

## MINUTES

### METROPOLITAN EMPLOYEE BENEFIT BOARD

#### IN LINE OF DUTY COMMITTEE

December 11, 2023

The Metropolitan Employee Benefit Board's In Line of Duty Committee met on Monday, December 11, 2023 in the Sonny West Conference Room, Howard Office Building, 700 2<sup>nd</sup> Avenue South, Nashville, Tennessee at approximately 9:30 a.m.

Committee Members present: Chair: Jonathan Puckett; Members: G. Thomas Curtis and Edna Jones. Alternates Shannon Hall and Jeremy Moseley.

Vice-Chair: Christine Bradley was unable to be present.

Others present: Christina Hickey, Metro Human Resources, Nicki Eke and Courtney Mohan, Attorneys, Metro Legal Department, Vickie Hampton and Kimberly Binkley, Davies, and Dr. Kenton Dodd, Civil Service Medical Examiner.

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

1. Public Comment Period.

A maximum of five (5) persons who write their names on the sign-up sheet provided at the meeting will be allowed to comment on matters that are germane to items on the Agenda. Comments are limited to a maximum of two (2) minutes per person. To provide comment, you must sign up prior to the beginning of the meeting.

There were no public comments.

Committee Chair Jonathan Puckett reported to the Committee that the employee for item 8 has requested a deferral.

Tom Curtis moved to defer item 8 to the next Committee meeting. Shannon Hall seconded, and the Committee approved without objection.

It was requested for any attorneys present today that they keep their comments on point and not belabor an issue.

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

Kimberly Binkley and Vickie Hampton, Davies, reviewed the claim with the Committee. Kimberly Binkley stated that this is a deferral from the last Committee meeting pending additional information from an Ear, Nose & Throat, (ENT), specialist as to causation. She stated that the additional information indicated that hearing loss was not related to employment nor was it from COVID Davies maintains the denial.

Tom Curtis moved to uphold the denial by Davies. Shannon Hall seconded.

There was some discussion the basis of the denial being industrial hearing loss and the issue with COVID came up later as a possible cause.

Dewey Branstetter, attorney, was present on behalf of the employee. He stated that the hearing loss is not sound or noise related it is inner/middle ear which is caused by viruses, which is the type of loss he has.

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

There was some discussion regarding any correlation or pattern where COVID patients are suffering hearing loss.

Dr. Kenton Dodd stated this would be unusual for COVID and overtime it we may discover other things that are related to this and this may not be directly associated with the COVID viral illness that he did suffer from.

After some discussion of not knowing all the after effects of COVID and the specialists statement indicating that he has not seen this particular diagnosis related to COVID, a vote was taken on the motion to uphold the denial by Davies and resulted with a tie vote with Tom Curtis and Shannon Hall in favor and Edna Jones and Jonathan Puckett opposed.

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

It was noted that following the last Committee meeting there was a lot of confusion surrounding this item and that the Committee needs to stay focused on what is before the Committee, which is injury on duty medical care only. It was also noted that the individual is on a service pension and can not be switched.

Kimberly Binkley and Vickie Hampton, Davies, reviewed the claim with the Committee. Kimberly Binkley stated that this is a deferral from the last Committee meeting pending additional information regarding the timeline of the individual applying for a medical disability pension and withdrawing. She stated that the employee is currently working for the Department of Commerce and Insurance in the Fire Marshalls Division and unless the job is remote it conflicts with what was stated at the last meeting regarding his ability to go out in public.

Edna Jones moved to uphold the denial of the claim by Davies. Tom Curtis seconded.

It was noted that the medical record indicates that it is a work from home position.

There was some discussion regarding the incident and the new standard for psychological claims that will go in effect January 1<sup>st</sup>.

Nicki Eke, Legal Department, stated that if the Board does not meet again in December to adjudicate this matter, come January the Board will have to apply the new evidentiary rule when it is reviewed.

