MINUTES

**METROPOLITAN EMPLOYEE BENEFIT BOARD**

**IN LINE OF DUTY COMMITTEE**

**March 20, 2013**

The Metropolitan Employee Benefit Board’s In Line of Duty Committee met on Wednesday, March 20, 2013 in the Civil Service Conference Room, Suite 163, 222 Building, Third Avenue North, Nashville, Tennessee, at approximately 1:32 p.m.

Committee Members present: Chair: Christine Bradley; Vice-Chair: W. Todd Henry; Alternate Members: Edna Jones and Rita Roberts-Turner.

Members Charles D. Clariday and Richard Riebeling were unable to be present.

Others present: Shannon Hall, Metro Human Resources, Nicki Eke, Attorney, Metro Legal Department and Dr. Celia Goodson, Civil Service Medical Examiner.

Shannon Hall called the meeting to order and stated the first order of business is to elect a Chair and Vice-Chair for the In Line of Duty Committee.

Rita Roberts-Turner nominated Christine Bradley for Chair of the In Line of Duty Committee. Edna Jones seconded. A vote was taken on the nomination for Committee Chair and was approved unanimously by the Committee.

Edna Jones nominated W. Todd Henry for Vice-Chair of the In Line of Duty Committee. Christine Bradley seconded. A vote was taken on the nomination for Committee Vice-Chair and was approved unanimously by the Committee.

# **BENEFIT BOARD ITEMS**

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

1. In line of duty medical care request – Employee from Metropolitan Nashville Public Schools.

Shannon Hall reported to the Committee that this item was deferred from the last In Line of Duty Committee meeting.

Tracy Petty, Alternative Service Concepts, (ASC), reported to the Committee that the overall issue is whether or not does Metro want to adopt the new statutory language regarding cumulative trauma injuries (carpel tunnel syndrome), where the treating physician has to state whether or not the condition is work related. She stated that at the last Committee meeting, it was requested that ASC ask the treating physician again whether or not it is work related and that information is being presented today. Ms. Petty stated that the treating physician still indicates that it is not an on the job injury. She also stated that the employee submitted a statement from an internal medicine physician indicating that it is an on the job injury and may not also be aware of the changes to the law.

Tracy Petty reviewed what the new law states, “a new section is added to reiterate that cumulative trauma injuries, hearing loss, carpel tunnel syndrome and other repetitive motion injuries are not occupational diseases unless such conditions arose primarily out of and in the course of the employment. The opinion of the authorized treating physician will be entitled to a presumption of correctness on the issue of causation, but may be rebutted by a preponderance of the evidence.”

Nicki Eke, Legal Department, stated that Metro uses workers compensation as a guide but in this case you have a specific statutory provision enacted by the state. She stated that ultimately what is before the Committee is two opinions from different physicians and it is the duty of the Committee to decide which one is more credible.

1. In line of duty medical care request – Employee from Metropolitan Nashville Public Schools. (continued)

The Committee discussed the specialties/credentials of the physicians, (treating physician, hand specialist and second opinion, internal medicine)

Dr. Celia Goodson gave an overview of each physician’s specialty. She stated that you may go with the presumption that the hand specialist (treating physician) is correct, unless there is medical evidence to the contrary, or you may want to get another opinion from the same specialty since there are conflicting opinions.

Edna Jones moved to uphold the denial based on the treating physician’s opinion. Rita Roberts-Turner seconded and the Committee approved without objection.

2. In line of duty medical care request – Employee from the Fire Department.

Shannon Hall stated that this is also a case that was held over from the last In Line of Duty Committee meeting. She also that this case is a similar set of circumstances as item 1.

Tracy Petty and Lisa Corley were present. Tracy Petty stated that ASC was asked to go back to the treating physician to see if the treating physician is basing their opinion on the statutory language. She stated that the physician has indicated that it would be compensable under the old law, but is not under the new law. Ms. Petty stated that ASC needs guidance on these types of cases regarding whether or not to use the new law as a guide.

There was discussion regarding the physicians giving an opinion based on their medical review and the Board deciding whether or not it is injury on duty.

Nicki Eke, Legal Department, stated that ultimately it is up to the Board to determine based on the complete record whether or not by a preponderance of the evidence the injury arose out of or in the course of employment. She stated the physician’s opinions are for guidance.

There was discussion of the new law and using it as a guide to make determinations.

Tracy Petty also noted that the employee’s job descriptions are also sent to the physicians.

Shannon Hall clarified one of the reasons ASC is seeking guidance. She stated that the Board has authorized for all initial determinations to be made by ASC and they need guidance as to what standard they should be using to determine compensability for these types of cases.

There was further discussion of the physician’s role, what to ask of the physicians and following the current law/statute.

Todd Henry moved that the Board have Metro’s IOD third party administrator (currently ASC) use the new worker compensation statute on gradual injury claims as a loose guide for initial IOD medical care determinations. Rita Roberts-Turner seconded and the Committee approved without objection.

