

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

**IN RE:
PILGRIM'S PRIDE OF WEST VIRGINIA**

**ADMINISTRATIVE PROCEEDING #
18-AP-MCSI-02000**

**AGREED ORDER ADOPTING REPORT OF
SELF-INSURED COMPLIANCE AUDIT, DIRECTING
CORRECTIVE ACTION AND ASSESSING PENALTY**

NOW COMES The Honorable Allan L. McVey, Insurance Commissioner of the State of West Virginia, and issues this Agreed Order which adopts the Report of Self-Insured Compliance Audit, directs corrective action and assesses a penalty. The Agreed Order is a result of findings in the Report of Self-Insured Compliance Audit for the examination of **PILGRIM'S PRIDE OF WEST VIRGINIA** for the audit period ending March 31, 2018, based upon the following, to wit:

PARTIES

1. The Honorable Allan L. McVey is the Insurance Commissioner of the State of West Virginia (hereinafter "Insurance Commissioner") and is charged with the duty of administering and enforcing, among other duties, the provisions of Chapter 33 and 23 of the West Virginia Code, as amended, including all Code of State Rules.

2. **PILGRIM'S PRIDE OF WEST VIRGINIA** is a corporation authorized to transact and conduct its workers' compensation affairs in a self-insured capacity in West Virginia pursuant to the provisions of W. Va. Code §23-2-9.

3. This self-insured audit was conducted and instituted as result and per the authority of 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.*

FINDINGS OF FACT

1. A Self-Insured Compliance Audit concerning the operational affairs of PILGRIM'S PRIDE OF WEST VIRGINIA for the period ending March 31, 2018, 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 Insurance Commissioner. The Self-Insured Compliance Audit of the Self-Insured Employer began on May 15, 2018 and concluded on July 3, 2018.

2. On July 13, 2018, the examiner filed with the Insurance Commissioner, pursuant to W. Va. Code § 33-2-9(j) (2), a Self-Insured Compliance Audit Report.

3. A true copy of the Report of Self-Insured Compliance Audit was sent to PILGRIM'S PRIDE OF WEST VIRGINIA, along with this Agreed Order Adopting Report of Self-Insured Compliance Audit and Directing Corrective Action.

4. PILGRIM'S PRIDE OF WEST VIRGINIA was notified pursuant to W. Va. Code § 33-2-9(j) (2) that it had thirty (30) days after receipt of the Self-Insured Compliance Audit Report to file a submission or objection with the Insurance Commissioner, or it could enter into this Agreed Order if it had no objections to the Self-Insured Compliance Audit Report.

5. The Self-Insured Compliance Audit Report focused on the methods used by the Self-Insured Employer to manage its operations for each of the business areas examined which includes how the Self-Insured Employer complies with West Virginia statutes and rules. A total of twenty-nine (29) specific elements were reviewed.

6. The exam discovered three (3) areas where there was not one hundred percent compliance.

7. PILGRIM'S PRIDE OF WEST VIRGINIA agreed to enter into this Order.

8. PILGRIM'S PRIDE OF WEST VIRGINIA hereby waives additional notice and

review of the Self-Insured Compliance Audit Report, notice of administrative hearing, any and all rights to an administrative hearing and to appellate review of any matters contained herein this Agreed Order.

CONCLUSIONS OF LAW

1. The Insurance 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. That PILGRIM'S PRIDE OF WEST VIRGINIA has incurred violations of W. Va. Code and/or W. Va. Code of States Rules as detailed in the Report of Self-Insured Compliance Audit including but not limited to:

(A.) Claims Standard A1 (One (1) violation) – The Self-Insured Employer did not respond to the West Virginia Office of the Insurance Commissioner in the time period required by the West Virginia Rules. W.Va. Code R. §85-1-16.

(B.) Claims Standard B1 (Three (3) violations) – The Self-Insured Employer did not timely issue indemnity claims rulings on two claims and did not send a ruling letter on one claim as required by W.Va. Code §§23-4-1c(a) and (b) and W.Va. Code R. §85-1-10.1.

