

## MINUTES

### METROPOLITAN EMPLOYEE BENEFIT BOARD

#### IN LINE OF DUTY COMMITTEE

August 10, 2022

The Metropolitan Employee Benefit Board's In Line of Duty Committee met on Wednesday, August 10, 2022 in the Sonny West Conference Room, Howard Office Building, 700 2<sup>nd</sup> Avenue South, Nashville, Tennessee at approximately 9:38 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. Kenton Dodd, Civil Service Medical Examiner.

Committee Chair Harold Finch noted that these are only recommendations that will be voted on at the September 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.

Kimberly Jordan, Davies, reviewed the claim with the Committee. Ms. Jordan stated this claim was deferred from the March 2022 meeting for clarification regarding the employee's job description. She stated the job description was reviewed by the Legal Department and Davies was advised they were not able to give a definitive answer to whether or not the classification qualified as an emergency rescue worker under the covid presumption.

The employee and Dewey Branstetter, attorney, were present.

Nicki Eke, Legal Department, stated that the Board will have to make the determination whether or not this classification comes under the presumption. She stated the covid presumption uses the term firefighter which is a similar term used in the heart and lung presumption act. She also stated that courts have applied the heart and lung presumption to fire inspectors and employees whose duties are to extinguish and control fires and fire related incidents. Ms. Eke stated it is her advice for the Board to look at the job description and make that determination as to whether arson investigator comes under that term of firefighter as used in the covid presumption.

After some discussion of other classifications referenced under heart and lung like under the covid presumption, Jeremy Moseley moved for approval of the claim. Shannon Hall seconded, and the Committee approved without objection.

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

The employee was present.

Kimberly Jordan, Davies, reviewed the claim with the Committee. She stated there was a previous claim approved for high cholesterol in 2003 and another one was filed in May of 2021 to start receiving the medication again, however, the prior claim had been closed as he had gone over three years without filling the medication. She stated the claim was denied because as of March 2012 high cholesterol is no longer considered injury on duty.

The employee addressed the Committee regarding the medication. He stated he did go off of the medication and stated he has managed to stay off the medication with exercise and altered diet. He also

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

stated that he feels this is not a new claim that would be cut off by the 2012 decision it's an extension of the 2003 claim.

There was some discussion that the treating physician was not consulted at the time he stopped taking the medication and if he had not stopped taking it would it still be covered.

There was some discussion regarding how Davies should handle these types of claims and issues that arise when someone stops taking a medication, goes several years without it and then comes back and at what level do you consider that being non-compliant.

There was some discussion of whether or not this is a re-injury or a new claim, which does not fall under the presumption.

There was also discussion of if you have a condition and the condition is no longer showing any symptoms do you still have that condition, the lack of consultation with a physician and if he had not stopped taking it the medication would still be covered.

Dr. Kenton Dodd, Civil Service Medical Examiner, (CSME), stated that high cholesterol itself does not immediately cause the injury it occurs overtime and will continue to exist.

Jeremy Moseley moved for approval of the claim. Shannon Hall seconded, and the Committee approved without objection.

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

The employee was present.

Kimberly Jordan, Davies, reviewed the claim with the Committee. She stated this is on a right knee injury where the employee reported getting out of his patrol car, hearing a pop, taking a few steps, and feeling pain. She stated he was initially seen at Summit emergency room and the claim was denied as being idiopathic in nature because there was nothing he slipped, tripped, or fell over.

The employee addressed the Committee regarding the claim and leave time.

There was some discussion of the employee seeking treatment through his insurance and having surgery and retro claims if the Board determines it's a compensable injury.

After some discussion of similar cases, no facts that take this claim out of the realm of being idiopathic, and no potential causation components, Christine Bradley moved to uphold the denial of the claim. Harold Finch seconded, and the Committee approved with Jeremy Moseley opposed.

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

This item was withdrawn.

5. In line of duty medical care appeal - Pensioner from the Fire Department.

Kimberly Jordan, Davies, reviewed the claim with the Committee. She stated in December of 2020 he filed a stroke claim under the heart presumption for October 2020. She stated that in September of 2020 there was a left heart catheterization with a diagnosis of severe aortic stenosis. She stated the medical records were sent to Reliable Review Services, (RRS), for review and the report states the diagnosis of aortic stenosis with a stroke complication from the procedure arose independent of the scope of employment and the claim was denied.

Dewey Branstetter, attorney, was present on behalf of the pensioner. Mr. Branstetter reviewed his condition and what happened during the course of the procedure leading to the stroke. He stated the

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

stroke was the result of a heart surgery that he had and was the result of treatment that had been covered under the heart lung act and should be part of the claim.

There was some discussion of the diagnosis made for the surgery in 2020 was 14 years after the individual retired and the surgery in 2020 was to correct a valve that was initially diagnosed as an issue in 2014 and the individual retired in 2000.

It was also noted that if there was a diagnosis while he was employed that led to and was covered under the presumption this would be covered.

The Committee discussed causation and is this a procedure that would normally be covered.

Dr. Kenton Dodd, CSME, stated that the most common association for aortic stenosis is an age-related condition and would not typically connect aortic stenosis to service as a firefighter directly. He did note there are a number of cardiac conditions that are not directly medically related associated with service as a firefighter.

After further discussion of the diagnosis, Jeremy Moseley moved to uphold the denial of the claim. Shannon Hall seconded, and the Committee approved without objection.

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

Christina Hickey noted that additional medical information has been provided to the Committee on this item.

The employee and Dewey Branstetter, attorney, were present.

