

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

CITY OF PARKERSBURG

Administrative Proceeding No. 22-IC-02229

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ADOPTING
REPORT OF SELF-INSURED MARKET CONDUCT COMPLIANCE EXAMINATION

NOW COMES Allan L. McVey, Insurance Commissioner of the State of West Virginia (hereinafter, “Commissioner”), who after consideration of *the Report of Self-Insured Market Conduct Compliance Examination* (hereinafter, the “*Examination Report*”) of the City of Parkersburg (hereinafter, “Parkersburg”) for the audit period ending June 30, 2022, make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. A Self-Insured Compliance Audit concerning the operational affairs of Parkersburg for the period ending June 30, 2022, was conducted in accordance with W.Va. Code §33-2-9, W.Va. Code §23-2-9, W.Va. Code §23-2C-22, W.Va. Code §33-2-21 and W.Va. Code R. §85-18-1, *et seq.* by auditors duly appointed by the Commissioner. The Self-Insured Compliance Audit began on October 1, 2022, and concluded on January 13, 2023.

2. On or about January 24, 2023, the examiner filed with the Commissioner, pursuant to W. Va. Code § 33-2-9(j)(2), the *Examination Report*.

3. A true copy of the *Examination Report* was provided to Parkersburg and Parkersburg was notified pursuant to W. Va. Code § 33-2-9(j)(2) that it had ten (10) days after receipt of the *Examination Report* to file a submission or rebuttal with the Commissioner.

4. As set forth in the *Examination Report*, the examination focused on the methods used by Parkersburg to manage its operations for each of the business areas examined, including whether and how

Parkersburg, a self-insured employer, complies with West Virginia's statutory and regulatory law.

5. The exam found Parkersburg was 100% compliant in the areas examined.

6. The Commissioner reviewed the *Examination Report* and considered Parkersburg's submissions, if any, prior to issuing these findings of fact, conclusions of law, and order.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the subject matter and the parties to this proceeding.

2. This proceeding is pursuant to and in accordance with W.Va. Code §33-2-9, W.Va. Code §23-2-9, W.Va. Code §23-2C-22, W.Va. Code §33-2-21 and W.Va. Code R. §85-18-1, *et seq*

3. As detailed in the *Examination Report*, Parkersburg was compliant in all areas examined.

4. The Commissioner is charged with the responsibility of verifying Parkersburg's continued compliance with West Virginia Law.

ORDER

Pursuant to W. Va. Code § 33-2-9(j)(3)(A), as a result of his review of the *Examination Report*, the examination work papers, and Parkersburg's response thereto, it is **ORDERED** as follows:

1. The referenced and attached *Examination Report* is hereby **ADOPTED** and **APPROVED** and, by this reference, incorporated herein and made a part hereof;

2. Parkersburg shall continue to monitor its compliance with applicable West Virginia law;

Entered this 7th day of February, 2023.



Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner

Report of Self-Insured Market Conduct Compliance Examination

As of June 30, 2022



City Of Parkersburg
P.O. Box 1627
Parkersburg, WV. 26102-1627

TPA
SmartCasualtyClaims
602 Virginia Street East Suite 400
Charleston, WV 25301

Examination Number 22-IC-02229

Date Prepared:
01/24/2023

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January 24, 2023

The Honorable Allan L. McVey, CPCU, ARM, AAI, AAM, AIS
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25302

Dear Commissioner McVey:

Pursuant to your instructions and in accordance with West Virginia Code §§ 33-2-9, 33-2-10(b), 33-2-21(a), 23-1-1, 23-2-9(b)(1) & (2), 23-2C-22 and West Virginia Code of State Rules Title 85, a Market Conduct examination has been made for the period of July 1, 2019 through June 30, 2022 on the Workers' Compensation self-insured claims handling of

City Of Parkersburg
P.O. Box 1627
Parkersburg, WV. 26102-1627

hereinafter referred to as the "Self-Insured Employer." The following report of the findings of this examination is herewith respectfully submitted.

COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS

The prior examination report (which covered the exam period of April 1, 2013 through June 30, 2015) identified no specific areas of non-compliance. Therefore, the examiner made no recommendations at the conclusion of the prior examination.

EXECUTIVE SUMMARY

This Self-Insured Market Conduct Compliance Examination (“examination”) was initiated to determine the compliance of the City of Parkersburg with the West Virginia statutes, rules and regulations governing the self-administration of workers’ compensation claims.

