

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

JOHN DAVID

Complainant,

ADMINISTRATIVE PROCEEDING NO. 22-IC-02014

v.

**NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA.,**

Respondent.

ORDER DENYING MOTION FOR REHEARING

This matter came before the West Virginia Offices of the Insurance Commissioner (hereinafter "OIC") on Complainant John David's (hereinafter "Complainant") Motion for a Hearing filed on or about February 22, 2022, pursuant to W.Va. Code §33-2-13 and W.Va. Code R. §114-13-6.12.

FINDINGS OF FACT

1. On or about December 10, 2021, Complainant filed a first-party administrative complaint against National Union Fire Insurance Company of Pittsburgh, PA (hereinafter, "Respondent") with the OIC regarding the valuation of a vehicle insured by Respondent.
2. The Complainant is the Director of the Southern Appalachian Labor School (hereinafter, "SALS").
3. On or about November 23, 2020, a vehicle registered to SALS and driven by Austin Flint was involved in a motor vehicle accident. The vehicle was insured by Respondent.

4. Respondent conducted an investigation through its claims administrator, AIG Claims, Inc., The vehicle was inspected, and pictures were taken. The appraisal determined the value of the vehicle to be Four Thousand Four Hundred Twenty-Five Dollars (\$4,425.00), less prior damage of Three Thousand One Hundred Nine Dollars (\$3,109.00) and the policy deductible of One Hundred Dollars (\$100.00), for a total loss of Three Hundred Fifteen Dollars (\$315.00). Complainant was notified of the decision by email dated December 21, 2020. A letter and copy of the appraisal were also sent to Complainant by regular mail on or about December 21, 2020.

5. On or about January 27, 2021, Complainant sent AIG Claims an email contesting the deduction for prior damage. Complainant alleged the vehicle had not been in a prior accident and had no prior damage. He requested the settlement offer be revised.

6. In response, AIG Claims sent Complainant an email dated January 28, 2021, explaining that the prior damage was unrelated to the accident in question, but affected the value of the vehicle. The email also explained to Complainant that pictures of the unrelated, prior damage had previously been provided to him for his review.

7. On or about February 3, 2021, Complainant sent AIG Claims another email, requesting it reconsider the value of the vehicle. In response, on or about February 4, 2021, AIG Claims sent Complainant an email indicating that the vehicle had been revalued and the settlement offer was raised to Five Hundred Sixty-Five Dollars and Eighty Cents (\$565.80). A letter offering the new amount was mailed to Complainant on or about February 12, 2021.

8. On or about February 16, 2021, Complaint sent another email to AIG Claims, stating he disagreed with the new offer and contested the decision of the vehicle having any prior damage. AIG Claims responded by email on or about February 16, 2021, listing the unrelated,

prior damage, and stood by their offer of Five Hundred Sixty-Five Dollars and Eighty Cents (\$565.80).

9. On or about November 30, 2021, AIG Claims sent Complainant a letter reiterating the final settlement offer and advising him of the applicable statute of limitations. AIG Claims closed their file on the matter.

10. On or about February 8, 2022, the OIC sent Complainant a “no violations letter,” indicating that there did not appear to be any violation of the insurance laws or regulations of the State of West Virginia in the handling of Complainant’s claim.

11. On or about February 22, 2022, Complainant requested a hearing with the OIC on the merits of this first-party administrative complaint against Respondent.

CONCLUSIONS OF LAW

1. W.Va. Code §33-2-13 states, in pertinent part, “[t]he commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties.” Additionally, W.Va. Code §33-2-13 further states, “[i]n the discretion of the commissioner a rehearing may be granted to any party to a hearing upon written request filed with the commissioner within thirty days of the mailing of such order.”

2. W.Va. Code R. §114-13-6.12 states “[i]n the discretion of the commissioner, a rehearing may be granted to any party to a hearing upon written request filed with the commissioner within thirty days (30) of entry.

3. Regarding first-party complaints, the WVOIC does not have the general authority to adjudicate the merits of an underlying claim involving a good faith dispute over liability or value. The authority of the WVOIC is limited by statute.

4. A disagreement regarding liability or value for an underlying claim does not alone signal an unfair claims settlement practice. “So long as the insurer acts in good faith, the insurer is not held to standards of omniscience or perfection; it has leeway to use and should consistently employ its honest business judgment.” *Jackson v. State Farm Mut. Auto. Ins. Co.*, 215 W.Va. 634, 600 SE2d 346 (2004), quoting *Peckham v. Continental Cas. Ins. Co.*, 895 F2d 830, 835 (1st Cir. 1990). Respondent simply must show that its investigation was done in good faith given its own knowledge at the time of the relevant facts and claim concerning the underlying claim. See *Jackson supra*, at 642, quoting *Bolden v. O’Connor Café of Worchester, Inc.*, 50 Mass App. Ct. 56, 734 N.E.2d 726 (2000).

Further, W.Va. Code R. § 114-13-3.3 states:

3.3 Hearing on written demand ~ When the commissioner is presented with a demand for a hearing as described in subsections 3.1 and 3.2 of this section, he or she shall conduct a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement. However, if the commissioner shall determine that the hearing demanded:

a. Would involve an exercise of authority in excess of that available to him or her under the law b. Would serve no useful purpose, the commissioner shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his or her reasons for such refusal. Appeal may be taken from such order as provided in W.Va. Code §33-2-14.

5. Respondent conducted a reasonable investigation of the claim and made a reasonable settlement offer. Respondent used an approved used car price guide and considered information provided by Complainant when determining the value of the vehicle. Although Complainant disagrees with the value, the OIC does not have the authority to determine damages and order a certain sum paid. The OIC is limited to reviewing whether Respondent committed an unfair claims settlement practice. A good faith dispute over the value of a claim is not considered an unfair claims settlement practice.

6. W.Va. Code §33-2-13 and W.Va. R. §114-1-3.3 give the Commissioner discretion in deciding whether a hearing would serve a useful purpose. Holding a hearing in this matter would involve an exercise of authority in excess of that available to the OIC under the law in that it would be asking the OIC to adjudicate a good faith liability dispute regarding the Complainant's underlying claim. The OIC properly closed this matter pursuant to W.Va. Code § 33-1 1-4a(g), and a hearing on the matter would serve no useful purpose.

7. Wherefore, a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to it under the law.

ORDER

It is therefore **ORDERED** that the Complainant's request for a hearing is **DENIED**. Pursuant to W.Va. Code §33-2-14, the Complainant has the right to appeal this Order of the Insurance Commissioner to the Circuit Court of Kanawha County within 30 days of receipt.

ENTERED this the 16th day of March, 2022.


ALLAN L. MCVEY