After clarification on the new legal standard regarding psychological claims, the motion to uphold the denial was withdrawn.

Tom Curtis moved to defer this item to the next Committee meeting. Shannon Hall seconded, and the Committee approved without objection.

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

The employee and attorney, Dewey Branstetter were present.

Kimberly Binkley and Vickie Hampton, Davies, reviewed the claim with the Committee. Kimberly Binkley stated that on November 26, 2022 the employee was getting out of the front door of the ambulance and as he was getting down his hand twisted and he felt a pop in his right hand with pain in his wrist. She stated he treated at Skyline Emergency Room and was returned to work two days later. She stated that on November 28, 2022 he treated at the IOD clinic and the MRI of the wrist showed chronic appearing scapholunate ligament tear with widening (wrist sprain) and was given restrictions. Ms. Binkley stated that the wrist swelling continued and a surgery option was discussed and it was noted that the causation letter indicates chronic changes, which suggests that this is more of an acute on chronic injury but cannot state that it was greater than 50 percent related to injury and the surgery was deemed not work related. She

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

stated that the employee treated with his private insurance and the statement from his primary care physician stating it was his opinion that the current wrist problem is related to the November 22<sup>nd</sup> injury along with the statement from a specialist that he was referred to. She stated that although there are opposing causation opinions, Davies maintains its partial denial based on the opinions of the authorized treating physician and the independent peer review from April. She stated Davies is requesting the Committee's recommendation due to conflicting causation opinions.

Dewey Branstetter stated that there are things not related to the initial injury, however, the records from the primary care physician and the specialist both state it is work related.

Tom Curtis moved to overturn the denial and approve the claim. Edna Jones seconded, and the Committee approved without objection.

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

Kimberly Binkley and Vickie Hampton, Davies, reviewed the claim with the Committee. Kimberly Binkley stated that on January 15, 2022 the employee slipped getting into the ambulance injuring his low back. He was seen at Centennial Emergency Room and diagnosed with a lumbar strain. She stated he was seen on January 18<sup>th</sup> at the IOD clinic and diagnosed with a lumbar strain, treated and full duty discharged. She stated on September 3, 2023 the employee advised that he had been treating for his back and wanted additional treatment under injury on duty. She stated an MRI was done at the IOD clinic and it showed congenital anomaly of the spine and was not work related. She stated that to date Davies maintains its partial denial as it has been opined by the IOD clinic that any additional treatment was not work related but due to pre-existing issues after review of all of the medical records.

Shannon Hall moved to uphold the denial of the claim. Tom Curtis seconded, and the Committee approved with Jonathan Puckett abstaining.

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

Dewey Branstetter, attorney, was present on behalf of the pensioner and requested a deferral.

Tom Curtis moved to defer this item to the next Committee meeting. Shannon Hall seconded, and the Committee approved without objection.

It was also requested that the additional medical records received after the Reliable Review Services, (RRS), review be sent back for review in addition to filing a presumption claim.

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

Kimberly Binkley and Vickie Hampton Davies reviewed the claim with the Committee. Kimberly Binkley stated that on November 15, 2022 the employee filed a 101 Form for bilateral femoral artery obstruction. She stated the employee also submitted a separate 101 Form for hypertension and this claim was approved. She stated that Davies maintains its denial based on the results of the RRS review and current risk factors.

Dewey Branstetter, attorney, was present on behalf of the employee. He stated that the report does indicate that there are contributing employment factors and exposures, along with the statistical information not being sufficient enough to overcome the presumption.

After some discussion of the presumption and rebutting it, Shannon Hall moved to overturn the denial and approve the claim. Edna Jones seconded, and the Committee approved without objection.

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

This item was deferred to the next Committee meeting.

With nothing further presented the meeting was adjourned at 10:47 a.m.

ATTEST:

APPROVED:

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

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**Jonathan Puckett, Chair  
In Line of Duty Committee**