

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

In the Matter of:

Patrick Pauley, Claimant,

and

Administrative Proceeding No. 22-IC-02391

Advance Auto Parts, Employer;

Indemnity Insurance of North America, Insurance Carrier; and

Sedgwick, Third-Party Administrator

ORDER DENYING MOTION FOR RECONSIDERATION
AND/OR REQUEST FOR REHEARING

This matter came before the Insurance Commissioner on the *Motion for Reconsideration and/or Request for Rehearing* (“Motion”) filed on behalf of the Employer, Advance Auto Parts; Insurance Carrier, Indemnity Insurance of North America (“Indemnity Insurance”); and Third-Party Administrator, Sedgwick. This Petition was filed as a result of the Insurance Commissioner’s Final Order dated October 13, 2022, adopting the September 19, 2022 Report of the Board of Review from Chairperson Nick Casey. This Report contains Findings of Fact and Conclusions of Law setting forth his opinion that the Employer did not timely comply with a request to reopen the claim for TTD benefits.

The Board of Review gave the parties thirty (30) days from the date it acknowledged the Petition to offer argument or explanation regarding the alleged failure to timely act. The Board of Review considered the following documents in rendering its Report which were the only documents timely submitted:

1. June 23, 2022 claimant’s *Petition Alleging Failure to Timely Act*
2. May 3, 2022 letter from Mr. Maroney requesting a reopening of the claim for TTD benefits
3. May 3, 2022 Reopening Application
4. May 3, 2022 MedExpress office note
5. May 3, 2022 MedExpress work restrictions

After considering all of the evidence presented, the Board of Review, by Chairperson Casey, found that Indemnity Insurance failed to timely act upon claimants May 3, 2022 request to reopen the claim for TTD benefits within thirty (30) days of receipt of request. Therefore, Indemnity Insurance had failed to timely act in violation of W. Va. Code R. §85-1-10.6.

Upon reviewing the Report from Chairperson Casey, the Insurance Commissioner entered an Order adopting the Findings of Fact and Conclusions of Law and ordered that Indemnity Insurance file a Corrective Action Plan, within thirty (30) days, setting forth detailed corrections, alterations and/or improvements to procedures and/or internal policies to ensure future compliance. It was also further ordered that Indemnity Insurance, pay a penalty to the State of West Virginia in the amount of Five Hundred Dollars (\$500.00). The Insurance Commissioner's Order advised that any party aggrieved by the Order could appeal pursuant to W. Va. Code § 33-2-14.

The Request for Rehearing does not set forth any factual or legal errors contained in Chairperson Casey's Report or the Insurance Commissioner's Final Order. The Motion states the parties resolved the issue in the Claimant's petition on August 4, 2022 but the Insurance Commissioner was not informed until October 18, 2022, after the Board of Review Report dated September 19, 2022 and the Commissioner's Final Order dated October 13, 2022.

Pursuant to W. Va. Code § 33-2-13, granting a party's request for a rehearing is at the discretion of the Insurance Commissioner. Having considered the Request for Rehearing, and having reviewed the record as a whole, the Insurance Commissioner finds the Insurer was given due process and ample opportunity to present evidence and argument prior to the September 19, 2022 Report to the Insurance Commissioner. Further, there is no justification for a rehearing and no error has been committed by the Board of Review. Chairperson Casey made proper findings of fact and conclusions of law based upon the

available evidence which were appropriately adopted by the Insurance Commissioner by Order dated October 13, 2022. Therefore, the Request for Rehearing is **DENIED**.

Indemnity Insurance shall comply with the Insurance Commissioner's October 13, 2022 Order within thirty (30) days of the below date.

The objections of any party aggrieved by this Order are preserved.

ENTERED this the 19th day of December, 2022.



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

BEFORE ALLAN L. MCVEY**INSURANCE COMMISSIONER OF THE STATE OF WEST VIRGINIA****Document Submission Form**

Claimant: Patrick Pauley

Employer(s): Advance Stores Company, Inc.

JCN No: 2018008126

Carrier Ref. No.: 30178701798-0001

DOI / DLE: 9/30/2017

Submitting Party: Jane Ann Pancake, Esq.

