

MINUTES

METROPOLITAN EMPLOYEE BENEFIT BOARD

IN LINE OF DUTY COMMITTEE

February 3, 2020

The Metropolitan Employee Benefit Board's In Line of Duty Committee met on Monday, February 3, 2020 in the Sonny West Conference Room, Howard Office Building, 700 2nd Avenue South, Nashville, Tennessee, at approximately 9:28 a.m.

Committee Members present: Chair: Stacey Rucker; Vice-Chair: Christine Bradley; Members: Harold W. Finch, II. Alternate: Edna J. Jones

Member Shannon B. Hall was unable to be present.

Benefit Board Member(s) present: B.R. Hall, Sr.

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

The meeting was called to order and Christina Hickey stated that the first order of business is to elect the Committee Chair and opened the floor to nominations.

Christine Bradley nominated Stacey Rucker for Committee Chair. Harold Finch seconded. A vote was taken on the nomination and was approved without objection.

Committee Chair Stacey Rucker stated that the decisions of this Committee are only recommendations to the full Board for consideration. He also stated that any information that Alternative Service Concepts, (ASC), shares is simply what they have received from the medical provider.

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

1. In line of duty medical care appeal – Former employee from Public Works.

The former employee was not present.

Tracy Harvey, ASC, was present.

Tracy Harvey reviewed the claim with the Committee. She stated the individual passed out at work and fell to the floor. She stated that it was opined that this was a case of syncope and could be related to any one of the medications being taken. Ms. Harvey also stated that as far as the law goes, when the cause of a fall is due to some condition personal to the employee, and is not causally related to some hazard incident to the condition of the employment, injury resulting therefrom is not compensable. She also noted that if she had hit the desk falling down and struck her head that would have been work related, but the floor is not considered a risk to the employment.

Scott McCormick, Public Works, was present and discussed the incident.

After some discussion regarding the temperature in the area at the time of the incident and if any other employees had any issues, Christine Bradley moved to uphold the denial of the claim by ASC. Harold Finch seconded and the Committee approved with Stacey Rucker opposed.

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

The employee was present.

Mark Young, union rep, was also present.

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

Tracy Harvey reviewed the claim with the Committee. She stated that a 101 Form was completed, however, in order for hernia or rupture resulting from injury by accident arising out of and in the course of the employee's employment to be covered there are five specific criteria that have to be met. She stated that 1) there was an injury resulting in hernia or rupture; 2) the hernia or rupture appeared suddenly; 3) it was accompanied by pain; 4) the hernia or rupture immediately followed the accident; and 5) the hernia or rupture did not exist prior to the accident for which compensation is claimed. She stated that there are two issues with this claim as there is no diagnosis immediately following the incident and the proper procedure was not followed.

The employee described the incident and how he was advised by his physician to go ahead and have the surgery, which he did using his personal insurance. He also indicated that he wanted to get his sick/vacation time back.

Mark Young stated that there is no dispute that some of the procedures were not exactly followed in filing the claim, however, there is no denying that it is job related.

There was some discussion regarding the medical record and there being no diagnosis of a hernia when the 101 was filed.

Dr. Gill Wright, Civil Service Medical Examiner, (CSME), described what a hernia is.

It was noted that this is not the venue to discuss recouping the leave he used.

After further discussion of the record, procedure and the lag time in seeking treatment, Harold Finch moved to uphold the denial of the claim by ASC. Christine Bradley seconded and the Committee approved with Stacey Rucker opposed.

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

The pensioner and his attorney, Dewey Branstetter were present.

Tracy Harvey reviewed the claim with the Committee. She stated that this case pertains to a presumption claim that was filed in March of 2019 with the injury date being December of 2018. She stated that the presumption protocol was initiated and the medical records were sent to Reliable Review Services, (RRS) for review. She stated that it was determined that it could not be determined to have arose primarily from employment. She also stated that the risk for bladder cancer in fire fighters is 1.12x and the increased risk for bladder cancer in smokers is 4.1x, therefore smoking is the most significant risk factor present.

Dewey Branstetter addressed the Committee regarding his employment, risk factors, his diagnosis and the cancer presumption. He also distributed a fact sheet regarding firefighters and cancer.

The pensioner addressed the Committee and requested that he be given back his sick and vacation days.

Dewey Branstetter stated that they are requesting a determination regarding the in line of duty injury under the presumption.

There was some discussion regarding the presumption and the definition of firefighter.

Nicki Eke, Legal Department, reviewed what the presumption states and the definition of firefighter.

There was some discussion regarding the determination to deny the claim.

3. In line of duty medical care appeal – Pensioner from Fire Department. (continued)

Tracy Harvey reviewed the process and stated that RRS indicated that his smoking is the primary factor.

There was some discussion regarding the pensioner's smoking, work history, risk factors and the presumption.

It was also noted that this is not the venue to discuss recouping the leave he used.

Christine Bradley moved to overturn the denial of the claim by ASC. Stacey Rucker seconded and the Committee approved without objection.

It was asked if Dr. Gill Wright could gauge the percentages.

Dr. Gill Wright stated that he does disagree on the opinion of what is competent medical in statistics. He also stated that in this situation he agrees with the Committee's decision.

Nicki Eke, Legal Department stated that in these presumption cases the Board has to decide what weight to give the medical record and what is competent medical information.