(C.) Claims Standard C4 (Three (3) violations) – The Self-Insured Employer did not issue letters suspending or closing temporary total disability benefits as required by W.Va. Code §23-4-7a(e), and did not notify claimants of their right to a permanent disability evaluation pursuant to W.Va. Code §23-4-22.

4. The Insurance Commissioner is charged with the responsibility of verifying continued compliance with West Virginia Code and the West Virginia Code of State Rules by PILGRIM'S PRIDE OF WEST VIRGINIA as well as all other provisions of state law that

PILGRIM'S PRIDE OF WEST VIRGINIA is subjected to by virtue of its self-insured workers' compensation status in the State of West Virginia.

5. Any Conclusion of Law that is more properly a Finding of Fact is hereby incorporated as such and adopted in the previous section.

ORDER

Pursuant to W. Va. Code § 33-2-9(j)(3)(A), following the review of the Self-Insured Compliance Audit Report, the examination work papers, and PILGRIM'S PRIDE OF WEST VIRGINIA's Response thereto, if any, the Insurance Commissioner and PILGRIM'S PRIDE OF WEST VIRGINIA have agreed to enter into this Agreed Order adopting the Self-Insured Compliance Audit Report. The Parties have further agreed to the imposition of corrective action and an administrative penalty against PILGRIM'S PRIDE OF WEST VIRGINIA as set forth below.

It is accordingly **ORDERED** as follows:

(A) The Self-Insured Compliance Audit Report of PILGRIM'S PRIDE OF WEST VIRGINIA for the period ending March 31, 2018, is hereby **ADOPTED** and **APPROVED** by the Insurance Commissioner.

(B) It is **ORDERED** that PILGRIM'S PRIDE OF WEST VIRGINIA will endeavor to comply with the recommendations in the Report of Self-Insured Compliance Audit adopted herein.

(C) It is further **ORDERED** that PILGRIM'S PRIDE OF WEST VIRGINIA shall continue to monitor its compliance with the West Virginia Code, the West Virginia Code of State Rules and all laws it is subject thereto.

(D) PILGRIM'S PRIDE OF WEST VIRGINIA shall specifically cure those violations and deficiencies identified in the Self-Insured Claims Audit Report including providing appropriate

restitution (where applicable) or other immediate handling of the issue so as to bring the violations into compliance and conformity with the Commissioner's findings, recommendations and any applicable law(s) to the extent the same has not already been completed and/or accomplished.

(E) It is further **ORDERED** that PILGRIM'S PRIDE OF WEST VIRGINIA shall file a Corrective Action Plan which will be subject to the approval of the Insurance Commissioner. The Corrective Action Plan shall detail PILGRIM'S PRIDE OF WEST VIRGINIA'S changes to its procedures and/or internal policies to ensure compliance with the West Virginia Code and West Virginia Code of State Rules. It shall further incorporate all recommendations of the Insurance Commissioner's examiners and address all violations specifically cited in the Self-Insured Compliance Audit Report. The Corrective Action Plan outlined in this Order must be submitted to the Insurance Commissioner for approval within thirty (30) days of the entry date of this Agreed Order. PILGRIM'S PRIDE OF WEST VIRGINIA shall implement reasonable changes to the Corrective Action Plan if requested by the Insurance Commissioner within thirty (30) days of the Insurance Commissioner's receipt of the Corrective Action Plan. The Insurance Commissioner shall provide notice to PILGRIM'S PRIDE OF WEST VIRGINIA if the Corrective Action Plan is disapproved and the reasons for such disapproval within thirty (30) days of the Insurance Commissioner's receipt of the Corrective Action Plan.

(F) The Insurance Commissioner has determined and it has been agreed by PILGRIM'S PRIDE OF WEST VIRGINIA and therefore, it is hereby **ORDERED** that PILGRIM'S PRIDE OF WEST VIRGINIA shall pay an administrative penalty of Five Hundred Dollars (\$500.00) to the State of West Virginia for non-compliance with the West Virginia law as described herein. The payment of this administrative penalty is in lieu of any other regulatory penalty and is due within **THIRTY (30) calendar days** upon execution of this Order.

