

IN THE MATTER OF THE  
MARYLAND INSURANCE  
ADMINISTRATION

v.

ANTONIO SMITH  
2912 Rose Valley Drive  
Fort Washington, MD 20744

\* BEFORE THE MARYLAND  
\*  
\* INSURANCE COMMISSIONER  
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\* CASE NO.: MIA- 2023-04-002  
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\* Fraud Division File No.: R-2022-4310A  
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**ORDER**

This Order is entered by the Maryland Insurance Administration (“MIA”) against Antonio Smith (“Respondent”) pursuant to §§ 2-108, 2-201, 2-204, and 2-405<sup>1</sup> of the Insurance Article, Md. Code Ann. (2017 Repl. Vol. & Supp.) (the “Insurance Article”) for the violations of the Insurance Article identified and described.

**I. Regulatory Framework**

1. Section 27-403 of the Insurance Article provides, in pertinent part:

It is a fraudulent insurance act for a person:

(2) to present or cause to be presented to an insurer documentation or an oral or written statement made in support of a claim...with knowledge that the documentation or statement contains false or misleading information about a matter material to the claim.

2. The term “claim” is defined in § 27-401(b) as:

(1) “Claim” means a demand for payment or benefit under a policy or contract by an insured, third party, or representative of the insured or third party.

(2) “Claim” includes a demand for payment or benefit made against:

(i) ...Title 9 of the Labor and Employment Article.

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<sup>1</sup> Unless otherwise indicated, all statutory references in this Order are to the Insurance Article of the Maryland Code.

3. Title 9 of the Labor and Employment Article governs worker's compensation. *See* Lab. & Empl. § 9-101, *et seq.*

4. Section 2-405 of the Insurance Article provides, in pertinent part:

The Fraud Division:

(1) has authority to investigate each person suspected of engaging in insurance fraud;

(2) if appropriate after an investigation:

(i) shall refer suspected cases of insurance fraud to the Office of the Attorney General or appropriate local State's Attorney to prosecute the person criminally for insurance fraud;

...

(iv) shall notify the Workers' Compensation Commission of suspected cases of insurance fraud referred to the Office of the Attorney General or appropriate local State's Attorney under subparagraph (i) of this paragraph that involve the payment of compensation, fees, or expenses under the Workers' Compensation Law; and

...

(7) shall investigate allegations of civil fraud and, if appropriate after investigation, impose administrative penalties and order restitution in accordance with § 27-408 of this article.

## **II. Relevant Material Facts:**

5. Respondent was employed by Pepco, an Exelon company ("Pepco"), performing work as a Substation Operator II. Respondent was hired on July 6, 2020. Pepco is self-insured for worker's compensation insurance. The Pepco self-insured fund is administered by the Pennsylvania Manufacture's Association Insurance Company ("PMA"), a third party administrator ("TPA"). Pepco's self-insured fund provided total temporary disability ("TTD") benefits<sup>2</sup> to employees for lost wages for work-related injuries.

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<sup>2</sup> MD Code, Labor and Employment § 9-621 states:

6. On May 4, 2022, Respondent notified a Pepco supervisor, hereinafter, "Mike," that he injured his back during his shift earlier that day and was unable to report to work for his May 5, 2022 shift, which was to begin at midnight. Mike advised Respondent to notify Pepco's Occupational Health Services Unit ("OHS").
7. On May 5, 2022, Respondent notified OHS that he injured his back while at work moving a breaker.
8. On May 6, 2022, Respondent submitted to Pepco a medical excuse note, which stated that he was under the care of a doctor for a spinal condition and was unable to work from May 4, 2022, until May 25, 2022, at which time Respondent had a follow-up appointment.
9. On May 9, 2022, PMA assigned Respondent's worker's compensation claim to one of its insurance claim agents (the "Agent") for further investigation. As part of the claims handling process, the Agent placed Respondent under surveillance, which was conducted by TNT Surveillance, LLC ("TNT").

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**Amount of payment**

(a)(1) Except as provided in paragraph (2) of this subsection, if a covered employee is temporarily totally disabled due to an accidental personal injury or an occupational disease, the employer or its insurer shall pay the covered employee compensation that equals two-thirds of the average weekly wage of the covered employee, but:

(i) does not exceed the average weekly wage of the State; and

(ii) is not less than \$50.

(2) If the average weekly wage of the covered employee is less than \$50 at the time of the accidental personal injury or the last injurious exposure to the hazards of the occupational disease, the employer or its insurer shall pay the covered employee compensation that equals the average weekly wage of the covered employee.

**Duration of payment**

(b) The employer or its insurer shall pay the compensation for the period that the covered employee is temporarily totally disabled.

