

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

NAYYAR ABBAS,

Complainant,

v.

ADMINISTRATIVE PROCEEDING NO.: 19-THP-02088

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA.,

Respondent.

FINAL ORDER 19-THP-02088/19-AP-THP-02088

On a prior day, to-wit, April 23, 2020, the Hearing Examiner in this matter submitted his Recommended Decision, appended hereto, containing findings of fact, discussion, analysis and conclusions of law. After review thereof, it is ORDERED that the said Recommended Decision is adopted as the decision of the Commissioner in this matter and is, by this reference, incorporated herein and made a part hereof.

It is ORDERED that, inasmuch as it has been determined that the Respondent did not violate *W. Va. Code of State Rules § 114-14-6.1*, this matter is hereby dismissed.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted is preserved.

ENTERED this 29th day of July, 2020.



JAMES A. DODRILL
Insurance Commissioner

**BEFORE JAMES A. DODRILL
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA**

NAYYAR ABBAS,

Complainant,

v.

**ADMINISTRATIVE PROCEEDING NO.:
19-THP-02088/19-AP-THP-02088**

**NATIONAL UNION FIRE
INSURANCE OF PITTSBURGH,
Respondent.**

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On March 5, 2020, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Office of the Insurance Commissioner, Charleston, West Virginia. Complainant, Nayyar Abbas appeared in person and by counsel Sam Cook, Esquire and Ms. Theresa Jenkins, Investigator Consumer Advocate's Office. Appearing on behalf of National Union Fire Insurance of Pittsburgh were Glen A. Murphy, Esquire, Ms. Jo Jackson and Mr. Keith Turner. Following the hearing, the matter was deemed submitted for recommended decision.

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Nayyar Abbas (hereinafter "Complainant") currently resides _____, Chicago Illinois, 60651, but at the time of the event giving rise to this Complaint, the Complainant resided at _____, Beckley, West Virginia 25801. (Tr. p. 7; Ex. 5)

2. National Union Fire Insurance of Pittsburgh¹ (hereinafter "Respondent") is the insurance company insuring the Young Men's Christian Association (hereinafter "YMCA") of Beckley, West Virginia.

3. On March 5, 2019, the Complainant and Mr. Rajendra Prasad went to the YMCA in Beckley, West Virginia. The Complainant alleges that he parked on the street behind the YMCA and entered the building on the stairway to the right of the building. When the Complainant entered the building it was still daylight outside. (Tr.8)

4. The Complainant testified that when leaving the building it was nighttime and it was dark on the stairway. The Respondent claimed that since it was dark he did not see a sheet of ice which caused him to slip and fall. The Complainant stated that he injured himself and damaged his cell phone. He did not go to the doctor at that time because he did not have health insurance. (Tr. 8-9; Ex. 5)

5. The next day, March 6, 2020, the Complainant went to the YMCA to file a complaint. The YMCA contacted the Respondent on March 11, 2019. On that same day, Ms. Jo Jackson, a claim representative for the Respondent, contacted the YMCA to get their version of the event. (Tr. 18, 20; Ex. 5)

6. During her testimony, Ms. Jackson testified that she talked to Rachel Bishop of the Beckley YMCA. Ms. Jackson was told that the stairway that the Complainant allegedly fell

¹National Union Fire Insurance of Pittsburgh is a subsidiary of the AIG Insurance Group

on were lit by a street lamp nearby and that it was salted at least once in the morning of the day of the accident. Ms. Bishop also sent Ms. Jackson two pictures of the steps where the Complainant allegedly fell and a street lamp is clearly visible in both pictures. Ms. Johnson admitted that she did not visit YMCA as part of her investigation. (Tr. 22-23; Ex. 3,4)

7. The Complainant, on several occasions during his direct examination claimed that the only contact he had with the Respondent was on the day he received the denial letter, April 4, 2019. For instance Complainant's counsel ask the Complainant the following:

Q. "Did anyone from the insurance company speak with you on a telephone, in person, in email or did you just get a letter from them?"

