

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

In the Matter of:

AMERICAN ELECTRIC POWER COMPANY, INC.

Administrative Proceeding No. 22-IC-02129

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 American Electric Power Company, Inc. (hereinafter, “AEP”) for the audit period ending March 31, 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 AEP for the period ending March 31, 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 May 13, 2022 and concluded on September 22, 2022.
2. On or about October 13, 2022, 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 AEP and AEP 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 AEP to manage its operations for each of the business areas examined, including whether and how AEP,

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

5. The exam discovered nine (9) areas where AEP failed to achieve 100% compliance with West Virginia law.

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

Claims Standard B 1 (*one violation*) The Self-Insured Employer did not issue the initial compensability ruling timely.

Claims Standard C 1 (*fifteen violations*) In four claims, the Self-Insured Employer did not provide proper notification of temporary total disability (TTD) awards. In eleven claims, the Self-Insured Employer did not include protest language in TTD award letters.

Claims Standard C 3 (*one violation*) The Self-Insured Employer calculated the TTD benefit period incorrectly.

Claims Standard J 1 (*two violations*) The Self-Insured Employer did not give a written ruling in two closed without payment claims.

Claims Standard L 1 (*one violation*) The Self-Insured Employer did not properly document the claim file.

Claims Standard M 1 (*nineteen violations*) The Self-Insured Employer did not report the first report of injury (FROI) to the Commissioner's Electronic Data Interchange (EDI) in a timely manner.

Claims Standard M 2 (*eleven violations*) The Self-Insured Employer did not properly report subsequent reports of injury (SROI) to EDI.

Claims Standard M 3 (*one violation*) The Self-Insured Employer did not update a claim in EDI to indicate it was closed.

Claims Standard O (*six violations*) The Self-Insured Employer failed to provide the claimant notice of his or her right to a permanent partial disability (PPD) evaluation in six medical only claims that were closed.

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

5. The Commissioner has determined that AEP 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 AEP'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. AEP shall endeavor to comply with the recommendations contained in the *Examination Report*;

3. AEP shall continue to monitor its compliance with applicable West Virginia law;

4. AEP 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. AEP shall file a Corrective Action Plan (CAP), subject to the approval of the Commissioner, which said CAP shall detail AEP'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. AEP 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. AEP shall within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP; and

9. AEP shall pay an administrative penalty in the amount of Ten Thousand Dollars (\$10,000.00) 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 29th day of November, 2022.



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

Report of Self-Insured Market Conduct Compliance Examination

As of March 31, 2022



American Electric Power Company, Inc.

1 Riverside Plaza

IDM Recovery Center 15th Floor

Columbus, OH 43215

TPA

CANNON COCHRAN MGT SERVICES INC (CCMSI)

Examination Number: 22-IC-02129

Date Prepared:
October 13, 2022

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October 13, 2022

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 January 1, 2020 through March 31, 2022 on the Workers' Compensation self-insured claims handling of

American Electric Power Company, Inc.
1 Riverside Plaza
IDM Recovery Center 15th Floor
Columbus, OH 43215

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 January 1, 2017 through December 31, 2019) found the following occurrences of non-compliance.

Claims Standard A1 - One (1) occurrence of not timely responding to a complaint. [W. Va. Code R. §85-1-16]

Claims Standard B1 - Six (6) occurrences of not properly issuing initial compensability decision letters. [W. Va. Code §§23-4-1c (a) and (b) & W. Va. Code R. §85-1-10.1]

Claims Standard C1 - Four (4) occurrences of not providing proper notification to the claimant of decisions. [W. Va. Code §23-5-1]

Claims Standard C4 - Three (3) occurrences of not issuing temporary total disability closure letters properly. [W. Va. Code §§23-5-1, 23-4-7a and 23-4-22]

Claims Standard D3 - One (1) occurrence of not timely paying a permanent partial disability award. [W. Va. Code R. §85-1-10.5.c]

Claims Standard M3 - Four (4) occurrences of not properly updating the status of claims in the Electronic Data Interchange (EDI). [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]

This examination found nine (9) instances where the Self-Insured Employer repeated the same failures. Details specific to the issues found in this examination can be found in the observations section below.

Claims Standard B1 & J1 – Three (3) occurrences of not properly issuing compensability decision letters. [W. Va. Code §§23-4-1c (a) and (b) & W. Va. Code R. §85-1-10.1]

Claims Standard C1 - Four (4) occurrences of not providing proper notification to the claimant of decisions. [W. Va. Code §23-5-1]

Claims Standard M3 - One (1) occurrence of not properly updating the status of claims in the Electronic Data Interchange (EDI). [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]

EXECUTIVE SUMMARY

This Self-Insured Market Conduct Compliance Examination ("examination") was initiated to determine the compliance of American Electric Power Company, Inc. with the West Virginia statutes, rules and regulations governing the self-administration of workers' compensation claims. The examination work related to American Electric Power Company, Inc. commenced May 13, 2022, and concluded September 22, 2022.