Representing: Employer

Reference: June 23, 2022

Short Description(s) of Order: Claimant Petition Alleging Failure to Timely Act on May 3, 2022, Request to Reopen for TTD Benefits.

Please Select One of the Following Categories: Attach only (1) document per form.

X Motion to Accept Employer's November 1, 2022, memorandum in support of motion for reconsideration and/or request for rehearing pursuant to W.V.A. Code §33-2-13 and §23-2-17, be accept.

(VIA Fax)

Date: November 11, 2022

Submitted by:



Jane Ann Pancake, WFSB # 10743

Jeffrey B. Brannon, WFSB # 7838

JAP/tlb

Enclosure

cc: Patrick K. Maroney, Esq., *via fax*
Randy Clifford, Sedgwick, *via e-mail*
Indemnity Insurance Company of North America
Advance Stores Company, Inc.

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

Patrick Pauley,

Claim No.: 30178701798-0001

Claimant,

JCN No: 2018008126

v.

D.O.I.: September 30, 2017

Advance Stores Company, Inc.

Employer.

**MOTION TO ACCEPT EMPLOYER'S NOVEMBER 1, 2022, MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION AND/OR REQUEST FOR REHEARING PURSUANT TO
W.VA. CODE §33-2-13 AND §23-2-17**

Comes now the Employer, by counsel, Jane Ann Pancake, Esquire, and request that the November 1, 2022, memorandum in support of the motion for reconsideration and/or request for rehearing pursuant to W.VA. Code §33-2-13 and §23-2-17, be accept.

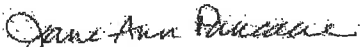
Reason:

1. On November 1, 2022, the employer filed a memorandum in support of the motion for reconsideration and/or request for rehearing pursuant to W.VA. Code §33-2-13 and §23-2-17, be accept. (Exhibit A)
2. On November 10, 2022, the employer received communication from the Board of Review advising receipt of our November 1, 2022, memorandum in support of the motion for reconsideration and/or request for rehearing pursuant to W.VA. Code §33-2-13 and §23-2-17.

Accordingly, the employer requests that this Motion and the November 1, 2022, Memorandum to the Office of Insurance Commissioner be accepted as timely filed.

Date: November 10, 2022

Submitted by:


Jane Ann Pancake, WYSB # 10743
Jeffrey B. Brannon, WYSB # 7838

JAP/tlb

cc: Patrick K. Maroney, Esq., *via fax*
Randy Clifford, Sedgwick, *via e-mail*
Indemnity Insurance Company of North America

CIPRIANI & WERNER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

JANE ANN PANCAKE
jpancake@c-wlaw.com

500 Lee Street East, Suite 900
Charleston, WV 25301

A Mid-Atlantic Litigation Firm.

Phone: (304) 341-0500
Fax: (304) 341-0507

Visit us online at
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www.C-WLAW.com

November 1, 2022

The Honorable Allan L. McVey, *via fax*
Insurance Commissioner of the State of West Virginia
Office of Judges
P.O. Box 2233
Charleston, WV 25328

RE: Patrick Pauley v. Advanced Auto Parts, Employer, Indemnity Insurance of North America, Insurance Carrier; and Sedgwick, Third-Party Administrator Administrative Proceeding: No 22-IC-02391
JCN: 2018008126
CCN: 30178701798-0001

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION AND/OR REQUEST FOR REHEARING PURSUANT TO W.VA. CODE §33-2-13 AND §23-2-17

Now Comes the Employer, Advanced Auto Parts, Indemnity Insurance Company of North America, its Insurance Carrier, and Sedgwick, the Third-Party Administrator (collectively referred to hereinafter as "Claim Administrator"), and moves that the Office of Insurance Commissioner to RECONSIDER its October 13, 2022, Final Order entered in the above matter or set this matter for REHEARING, so that it may reconsider the Final Order entered on October 22, 2022, finding and concluding that concludes that a violation of the W. Va. Code and/or W. Va. Code of State Rules occurred. (Exhibit A).