**10.** On May 9, 2022, Respondent was captured by TNT at his residence attempting to perform a cartwheel. TNT noted that Respondent did not appear to be incapacitated in any way. Respondent was also observed moving, walking, squatting and bending.

**11.** On May 10, 2022, Respondent was interviewed by Pepco supervisors. Respondent reported that on May 4, 2022, while at work, he went into Substation 77 and started moving items when he felt a "tweak" in his lower left back and left leg. Respondent did not feel the need to report the incident to his supervisor and continued working for the remainder of his shift.

**12.** On May 20, 2022, in a recorded interview with the Agent, Respondent reported that he had no prior motor vehicle accidents resulting in injury and he never filed a worker's compensation claim in the past. Respondent stated that on May 4, 2022, at 3:00 am, he was at Substation 77 moving a breaker when he "tweaked" his back. He reported that he did not feel pain at the time and continued to work. He did not inform his supervisor of the potential injury before leaving work. After his shift, Respondent went home and went to sleep. When he awoke, he was unable to move, and he had pain in his back and down his legs. Respondent notified a Pepco supervisor who instructed him to notify the OSH. OSH instructed Respondent to go to Urgent Care. Respondent reported that the wait was too long at Urgent Care, so he went to the Virginia Spine Institute ("VSI"), where he was seen, and referred for an MRI. Respondent reported that he had never previously been to VSI, and he had a follow-up appointment on June 10, 2022.

**13.** On May 22, 2022, TNT observed Respondent removing items from a Marlow Heights, Maryland residence and taking them to a storage facility in Capital Heights, Maryland. The items included a bookcase, headboard, bedframe, table top and bags. Respondent was observed squatting, bending at the waist, and lifting items over his head, as well as walking up and down steps.

**14.** On June 8, 2022, the Agent obtained Respondent's medical records from VSI. The records revealed that Respondent was treated for back and leg pain at VSI on April 27, 2022, seven days prior to his alleged May 4, 2022, work-related injury. The records stated that Respondent's symptoms began "approximately 4-5 years ago." The treating physician's notes stated, "We have recommended an updated lumbar spine MRI as the prior 1 is 3 years old and his symptoms have only progressed." The treating physician referred Respondent for an MRI, which was performed on May 4, 2022, at 11:45 am.

**15.** On May 20, 2022, Respondent filed a claim with the Workers' Compensation Commission (the "WCC"). Respondent submitted a signed employee claim form which documented that on May 4, 2022, while working for Pepco, he tweaked his back. The form contained the following statement:

**NOTE:** Failure to disclose information or giving false information, including information regarding any work related activity or return to work either before or after an award of benefits, may subject you to fines, imprisonment, or both, and disqualify you from receiving benefits. A CLAIMANT'S FAILURE TO COMPLETE THIS FORM IN COMPLIANCE WITH THE DIRECTIONS MAY RESULT IN THE CLAIM BEING REJECTED. TO EXPEDITE YOUR CLAIM, YOU MAY SEND A COPY OF THE COMPLETED FORM TO YOUR EMPLOYER.

Respondent signed the WCC form immediately after the following statement:

I hereby certify that I have read the information on this form and by signing and submitting this claim for compensation for an injury resulting in my disability due to an accident (or disease) arising out of and in the course of my employment, I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

**16.** The Agent examined Respondent's claim history and concluded that the records contradicted statements Respondent made during his May 20, 2022 interview, wherein he denied having prior motor vehicle accident or worker's compensation claims. Records revealed that

Respondent actually was injured in a motor vehicle accident on August 8, 2017, and that he filed a worker's compensation claim on May 7, 2015.

**17.** The Agent examined the GPS records from Respondent's assigned company vehicle, which confirmed that Respondent was at Substation 77 on May 4, 2022, at 1:37 am. The Substation was equipped with video surveillance, as well as a security access card reader. The Agent examined the May 4, 2022, video as well as the access card records, and learned that Respondent never entered the Substation, and in fact, he never exited his vehicle while at the Substation.

**18.** A WCC hearing was originally scheduled for August 16, 2022, and rescheduled for August 22, 2022 as the claim was being contested. Respondent failed to appear at the hearing so the case was dismissed.

**19.** Section 27-802(a)(1) of the Insurance Article states:

An authorized insurer, its employees, fund producers, or insurance producers, ... who in good faith has cause to believe that insurance fraud has been or is being committed shall report the suspected insurance fraud in writing to the Commissioner, the Fraud Division, or the appropriate federal, State, or local law enforcement authorities.

PMA, having a good faith belief that Respondent committed insurance fraud, referred the matter to the MIA, Insurance Fraud and Enforcement Division, which opened an investigation.

