

MINUTES

METROPOLITAN EMPLOYEE BENEFIT BOARD

IN LINE OF DUTY COMMITTEE

June 15, 2015

The Metropolitan Employee Benefit Board's In Line of Duty Committee met on Monday, June 15, 2015 in the Sonny West Conference Room, Howard Office Building, 700 2nd Avenue North, Nashville, Tennessee, at approximately 9:30 a.m.

Committee Members present: Chair: Jerry Hall; Vice-Chair: Veronica Frazier; Members Charles D. Clariday and *Richard Riebeling.

Benefit Board Member: B.R. Hall, Sr.

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

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

1. In line of duty medical care appeal discussion – Pensioner from the Police Department.

Jamie Summers was present for the pensioner.

Vickie Hampton, Alternative Service Concepts, (ASC), reviewed the claim with the Committee. She stated that the pensioner has an approved claim on file. She stated that the pensioner also developed an illness that was confirmed to be related to a medication taken for the approved claim. She stated that the pensioner is asking the Committee to approve treatment that is not Federal Drug Administration (FDA) approved.

The Committee reviewed the information presented regarding the treatment.

*Denotes the arrival of Richard Riebeling.

Jamie Summers stated that there is a part of the treatment program that is not FDA approved. She reviewed the individual's current conditions and treatments, and also stated that this treatment may help with quality of life and avoid amputation.

There was discussion of this request coming before the Committee because the treatment is not FDA approved and there is no relief on the cost, the potential cost savings if the treatment is approved versus the condition worsening.

Doug Clariday moved for approval of the in line of duty medical care appeal. Richard Riebeling seconded and the Committee approved without objection.

2. In line of duty medical care appeal – Employee from Sheriff's Office.

Vickie Hampton reviewed the claim. She stated that after investigation by the Sheriff's Office of the events that caused the injury the claim was denied. She also stated that idiopathic injuries are not covered.

Richard Riebeling moved to uphold ASC's denial of the in line of duty medical care appeal. Veronica Frazier seconded and the Committee approved without objection.

3. In line of duty medical care appeal – Employee from Metropolitan Nashville Public Schools.

The employee was present.

Vickie Hampton, ASC, reviewed the claim. She stated that she treated at the In Line of Duty (IOD),

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

Clinic for the incident, however, the treating physician did not feel that it was work related. She stated that she had an additional complaint that the treating physician did not feel was work related either. She treated with her primary physician and had an MRI that showed a partial rotator cuff tear. Ms. Hampton stated that the treating physician indicated that there is no acute injury that would have caused the tear and the claim was denied.

The employee was present and questioned how the claim is denied and stated she had additional medical information.

Vickie Hampton stated that the denial is based on what the treating physician stated regarding how the injury occurred (turning the wheel of the bus will not tear your shoulder in that one event).

Vickie Hampton reviewed a letter from her primary physician. Ms. Hampton stated that the additional medical information does not change ASC's opinion because it says nothing about the diagnosis being related to the incident.

After some discussion of wear and tear, using the workers comp guideline that states that the treating physician's opinion carries more weight, and additional medical information, Veronica Frazier moved to uphold ASC's denial of the in line of duty medical care appeal. Richard Riebeling seconded and the Committee approved with Doug Clariday opposing.

4. In line of duty medical care appeal – Employee from Metro Action Commission.

The employee was present.

Jerry Hall noted that there is additional medical information.

Vickie Hampton reviewed the claim. She stated that she has had two incidents within a month of each other, reported the incidents at the same time and never sought treatment. She stated that about a month later she presented at the IOD Clinic and given the timeframe of the onset of pain, the treating physician stated that the condition is related to a personal condition and not an injury on duty. Ms. Hampton stated that she has treated with her primary physician and noted that at the time of the incident she did have another job.

The employee addressed the Committee regarding the incident, going to the IOD Clinic, her job and her conditions.

There was some discussion regarding her additional medical conditions and what the medical history reflects with regards to a prior back injury.

Veronica Frazier moved to uphold ASC's denial of the in line of duty medical care appeal. Richard Riebeling seconded and the Committee approved with Doug Clariday opposing and Jerry Hall abstaining.

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

Vickie Hampton reviewed the claim. She stated that this individual initially came to Metro in 1994 as a recruit with a pre-existing condition and did not complete the academy. She stated that the individual continued to treat after maximum medical improvement and requested a second opinion because of continual pain. She stated that the individual has had surgeries based on the results of an MRI and one was covered under injury on duty and the other was not based on a causation letter received from the treating physician.

After some discussion of a previous notation in the medical record that indicated causation was work related and the most recent causation letter, Richard Riebeling moved to uphold ASC's denial of the in line of duty medical care appeal. Veronica Frazier seconded and the Committee approved with Doug Clariday opposing.