The Report to the Insurance Commissioner regarding the claimant's petition alleging failure to timely act regarding his May 3, 2022, request to reopen the claim for temporary total disability benefits was issued on September 19, 2022. On August 4, 2022, the parties resolved the issues raised in the claimant's petition. By letter dated October 18, 2022, the claimant's attorney advised the Insurance Commissioner of this, and requested the petition be withdrawn. (Exhibit B)

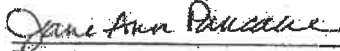
As the parties have resolved this matter, the Claims Administrator REQUESTS the OIC RECONSIDER its October 22, 2022, Final Order, SET ASIDE the October 22, 2022, Final Order and DISMISS this matter. Alternatively, the Claims Administrator MOVES that a REHEARING



be granted before the OIC regarding the Final Order dated October 22, 2022, pursuant to West Virginia Code § 33-2-13 and West Virginia Code § 23-2-17.

Date: November 1, 2022

Submitted by:


Jane Ann Pancake, WVSB # 10743
Jeffrey B. Brannon, WVSB # 7838

JAP/tlb

Enclosure

cc: Patrick K. Maroney, Esq., *via fax*
Randy Clifford, Sedgwick, *via e-mail*
Indemnity Insurance Company of North America
Advance Stores Company, Inc.

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

In the Matter of:

Patrick Pauley, Claimant

and

Administrative Proceeding No. 22-IC-02391

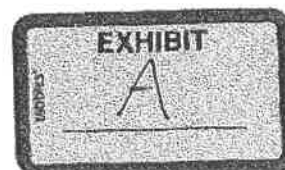
Advance Auto Parts, Employer;
Indemnity Insurance of North America, Insurance Carrier; and
Sedgwick, Third-Party Administrator

FINAL ORDER

This matter came before the Insurance Commissioner on the Claimant's Petition Alleging Failure to Timely Act. The matter was heard by the Board of Review, which was acting as hearing examiner for the Insurance Commissioner. Pursuant to 93 CSR 1 §18.1 – 18.4, the employer was given notice and an opportunity to be heard.

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby ADOPT and APPROVE the September 19, 2022 Report to the Insurance Commissioner Upon Petition Alleging Failure to Timely Act of the Board of Review, appended hereto, as well as the Findings of Fact and Conclusions of Law therein contained. The undersigned further finds and concludes that INDEMNITY INSURANCE OF NORTH AMERICA committed a violation of the W. Va. Code and/or W. Va. Code of State Rules as set forth in the attached Findings of Fact and Conclusions of Law.

It is, therefore, ORDERED that INDEMNITY INSURANCE OF NORTH AMERICA shall file a letter with the Insurance Commissioner by mailing it to the attention of the Legal Division, PO Box 50540, Charleston, West Virginia, 25305, within thirty (30) calendar days of entry of this Order acknowledging receipt of this Order and advising the Insurance Commissioner as to how it has improved its claims processing to ensure that the violations found herein do not occur in the future.

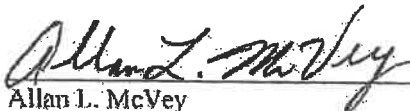


It is further **ORDERED** that INDEMNITY INSURANCE COMPANY OF NORTH AMERICA pay a penalty to the State of West Virginia in the amount of Five Hundred Dollars (\$500.00) for failing to timely issue a protestable order regarding claimants request to reopen his claim for benefits.

Pursuant to W. Va. Code §33-2-13, in the discretion of the Insurance Commissioner, a rehearing may be granted upon written request filed with the Insurance Commissioner within thirty (30) days of the mailing of this Order.

The objections of any party aggrieved by this Order are preserved.

ENTERED this the 13th day of October, 2022.


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

BEFORE ALLAN L. MCVEY
INSURANCE COMMISSIONER OF THE STATE OF WEST VIRGINIA
Workers' Compensation Board of Review, P.O. Box 2628, Charleston, WV 25329-2628
Telephone (304) 558-5230

IN THE MATTER OF

Patrick E. Pauley
Claimant

JCN: 2018008126

and

Indemnity Insurance Company of North America, for
Advance Auto Parts

REPORT TO INSURANCE COMMISSIONER
UPON PETITION ALLEGING FAILURE TO TIMELY ACT

PARTIES:

Claimant, Patrick E. Pauley, by counsel, Patrick K. Maroney
Carrier, Indemnity Insurance Company of North America, by counsel, Jane
Ann Pancake

JURISDICTION:

The claimant alleges that the employer or its insurer¹ failed to perform an act required by West Virginia Statute or Rule within time limits set by law. The Offices of the Insurance Commissioner (OIC) has jurisdiction over the matter pursuant to W. Va. Code §§ 33-2-13 and 33-2-21. The OIC has assigned the hearing of this matter to the Workers' Compensation Board of Review.