A. "I just got a letter from them"

8. On cross examination, after the Respondent's counsel introduced into evidence a recording of the conversation between the Complainant and Ms. Jackson, did the Complainant admit that the Respondent had contacted him by phone prior to the issuance of the denial letter. The Complainant explained this discrepancy because he thought his counsel was asking him if there was any contact with the Respondent after the denial letter. The questions asked by the Complainant's counsel did not qualify when the Complainant was contacted but if he had ever been contacted other than the denial letter. (Tr. 10, 11, 18; Ex. 1, 6)

9. The Complainant testified that there are two stairways leading from the parking lot into the building and that he fell on the stairway on the right side of the building. The pictures provided by the Respondent are pictures of the stairway on the left of the building when facing the YMCA building. Ms. Jackson did not inquire of Ms. Bishop on how many stairways are at the YMCA. Ms. Jackson did not do a site inspection. (Tr. 30, 34; Ex. 3,4)

10. Ms. Jackson testified that the decision to deny the claim on April 4, 2019, was based on the interview with Ms Bishop, with the Complainant and the pictures of the stairway. (Tr. 25-26, Ex. 3, 4, and 6).

11. There was no evidence presented at the hearing on whether the Complainant or the Respondent contacted Mr. Prasard about the incident.

12. Following receipt of the denial letter, the Complainant sent a letter to the Respondent and filed a complainant with the West Virginia Offices of the Insurance Commissioner. (Tr. 10; Ex. 5)

Issue

Whether the Respondent violated West Virginia Code §§ 33-11-4(9)(c), and West Virginia Code of State Rules § 114-14-6.1.

Burden of Proof

The Complainant has the burden of proof to prove, by a preponderance of the evidence, that the Respondent violated the insurance laws of the State of West Virginia.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over matters arising under the issuance of a non resident producer license pursuant to West Virginia Code Chapter §33-2-3.

Analysis

According to the Merit Letter issued by the West Virginia Offices of the Insurance Commissioner, the purpose of the hearing was to determine whether the Respondent violated West Virginia Code of State Rules § 114-14-6.1 which states:

§114-14-6. Standards For Prompt Investigations And Fair And Equitable Settlements Applicable To All Insurers.

6.1. Investigation of claims. -- Every insurer shall promptly conduct and diligently pursue a thorough, fair and objective investigation and may not unreasonably delay resolution by persisting in seeking information not reasonably required for or material to the resolution of a claim dispute. This section is not intended to conflict with the statutory requirements of the Medical Professional Liability Act, W. Va. Code §§55-7B-1 to 11, as the same relate to the assertion and investigation of medical professional liability claims.

This Rule requires that an investigation of a claim be timely, thorough, fair and objective.

In the instant matter, there does not appear to be a problem with the timeliness of the investigation. The Respondent was put on notice of the incident on March 11, 2019, and a decision to deny the claim was made on April 4, 2019. So the investigation, from beginning to end, lasted twenty-four days, making it timely.

The real issue raised by the Complainant is whether the investigation was fair and thorough. The Complainant stated, in his initial report filed with the YMCA, that he fell on a sheet of ice on a stairway to the “to the right” of the building. During the hearing, the Complainant testified that the pictures used by the Respondent were taken of a stairway located on the “left” side of the building, and therefore, not relevant to the investigation. So it would follow, that the Complainant asserts that the investigation could not be fair or thorough if the wrong set of stairways were reviewed during the investigation.

The Complainant stated that there were two stairways from the YMCA leading to the area

that he parked his car on March 5, 2019. He claimed that one was lit but the one where he slipped was dark and dangerous. The witness for the Respondent, Ms. Jackson, believed that there was only one stairway, the one shown in the pictures put into evidence. Ms. Jackson admitted that she did not visit the YMCA and that she did not specifically ask Ms. Bishop, of the YMCA, about the number of stairways, but assumed there was only one. This assumption is based on the fact that she asked Ms. Bishop to send her pictures of the scene of the accident and she sent the pictures of the steps in which she believed that the accident occurred.

There was no other testimony, other than from the Complainant, that there was more than one set of steps. Since the Respondent did not produce any evidence that there was only one set of stairs, we must assume that there are two sets of steps that lead to the parking area of the YMCA. Then the issue becomes which set of steps caused the Complainant's fall.

In his initial report, the Complainant stated that he had fallen on the steps to the right of the YMCA. This by itself may cause problems. When looking at the front of the YMCA, one stairway would be to the left of the building and the other to the right. However, if looking at the stairways from the parking area, the location of the left side and the right side would be reversed. Both Ms. Bishop and Ms. Jackson had copies of the initial incident report wherein the Complainant stated that the accident occurred on the right. However, it is difficult to know whether the Complainant's reference to the right stairway was from the perspective from the front of the building or from the back of the building.