6. In line of duty medical care appeal – Employee from Metropolitan Nashville Public Schools.

Vickie Hampton reviewed the claim. She stated that the individual reported an incident, was treated, had surgery, was at maximum medical improvement and returned to work. She stated that recently the individual went back to the treating physician for pain where the injury occurred, however, the treating physician did not feel that this pain was related to the injury on duty and the claim was denied.

Richard Riebeling moved to uphold ASC's denial of the in line of duty medical care appeal. Veronica Frazier seconded and the Committee approved with Doug Clariday opposing.

7. In line of duty medical care appeal – Employee from Metropolitan Nashville Public Schools.

Vickie Hampton reviewed the claim. She stated that the individual was treated for the incident and was diagnosed with a condition related to the eye. She stated that the individual returned a few weeks later with a new complaint related to a different body part. She stated that the department submitted an amended 101Form so the individual could be seen at the clinic. Ms. Hampton stated that after review of the medical record and witness statements to the initial incident the treating physician did not think it is work related due to the onset of the pain.

After some discussion of the incident and the extent of the injury, Richard Riebeling moved to overturn ASC's recommendation to deny and approve the in line of duty medical care appeal. Doug Clariday seconded and the Committee approved without objection.

8. In line of duty medical care appeal – Employee from Metropolitan Nashville Public Schools.

The employee was present.

Vickie Hampton reviewed the claim. She stated that the individual was driving an older bus filling in in another department when the incident occurred. She stated that he reported pain and was seen at General Hospital ER and then by an orthopedist who indicated that it was not work related.

The employee addressed the Committee regarding his job duties the day of the incident and diagnosis from the treating physician.

After some discussion of the medical record that indicates he had no recollection of the injury, Veronica Frazier moved to uphold ASC's denial of the in line of duty medical care appeal. Richard Riebeling seconded and the Committee approved with Doug Clariday opposing.

9. In line of duty medical care appeal – Employee from Sheriff's Office.

Vickie Hampton reviewed the claim. She stated that the individual was stung by an insect (wasp) and did not have their epi-pen. She stated the individual was treated at Vanderbilt with an epi-pen and additional medications, and discharged with no signs or history of hypertension known. She stated one week later the individual presented to the emergency room with symptoms of mini strokes and an elevated blood pressure. Ms. Hampton stated that the individual was seen by an allergist and his diagnosis (anaphylaxis) was presumed to be work related. She stated the individual then treated with their primary physician and was referred to a neurologist who indicated the high blood pressure was not related to the insect sting. She stated that the individual then treated with a cardiologist who also said it was not work related.

After some discussion of the medical record and lack of information showing a relation to the incident (sting), Veronica Frazier moved to uphold ASC's denial of the in line of duty medical care appeal. Richard Riebeling seconded and the Committee approved with Doug Clariday opposing.

10. In line of duty medical care appeal – Employee from the Water Department.

The employee was present.

Vickie Hampton reviewed the claim. She stated that the incident occurred while moving some filing

10. In line of duty medical care appeal – Employee from the Water Department. (continued)

cabinets at work. She stated the individual was seen by a specialist for several complaints (knee, back, shoulder and neck pain) and was released. She stated that it was determined by a specialist that the pains were not work related, it was arthritis. She stated that he indicated that he was not aware that he had arthritis.

The employee addressed the Committee regarding his regular job duties and what he was doing that day when the incident occurred and a statement from his physician. He also noted that he was following the instructions of an Assistant Director not in his department at the time of the incident and that an investigation showed that he did not have the proper equipment to do the job.

Vickie Hampton stated that all claims have been paid up to the point of where the physician stated it is not related to the incident. She also noted that arthritis can be aggravated, not caused by an injury.

The employee reviewed what the physicians statement says related to the pre-existing arthritis and aggravating the condition.

The Committee discussed the individual being at maximum medical improvement from the initial injury, the likelihood of pre-existing arthritis and the incident aggravating the condition.

Riebeling moved to overturn ASC's recommendation to deny and approve the in line of duty medical care appeal with the understanding that this may change based on any additional medical information. Doug Clariday seconded and the Committee approved without objection.

11. In line of duty medical care appeal – Employee from the Fire Department.

The employee and his attorney Dewey Branstetter were present.

Vickie Hampton reviewed the claim. She stated that effective January 1st, ASC has been applying the presumption as it is actually written by using more restrictive guidelines as instructed by Human Resources for these cases. She stated that ASC gathers the pre-employment record, job description, and 10 years of medical records for review by an outside vendor, ReviewMed, for an opinion by a specialist in that field (heart or cancer). She stated that the individual will not sign the release for the medical records so they can be reviewed.