Kimberly Jordan, Davies, reviewed the claim with the Committee. She stated that in October of 2021 he was diagnosed with a heart arrhythmia and filed a heart presumption claim. She stated there are no other presumption claims on file and the medical records were sent to RRS for review. She stated that the report states that the medical evidence shows the diagnosis primarily arose independent of the scope of employment and the condition is not presumed to be related.

Dewey Branstetter addressed the Committee regarding the claim, medical record, and family history. He reviewed what the presumption states along with the treating physician's statement that says the condition very well could have occurred as a result of his work as a firefighter although the exact ideology is hard to pinpoint. He also noted that the presumption should apply, and he is also seeking reinstatement of his sick leave days and not any sort of pension.

It was noted that this is for injury on duty medical care only and leave is not under the jurisdiction of the Board.

There was some discussion regarding the rationale used when applying the presumption.

Vickie Hampton, Davies, reviewed the process used by Davies for presumption cases. She stated that Davies gathers 10 years of medical records for RRS to review, all the factors and risk factors that could be and then they give an opinion based on the employee's history.

After some discussion of the factors used not being present, Jeremy Moseley moved for approval of the claim. Shannon Hall seconded.

There was some discussion of this being more of a genetic predisposition issue that the employee has.

Dr. Kenton Dodd, CSME, stated that this condition occurs in just about everyone but the occurrence of symptomatic premature ventricular complexes that require treatment is a more rare finding. He also noted they can arise in the absence of any known risk factors.

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

Kimberly Jordan, Davies, stated that the report also states that the condition is common and cannot be related to employment.

After some discussion of what the law states and the review by RRS, a vote was taken on the motion for approval of the claim and the Committee approved without objection.

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

Christina Hickey reported to the Committee that the employee requested that this item be deferred. She also stated that there were some questions from members whether the CSME has reviewed the claim.

Dr. Kenton Dodd, CSME, stated that he has reviewed the claim and looked into some of the statistical analysis that went into the rebuttal of the presumption. He stated that the math was not appropriately presented with respect to some of the terms used.

The Committee discussed the RSS review that notes a family history in the report, the recorded statement by Davies and the contributing factor being 50% hypertension, which is covered under the presumption.

There was also some discussion of whether or not the recommendation is still to deny the claim after speaking with Dr. Dodd.

Kimberly Jordan, Davies, stated that after speaking with Dr. Dodd the claim would be approved.

Dr. Kenton Dodd stated that after his review of the case he would recommend overturning the denial of the claim.

Jeremy Moseley moved for approval of the claim. Christine Bradley seconded, and the Committee approved without objection.

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

The employee was not present.

Kimberly Jordan, Davies, reviewed the claim with the Committee. She stated that in June of 2022 the employee filed a claim for covid. She stated that there was no treatment, the employee administered a self-test and the claim was denied as the employee is a civilian and can not state a specific known source where it was contracted.

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

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

The employee and his spouse were present.

Kimberly Jordan, Davies, reviewed the claim with the Committee. She stated that the employee filed a mental and emotional stress claim April of 2022 with a date of injury of September 2019. She stated the medical records were obtained and the claim was denied as the specific event did not seem to subject the employee to sudden mental stimulus such as fright, shock, or excessive unexpected anxiety as opposed to gradual build-up of stress over time. She also stated that he has a prior documented diagnosis of depression, attention deficit disorder, (ADD), and post-traumatic stress disorder, (PTSD).

The employee's spouse addressed the Committee regarding the claim, his conditions, the incident and how it has impacted him.

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

There was some discussion regarding why the claim was filed two years later.

The Committee discussed the case law, the criteria for psychological claims and the employee's history of depression and other conditions.

There was discussion of when employees are hired, they are hired as they are.

Nicki Eke, Legal Department, stated there is a different standard that applies to physical injuries and a different legal standard that applies to psychological injuries in the injury of duty realm. She stated that the standard is pretty specific with regards to psychological injuries. She stated there must be a specific incident, it must be caused by an identifiable stressful work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety and the stress produced may not be usual stress or extraordinary or usual in comparison to the stress which can be ordinarily experienced by other employees in the same type of duty. She stated if you have a pre-existing mental condition and it's aggravated by something that happens that alone is not sufficient, and it cannot be something that builds up over time.

There was some discussion of when employee was diagnosed with PTSD.

The employee discussed other events in his life that has contributed to his conditions.

The Committee discussed each part of the criteria and how it relates to this claim.

Kimberly Jordan, Davies, stated that the medical record shows PTSD being listed in September of 2021 from a full psychiatric evaluation where it mentions several exposures. She also stated that the medical records from that were never received.

Christine Bradley moved for approval of the claim. Jeremy Moseley seconded.

After some discussion that this particular set of facts meets the criteria, a vote was taken on the motion to approve the claim and the Committee approved with Harold Finch opposed.

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

The employee was present.

Kimberly Jordan, Davies, reviewed the claim with the Committee. She stated that in March of 2022 the employee was removing a contact from his eye at work and his eye started watering and burning. He was seen at the injury on duty clinic and the physician advised that the injury was not an injury on duty and was sent to have a dilated exam. She stated he was seen on the same day and the chief complaint in the medical record states that after sleeping in his contacts his right eye started watering and burning and the claim was denied as no injury within the course and scope of employment.

The employee addressed the Committee regarding the injury. He stated that he come in contact with some debris in the bunker room once he got to work. He also stated that on the way to work it was not bothering him.

After some discussion of the diagnosis and causation, Shannon Hall moved to uphold the denial of the claim. Harold Finch seconded, and the motion failed with Shannon Hall and Harold Finch in favor and Christine Bradley and Jeremy Moseley opposed.

With nothing further presented the meeting was adjourned at 11:51 a.m.

ATTEST:

APPROVED:

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

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