

## MINUTES

### METROPOLITAN EMPLOYEE BENEFIT BOARD

#### IN LINE OF DUTY COMMITTEE

March 2, 2022

The Metropolitan Employee Benefit Board's In Line of Duty Committee met on Wednesday, March 2, 2022 in the Sonny West Conference Room, Howard Office Building, 700 2<sup>nd</sup> Avenue South, Nashville, Tennessee at approximately 9:32 a.m.

Committee Members present: Chair Harold Finch, II; Vice-Chair: Christine Bradley; Members: Shannon B. Hall and Jeremy Moseley. Alternates: Jonathan Puckett.

Benefit Board Members present: Edna Jones

Others present: Christina Hickey, Metro Human Resources, Nicki Eke, Attorney, Metro Legal Department, Vickie Hampton and Kimberly Jordan, Davies, and Dr. Gill Wright, Director of Health and Dr. Kenton Dodd, Civil Service Medical Examiner.

Election of Committee Chair and Vice-Chair.

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

Jeremy Moseley nominated Harold Finch for Committee Chair. Shannon Hall seconded. A vote was taken on the nomination for Chair and the Committee approved without objection.

Shannon Hall nominated Christine Bradley for Vice Chair. Harold Finch seconded. A vote was taken on the nomination for Vice-Chair 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.

Vickie Hampton and Kimberly Jordan, Davies, were present.

The employee and Dewey Branstetter, attorney, were present.

Vickie Hampton, Davies, reported to the Committee that this item has been deferred a couple of times in order to get additional medical information from the treating physician. She stated that after review of the additional medical information and after speaking with Dr. Gill Wright, the claim will now be covered under the cancer presumption.

Christine Bradley moved to approve the in line of duty medical care request.

As a point of clarification, no motion would need to be made as the initial determination has been changed.

Dewey Branstetter, attorney, asked the Committee if item 6 could be taken out of order.

This item was taken out of order without objection.

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

A Fire Union representative was present on behalf of the employee.

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

Vickie Hampton, Davies, reviewed the claim with the Committee. She stated that the employee filed a Covid claim and a fire inspector does not meet the qualifications for the Covid presumption.

Jamie Summers, Fire Department, stated that he is actually classified as an arson investigator.

Vickie Hampton reviewed the job classifications that are covered, (full time firefighter, paramedic, emergency medical technician, (EMT), and medical technician advanced), and stated unless there is something that says he has done acts under those classifications then Davies can not approve the claim.

Dewey Branstetter, attorney, stated that he goes on the scene of fires and interacts with the public. He also stated that he has all the requirements of firefighter and EMT and that he should be covered under the resolution that Metro adopted, (RS 2020-271), because of the nature of the job that he performs.

Clarification was requested regarding the issue that is before the Committee, what resolution is being referred to and that the presumption for Covid is a state law that outlines certain classifications that are covered as presumption in and for the cases of Covid.

Nicki Eke, Legal Department, stated the resolution being referred to is a memorializing resolution that's requesting to provide injury on duty leave to certain employees. She stated that if the person does not fall under the state law presumption, then the Board has to determine whether or not this particular occupational injury arose out of and in the course of employment.

It was concluded that the issue before the Committee is medical care and not leave and whether or not it can be tied to employment.

After some discussion regarding the employee's classifications and potential exposures, Shannon Hall moved to defer this item to the next Committee meeting. Christine Bradley seconded, and the Committee approved with Jeremy Moseley opposed.

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

Jeremy Moseley recused himself from discussions on this item.

The employee and Rob Martin were present.

Vickie Hampton, Davies, reviewed the claim with the Committee. She stated this is a sexual harassment claim that was filed citing stress and anxiety. She stated the claim was denied as this is not the venue for this type of claim.

There was discussion of some of the issues that are in the record, ongoing litigation, the claims of sexual harassment and no cited incidents in the record, the criteria for psychological injury on duty, and whether or not the Committee is equipped to consider this matter and just allowing it to play out in a court of law.

Rob Martin, addressed the Committee regarding the claim. He discussed the initial report made to the Police Department regarding sexual harassment citing specific incidents that led to her conditions, that her mental health treatment be covered, and that she be considered for a disability pension since she was forced to resign her position.

It was clarified that this is only for injury on duty medical only and not disability pension.

There was some discussion of the medical record that shows several disorders and that the criteria for psychological injury on duty has not been met.