The examination work related to the City of Parkersburg commenced October 1, 2022 and concluded January 13, 2023. The City of Parkersburg maintains an electronic environment; the majority of the examination work was conducted through an electronic virtual private network of the Third-Party Administrator’s (“TPA’s”) SmartCasualtyClaims computer systems.

HISTORY AND PROFILE

Parkersburg is a city in Wood County, West Virginia, United States and is recognized as its county’s seat. Originally established as Newtown, the town was renamed Parkersburg in 1810. It is located at the confluence of the Ohio and Little Kanawha rivers and is the state’s fourth-largest city in terms of population. This organization primarily operates in the Mayor’s Office business / industry within the Executive, Legislative & General Government, except the Financial sector. The City of Parkersburg first became self-insured effective July 1, 1982 and has 329 employees.

METHODOLOGY

The examiner conducted file reviews and was familiar with the Self-Insured Employer/TPA claim process in as much as prior examinations had been performed. This examination report is a report by test, rather than a report by exception, and all elements tested are described and the results indicated. Tests designed to measure the level of compliance with West Virginia statutes, rules and regulations were applied to the files.

The examiner used the NAIC standards of 7% error ratio on claims tests (93% compliance rate) and 10% error ratio on all other tests (90% compliance rate) to determine whether an apparent pattern or practice of being compliant, predominantly compliant, or non-compliant existed for any given test. Typically, areas below 93% would generally require systemic corrective action. Any element scoring below 100% will detail the observations of the specific issue and include a recommendation.

The examiner reviewed forty (40) claim files that were selected from a population of ninety-six (96) claims during the examination period. Of the forty (40) claims reviewed, five (5) were denied claims, twenty-five (25) were medical only claims, and ten (10) were indemnity claims. The indemnity claims are further broken out as eight (8) PPD claims and two (2) TTD claims.

Each area of the examination has specific elements that were tested, and the areas and elements are listed below. Twenty-nine Elements of Review were under consideration to examine the forty (40) claims in the sample. In conclusion, twenty-four (24) elements passed and five (5) elements were deemed N/A.

The examiner may not have discovered every unacceptable or non-compliant activity in which the Self-Insured Employer/TPA is engaged. The failure to identify, comment on, or criticize specific practices does not constitute an acceptance of the practices by the West Virginia Offices of the Insurance Commissioner or its designee. A compliance table follows and it contains results of each area of review with the compliance percentage for the Self-Insured Employer/TPA.

ELEMENTS OF THE REVIEW

A. COMPLAINTS: THE TIME FRAME WITHIN WHICH THE EMPLOYER RESPONDS TO COMPLAINTS IS IN ACCORDANCE WITH APPLICABLE STATUTES, RULES AND REGULATIONS.

1. Did the Self-Insured Employer respond to complaints received from the WVOIC within fifteen (15) working days? [W. Va. Code R. § 85-1-16]

B. INITIAL COMPENSABILITY DECISIONS AND INVESTIGATIONS ARE CONDUCTED IN A TIMELY MANNER.

1. Did the Self-Insured Employer properly investigate then provide a written ruling on a claim within fifteen (15) working days, or if “tolled” while evidence for the claim is gathered, rule in the appropriate time? [W. Va. Code §§ 23-4-1c (a) and (b) & W. Va. Code R. § 85-1-10.1]
2. Did the Self-Insured Employer include on the written notice of the decision the protest clause? [W. Va. Code § 23-5-1(b)(1) & W. Va. Code R. § 85-1-7.2]

C. TEMPORARY TOTAL DISABILITY (TTD)

1. Did the Self-Insured Employer/TPA properly notify the claimant of the TTD award? [W. Va. Code § 23-5-1]

2. Did the Self-Insured Employer/TPA immediately pay amounts due the claimant for benefits upon determination of eligibility? [W. Va. §§ 23-4-1c(b) and (g)]
3. Did the Self-Insured Employer/TPA calculate and pay indemnity payments correctly? [W. Va. Code § 23-4-14(b)(2) and Informational Letter 162A]
4. Did the Self-Insured Employer/TPA issue temporary total disability closure letters properly? [W. Va. Code §§ 23-5-1, 23-4-7a, 23-4-22, and 85-1-10.4]

