stated that a 60-a code was put in place so that if a police or fireman gets dispatched to a call where dispatch says the person is having trouble breathing and is short of breath it would be coded as a 60-a call and then 10 days later has a positive Covid test the Safety Department would be asked if there are any 60-a forms on file. She stated that if there is for first responders it is covered. She also stated that in working with Metro they have set up a three prong test to accept a claim; 1) was there an increased risk or greater likelihood of contracting the condition due to the workers occupation, first responder or healthcare worker; 2) if not for their job would the workers have been exposed to the virus contracted or contracted the condition; and 3) can the worker identify a specific source or event during the performance of his or her employment that resulted in the exposure to the new Corona virus, first responder or healthcare worker that actually treated a patient with the virus. She also stated that it in order to meet the 3rd criteria Metro decided to use the documentation created by the Department of Emergency Communications, (DEC), or the individual departments documentation like run reports and 60-a dispatch codes. She also noted that right now only claims for first responders and healthcare workers are being accepted.

Tracey Harvey reviewed the claim with the Committee. She stated that on June 21st the employee received a positive Covid-19 test result and filed a 101 Form a month later. She stated that the employee indicated that he had worked some locations where he could have been exposed and also went out of town from June 11th through the 13th. She stated he returned to work, got tested at a CVS and received a positive result on June 21st and was also exposed to a known source on June 3rd that tested positive on June 8th. Ms. Harvey stated that with no 60-a calls or anything under the guidelines put in place the claim was denied.

Christine Bradley moved to uphold the denial of the claim. Harold Finch seconded.

There was some discussion of the criteria, Federal statutes, the incubation period for the virus, and the 60-a code.

Mark Young, Firefighters Union, addressed the Committee regarding the exposures from this disease to the Fire Department.

Jamie Summers, Fire Department, addressed concerns with the administrative staff that come in contact with those who work out in the field.

There was some discussion that some points do not need to be made if it is not a part of a particular case and clarification that the Federal Government Public Safety Officer benefit is specific to the public safety officer benefit and is not applicable to other benefits that are afforded to public safety.

A vote was taken on the motion to uphold the denial and the Committee approved without objection.

6. In line of duty medical care appeal - Employee from the Police Department.

The employee and Jack Byrd, Attorney, were on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that on July 29th the employee filed a 101 Form for a positive Covid test result. She stated that there are two different incubation periods and there is no documentation that fits within the incubation period. She stated the employee thought it was contracted from a co-worker that returned to work from a positive test, however the symptoms started too

late to be within the incubation period. She also stated that after checking with the supervisor there is also no documentation to accept it as compensable.

Jack Byrd, Attorney, addressed the Committee regarding the claim. He stated that there are run reports that show an exposure to a family that was diagnosed with Covid.

The employee discussed the particular call regarding the exposure with the Committee, his symptom timeline and his hospital stay.

After some discussion of the timeline, symptoms, and the incubation period, Shannon Hall moved to defer this item for more documentation/medical information regarding the timeline. Christine Bradley seconded and the Committee approved without objection.

7. In line of duty medical care appeal - Employee from the Police Department.

The employee was not on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that the employee filed a 101 Form on April 6th with the date of injury April 3, 2020. She stated he was tested for Covid-19 on April 3rd and notified of a positive result on April 4th. She stated that there is no positive source or 60-a calls on file and the employee was also on vacation March 30th and 31st which is in the incubation period.

Christine Bradley moved to uphold the denial of the claim. Jeremy Moseley seconded.

James Smallwood, Fraternal Order of Police, (FOP), questioned how to document the exposure 60-a for an asymptomatic patient.

After some discussion of the lack of documentation and what is needed to document and the criteria, a vote was taken on the motion to uphold the denial and the Committee approved without objection.

8. In line of duty medical care appeal - Employee from the Police Department.

The employee was not on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that on July 18, 2020 a 101 Form was filed for a positive Covid-19 test result that was performed on July 14th. She stated that the incubation period for that would be June 30th through July 14th. She stated that there is no positive source nor any 60-a calls. She also noted that he works at Summit Emergency Room through the secondary employment unit and he stated that's where he felt like he contracted the virus and his girlfriend also tested positive.