(G) It is finally **ORDERED** that all such review periods, statutory notices, administrative hearings and appellate rights are herein waived concerning this Self-Insured

Compliance Audit Report and Agreed Order. All such rights are reserved by the Parties regarding any future action taken, if any, on such Agreed Order by the Insurance Commissioner against PILGRIM'S PRIDE OF WEST VIRGINIA.

Entered this 19th day of September, 2018.



The Honorable Allan L. McVey
Insurance Commissioner
State of West Virginia

REVIEWED AND AGREED TO BY:

On Behalf of the WVOIC:



Jeffrey C. Black, Associate Counsel
Attorney Supervisor
Regulatory Compliance and Enforcement

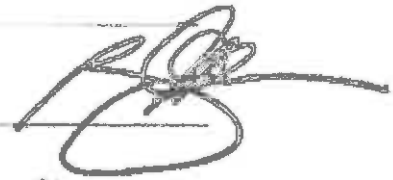
Dated: 9/18/18

On Behalf of PILGRIM'S PRIDE OF WEST VIRGINIA:

By: STEPHANY ROCKWELL
[Print Name]

Its: _____

Signature: _____



Dated: 9-17-18

Report of Self-Insured Market Conduct Compliance Examination

As of March 31, 2018



Pilgrim's Pride Corporation of West Virginia, Inc.

1770 Promontory Circle

Greeley, CO 80634

TPA

Sedgwick Claim Management Services

700 Washington Street

Charleston, WV 25301

Examination Number 18-MCSI-02000

Date Prepared:

July 13, 2018

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July 13, 2018

The Honorable Allan I. 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, 2015 through March 31, 2018 on the Workers' Compensation self-insured claims handling of

Pilgrim's Pride Corporation of West Virginia, Inc.
1770 Promontory Circle
Greeley, CO 80634

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 report dated as of June 30, 2015 found one claim in which the compensability ruling letter was never sent. This examination found one claim where the Self-Insured Employer repeated the same failure. All previous recommendations have been addressed by the Self-Insured Employer and we found no subsequent failure of those standards.

EXECUTIVE SUMMARY

This Self-Insured Market Conduct Compliance Examination ("examination") was initiated to determine the compliance of Pilgrim's Pride Corporation of West Virginia, Inc. with the West Virginia statutes, rules and regulations governing the self-administration of workers' compensation claims

The examination work related to Pilgrim's Pride Corporation commenced May 15, 2018 and concluded July 3, 2018. Pilgrim's Pride Corporation 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") Sedgwick Claims Management Services, Inc.'s computer systems.

The following are areas of concern:

- **Element of review A. 1.**

One (1) insurance complaint response to the West Virginia Offices of the Insurance Commissioner was filed ten (10) days late in violation of W. Va. Code R. § 85-1-16.

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

Two (2) indemnity claims had late rulings and one (1) claim failed to send a ruling letter in violation of W. Va. Code §§ 23-4-1c (a) and (b) & W. Va. Code R. § 85-1-10.1.

- **Element of review C. 4.**

In three (3) claims the employer failed to properly notify the employee of their right to a Permanent Partial Disability (PPD) evaluation in violation of W. Va. Code §§ 23-5-1, 23-4-7a and 23-4-22.

HISTORY AND PROFILE

With corporate headquarters located in Greeley, Colorado, Pilgrim's Pride Corporation operates two (2) facilities in Moorefield West Virginia. The fresh plant facility processes

approximately 450,000 birds per day and the prepared foods facility processes various ready-to-eat products which produces an average of 2.4 million pounds of product per week. The first poultry plant, Rockingham Poultry Marketing Cooperative opened in 1944. In 1988, Rockingham Poultry, Inc. merged with Wampler-Longacre, Inc., to become WLR Foods, Inc., and in 2001, joined Pilgrim's Pride Corporation. In 2009, the Self-Insured Employer joined JBS USA.