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

The employee was present.

Tracy Harvey reviewed the claim with the Committee. She stated that the employee's blood pressure spiked after fighting a fire and was diagnosed with syncope and elevated blood pressure with out a diagnosis of hypertension. She stated that the initial charges were paid, however, the claim was denied based on it not being a heart related diagnosis for it to fall under the presumption.

The employee addressed the Committee regarding the incident.

Dr. Gill Wright reviewed the diagnosis from the hospital and any other potential issues from this incident.

There was some discussion regarding the status of his claims and if all have been paid.

Tracy Harvey noted that there have been a few outstanding charges and they are being taken care of.

After some discussion regarding not having a presumption claim already on file and that if something else happens he can file again, Harold Finch moved to uphold the denial of the claim by ASC. Christine Bradley seconded and the Committee approved with Stacey Rucker opposed.

Tracy Harvey also stated that he had a similar incident in 2015 and it was taken care of as well.

It was the opinion of some Committee members that this was caused by the fire and there was some discussion that directly there is nothing to vote on going forward, as he was able to return to full duty with no expected treatment.

There was also some discussion that if he had followed the proper process and the injury on duty claim is approved, he would receive the days he used back, but in this case since light duty was offered and it was refused he will use his own time.

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

This item was withdrawn.

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

The pensioner was present.

Tracy Harvey reviewed the claim with the Committee. She stated that May of 2019 he filed a claim for hearing loss with an injury date of May 2004. She stated that the medical record was sent to the CSME for review and he indicated that there was hearing loss at the time of his pre-employment physical and two other issues noted in the record.

The pensioner addressed the Committee regarding the medical record and indicated that it was flawed, his physicals and work environment.

Dr. Gill Wright discussed his opinion that it is not work related with the Committee. He stated there was some hearing loss when he started. He also reviewed some of his other conditions of the ear, (tube dysfunction and Menieres), causes of those conditions and when he was diagnosed. He also noted that these conditions are not related to any particular job or exposure.

Stacey Rucker moved to overturn the denial of the claim by ASC.

There was some discussion regarding who made the diagnosis of Menieres and exposure to loud noises and getting a second opinion from the ear nose and throat specialist.

Harold Finch seconded and asked that the motion be amended to allow for further discussion at the Board.

Nicki Eke, Legal Department, stated that this item will go to the Board with or without a recommendation.

A vote was taken on the motion and was approved with Christine Bradley opposed.

There was further discussion regarding how hearing tests are conducted during physicals.

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

The employee was not present.

Tracy Harvey reviewed the claim with the Committee. She stated that while performing her administrative duties she felt chest pain, tongue numbness and felt lightheaded. She stated the 101 was filled out however she was diagnosed with aphasia, which is not a work-related diagnosis. She did note that she has an active high blood pressure and high cholesterol claim on file.

There was some discussion regarding the diagnosis and the claims on file.

Dr. Gill Wright stated that her blood pressure was elevated, however she did not have a stroke or any other cause.

Christine Bradley moved to uphold the denial of the claim by ASC. Harold Finch seconded and the Committee approved with Stacey Rucker opposed.

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

The employee was not present.

Tracy Harvey reviewed the claim with the Committee. She stated that he filed a 101 stating that he felt a strain in his lower back when getting up from his chair. Ms. Harvey stated that mere presence at a place where injury takes place is not sufficient to make injury compensable unless injury is related to the

8. In line of duty medical care appeal – Employee from Police Department. (continued)

employment. She stated that he indicated that it is from wearing his duty belt. She stated that after it was reviewed the claim was denied based on that it did not contribute more than 50% in causing the injury.

Harold Finch moved to uphold the denial of the claim by ASC. Christine Bradley seconded and the Committee approved with Stacey Rucker opposed.

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

The employee was present.

Tracy Harvey reviewed the claim with the Committee. She stated the individual fell and sustained an injury to her left leg/knee. She also stated the 101 was filled out the same day. Ms. Harvey stated that during the recorded interview, the employee indicated that she just stumbled and there was nothing on the floor. She stated that the claim was denied as there was no risk inherent to the employment. She also noted that case law cites that just walking and falling with no hazard is not covered.

The employee addressed the Committee regarding the incident, her job duties and the injury.

The Committee reviewed what the law states regarding falls and that when an injury happens it is presumed to be work related, you get treatment and ASC wont know until they get the determination that it is not, they will not pay going forward.

Vickie Hampton, ASC, stated that it is really a case by case scenario. She stated there are instances where some things have been paid for such as syncope.

There was discussion regarding payments up to the denial.

Nicki Eke, Legal Department, stated that she would need to obtain and review the IOD Policy adopted by the Benefit Board to determine how the Policy addresses the issue of payments up to denial.

Harold Finch moved to uphold the denial of the claim by ASC. This motion died due to lack of a second.

After further discussion that the claims are paid up to the time of denial, finding out exactly what the policy states regarding payments and using workers compensation as a guide, Christine Bradley recommended sending this to the Board without a recommendation. Harold Finch seconded and the Committee approved without objection.

With nothing further presented the meeting was adjourned at 11:52 a.m.

ATTEST:

APPROVED:

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

**Stacey Rucker, Chair
In Line of Duty Committee**