The following are areas of concern:

- Element of review B1 – Initial Compensability Decision

One (1) paid claim found the initial compensability ruling was not issued timely within the fifteen (15) working day timeframe as required by W.Va. Code §23-4-1c(a) and W.Va. Code R. §85-1-10.1.

- Element of review C1 – Temporary Total Disability Ruling

Four (4) Temporary Total Disability claims did not receive a proper notification of a TTD award as required by W.Va. Code §23-5-1 and W.Va. Code R. §85-1-7.2.
Eleven (11) TTD ruling letters failed to provide the WVOIC protest clause as required by W.Va. Code §23-5-1(b)(1).

- Element of review C3 – Benefits for the First Days After Injury

One (1) paid claim found the TTD benefit period was calculated incorrectly as required by W.Va. Code §23-4.5

- Element of review J1 – Denied/CWOP Written Ruling

Two (2) closed without pay (CWOP) claims failed to give a written ruling as required by W. Va. Code § 23-4-1c (a) and W. Va. Code R. § 85-1-10.1.

- Element of review L1 - Documentation

One (1) CWOP claim was not properly documented as required by W. Va. Code R. §§ 85-18-13.3 and 13.4.

- Element of review M1 - Electronic Data Interchange (“EDI”)

Nineteen (19) claims were found to have late FROI reporting to EDI.

- Element of review M2 - Electronic Data Interchange (“EDI”)

Eleven (11) claims were found to have late or no SROI reporting to EDI.

- Element of review M3 - Electronic Data Interchange (“EDI”)

One (1) paid claim that was administratively closed was not updated to closed status.

HISTORY AND PROFILE

Headquartered in Columbus, OH, American Electric Power Company, Inc. (AEP) is one of the largest investor-owned electric public utility holding companies in the United States. AEP's electric utility operating companies provide generation, transmission and distribution services to more than 5 million retail customers in Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia. AEP's subsidiaries operate an extensive portfolio of assets including approximately 223,000 miles of distribution lines delivering electricity to 5.5 million customers, approximately 40,000 circuit miles of transmission lines and approximately 31,000 megawatts of regulated owned generating capacity. AEP is self-insured for workers' compensation benefits in eleven states (IN, OH, WV, KY, VA, TX, LA, AR, OK, IL, MI) and has many other states with employees covered by an insured program administered through Liberty Mutual. The company has approximately 17,000 employees in positions ranging from administrative to power plant operators, transmission / distribution line personnel and barge operators within its self-insured jurisdictions. Approximately 400 new workers' compensation claims are reported each year with an annual program spend of approximately 8 million dollars per year. American Electric Power has administered claims in WV through a TPA for more than 17 years and began utilizing Cannon Cochran Management Services, Inc. (CCMSI) beginning in 2016.

American Electric Power Company maintains a generous sick leave policy. Employees can have up to 26 weeks of sick pay at 100% of their wage. Up to the first six months of sick pay benefits and TTD indemnity payments are coordinated so that the employee always receives the better benefit available to them at the time. In addition, W2 wage adjustments are made allowing the employee to receive tax free benefits of TTD payments.

In accordance with W. Va. Code §23-2-9, American Electric Power Company, Inc. has been self-insured in West Virginia since February 4, 2009, and currently employs approximately 1,800 employees in the state of West Virginia.

METHODOLOGY

AEP maintains an electronic environment; most of the examination work was conducted via electronic virtual private network through the Third-Party Administrator's ("TPA's") CCMSI claims computer system. Due to the limited number of claims for AEP during the examination period, the entire claim population was reviewed. The total claim population consisted of forty-five (45) claims. Of the total claim population, seven (7) were closed without pay (CWOP); fifteen (15) medical only; nineteen (19) total temporary disability; and four (4) denied. Of the nineteen (19) total temporary disability claims, one (1) was identified as a permanent partial disability claim. 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.

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] and 23-4-5 Benefits paid for first three days
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 § 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. 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	33	1	0	97	*	
B2	34	0	0	100		
C1	4	15	0	21		*
C2	19	0	0	100		
C3	18	1	0	95	*	
C4	19	0	0	100		
D1	1	0	0	100		
D2	1	0	0	100		
D3	1	0	0	100		
D4	1	0	0	100		
E1	45	0	0	100		
F1	N/A	N/A	N/A	N/A		
G1	N/A	N/A	N/A	N/A		
H1	45	0	0	100		
I1	N/A	N/A	N/A	N/A		
J1	9	2	0	82	*	
J2	11	0	0	100		
J3	11	0	0	100		
J4	11	0	0	100		
J5	11	0	0	100		
K1	N/A	N/A	N/A	N/A		
L1	44	1	0	98	*	
M1	26	19	0	56		*
M2	34	11	0	76		*
M3	44	1	0	98	*	
N1	N/A	N/A	N/A	100		
N2	N/A	N/A	N/A	100		
O	9	6	0	60	*	

*See "Observations and Recommendations" below.