In accordance with W. Va. Code § 23-2-9, Pilgrim's Pride Corporation commenced its self-insured operations in West Virginia beginning October 1, 2001. As of the date of this report, the Self-Insured Employer employs 1,749 active employees in the state of West Virginia and utilizes the services of third party administrator (TPA), Sedgwick Claims Management Services, Inc., for self-insured claims services under an agreement signed January 1, 2014.

METHODOLOGY

The examiners 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. There was a total of 718 claims during the examination period. Of the 718 total claims population; 110 consisted of denied claims and the remaining 608 were paid/indemnity claims. The paid/indemnity claims included 458 which were medical only. A maximum initial sample of fifty (50) claims files was selected randomly using the following parameters. Denied Claims: A maximum initial sample of twenty-five (25) denied claims files was selected; Paid Claims: A maximum initial sample of twenty-five (25) paid claims files was selected; A weighted sampling methodology of "80% Indemnity" (20 Claims) and 20% "Medical Only" (5 Claims) were utilized. Of the indemnity claims sample; twenty (20) were total temporary disability and of these; seven (7) were permanent partial disability claims.

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. Are 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. Is the claim properly closed and a notice issued? [W. Va. Code § 24-4-16 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. Are 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. Are claims denied inappropriately due to a technicality? [W. Va. Code § 23-5-13]
4. Is 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. Are 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	0	1	1	0%	*	
B1	22	3	0	88%		*
B2	25	0	0	100%	N/A	N/A
C1	25	0	N/A	100%	N/A	N/A
C2	25	0	N/A	100%	N/A	N/A
C3	20	0	N/A	100%	N/A	N/A
C4	17	3	N/A	85%		*
D1	7	0	N/A	100%	N/A	N/A
D2	7	0	N/A	100%	N/A	N/A
D3	7	0	N/A	100%	N/A	N/A
D4	7	0	N/A	100%	N/A	N/A
E1	25	0	N/A	100%	N/A	N/A
F1	N/A	N/A	N/A	N/A	N/A	N/A
G1	N/A	N/A	N/A	N/A	N/A	N/A
H1	50	0	N/A	100%	N/A	N/A
I1	N/A	N/A	N/A	N/A	N/A	N/A
J1	25	0	N/A	100%	N/A	N/A
J2	25	0	N/A	100%	N/A	N/A
J3	25	0	N/A	100%	N/A	N/A
J4	25	0	N/A	100%	N/A	N/A
J5	25	0	N/A	100%	N/A	N/A
K1	N/A	N/A	N/A	N/A	N/A	N/A
L1	50	0	N/A	100%	N/A	N/A
M1	50	0	N/A	100%	N/A	N/A
M2	20	0	N/A	100%	N/A	N/A
M3	41	0	N/A	100%	N/A	N/A
N1	6	0	N/A	100%	N/A	N/A
N2	50	0	N/A	100%	N/A	N/A
O	N/A	N/A	N/A	N/A	N/A	N/A

*See "Observations and Recommendations" below.

OBSERVATIONS

A1 – The Self-Insured Employer responded to one (1) insurance complaint ten (10) days late. The complaint was filed with the Self-Insured Employer on April 27, 2017. On June 1, 2017, the West Virginia Offices of the Commissioner (WVOIC) contacted the Self-Insured Employer via email advising them their response was due on May 19, 2017. The Self-Insured Employer response was received June 2, 2017 in violation of the required fifteen (15) working day timeframe as required by W. Va. Code R. § 85-1-16.

B1 – One (1) claim the ruling letter for a secondary condition was never sent. The claim file noted the ruling letter was sent to the employee denying benefits for the secondary condition. The Self-Insured Employer agreed they failed to send the ruling letter, and in response to the examiners inquiry, sent a ruling letter to the employee.