Specifically, the claimant alleges that the employer or its insurer carrier failed to timely act upon his May 3, 2022 request to reopen the claim for temporary total disability (TTD) benefits.

RECORD TO BE CONSIDERED:

1. The claimant's Petition Alleging Failure to Timely Act dated June 23, 2022.
2. Letter from Mr. Maroney dated May 3, 2022, requesting a reopening of the claim for TTD benefits.
3. Reopening Application dated May 3, 2022.
4. MedExpress office noted dated May 3, 2022.
5. MedExpress work restrictions form dated May 3, 2022.

¹ Advance Auto Parts is the employer in this claim, and Indemnity Insurance Company of North America is the workers' compensation insurance carrier. Sedgwick is the claim administrator for Indemnity Insurance Company of North America.

Patrick E. Pauley

JCN: 2018008126

6. Email from Jeanie Jarvis at Mr. Maroney's office dated May 3, 2022.

FINDINGS OF FACT:

1. The claimant sustained a compensable injury on September 30, 2017.
2. The claimant was seen by Phillip A. Miller, FNP at MedExpress, on May 3, 2022, for a follow-up of his back injury. He was diagnosed with sprain of ligaments of lumbar spine, subsequent encounter and was referred to orthopedics.
3. Phillip A. Miller, FNP, completed a work restrictions form on May 3, 2022, indicating the claimant was able to return to modified duty as of May 3, 2022 with kneeling, pulling/pushing, overhead reach, lifting and carrying restrictions.
4. Phillip A. Miller, FNP, completed a Reopening Application dated May 3, 2022. Mr. Miller opined claimant was disabled from working for the period of April 12, 2022 to May 10, 2022.
5. On May 3, 2022, Mr. Maroney emailed a letter to Randy Clifford at Sedgwick, requesting the reopening of the claim for TTD benefits from April 12, 2022, to May 10, 2022.
6. On May 3, 2022, Jeanie Jarvis from Mr. Maroney's office emailed the reopening request to Randy Clifford at Sedgwick. (In the electronic file under the date of June 23, 2022.)
7. The claimant filed a Petition Alleging Failure to Timely Act on June 23, 2022. Specifically, the claimant asserted the claim administrator failed to timely act upon his May 3, 2022 request to reopen the claim for TTD benefits.

DISCUSSION:

The provisions of W. Va. Code § 33-2-21 provide that the Insurance Commissioner shall regulate all insurers licensed to transact Workers' Compensation insurance in this state, and W. Va. Code § 33-2-13 provides that the Insurance Commissioner may hold hearings for any purpose deemed necessary by him for the performance of his duties. W. Va. Code § 23-4-1c(a)(3) provides a venue for a claimant to address situations where a claim administrator fails to timely issue a ruling upon an application or motion as provided by law. The law provides other venues to review substantive disputes regarding the subject matter of rulings, i.e., by filing objections to specific claim administrator's orders with the Board of Review pursuant to W. Va. Code § 23-5-1a, *et seq.*

Patrick E. Pauley

JCN: 2018008126

Accordingly, it is noted that the purpose of this specific report is to determine if the carrier or its claim administrator failed to timely act upon claimant's TTD reopening request. This report is not intended to, nor does it, address the merits of any issues that may be in litigation on the claimant's protests to orders issued by the claim administrator.

The claimant alleges the claim administrator failed to timely act upon his May 3, 2022 request to reopen the claim for TTD benefits. The applicable rule regarding the issuance of rulings in response to the filing of a claim application is W.Va. C.S.R. § 85-1-10.6.² Generally, the claim administrator is required to issue a ruling on a reopening application within 30 days of receipt of the application. There is no evidence that the claim administrator ever issued a protestable order granting or denying the request for a TTD reopening. Based upon the evidence of record, it is found that the claim administrator failed to act in a prompt and timely manner.