OBSERVATIONS

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

B1 – One (1) Temporary Total Disability (TTD) claim found the initial compensability ruling was not issued timely within the fifteen (15) working day timeframe as required by W.Va. Code §23-4-1c(a) and W.Va. Code R. §85-1-10.1. Although not considered as a violation, the examiner also noted that the Self-Insured Employer failed to issue the TTD award letter (Claim Standard (C1)). Because the initial compensability ruling was issued *after* the claimant was on TTD, the violation for not issuing the TTD ruling was waived.

Note: Although the claim compensability ruling was not issued timely and the TTD ruling was not issued, the claim and the compensability benefits were processed timely.

C1 – Four (4) paid claims did not receive a proper notification of a TTD award as required by W.Va. Code §23-5-1 and W.Va. Code R. §85-1-7.2.

Eleven (11) TTD ruling letters found The Self-Insured Employer failed to provide the claimant notice in writing for filing a protest to the finding as required by W.Va. Code §23-5-1(b)(1). The Self-Insured Employer disagreed they were in violation stating TTD award letters are considered interlocutory and were therefore not required to provide the notice.

Note: It should be noted that of the claims where TTD award letters were not issued and, in some instances, omitted the notice of the right to protest, claim benefits were processed timely and accurately.

C3 – One (1) paid claim found the TTD benefit period was calculated incorrectly as required by W.Va. Code §23-4.5 & W.Va. Code R. §85-1-5. The date of disability began on Monday April 4, 2022. The TTD benefits did not become effective until two days later on Wednesday April 6, 2022. In response to the examiner's inquiry, the Self-Insured Employer disagreed stating the TTD benefits were property initiated as that was the period of disability certified by the claimant's treating physician. The examiner also noted that the Self-Insured Employer failed to issue the TTD ruling letter (noted above under Claim Standard (C1) notifying the claimant of his TTD award and was therefore not noticed of his right to protest.

F1 - This standard was N/A as there were no benefits awarded for Non-Awarded Partial (NAP) during the examination period.

G1 - This standard was N/A as there were no Fatalities during the examination period.

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

J1 – Two (2) closed without pay (CWOP) claims failed to give a written ruling as required by W. Va. Code § 23-4-1c (a) and W. Va. Code R. § 85-1-10.1. One (1) claim was set up due to the medical provider contacting the company for billing information. The claims representative made multiple attempts to obtain copies of the medical bills but was unsuccessful. Although the claim file noted the claim was compensable, a compensability ruling was never issued, and the claim was CWOP. In response to the examiners inquiry the Self-Insured Employer stated they were under no legal obligation to rule upon the claim because the claimant never submitted a completed WC1. The examiner also noted the claim file had no record of where a blank WC1 was sent to the claimant or any documented conversation with the claimant explaining the WC1 requirement and/or process.

One (1) claim, that was being investigated to determine whether the injury was work related, was CWOP without issuing a compensability ruling. Included in the claim file were medical records, the claimants signed medical authorization, a list of treating physicians provided by the claimant and a documented conversation with the claimant who advised he wished to pursue a claim for benefits. In response to the examiner's inquiry, the Self-Insured Employer stated no claim legally existed without a completed WC1. *Note: After the examination of the claim file was performed, a denial letter was subsequently issued upon receiving a completed WC1 from the claimant.*

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

L1 – One (1) CWOP claim (also noted above under Claim Standard J1) was not properly documented. The claim file noted on 1/31/22 that the claim was being monitored for the WC1. On 2/10/22, the claim was administratively closed with no further explanation. Additionally, a claim note stating the payment of a medical bill had been denied. However, there was no record of a denial letter to the medical provider. At the time the examination was being performed, a claim compensability ruling had not been issued and the examiner was unable to ascertain the resolution of the claim as required by W. Va. Code R. § 85-18-13.3.

M1 – A total of nineteen (19) claims were found to have late FROI reporting to EDI. The Self-Insured Employer responded to the examiner's inquiry stating they timely reported all required transmissions however a technical error occurred rejecting the initial FROI transmission. Corrected submissions were untimely submitted. Page 17 of the West Virginia Offices of the Insurance Commissioner's Electronic Data Interchange (“EDI”) Implementation Guide states; *“A rejected report is not considered filed until it has been corrected, retransmitted, and accepted with or without errors”.*

M2 - A total of eleven (11) claims were found to have late or no SROI reporting to EDI. Of these; two (2) medical only claims were not updated to TTD status; one (1) Notification only claim was not updated to TTD status; one (1) PPD claim was still listed as medical only; two (2) medical only claims were not updated to denied status; and five (5) TTD claims had untimely quarterly updates as required by 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.