One (1) claim with a date of injury August 18, 2017 was tolled by the Self-Insured Employer on September 26, 2017 and a compensability decision letter was not issued until February 12, 2018 despite the adjuster indicating via file notes that the claim was compensable. The file indicated that the ruling letter was dated three months after the Self-Insured Employer authorized surgery, and four months after receiving the medical records of a nerve conduction study (October 30, 2017) indicating a diagnosis of severe bilateral carpal tunnel syndrome. The file did not indicate that additional information was either subsequently received or requested relevant to the compensability decision. In a second claim the initial ruling letter took forty-four days following receipt of the employee's WC1 and medical records documented in the claim file. The Self-Insured Employer agreed the ruling for compensability was not issued timely as required by W. Va. Code §§ 23-4-1c (a) and (b) & W. Va. Code R. §85-1-10.1.

C4 - In three (3) claims the employer failed to properly notify the employee of their right to a Permanent Partial Disability (PPD) evaluation. In one (1) claim following the employee's full duty return to work status the employee's treating physician placed the employee at Maximum Medical Improvement (MMI) with no PPD. The employee however, was not notified of her right to a PPD evaluation. In response to the examiners inquiry, the Self-Insured Employer sent the employee a 0% PPD award letter and notice of the right to a PPD evaluation. In two (2) claims the Total Temporary Disability (TTD) closure letter closed the claim for PPD benefits stating, *"Your claim is closed for permanent partial disability benefits because it appears that you do not have impairment resulting from this injury, and you did not request a permanent impairment evaluation. To reopen your claim for permanent partial benefits, you must submit a request in writing accompanied by a medical report indicating you*

have suffered impairment as a result of this injury". The Self-Insured Employer disagreed with the violation in one (1) claim stating a May 24, 2017 TTD closure letter did notify the employee of his right to a PPD evaluation. Although the TTD closure letter made reference to PPD benefits, it stated that the claim needed to be reopened and the language does not clearly state the employee had a right to a PPD evaluation. Although the PPD evaluation notices were not technically correct, the examiner acknowledges that in these instances the claimants were provided an avenue to pursue a PPD evaluation. However, the words "closed" and "reopen" give the impression of a greater burden.

The Self-Insured Employer agreed that under the second claim, the employee was not properly notified of their right to a PPD evaluation. In response to the examiners inquiry, the Self Insured Employer sent the employee a letter with the required notification.

RECOMMENDATIONS

A1 – It is recommended that the Self-Insured Employer respond to complaints filed by the Offices of the Insurance Commissioner within the required fifteen (15) working day timeframe outlined under W. Va. Code R. § 85-1-16.

B1 – It is recommended the Self-Insured Employer have procedures in place to ensure that compensability decisions are made, and notices issued within the required fifteen (15) working day timeframe as required by W.Va. Code § 23-4-1c(a) and W.Va. Code R. § 85-1-10.1.

C4 – It is recommended the Self-Insured Employer adjust their TTD closure letters to clearly state the employee has a right to a PPD evaluation in accordance with W. Va. Code §§ 23-5-1, 23-4-7a and 23-4-22.

EXAMINER'S AFFIDAVIT

State of West Virginia
County of Kanawha

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

I, Letha G. Tate, being duly sworn, states as follows:

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

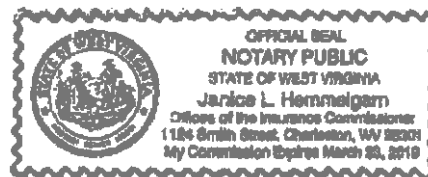
The affiant says nothing further.

Letha G. Tate, MCM
Letha G. Tate, MCM

Subscribed and sworn before me by Letha G. Tate on this July 13, 2018

Janice Hemmelgarn
Notary Public

My commission expires: March 23, 2019



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.

A handwritten signature in cursive script that reads "Letha G. Tate". The signature is written in black ink and is positioned above a horizontal line.

Letha G. Tate, MCM
Examiner-in-Charge