Dewey Branstetter, attorney, stated that he has been in discussions with the Legal Department regarding to what extent can you obtain this type of information and not apply the presumption. He stated that there have been some questions regarding legal opinions that have been given that say there has to be a causal connection between the incident/injury/condition and employment. He stated that it is his position that the law is very clear as it says that you have to show competent medical evidence to the contrary and no causal connection between the work and condition. He stated that he did advise him not to sign the release and is only trying to determine what an employee is obligated to do. He also stated that the individual received a letter informing him that his injury on duty leave was denied based on him not signing the form. Mr. Branstetter stated that you could probably do that if this was not a presumption case. He stated that is clearly contrary to what the presumption says (you can not say that if you don't return something we are going to deny you IOD). He stated that he is entitled to the presumption in the absence of there being some evidence to the contrary. Mr. Branstetter stated they are asking that the decision made by ASC to deny be overturned based on there being no medical evidence to show that it is not job related. He also stated that the requirements under HIPAA would allow Metro to request this information whether or not he signs a release. He stated that the issue there is that the doctor can only provide the minimum amount of information necessary in order to make the determination of IOD or some other cause or condition. He stated that they are trying to get a handle on what is overbroad and evasive into someones privacy and under HIPAA that is not allowed. He also noted what federal regulations require for work related injuries, (the minimum necessary to accomplish the workers comp (IOD) purpose) and stated that protects him from having to disclose information so broad.

Nicki Eke, Legal Department, stated that the issue is an employee refusing to release medical

11. In line of duty medical care appeal – Employee from the Fire Department. (continued)

information. She stated that this Board is still entitled to relevant medical information that will allow the Board to determine whether an injury is a situation where the injury arises in and out of the course of employment even if it is a presumption case. She stated that the fact that the presumption applies doesn't prevent the Board from obtaining what evidence is relevant. She stated that even if the employee has established that the presumption applies the employee can not deny the Board evidence that will allow the Board to evaluate whether the presumption will be rebutted. She stated that if the employee refuses to provide that information the Board does not have full information to evaluate the case and you can deny the request.

There was discussion of the Board being privy to that information and Metro/ASC obtaining that information.

Nicki Eke stated that there are provisions of HIPAA that do not apply to workers comp type cases, however, if Metro goes to a medical provider and just ask the provider to release the records of the patient that provider will not do that. She stated that Metro has to have the proper authorization to obtain that information.

Vickie Hampton stated that there is a lot of resistance when ASC attempts to collect medical records and that is why the signature is required.

The employee stated that he does not have an issue with doing that as long as the information is just related to the heart or anything related to that.

There was discussion of whether or not ASC could specify to the request and Vickie Hampton stated that ASC can not say what is relevant.

Dewey Branstetter cited federal regulations that would give Metro the authority to request the records.

Steve Cain, Human Resources, stated that the information does need to be obtained, if not, they can not determine if there is any competent medical information to determine if it happened outside the job. He stated that it is up to the physician's contracted by Metro, not the employees. He also stated that after review and advice by the Legal Department, Human Resources proceeded with the 10 year medical background requirement.

After some discussion of Metro's protocol, federal regulations and further clarification from the Legal Department that Metro can request that information in order to make a determination, Richard Riebeling moved to defer this item for one month pending further review by the Legal Department. Doug Clariday seconded.

Mark Young, union representative, was present and addressed the Committee on how employees should proceed when asked to sign a release.

It was noted that it is at the discretion of the employee whether or not to sign the medical release form.

After some discussion of the medical release form, a vote was taken on the motion to defer this item for one month and the Committee approved without objection.

12. In line of duty medical care appeal – Employee from the Fire Department.

The employee was present.

Dewey Branstetter, attorney, was present.

Mark Young was present and had additional information for the Committee to review.

12. In line of duty medical care appeal – Employee from the Fire Department.

Vickie Hampton reviewed the claim. She stated that the individual filed a cancer presumption claim and it was denied because of his classification. She stated that he presented some documentation in support of his appeal and ASC reached out to the Fire Department to confirm his job description and exposures. She stated that information was presented back to his treating physician however the treating physician still stated that it was not work related.

The employee addressed the Committee regarding the appeal. He stated that he was not aware of the letter from his physician.

There was some discussion of his classification and exposures.

Dewey Branstetter reviewed what the form asks of the physician and stated that he does not think that is substantial medical evidence to the contrary to rebut the presumption. He also noted that there is not an explanation.

Veronica Frazier moved to overturn ASC's recommendation to deny and approve the in line of duty medical care appeal. Doug Clariday seconded.

The motion was amended with the understanding that this may change based on any additional medical information. A vote was taken on the motion to overturn ASC's recommendation to deny and approve the in line of duty medical care appeal and the Committee approved without objection.

13. In line of duty medical care appeal discussion – Pensioner from the Police Department.

This item was deferred at the request of the pensioner's attorney.

With nothing further presented the meeting was adjourned at 11:10 a.m.

ATTEST:

APPROVED:

**Ms. Veronica T. Frazier, Director
Human Resources**

**Mr. Jerry Hall, Chair
In Line of Duty Committee**