

MINUTES

METROPOLITAN EMPLOYEE BENEFIT BOARD

IN LINE OF DUTY COMMITTEE

November 17, 2015

The Metropolitan Employee Benefit Board's In Line of Duty Committee met on Tuesday, November 17, 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: Christine Bradley and Charles D. Clariday.

Others present: Christina Hickey, Metro Human Resources, Nicki Eke, Attorney, Metro Legal Department, Claire Cobb Civil Service Medical Examiner's Office.

Jerry Hall called the meeting to order and informed the audience that this Committee only makes recommendations to the full Board.

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.

Vickie Hampton, Alternative Service Concepts, (ASC), reviewed the claim with the Committee. She stated that the employee was helping with an unruly patient and was subsequently injured (scratched) and treated for a skin infection on the finger. She stated that the employee was treated at the in line of duty (IOD) clinic and the physician felt that it was not work related as there was no open wound and the employee was wearing gloves. She stated that the employee was given an antibiotic, which they had an allergic reaction to and could not take their vacation time as scheduled. She stated that the employee requested that the time off be changed to in line of duty and the department denied the request.

After some discussion of the medication taken and whether or not the employee's physician would have prescribed the same and the department not allowing the employee to change their scheduled vacation Christine Bradley moved to uphold ASC's recommendation to deny the claim. Veronica Frazier seconded and the Committee approved with Doug Clariday opposing and Jerry Hall opposing.

2. In line of duty medical care appeal – Employee from the Parks Department.

The employee was present.

James Gray, Safety Coordinator, Parks Department was also present.

Vickie Hampton reviewed the claim with the Committee. She stated that the employee has a previous accepted IOD claim for her right index finger and right thumb. She had surgery and was released at maximum medical improvement (MMI). Ms. Hampton stated that four years later the employee requested to be seen for right hand pain and the physician stated that it was not work related. She stated that the employee filed a new 101 form for her right hand and wrist and the physician at the IOD clinic diagnosed her with carpal tunnel syndrome and indicated it was not work related.

The employee addressed the Committee regarding her duties.

James Gray also addressed the Committee regarding her duties and other employees that have had carpal tunnel surgery within the Parks Department and other Metro departments.

The Committee discussed the employees initial diagnosis (trigger thumb), which is different from carpal tunnel.

The Committee discussed contributing factors to these types of conditions, past precedent, and any legal changes that may apply.

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

Nicki Eke, Legal Department, stated that the Committee has to look at the evidence and determine whether it has been shown that this particular injury arose out of or in the course of employment. She also stated that it appears that there is only one medical opinion in the file related to causation. Ms. Eke also stated that the employee ultimately has the burden of proving the claim.

Christine Bradley moved to approve the claim as in line of duty. Veronica Frazier seconded and the Committee approved without objection.

3. In line of duty medical care appeal – Pensioner from the Fire Department.

The pensioner was present.

Mark Young union representative was present.

Vickie Hampton, ASC, reviewed the claim. She stated that the pensioner has a chronic obstructive pulmonary disease (COPD) claim that was accepted in 1984, prior to ASC's handling of injury on duty claims. She stated that the individual is not able to walk more than 40 feet due to the COPD and other health issues. She stated that in 2012 the pensioner's physicians felt that a powered mobility device was a medical necessity and a 25.125 inch power wheelchair was purchased for the individual. She also stated that medical necessity letters were written for modifications (walk in shower and widening the bathroom door from 32 to 36 inches to accommodate the chair) to the pensioner's home, which was also done. Ms. Hampton stated that he is now requesting to have his bedroom door widened, which was denied based on it not being a medical necessity.

The pensioner addressed the Committee regarding the request for the chair.

There was some discussion regarding what the Americans with Disabilities Act (ADA) states regarding doorways, the cost of a new chair and what extent is required by Metro regarding adjustments to a dwelling for an injury on duty claim.

