

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

In the Matter of:

FEDERAL EXPRESS CORPORATION

Administrative Proceeding No. 23-IC-155817

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ADOPTING
REPORT OF SELF-INSURED MARKET CONDUCT COMPLIANCE EXAMINATION
AND DIRECTING CORRECTIVE ACTION AND ASSESSING PENALTY

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 Federal Express Corporation (hereinafter, "FedEx Corp.") for the audit period ending June 30, 2023, 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 FedEx Corp. for the period ending June 30, 2023, 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 31, 2023 and concluded on February 9, 2024.

2. On or about March 1, 2024, 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 FedEx Corp. and FedEx Corp. 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 FedEx Corp. to manage its operations for each of the business areas examined, including whether and

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

5. The exam discovered three (3) areas where FedEx Corp. failed to achieve 100% compliance with West Virginia law.

6. The Commissioner reviewed the *Examination Report* and considered FedEx Corp.'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 of, 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*, FedEx Corp. failed to comply with provisions West Virginia law as follows:

Claims Standard B1 (*Five (5) violations*) The Self-Insured Employer did not provide an initial compensability ruling within 15 working days as required by W.Va. Code R. § 85-1-10.1.

Claims Standard C1 (*Five (5) violations*) The Self-Insured Employer did not properly notify the claimant of a TTD award as required by W.Va. Code § 23-5-1.

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

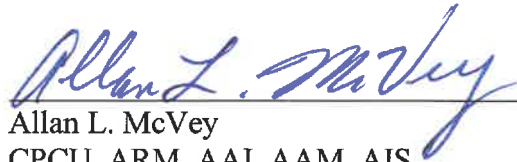
5. The Commissioner has determined that FedEx Corp. should be assessed a penalty for violating the aforementioned standards.

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 FedEx Corp.'s response therefore, 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. FedEx Corp. shall endeavor to comply with the recommendations contained in the *Examination Report*;
3. FedEx Corp. shall continue to monitor its compliance with applicable West Virginia law;
4. FedEx Corp. shall specifically cure the violations and deficiencies identified in the *Examination Report* so as to bring itself into compliance and conformity with West Virginia law, as set forth hereinabove, to the extent such has not already been completed and/or accomplished;
5. FedEx Corp. shall file a **Corrective Action Plan (CAP)**, subject to the approval of the Commissioner, which said CAP shall detail FedEx Corp.'s changes to its procedures and/or internal policies to ensure compliance with West Virginia law, and shall further incorporate all recommendations of the Commissioner's examiners and address all violations specifically cited in the *Examination Report*;
6. The CAP shall be submitted to the Commissioner for his approval within 30 days of the date this order is entered;
7. FedEx Corp. shall make reasonable changes to the CAP if and as directed by the Commissioner within 30 days of its receipt of the Commissioner's changes to, or disapproval of the CAP;
8. FedEx Corp. shall within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP; and
9. FedEx Corp. shall pay an **administrative penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500.00)** for its non-compliance with West Virginia law as set forth hereinabove, the assessment of which penalty is in lieu of any other regulatory penalty and shall be remitted within 30 calendar days of the date this order is entered.

Entered this 18th day of April, 2024.

A handwritten signature in blue ink that reads "Allan L. McVey". The signature is written in a cursive style and is positioned above a horizontal line.

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

Report of Self-Insured Market Conduct Compliance Examination

As of June 30, 2023



Federal Express Corporation

3620 Hacks Cross Road
Building B, 2nd Floor
Memphis, TN 38125-8800

TPA
Sedgwick CMS, Inc.

Examination Number 23-IC-155817

**Date Prepared:
03/01/2024**

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03/01/2024

The Honorable Allan L. McVey, CPCU, ARM, AAI, AAM, AIS
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25305

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, 2020 through June 30, 2023 on the Workers' Compensation self-insured claims handling of

Federal Express Corporation
3620 Hacks Cross Road
Building B, 2nd Floor
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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

There were no recommendations from the previous exam.