Shannon Hall moved to uphold the denial of the claim. Harold Finch seconded and the Committee approved without objection.

9. In line of duty medical care appeal - Employee from the Police Department.

The employee was not on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that on October 30, 2020 the employee filed a 101 for Covid-19 with an injury date of the same. She stated the claim was denied following contact investigation and she was on vacation October 12th -15th. She stated there is no documentation regarding 60-a calls or any filed exposure forms. She also noted that there is a mask mandate in all buildings in an office setting and her spouse or significant other tested positive on October 28th.

There was some discussion of others in her department that tested positive, claims for those individuals and any other exposures.

James Smallwood, FOP, addressed the Committee regarding the claim and exposures.

Dr. Gill Wright, CSME, also addressed the transmission/exposures in this claim.

Harold Finch moved to uphold the denial of the claim. Christine Bradley seconded and the Committee approved with Jeremy Moseley opposed.

10. In line of duty medical care appeal - Employee from the Fire Department.

The employee was on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that on January 1, 2021 she filed a 101 Form for Covid-19 citing an injury date of December 29, 2020. She stated that she is not a first responder and does not provide patient care and no 60-a calls or any exposure forms on file and the claim was denied based on there was no increased risk or greater likelihood of contracting the condition due to the occupation.

Jamie Summers, Fire Department, addressed the Committee on behalf of the employee regarding the claim. She stated that the employee has daily interaction with field operation personnel and also with any customers that may come in. She also discussed the employee's current condition after testing positive for Covid-19.

There was some discussion regarding the claims that have been approved versus denied and the impact testing positive can have in the future.

Mark Young, Firefighters Union, addressed the Committee regarding the claim and exposures.

Dr. Gill Wright, CSME, stated that almost all of the cases within the Health Department have been contracted outside of work and the most common thing to look at is contact tracing.

Shannon Hall moved to uphold the denial of the claim. Harold Finch seconded and the Committee approved without objection.

11. In line of duty medical care appeal - Employee from the Police Department.

The employee and Jack Byrd, Attorney, were on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that on August in 2018 he had a compensable motor vehicle accident which caused an injury to his neck and back and treatment concluded in October of 2018 with a release to full duty. She stated that in 2020 he notified Davies that he needed to seek treatment and a possible surgery. She stated that after reviewing the medical records the claim was denied as baseball was more than likely the cause of the injury versus the initial injury and was not work related.

Jack Byrd, Attorney addressed the Committee regarding the claim. He stated that the result of this accident is what caused this current condition.

The employee addressed the Committee regarding the claim, the timeline of the initial injury, an injury prior to being hired and his current condition.

After some discussion of the medical information, an injury prior to employment and exacerbation of the compensable injury, Harold Finch moved to defer this item. Jeremy Moseley seconded and the Committee approved without objection.

12. In line of duty medical care appeal - Employee from Codes.

The employee was not on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that the employee fell after her employer allowed her to go and vote on her break. She completed the 101 Form and the claim was denied based on this not arising out of the employment. Ms. Harvey noted that she does have prior compensable claims involving the stairs within her office building as they are an uneven surface and this has been discussed with the Safety Coordinator at Codes.

After some discussion that voting during the work hours is allowed as an administrative function that's granted by state law, Jeremy Moseley moved to uphold the denial of the claim. Harold Finch seconded and the Committee approved without objection.

13. In line of duty medical care appeal - Former Employee from the Police Department.

The employee was not on the call.

Tracey Harvey reviewed the claim with the Committee. She stated that in May 15, 2020 the employee stepped off of a ladder awkwardly and bruised her legs. She stated that on October 16, 2020 she requested that the 101 Form be amended to include her back and neck. Ms. Harvey stated that after review of the medical records the claim was partially denied for the back and neck that was added five months later.

Jeremy Moseley moved to uphold the denial of the claim. Christine Bradley seconded and the Committee approved without objection.

With nothing further presented the meeting was adjourned at 12:54 p.m.

ATTEST:

APPROVED:

**Shannon B. Hall, Director
Human Resources**

**Harold Finch, II, Chair
In Line of Duty Committee**