M3 - One (1) paid claim that was administratively closed 7/23/21 was not updated to closed status from the original FROI submission in accordance with 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.

O - Although not necessarily considered a violation; the examiner observed the following:

- Six (6) of the fifteen (15) medical only claims the Self-Insured Employer failed to provide the claimant with notice of their right to a Permanent Partial Disability (PPD) evaluation in accordance with *W. Va. Code §23-4-22*. The Self-Insured Employer agreed they failed to provide notice in the six (6) identified claims and were evaluating appropriate corrective action options.
- The Self-Insured Employer inconsistently applies their policy requirement that a completed WC1 application must be submitted from the claimant before a claim compensability ruling will be issued. The Self-Insured Employer maintains that in the absence of a completed WC1, a valid workers compensation claim does not legally exist. The examiner however, found multiple instances wherein claims were ruled as compensable without a WC1 from the claimant while other claims were closed without payment (CWOP) due to the claimant failing to submit a WC1 application.
- The Self-Insured Employer utilizes a template letter referenced in the claim file "Letter to Injured Worker requesting WC1". Within the body of the letter, the claimant is advised that their claim cannot be processed "due to a lack of information". Within the body of the letter, the claimant is given three options:

- 1) *A completed WC1 form*
- 2) *Pay bill from their personal funds*
- 3) *Submit to their private insurance.*

At best, this is misleading and confusing giving the impression of placing a greater burden on the employee. Regardless of whether the injury is currently being investigated as compensable, it is incorrect to advise a claimant their options are anything other than workers compensation benefits.

- The Self-Insured Employer utilizes a two-page informational Workers' Compensation mailing referenced within the claim file as "Welcome Packet". The examiner observed the following inaccuracies that need corrected and/or updated.
 - 1) *Offices of the Insurance Commissioner mailing address.*
 - 2) *Insurance Commissioner name.*
 - 3) *Offices of the Insurance Commissioner logo.*
 - 4) *Consider replacing any reference to third party administrator (TPA) HealthSmart with current TPA CCMSI.*

RECOMMENDATIONS

B1 – It is recommended the Self-Insured Employer have procedures in place to ensure that rulings on all claims are 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.

C1 – It is recommended the Self-Insured Employer issue temporary total disability award letters and in compliance with W. Va. Code §§23-5-1 & W.Va. Code R. §85-1-10.1.

It is recommended the Self-Insured Employer ensure that all ruling letters contain the WVOIC protest clause as required by W. Va. Code § 23-5-1.

C4 – It is recommended the Self-Insured Employer have procedures in place to ensure that claim benefits are calculated correctly as required by W.Va. Code §23-4.5 & W.Va. Code R. §85-1-5.

J1 – It is recommended the Self-Insured Employer have procedures in place to ensure that rulings on all claims are 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.

L1 – It is recommended the Self-Insured Employer maintains all records associated with claims handling in the claim file as required by W. Va. Code R. § 85-18-13.3.

M1 – It is recommended the Self-Insured Employer ensure timely FROI reporting is completed as required by W. Va. Code §23-2C-5(C)(8) 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.

M2 – It is recommended the Self-Insured Employer have procedures in place to ensure updated reporting to EDI as required by 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.

M3 - It is recommended the Self-Insured Employer ensure timely FN reporting to EDI when a file is administratively closed or no further payments are expected as required by 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.

O – It is recommended the Self-Insured Employer advise the claimant of their right to a permanent disability evaluation in accordance with W. Va. Code §23-4-22.

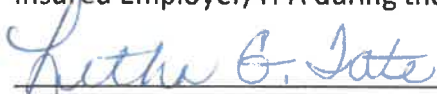
It is recommended the Self-Insured Employer implement procedures regarding their requirement of the WC1 application to ensure consistency and balance when issuing claim compensability decisions.

It is recommended the Self-Insured Employer discontinue utilizing the current claim template when requesting a WC1 from the injured worker.

It is recommended the Self-Insured Employer make the necessary updates to their Workers' Compensation "Welcome Packet" referenced in the above noted examiner observations.

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.



Letha G. Tate, AIE, AIRC, ALMI, MCM
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, Letha G. Tate, being duly sworn, states as follows:


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

The affiant says nothing further.



Letha G. Tate, AIE, AIRC, ALMI, MCM

Subscribed and sworn before me by Letha G. Tate, on this 13 day of October 2022.



Notary Public

My commission expires: March 23, 2024