CONCLUSIONS OF LAW:

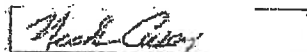
There is no evidence that the claim administrator issued a protestable order regarding the request to reopen the claim for TTD benefits. Therefore, it failed to timely act in violation of W.Va. C.S.R. §85-1-10.6.

REFERRAL TO OFFICES OF INSURANCE COMMISSIONER:

These Findings of Fact and Conclusions of Law are now referred to the Offices of the Insurance Commissioner. The Board of Review recommends the Offices of the Insurance Commissioner take action against the claim administrator for failure to comply with the law

All of which is accordingly ORDERED.

Date: September 19, 2022


Nick Casey, Chairperson

² W.Va. C.S.R. § 85-1-10.6 states, "Applications for reopening of claims for temporary or permanent disability benefits shall be ruled upon by the responsible party within thirty (30) days from the date of receipt of the application by the responsible party. The responsible party shall consider all information and proof properly submitted in connection with the application. Whenever a claim has not been adequately or properly developed for consideration, the responsible party may require the production of additional evidence. The thirty (30) days to rule on the claim shall be tolled during this evidence gathering process."

Patrick E. Pauley

JCN: 2018008126

cc PATRICK PAULEY
PATRICK MARONEY
ADVANCE AUTO PARTS
JANE ANN PANCAKE
INDEMNITY INSURANCE CO OF NORTH AMERICA
SEDGWICK CMS
JEFF BLACK

MARONEY, WILLIAMS, WEAVER & PANCAKE, PLLCOFFICE OF
GENERAL COUNSEL
AND

WORKERS' COMPENSATION SERVICES

THOMAS P. MARONEY
GENERAL COUNSELROBERT M. WILLIAMS, ATTORNEY
J. ROBERT WEAVER, ATTORNEY
EDWIN H. PANCAKE, ATTORNEY
PATRICK K. MARONEY, ATTORNEYMAILING ADDRESS
POST OFFICE BOX 3709
CHARLESTON, WV 25337OFFICE ADDRESS
608 VIRGINIA STREET, EAST
CHARLESTON, WEST VIRGINIA 25301TELECOPIER (304) 346-3325
TELEPHONE (304) 346-9629

October 18, 2022

State of West Virginia
Offices of the Insurance Commissioner
900 Pennsylvania Avenue
Charleston, WV 25302

Re: Failure to Timely Act on June 23, 2022
Administrative Proceeding No.: 22-IC-02391
Claimant: Patrick Pauley
JCN: 2018008126
DOI: 09/30/2017

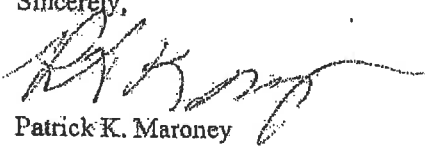
Dear Sirs:

On June 23, 2022, the claimant filed a Failure to Timely Act regarding a petition to reopen the claim for temporary total disability benefits.

On August 4, 2022, the parties resolved the failure to timely act and the Insurance Carrier issued an order dated August 18, 2022. The claimant is satisfied that this issue has been resolved and respectfully request that the Failure to Timely Act be withdrawn.

The claimant appreciates the Commissioner's time and if anything further is needed, please let me know.

Sincerely,


Patrick K. Maroney

PKM/bj

cc: Jane Ann Pancake, Esquire



FAX COVER SHEET

TO

COMPANY

FAXNUMBER 13045581908

FROM CW Send Only 20

DATE 2022-11-11 16:56:26 EST

RE Claim No.: 30178701798-0001 Patrick Pauley v. Advance
Stores Company, Inc. (1905-80881C)

COVER MESSAGE

Please find attached **Motion to Accept Employer's 11/1/22 Memorandum in support of motion** regarding the above referenced claim. If you have any questions, please feel free to contact our office.

Connor Brannon | Legal Assistant

CIPRIANI & WERNER PC

500 LEE STREET EAST, SUITE 900 | CHARLESTON, WV 25301
(304) 341-0500 (MAIN) | www.c-wlaw.com

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