D. PERMANENT PARTIAL DISABILITY (PPD)

1. Did the Self-Insured Employer/TPA act on PPD evaluations timely? [W.Va. Code R. § 85-1-10.5 a. The responsible party shall act on a permanent disability evaluation report received from a physician to whom the responsible party referred a claimant in a claim for injuries and occupational diseases other than occupational pneumoconiosis within thirty (30) working days of receipt by the responsible party of the report.]
2. Did the Self-Insured Employer/TPA make timely IME referrals? [W.Va. Code R. § 85-1-10.5 b. The responsible party shall make a referral of a claimant to a physician for examination and evaluation in response to a request by or on behalf of the claimant for consideration of a permanent disability award in a claim for injuries and occupational diseases other than occupational pneumoconiosis within thirty (30) working days from the date the request was received by the responsible party.]
3. Did the Self-Insured Employer/TPA commence PPD award payments timely? [W.Va. Code R. § 85-1-10.5 c. Permanent partial disability awards may be paid, at the discretion of the responsible party, either by lump sum or in installments consistent with applicable law. Payment of permanent partial awards shall commence within fifteen (15) working days of the decision granting the award.]
4. Did the Self-Insured Employer/TPA calculate and pay the payment correctly? [W. Va. Code § 23-4-14(b)(2) and Informational Letter 162A]

E. MEDICAL AUTHORIZATIONS

1. Did the Self-Insured Employer/TPA comply with W. Va. Code R. § 85-1-10.3? “Medical treatment, medications, appliances, devices and supplies. – The responsible party shall act upon an injured worker’s request for authorization of medical treatment, medications, appliances, devices and supplies within fifteen (15) working days from the date the request was received by the responsible party.”

F. NON-AWARDED PARTIAL BENEFITS (NAP)

1. Were non-awarded partial disability benefits paid at the same rate as the permanent partial disability rate per W. Va. Code R. § 85-1-9.7?

G. DEATH CLAIMS (FATALITIES)

1. Were the death benefits in the proper amounts and to the proper person(s) per W. Va. Code §§ 23-4-1 and 23-4-10.

H. CLOSURE

1. Were the claims properly closed and a notice issued? [W. Va. Code § 23-4-16 and Supreme Court of Appeals of West Virginia decision May 23, 2008, LOVAS v. CONSOLIDATION COAL COMPANY]

I. OCCUPATIONAL PNEUMOCONIOSIS

1. Did the Self-Insured Employer enter non-medical decisions in occupational pneumoconiosis claims within ninety (90) days from the date the responsible party receives properly executed, prescribed forms? (can be "tolled" for no more than thirty (30) additional days during the evidence gathering process) [W. Va. Code § 23-4-15b and W.Va. Code R. § 85-1-10.2] (If necessary, this should reflect in the report as N/A with explanation as none were in the samples.)

J. DENIED AND CLOSED WITHOUT PAYMENT

1. Did the Self-Insured Employer properly investigate then give a written ruling on a claim within fifteen (15) working days, or if "tolled" while evidence for the claim is gathered, rule in the appropriate time? [W. Va. Code § 23-4-1c (a) and W. Va. Code R. § 85-1-10.1]
2. Were claims handling practices meeting West Virginia statutes, rules and regulations of "denied" and "closed without payment" claims including proper notifications, reasonable basis for denial, and whether or not claimants are provided adequate instructions for rebuttals? [W. Va. Code §§ 23-5-1(a) 23-5-1(b)(1)]
3. Were claims denied inappropriately due to a technicality? [W. Va. Code § 23-5-13]
4. Were appropriate protest/grievance language on the decision order? [W. Va. Code §§ 23-5-1(b)(1) and 23-4-3(f) and W. Va. Code R. §§ 85-1-7.2 and 85-21-10.2b]
5. Were denied claim investigations by the Self-Insured Employer/TPA complete and thorough?

K. OFFICE OF JUDGES (OOJ) AND BOARD OF REVIEW (BOR) ORDERS

1. Did the Self-Insured Employer comply with all orders of the Office of Judges (“OOJ”) and the Board of Review (“BOR”) and all mandates of the West Virginia Supreme Court of Appeals within thirty (30) days from the date of receipt, unless the responsible party is required to act sooner under the terms of the order or mandate or the order or mandate is subject to a lawfully ordered stay? [W. Va. Code § 23-5-9(f) and W. Va. Code R. § 85-1-10.7]

L. DOCUMENTATION

1. Did the Self-Insured Employer follow state statutes, rules and regulations which require that claim files contain adequate documentation and to be maintained in a manner so that pertinent events and dates of such events can be reconstructed if necessary? [W. Va. Code R. §§ 85-18-13.3 and 13.4]