In exhibit 4, the YMCA building can be seen to the right of the steps in the picture, which was apparently taken from the front of the building. If the picture had been taken from the parking lot, then the steps shown would be to the right of the building. In other words, it is

unknown from what perspective the initial accident report was referring to when he said it was on the right side of the building. It may be possible that Ms. Bishop thought that the Complainant was referring to the stairway shown in Exhibits 3 and 4 as the right side of the building from the perspective of the parking lot, while the Complainant was referring to the other stairway which are to the right of the building from the perspective from the front of the building.

During the hearing, Ms. Jackson stated that she believed there was only one stairway but she also admitted that she did not know whether there was another stairway or not. The Complainant is arguing that since Ms. Jackson did not inspect the site of the accident, she could not have performed a thorough investigation. The undersigned has never held that the investigation requires a visit to the site in order to be thorough. In this matter, Ms. Jackson was relying on Ms. Bishop to inform her about the accident.

According to the testimony, Ms. Bishop told Ms. Jackson that the steps were well lit and that the maintenance crew put salt on the steps at least in the morning and may do it more times, depending on the weather. Ms. Jackson also asked Ms. Bishop to send her pictures of the stairs where the accident allegedly occurred. There was no reason for Ms. Jackson to question whether there was another set of stairs, since she rightly assumed that if there was another set of stairs or confusion where the accident occurred, Ms. Bishop would have told her.

It is unclear from the record whether the Complainant ever informed the Respondent, prior to the hearing, that there were two stairways or that the stairway in the pictures was the wrong stairway. During the hearing, the Complainant was adamant that the pictures were of the wrong set of steps. It was apparent that this was the first time Ms. Jackson had heard about a second set of stairs.

While it is not required that an investigation be perfect in order to be thorough, however there are certain basic matters that should be investigated to make the investigation acceptable. It is more concerning that the Complainant and the Respondent failed to communicate the actual position of the Complainant as to the stairs. It is also concerning that the Respondent knew, from the initial report, that the Complainant had been accompanied to the YMCA by Mr. Prasad and it did not appear that the Respondent ever contacted Mr. Prasad.. It is not known that if the Respondent had contacted Mr. Prasad that it would have provided a clearer idea of where and how the accident occurred.

Another disturbing fact about the Complainant's testimony was that he had never heard from the Respondent until he received the denial letter. The Complainant's counsel asked very direct questions about whether the Complainant had been contacted by phone or mail other than the denial letter. On each occasion the Complainant denied communicating with the Respondent. However, when the Respondent introduced into evidence the recorded interview that Ms. Jackson had conducted with the Complainant. The Complainant said that he thought his counsel was asking about communication after receiving the denial letter. This explanation did not ring true. Clearly the Complainant was attempting to show that the Respondent had not obtained his version of the incident, thus making the investigation faulty.

The Complainant has the burden to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rule §114-14-6.1. It is clear that the Respondent should have done more while conducting its investigation. For instance, Ms. Jackson should have followed up with Mr. Prasad to seek more clarification of the Complainant's version of the facts. While it is reasonable for Ms. Jackson to rely on her insured

to provide the necessary information about the area surrounding the accident, the fact that the Complainant identified that the accident occurred on the right stairway is important, Ms. Jackson should have questioned whether there were stairways to the YMCA. If the evidence had showed that the Complainant had informed Ms Jackson that there were two sets of stairs and Ms. Jackson failed to act upon that information, then there would be no doubt that the investigation was not thorough. However, there was no evidence introduced that would indicate that that happened.

While the investigation by the Respondent could have been better, the Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code §§ 33-11-4(9)(c), and West Virginia Code of State Rules § 114-14-6.1.

Conclusions of Law

The following are made as conclusions of law:

1. The Complainant has the burden to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code §§ 33-11-4(9)(c).
2. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent did not conduct a thorough investigation thus proving that it did not violate West Virginia Code of State Rules § 114-14-6.1

Recommended Decision

It is recommended that the Complaint filed by the Complainant be denied because the

Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code §§ 33-11-4(9)(c), and West Virginia Code of State Rules § 114-14-6.1.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: July 14, 2020