EXECUTIVE SUMMARY

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

The examination work related to Federal Express Corporation commenced October 31, 2023, and concluded February 09, 2024. Federal Express Corporation, Inc. maintains an electronic environment; the majority of the examination work was conducted by electronic virtual private network through the Third-Party Administrator’s (“TPA’s”) computer systems. Due to the limited number of claims for Federal Express Corporation during the examination period, the entire claim population of fifty (50) claims was reviewed, which included two (2) PPD claims, twenty (TTD) and twenty-eight (MO) claims. The entire population of fourteen (14) denied claims was also reviewed.

The following are areas of concern:

- **Element of review B.1.**

Five (5) claims did not provide an initial compensability ruling within fifteen (15) working days, as required by W. Va. Code §§ 23-4-1c (a) and (b) & W. Va. Code R. § 85-1-10.1

- **Element of review C.1.**

Five (5) claims did not properly notify the claimant of their TTD award as required by W. Va. Code § 23-5-1.

- **Element of review C.2.**

One (1) claim showed the TTD payment was not timely paid an amount due the claimant as required by W. Va. §§ 23-4-1c(b) and (g).

HISTORY AND PROFILE

Federal Express is part of a family of companies under FedEx Corporation, a premier global provider of transportation, e-commerce, and business services. Federal Express Corporation was founded in 1971 in Little Rock, AR and began operations on April 17, 1973, in Memphis, TN. FedEx was renamed in 2000 to FedEx Express, reflecting the company's position in the overall FedEx Corporation portfolio and to further position themselves as an express carrier. FedEx Express has been self-insured in West Virginia since July 1, 1985, and as of August 22, 2023, there are 323 employees in the state.

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.

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.

Except as otherwise noted, all tests were conducted via a random sample taken from a given population of sixty-four (64) claims. A maximum initial sample of fifty (50) claims files was selected randomly using the following parameters. Denied Claims: A maximum initial sample of fifty (50) denied claims files will be selected; if the population of denied claims is less than twenty-five (25) then the entire population will be reviewed. Paid Claims: A maximum initial sample of twenty-five (25) paid claims files will be selected; A weighted sampling methodology of "88% Indemnity" (22 Claims) and 18% "Medical Only" (3 Claims) will be utilized. If the population of indemnity claims is less than the indicated indemnity sample size, then the remaining sample size will be medical only. Supplemental (Secondary) Samples: Supplemental or secondary samples will be obtained if the pass rate for any given standard is greater than 80% but less than 100%. If the pass rate is less than 80% on the initial sample, no additional sample will be obtained.

Each area of the examination has specific elements that were tested, and the areas and elements are listed below. The examiners 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 containing 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 and 23-4-22]

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 (FATAL)

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. EDI - DOES THE SELF-INSURED EMPLOYER PROMPTLY AND ACCURATELY PROVIDE THE WVOIC WITH ALL NECESSARY CLAIM INFORMATION TO MAINTAIN THE WORKERS' COMPENSATION CLAIM INDEX? [W. VA. CODE §23-2C-5(C)(8) AND 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	20	5	0	80%		*
B2	20	0	5	100%		
C1	17	5	3	77%		*
C2	21	1	3	95%	*	
C3	22	0	3	100%		
C4	18	0	7	100%		
D1	2	0	23	100%		
D2	2	0	23	100%		
D3	2	0	23	100%		
D4	2	0	23	100%		
E1	22	0	3	100%		
F1	N/A	N/A	N/A	N/A		
G1	N/A	N/A	N/A	N/A		
H1	21	0	4	100%		
I1	N/A	N/A	N/A	N/A		
J1	14	0	0	100%		
J2	14	0	0	100%		
J3	14	0	0	100%		
J4	14	0	0	100%		
J5	14	0	0	100%		
K1	N/A	N/A	N/A	N/A		
L1	14	0	0	100%		
M1	25	0	0	100%		
M2	25	0	0	100%		
M3	21	0	4	100%		
N1	39	0	0	100%		
N2	39	0	0	100%		
O	N/A	N/A	N/A	N/A		

OBSERVATIONS

A.1. – This element of review was N/A as there were no complaints for the exam period.