**20.** An MIA investigator conducted an Insurance Service Office ("ISO") claim search, which confirmed that Respondent filed a worker's compensation claim in 2015, and a bodily injury motor vehicle accident claim in 2017. An examination of the video and card access reader from the Substation confirmed that Respondent never entered Substation 77 on May 4, 2022; and therefore, Respondent could not have been injured as described. Further, also contrary to Respondent's statements regarding how he was injured, medical records revealed a prior diagnosis of back problems and treatment for those problems. Respondent's May 4, 2022 MRI was scheduled on April 27, 2022, seven days prior to the alleged workplace injury.

### **III. Violation(s)**

21. In addition to all relevant sections of the Insurance Article, the Administration relies on the following pertinent sections in finding that Respondent has violated Maryland's insurance laws:

§ 27-403 of the Insurance Article provides, in pertinent part:

It is a fraudulent insurance act for a person:

(2) to present or cause to be presented to an insurer documentation or an oral or written statement made in support of a claim...with knowledge that the documentation or statement contains false or misleading information about a matter material to the claim.

§ 27-408(c) of the Insurance Article provide, in pertinent part:

(1) In addition to any criminal penalties that may be imposed under this section, on a showing by clear and convincing evidence that a violation of this subtitle has occurred, the Commissioner may:

(i) impose an administrative penalty not exceeding \$25,000 for each act of insurance fraud; and

(ii) order restitution to an insurer or self-insured employer of any insurance proceeds paid relating to a fraudulent insurance claim.

\* \* \*

(2) In determining the amount of an administrative penalty, the Commissioner shall consider:

(i) the nature, circumstances, extent, gravity, and number of violations;

(ii) the degree of culpability of the violator;

(iii) prior offenses and repeated violations of the violator; and

(iv) any other matter that the Commissioner considers appropriate and relevant.

22. By the conduct described herein, Respondent knowingly violated § 27-403 of the Insurance Article. A fraudulent insurance act of making a false statement in support of a claim is complete upon making the false statement and is not dependent on payment being made. Respondent committed a violation of the Insurance Article when he made false statements to an insurer to

affect payment related to a workers' compensation claim. As such, Respondent is subject to an administrative penalty under the Insurance Article § 27-408(c).

#### **IV. Sanctions**

**23.** Insurance fraud is a serious violation, harmful to consumers because the losses experienced by insurance companies are passed on to consumers in the form of higher premiums. Pursuant to §§ 2-210(d)(1) and 2-405 of the Insurance Article, the Commissioner has the authority to investigate complaints alleging that a fraudulent claim has been submitted to an insurer.

**24.** Having considered the factors set forth in § 27-408(c)(2) and COMAR 31.02.04.02, the MIA has determined that a fine of \$1,500.00 is an appropriate penalty.

**25.** Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by number (R-2022-4310A) and name (Antonio Smith). Payment of the administrative penalty shall be sent to the attention of: Acting Associate Commissioner Joseph Smith, Insurance Fraud and Producer Enforcement Division, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202. Unpaid penalties will be referred to the Central Collections Unit for collection.

**26.** This Order does not preclude any potential or pending action by any other person, entity or government authority regarding any conduct by Respondent including the conduct that is the subject of this Order.

**WHEREFORE**, for the reasons set forth above, and subject to the right to request a hearing, it is this 6th day of April 2023, **ORDERED** that:

Antonio Smith shall pay an administrative penalty of One Thousand Five Hundred Dollars (\$1,500.00) within 30 days of the date of this Order.



KATHLEEN A. BIRrane  
Insurance Commissioner

BY: signature on original  
JOSEPH E. SMITH  
Acting Associate Commissioner  
Insurance Fraud & Producer Enforcement Division

### **RIGHT TO REQUEST A HEARING**

Pursuant to § 2-210 of the Insurance Article and Code of Maryland Regulations (“COMAR”) 31.02.01.03, an aggrieved person may request a hearing on this Order. This request must be in writing and received by the Commissioner within thirty (30) days of the date of the letter accompanying this Order. However, pursuant to § 2-212 of the Article, the Order shall be stayed pending a hearing only if a demand for hearing is received by the Commissioner within ten (10) days after the Order is served. The written request for hearing must be addressed to the Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, Attn: Melanie Gross, Executive Assistant to the Deputy Commissioner. The request shall include the following information: (1) the action or non-action of the Commissioner causing the person requesting the hearing to be aggrieved; (2) the facts related to the incident or incidents about which the person requests the Commissioner to act or not act; and (3) the ultimate relief requested. The failure to request a hearing timely or to appear at a scheduled hearing will result in a waiver of your rights to contest this Order and the Order shall be final on its effective date. Please note that if a hearing is requested on this initial Order, the Commissioner may affirm, modify, or nullify an action taken or impose any penalty or remedy authorized by the Insurance Article against the Respondent in a Final Order after hearing.