

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

JAMES BAEK,

Complainant,

v.

Administrative Proceeding No.: 19-FP-CC-02060

WEST VIRGINIA MUTUAL INSURANCE COMPANY,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER DENYING REQUEST FOR A HEARING**

This matter came before the Insurance Commissioner (hereinafter, Commissioner or “WVOIC”), on James Baek’s (hereinafter, “Complainant”) request for a hearing on his first-party administrative complaint filed against West Virginia Mutual Insurance Company (hereinafter, “the Mutual”). Whereupon, the WVOIC makes the follow findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Complainant was employed as a physician by Kanawha Valley Radiologists.
2. At the filing of his first-party administrative complaint, Complainant was 55 years old.
3. From 2004 until March of 2020, Complainant was insured under a claims made policy issued and sold to him by the Mutual. Complainant was claims free during the entire time he was insured by the Mutual.

4. On March 2, 2020, Complainant left Kanawha Valley Radiologists and moved to Portland, Oregon, where he was employed as a physician by the Oregon Health and Science University (hereinafter, "OHSU").

5. Once employed by OHSU, Complainant was no longer insured by the Mutual, but rather by a policy provided by OHSU.

6. Complainant alleges in his first-party administrative complaint that the free tail coverage offered to physicians over the age of 60 as provided for in the Mutual's policy is unfair and should be afforded to him at no cost.

7. Mutual responded to the first-party administrative complaint by stating that its policy offers free tail coverage only to physicians who permanently retire from the practice of medicine, and that since Complainant was not permanently retired from the practice of medicine and was, instead, still employed as a physician in the State of Oregon, he was not entitled to the free tail coverage.

8. The policy issued and sold by the Mutual to Complainant provided extended coverage at no charge if "the insured retires permanently from professional practice as a physician licensed by the appropriate State licensing Board after the age of 60 However, permanent retirement from practice is not required if following the issuance of the Extended Reporting Endorsement the physician works in a practice that is immune from medical professional liability or is insured by any Federal State or governmental insurance program or policy."

9. On or about February 26, 2020, the WVOIC mailed Complainant a "no merit" letter closing his first-party administrative complaint filed before the WVOIC. As stated therein, the WVOIC's investigation did not reveal any unfair claims settlement practices committed by the Mutual in the handling of his claim.

10. On March 6, 2020, Complainant requested a hearing on the merits of his first-party administrative complaint against Mutual. Complainant subsequently stated that the tail coverage offered by the Mutual will cost an annual premium of 30,000.

11. In his request for a hearing, Complainant further alleged that he was employed by a state entity, thus triggering the policy language in his policy with Mutual providing free tail coverage.

12. The Manager of Risk and Insurance Claims for OHSU responded to the Complaint's allegation by stating that "OHSU is a statutory public corporation but separate from the State of Oregon. We self-insure through a captive insurance program and are subject to the limits of the Oregon Torts Claims act (sic) but our policy is separate from the State of Oregon."

CONCLUSIONS OF LAW

1. W.Va. Code §33-20D-3(a) states, "[u]pon cancellation, nonrenewal or termination of any claims made professional malpractice policy, the insurer shall offer to the insured tail coverage."

2. Complainant was offered tail coverage by the Mutual as is required by W.Va. Code §33-20D-3. The Mutual's policy language would provide free tail coverage to Complainant if he were over 60 years of age, retired permanently from the practice of medicine, or works in a practice immune from professional liability or is insured under any federal or state governmental insurance policy. However, none of those exceptions apply to Complainant.

3. W.Va. Code §33-2-13 states, in pertinent part, "[t]he commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties." Further, W.Va. Code R. § 114-13-3.3 states:

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

date by mutual agreement. However, if the commissioner shall determine that the hearing demanded:

a. Would involve an exercise of authority in excess of that available to him or her under the law; or

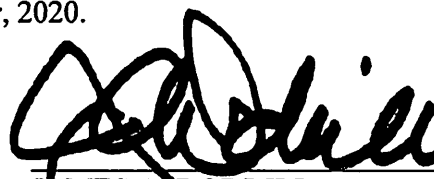
b. Would serve no useful purpose, the commissioner shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his or her reasons for such refusal. Appeal may be taken from such order as provided in W.Va. Code §33-2-14.

4. W.Va. Code §33-2-13 and W.Va. Code R. §114-1-3.3 give the Commissioner discretion in deciding whether a hearing would serve a useful purpose. Holding a hearing in this matter would involve an exercise of authority in excess of that available to the Commissioner under the law in that it would be asking him to adjudicate a good faith liability dispute between the Complainant and the Mutual in Complainant's claim. Therefore, a hearing in the matter would serve no useful purpose.

ORDER

Inasmuch as a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to the WVOIC under the law, it is **ORDERED** that the Complainant's hearing request is **DENIED**. Pursuant to W.Va. Code §33-2-14, the Complainant has the right to appeal this Order to the Circuit Court of Kanawha County within 30 days of his receipt hereof.

ENTERED this the 28th day of September, 2020.



JAMES A. DODRILL
Insurance Commissioner