B.1. –Five (5) claims did not provide an initial compensability ruling within fifteen (15) working days.

B.2. Five (5) claims were determined to be N/A as they were not subject to protest language. There were no violations noted.

C.1. – Three (3) did not properly notify the claimant of the TTD award. Five (5) claims were marked as N/A due to being medical only claims. There were no violations noted for the remaining seventeen (17) claims.

C.2. –On one (1) claim the TTD payment was not timely paid. Three(3) claims were N/A due to being medical only claims. There were no violations for the remaining twenty-one (21) claims.

C.3. – Five (5) were determined to be N/A as they were medical only claims. There were no violations noted.

C.4. –Five (5) claims were determined to be N/A as they were medical only.

D.1. –Twenty-two (23) claims were determined to be N/A as there weren't any PPD benefits requested nor rewarded. The remaining two (2) claims were reviewed and no violations noted.

D.2. – Twenty-two (23) claims were determined to be N/A, as there weren't any PPD benefits requested nor rewarded. The remaining two (2) claims were reviewed and no violations noted.

D.3. –Twenty-two (23) claims were determined to be N/A, as there weren't any PPD benefits requested nor rewarded. The remaining two (2) claims were reviewed and there were no violations noted.

D.4. –Twenty-two (23) claims were determined to be N/A, as there weren't any PPD benefits requested nor rewarded. The remaining two (2) claims were reviewed and there were no violations noted.

E.1. – Twenty-five (25) claims were reviewed of which three (3) were marked as N/A as they were not subject medical authorization requirements. The remaining twenty-two (22) claims had no violations.

F.1. – This element of review was N/A as there were no benefits awarded for Non-Awarded Partial (NAP) during the examination period.

G.1.– This standard was N/A as there were no benefits awarded for Death Claims (FATAL) during the examination period.

H.1.– Four (4) claims were marked as N/A as they were still open and not subject to closure of claims regulations. The remaining twenty-one (21) claims had no violations.

I.1. – This standard was N/A as there were no Occupational Pneumoconiosis claims during the review period.

J.1. – The entire population of fourteen (14) closed claims was reviewed and there were no violations noted.

J.2. – The entire population of fourteen (14) closed claims was reviewed and there were no violations noted.

J.3. – The entire population of fourteen (14) closed claims was reviewed and there were no violations.

J.4. – The entire population of fourteen (14) claims was reviewed and there were no violations.

J.5. – The entire population of fourteen (14) closed claims was reviewed and there were no violations noted.

order.

K.1. – This standard was N/A as there were no Office of Judges orders to comply with during the examination period.

O. – This standard was N/A as there were no additional issues to be noted.

RECOMMENDATIONS

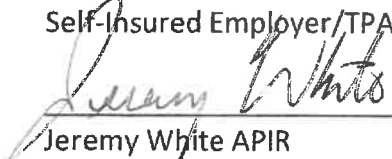
B.1. – The Self-Insured Employer/TPA should review its current procedures to ensure that compensability rulings on all claims are issued within the required fifteen (15) working day timeframe as required by W. Va. Code §§ 23-4-1c (a) and (b) & W. Va. Code R. § 85-1-10.1.

C.1. – The Self-Insured Employer/TPA should review its current procedures to ensure that the claimant is properly notified of a TTD award as required by W. Va. Code § 23-5-1.

C.2. – The Self-Insured Employer/TPA should review its current procedures to ensure that the TTD payment to the claimant is timely made upon determination of eligibility as required by W. Va. §§ 23-4-1c(b) and (g).

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 Federal Express Corporation.
2. I have reviewed the examination work papers and examination report, and the examination of Federal Express Corporation was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.



Jeremy White AP/R

Subscribed and sworn before me by Jeremy White on this 1st Day of March 2024.



Notary Public

My commission expires: 10-11-2024