Edna Jones moved to uphold the denial based on the criteria of the law. Rita Roberts-Turner seconded and the Committee approved without objection.

3. In line of duty medical care request – Employee from Police Department.

Shannon Hall reported to the Committee that this case has previously been before the Committee. She stated that the initial injury (fall) was deemed compensable by ASC, however, the cause of the injury (seizure) was not based on medical history. Ms. Hall stated that as a part of the ongoing compensable treatment, ASC has decided to discontinue the course of care and the individual is appealing that decision.

3. In line of duty medical care request – Employee from Police Department. (continued)

Tracy Petty and Tracy Patterson were present. Tracy Petty reported to the Committee that the care for the initial injury was stopped based on medical reports from the treating physicians citing various diagnoses/issues for the ongoing pain that are not work related.

After review of the medical and the basis for the denial, Edna Jones moved to uphold the denial. Rita Roberts-Turner seconded and the Committee approved with Todd Henry abstaining.

4. In line of duty medical care request – Employee from Police Department.

Tracy Petty and Tracy Patterson were present.

The individual was also present.

Tracy Petty reported to the Committee that the individual filed a claim citing increased stress related to work related activities. Ms. Petty stated that the individual has been diagnosed with post- traumatic stress disorder by a department mandated psychologist and a personal psychiatrist. Ms. Petty stated that upon review of the medical record and an interview, a denial was issued as cumulative stress and usual stress experienced by personnel in the same position does not meet the criteria for an injury on duty stress claim.

Nicki Eke, Legal Department, stated that there must be a specific incident of stress that the injury must be caused by an identifiable stressful work related event producing a sudden mental stimulus such as fright, shock or excessive or unexpected anxiety that the stress produced must not be usual stress, but must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type of duty. She also noted that it can not be gradual.

Tracy Petty stated that the medical record indicates that it is cumulative.

The individual addressed the Committee regarding their job history.

Tracy Petty reviewed the physician’s statement from the department mandated psychologist visit.

There was discussion of the individual’s employment.

A Police Department representative addressed the Committee stating that they support ASC’s recommendation. He also stated that the employee was unable to provide any information in an attempt to verify/obtain information to certain types of calls for service. He also noted that after his employment with Metro, he was briefly employed by the Lebanon Police Department.

Edna Jones moved to uphold the denial of the claim based on the criteria established for post-traumatic stress disorders.

There was some discussion of any type of services available to the individual and Todd Henry stated that the individual will be offered police advocacy support services (PASS) services that are available even though he is no longer employed. Todd Henry also seconded the motion.

After further discussion of the criteria for stress claims, Rita Roberts-Turner asked the employee if there was one specific event that they can reacall and they stated no.

A vote was taken on the motion to uphold the denial and was approved with Christine Bradley abstaining.

5. In line of duty medical care – Employee from Health Department.

Tracy Petty and Vickie Hampton were present. Tracy Petty stated that the individual filed a claim citing an injury (neck pain) that their normal office and clerical duties were causing. Ms. Petty stated

5. In line of duty medical care – Employee from Health Department. (continued)

that the employee sought care and had surgery prior to reporting this as injury on duty. Ms. Petty further stated that a statement from the Health Department, the 101 form and medical information are attached. She stated that the claim was denied based on the employee did not advise the issue was work related and the physician can not state that is was caused by her job without an actual injury/causation. Ms. Petty also stated that an increase in pain is not compensable without structural change.

The employee was present and addressed the Board regarding the claim. She also distributed an affidavit from a co-worker regarding the work area and their injury on duty.

Edna Jones moved to uphold the denial of the claim. Rita Roberts-Turner seconded and the Committee approved without objection.

Daniel Marshall, attorney, for the employee on item 1. In line of duty medical care request – Employee from Metropolitan Nashville Public Schools, requested to address the Committee.

It was noted that Mr. Marshall arrived during discussions of item 1 and the employee was present as well.

Shannon Hall reviewed the recommendation of the appeal with the individual and their attorney.

Daniel Marshall stated that when he arrived at the meeting he was not aware that his client was being discussed.

Nicki Eke, Legal Department, advised that he should be allowed to address the Committee and then based on what is heard, the Committee can determine whether the Committee would like to take any further action.

Daniel Marshall reviewed the medical information that was supplied at the last Committee meeting regarding the claim.

There was some discussion of Mr. Marshall receiving notice of the meeting and the information presented today.

There was discussion of the information initially supplied to the treating physician and the second opinion by the treating physician.

Tracy Petty confirmed that the revised job description was supplied to the treating physician following the last Committee meeting and the treating physician’s opinion has not changed.

With nothing further presented the meeting was adjourned at 2:08 p.m.

ATTEST: APPROVED:

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Mrs. Rita Roberts-Turner, Director Mrs. Christine Bradley, Chair

Human Resources In Line of Duty Committee