Nicki Eke, Legal Department, informed the Committee that to the extent that it is medically necessary for them to ambulate based on the medical condition that is IOD.

Vickie Hampton stated that the previous Civil Service Medical Examiner did not think it was medical necessity.

Nicki Eke, Legal Department, stated that modification of the home may not be medically necessary if there are other accommodations that will address the issue.

There was discussion that the pensioner was not using the chair today and he admitted to not having used it in about two years.

Doug Clariday moved to approve the claim as in line of duty. Jerry Hall seconded and the motion failed with Doug Clariday and Jerry Hall in favor and Veronica Frazier and Christine Bradley opposing.

It was noted that this item will go to the Board without a recommendation from the Committee.

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

Jerry Hall stated that the pensioner requested to defer this item.

Doug Clariday moved to defer this item. Christine Bradley seconded and the Committee approved without objection.

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

Mark Young, union representative, was present on behalf of the employee.

Vickie Hampton, ASC, reviewed the claim. She stated that the employee was prescribed blood pressure medication in February of 2014 and filed a hypertension 101 July 2015. She stated that after review of the medical records it was opined that the record demonstrated evidence of a sedentary lifestyle where diet and exercise were recommended on multiple occasions over a period of time and show that the diagnosis of hypertension was not work related.

There was discussion regarding the individual's weight gain and job duties.

Doug Clariday moved to approve this claim as in line of duty.

After some discussion of the presumption and rebutting that presumption, and the medical opinion that the condition arose independent of the scope of employment,

Jerry Hall seconded the motion to approve the claim as in line of duty and failed with Doug Clariday and Jerry Hall in favor and Veronica Frazier and Christine Bradley opposing.

Mark Young requested to defer this item to allow for time to prepare for the Board meeting.

The Committee was in agreement that this item will go to the January Board for a vote with no recommendation from the Committee.

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

The employee and his attorney, Daphne Davis were present.

Vickie Hampton, ASC, reviewed the claim. She stated that at the time of the incident the employee was working as a student resource officer, (SRO), when he became ill and was diagnosed with hypertension at the IOD clinic. She stated that after review of the medical records the IOD clinic physician and the employee's primary care physician both stated that the current diagnosis of hypertension was not work related.

Daphne Davis, attorney, stated that he has been treated for hypertension and have documents related to that.

It was noted that there are no 101 forms on file for hypertension.

Doug Clariday moved to defer this claim to the next IOD Committee meeting.

After some discussion of obtaining the records of the physicals from the Health department, Jerry Hall seconded the motion and the Committee approved without objection.

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

Vickie Hampton passed out some additional information.

The employee was present and also had some additional information.

The Committee was in agreement to defer this item to the next meeting based on the new information.

Jerry Hall moved to defer this item to the next meeting. Christine Bradley seconded and the Committee approved without objection.

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

Vickie Hampton, ASC, reviewed the claim. She stated that the employee claimed verbal abuse by the supervisor and filed a stress claim. Ms. Hampton stated that it does not meet the psychological

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

stress criteria and in addition, IOD is not the proper venue for what appears to be HR issues. Jerry Hall moved to uphold ASC's recommendation to deny the claim. Doug Clariday seconded and the Committee approved without objection.

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

Vickie Hampton, ASC, reviewed the claim. She stated that the employee filed an EEOC claim against her department claiming racial discrimination and a hostile work environment. Ms. Hampton stated that after the EEOC investigation, it was determined that there was not merit to her complaint and found that she in fact harassed her co-workers. She stated that after the EEOC findings, the employee filed a stress claim and it was denied as it did not meet Metro's criteria for psychological stress. She also stated that IOD is not the proper venue for what appears to be HR issues.

Veronica Frazier moved to uphold ASC's recommendation to deny the claim. Christine Bradley seconded and the Committee approved without objection.

With nothing further presented the meeting was adjourned at 10:24 a.m.

ATTEST:

APPROVED:

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

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