M. ELECTRONIC DATA INTERCHANGE (EDI)

Does the self-insured employer promptly and accurately provide the WVOIC with all necessary information to maintain the workers compensation index? [W. Va. Code §23-2C-5(C)(8); W. Va. Code R. §85-2-1 ET SEQ. and West Virginia Offices of the Insurance Commissioner’s Electronic Data Interchange (“EDI”) Implementation Guide]

1. FROI – Did the Self-Insured Employer/TPA submit the First Report of Injury report timely within ten (10) business days?
2. SROI - Did the Self-Insured Employer/TPA submit the Subsequent Reports of Injury report(s) updates on each claim either monthly or quarterly?
3. Closing - Did the Self-Insured Employer/TPA properly report closure of the claim when no additional transactions are expected on the claim? (For example: A notification that an accident has occurred is not a request for a compensability decision and therefore should not be denied (FROI 04) or administratively closed (SROI FN) and should be canceled as a FROI 01.)

N. THE SELF-INSURED EMPLOYER COOPERATES ON A TIMELY BASIS WITH EXAMINERS PERFORMING THE EXAMINATION.

1. Did the Self-Insured Employer respond to RFI’s in a timely manner?

2. Did the Self-Insured Employer provide records in a timely basis and cooperate with the examination? [W. Va. Code R. § 85-18-13.6]

O. OTHER ISSUES

COMPLIANCE TABLE

<u>Review Section</u>	<u># Pass</u>	<u># Fail</u>	<u>N/A</u>	<u>Compliance %</u>	<u>Individual Corrective Action</u>	<u>Systemic Corrective Action</u>
A1	N/A	N/A	N/A	N/A		
B1	40	0	0	100		
B2	40	0	0	100		
C1	10	0	0	100		
C2	10	0	0	100		
C3	10	0	0	100		
C4	10	0	0	100		
D1	8	0	0	100		
D2	8	0	0	100		
D3	8	0	0	100		
D4	8	0	0	100		
E1	10	0	0	100		
F1	1	0	0	100		
G1	N/A	N/A	N/A	N/A		
H1	40	0	0	100		
I1	N/A	N/A	N/A	N/A		
J1	5	0	0	100		
J2	5	0	0	100		
J3	5	0	0	100		
J4	5	0	0	100		
J5	5	0	0	100		
K1	N/A	N/A	N/A	N/A		
L1	5	0	0	100		
M1	40	0	0	100		
M2	40	0	0	100		
M3	40	0	0	100		
N1	40	0	0	100		
N2	40	0	0	100		
O	N/A	N/A	N/A	N/A		

*See "Observations and Recommendations" below.

OBSERVATIONS

A1 - This standard was N/A as there were no complaints opened or closed during the examination period.

B1– Three (3) claims were tolled causing a delay in the compensability ruling. An RFI was sent to the Self-Insured Employer/TPA asking for more details regarding the handling of each claim.

G1 – This standard was N/A as there were no fatality claims during the examination period.

I1 – This standard was N/A as there were no Occupational Pneumoconiosis claims during the examination period.

K1 – This standard was N/A as there were no Office of Judges (“OOJ”) or Board of Review (“BOR”) claims during the examination period.

M3 – At the time this element was reviewed it appears two (2) claims were not administratively closed in EDI with no future payment expected; however, upon further review by the examiner, the Self-Insured Employer/TPA self-corrected this issue in both cases.

RECOMMENDATIONS

B1 – As a consistent business practice, the Self-Insured Employer/TPA should maintain and monitor its current procedures regarding the identification of potential claims, if adequate medical and/or additional documentation is received to establish a claim and the WC-1 form is not readily available.

EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT

The examiner would like to acknowledge the cooperation and assistance extended by the Self-Insured Employer/TPA during the course of the examination.



Jeremy White APIR
Examiner-in-Charge

EXAMINER'S AFFIDAVIT

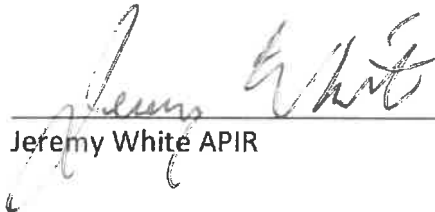
State of West Virginia
County of Kanawha

EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES USED IN AN EXAMINATION

I, Jeremy White, being duly sworn, states as follows:

1. I have the authority to represent West Virginia in the examination of City of Parkersburg.
2. I have reviewed the examination work papers and examination report, and the examination of City of Parkersburg was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.



 Jeremy White APIR

Subscribed and sworn before me by Jeremy White on this 24th day of

January, 2023



 Notary Public

My commission expires: 10-11-2024