Nicki Eke, Legal Department, stated that the issue before the Committee is the request for injury on duty

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

medical care. She stated that there is litigation going on and that is a separate forum and governed by separate laws. She stated the role of the Board is to make a determination based on the record for this individual of whether or not what they are seeking medical treatment for and the basis for seeking that medical treatment qualifies as injury on duty. She also stated that the Tennessee Supreme Court has stated that in general workers compensation is not the proper venue for sexual harassment claims. She stated that to recover for emotional injuries arising from alleged workplace sexual harassment the employee has the burden of establishing that the nature of the employer's business was such that the risk of harassment was a reasonably condoned hazard so that it was a normal component of the employment relationship. She stated they also have to show that there is an established policy or systematic behavior by the employer in which sexual harassment is condoned. Ms. Eke stated that the Board has to make a decision on just the injury on duty claim and the other issues will have to be resolved in the appropriate venue.

Shannon Hall moved to uphold the denial by Davies. Christine Bradley seconded, and the Committee approved with Jeremy Moseley not voting.

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

The employee was not present.

Vickie Hampton, Davies, reviewed the claim with the Committee. She stated this claim was deferred in order to get additional medical information from the treating physician. She stated additional medical information was received and that after review there was mention of a 2014 car accident showing neck and back pain as the current neck and back pain from the 2006 injury on duty. She stated that the additional records confirmed that the current neck and back pains were not related to the 2006 injury on duty.

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

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

The employee and Jack Byrd, attorney, were present.

Vickie Hampton, Davies, reviewed the claim with the Committee. She stated this claim was referred back to the Committee from the June 2021 Board meeting in order to get additional medical information from the treating physician. She stated additional medical information was received and after review there was a negative Covid test however for the period in question there were no 60-a calls that would give a clear causal connection to Covid.

Jack Byrd, attorney, addressed the Committee regarding the claim. He discussed the information that was submitted at the previous Committee and Board meetings. He reviewed the dates from the activity sheets of the possible exposure, the 101 Form and when he tested positive.

Vickie Hampton stated that the information they received indicated that he was dispatched, however, no indication of a connection to Covid.

The Committee discussed the activity sheets and the incubation period.

Dr. Gill Wright discussed exposures and incubation periods.

There was some discussion of the activity sheets that indicate where he went to a family more than once that was quarantined and then were positive.

Dr. Gill Wright discussed being quarantined.

4. In line of duty medical care appeal - Employee from the Police Department. (continued)

There was further discussion of the activity sheets, being able to identify causation and nothing in the record that identifies causation.

William Watkins, Police Department, was present and discussed the activity sheets, types of calls for service and the locations. He stated that on March 13, 2020 staff was instructed to make notations on the activity sheets of any contact with anyone exhibiting Covid symptoms. He also noted that there are no notations in the system or on any of his activity sheets for 60-a calls.

The employee addressed the Committee regarding the claim, his calls, the guidelines, and his exposure.

After further discussion of the calls, timeline and the policy for reporting, Christine Bradley moved to overturn the denial by Davies and approve the claim. Jeremy Moseley seconded, and the motion failed with a tie vote with Christine Bradley and Jeremy Moseley in favor and Harold Finch and Shannon Hall opposed.

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

The employee was not present.

Vickie Hampton, Davies, reviewed the claim with the Committee. She stated this claim is for Covid and it does not meet the criteria as far as the job description.

Jeremy Moseley moved to uphold the denial of the claim by Davies. Shannon Hall seconded, and the Committee approved without objection.

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

This item was taken out of order.

7. In line of duty medical care appeal - Employee from Parks.

The employee was not present.

It was noted that there is an approved claim on file for the right hand before Tennessee workers compensation law changed regarding carpal tunnel.

Vickie Hampton, Davies, reviewed the claim with the Committee. She stated this claim is regarding the left hand. She stated she filed a bilateral carpal tunnel claim in 2021 and was seen at the injury on duty clinic. She stated that after review it was determined that the left carpal tunnel is related to normal aging of the nerve and not her work duties.

There was some discussion regarding the old law and the new law.

Nicki Eke, Legal Department, stated that the role of the Board is to determine whether this injury arose out of and in the course of employment. She stated that the law Davies is referencing is Tennessee workers comp law.

Dr. Gill Wright stated that the literature has changed significantly since then and some of it shows that such things as typing, which was thought to originally caused it, actually reduces the risk for carpal tunnel. He also stated there are studies that show this as well.

Christine Bradley moved to uphold the denial of the claim by Davies. Shannon Hall seconded, and the Committee approved without objection.

With nothing further presented the meeting was adjourned at 10:58 a.m.

ATTEST:

APPROVED:

---

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

---

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