



**Barry L. Kluger**  
**Inspector General**

## **Office of the Inspector General**

Metropolitan Transportation Authority  
Two Penn Plaza, 5<sup>th</sup> Floor  
New York, New York 10121  
212-878-0000

May 5, 2011

Mr. Thomas Prendergast  
President  
MTA New York City Transit  
2 Broadway, 30<sup>th</sup> Floor  
New York, NY 10004

**Re: Falsification of Workers'  
Compensation Claim  
MTA/OIG #2011-06**

Dear Mr. Prendergast:

An investigation by the Metropolitan Transportation Authority Office of the Inspector General (OIG) determined that Bus Dispatcher Pawel Klimek falsified a Workers' Compensation claim by misrepresenting how he sustained a February 8, 2010 injury to his left knee. Specifically, we established that Klimek injured his knee while engaging in "horseplay" in the office of Superintendent Larry Hollander. However, he reported to Workers' Compensation, at Hollander's direction, that he injured the knee walking down the stairs. We recommend that both men be disciplined, Klimek for violating Rule 8 of NYC Transit's Rule Book, which required all written reports to be completed accurately and Hollander for violating Section V of the Managerial Disciplinary policy, which holds managers responsible for abiding by and implementing NYC Transit rules, policies and procedures and Section V.12, which prohibits managerial employees from falsifying Transit records.

### **FACTS**

On the morning of February 8, 2010, Klimek and Hollander were in Hollander's office in Staten Island's Yukon Bus Depot. Klimek came up behind Hollander and lifted him up off the floor. As he did so, Klimek felt a pain in his knee. Realizing Klimek had injured himself, Hollander admitted in a written account of the incident that he told Klimek: "whatever just happened didn't happen here." Rather, he admitted to OIG investigators that he had instructed Klimek to claim he injured his knee on the stairs. Klimek refused medical aid and went home.

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Klimek filled out and signed an “On-the-Job Injury Form (IOD)” dated February 8, 2010 following Hollander’s instructions to falsify the report. Responding to the question “Why did injury occur,” Klimek stated: “Twist Lt knee during walking down on stairs.” The form required a supervisor’s signature, so Support Service Manager Dennis Kearney signed it. Kearney stated that he had no knowledge that the form he signed had been falsified.

Klimek falsified another report as well. He went to see a doctor on February 8 and filled out a medical form required for Workers’ Compensation Claims. On this form, he once again stated that he injured his knee walking down a flight of stairs.

Klimek returned to work on February 9, but claimed in another On-the-Job Injury Form that sitting at his desk caused severe pain. On February 10th, Klimek filled out Workers’ Compensation Board Form IME-5 (2-01), “Claimant’s notice of Independent Medical Examination.” The following day, February 11th, an orthopedist examined Klimek and diagnosed a degenerative condition in his left knee. The form indicated that Klimek was unable to work because of his knee injury.

While out on Workers’ Compensation, Klimek received seven compensation checks. He cashed five checks dated February 26 to April 2, 2010 with a total value of \$2,913.71. He did not cash two checks dated April 16 and April 30, 2010 totaling \$871.60. Klimek returned to work on April 28, 2010.

## **INVESTIGATION**

On March 26, 2010, OIG received an anonymous complaint alleging Klimek had falsified a Workers’ Compensation claim in the manner described above. Consequently, we interviewed the individuals involved in the incident. We interviewed Hollander on April 16, 2010. At first, he said he did not recall what happened the morning of February 8. A few minutes later, though, he returned and said, “I remembered telling Pawel to say it did not happen in my office, it happened on the stairs.” Hollander subsequently admitted directing Klimek to falsify his account of what had happened in writing in an April 26, 2010 memorandum to the NYC Transit Law Department:

On 2/8/10, SLD [Surface Line Dispatcher] Klimek walked into my office for reasons I do not recall at this time. I was standing near my desk when he picked me up and put me in a bear hug. At that point I told him to put me down as I was getting dizzy and nearly blacked out. He put me down and I took a seat on a chair. As he was leaving my office, I saw him flexing his knee. I told him whatever just

happened didn't happen here. He finished his tour, returned to work the next day, and went IOD [injured on duty].

OIG interviewed Klimek on April 21, 2010. He recounted being in Hollander's office playing around on February 8. He said he approached Hollander from behind, wrapped his arms around him, and picked him up. He felt pain in his left knee, and released Hollander. Hollander asked Klimek if he was okay, and Klimek replied "my knee." Klimek asked Hollander what he should do. Hollander told him to fill out an IOD report, but cautioned him: "Don't put it happening in my office. Make it happen on the steps." By directing a subordinate to falsify an official NYC Transit document, Hollander violated Sections V and V.12 of the Managerial Disciplinary Policy/Instruction (Number 6.5.0, issued November 24, 2008). Section V of the Managerial Discipline Policy/Instruction states: "Managers should be aware that they are held to the highest standards in terms of abiding by and implementing NYC Transit rules, policies, and procedures." Under Section V.12 of the Managerial Discipline Policy, falsification of records is an offense punishable by dismissal or demotion "in the first instance."

The same day that OIG interviewed Klimek, April 21, he submitted an "amended" On-the-Job Injury Form, admitting his prior false claim. In response to the question, "what were you doing when injured or when injury occurred," Klimek stated: "I was in GS Hollander [sic] office. During the course [of] fooling around I was injur[ed]." Klimek also prepared a signed written statement on April 23, 2010, further describing what had actually happened. It stated:

On February 8, 2010, I was in GS [General Superintendent] Larry Hollander [sic] office. We were talking about overtime and an assignment for the next day. We started to joke and play around. In the moment of excitement I lifted GS Larry Hollander from behind up. In this moment I felt some movement in my left knee and a lot of pain.

GS Larry Hollander instructed me to write the injury of [sic] duty [IOD] report. He also instructed me to write that, my injury happen [sic] on stairs, not in his office. I fallowed [sic] his instruction.

By making false statements in his IOD forms and Workers' Compensation documentation, Klimek violated Rule 8 of NYC Transit's Rule Book, which states: "Written or oral reports must be complete and accurate. Employees who knowingly submit, or make, reports containing false statements shall be charged with misconduct and incompetence."

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Based on OIG's investigation, NYC Transit brought an action before the Workers' Compensation Board under Section 114-a of the Workers' Compensation Law. Section 114-a, "Disqualification for false representation," states that if a claimant "knowingly makes a false statement or representation as to a material fact, such person shall be disqualified from receiving any compensation directly attributable to such false statement or representation...." Case law, in interpreting Section 114-a, is clear that if a claimant's false statement or representation enables him to claim benefits to which he or she would not otherwise be entitled, disqualification is *mandatory*. However, an administrative law judge hearing the case has the *discretionary* power to disqualify the claimant for statements or representations meeting common usage of the term material.<sup>1</sup>

The Workers' Compensation Board scheduled a hearing for June 21, 2010. However, on June 20, 2010, the Board received a signed statement from Klimek stating that he wished to withdraw his claim. Based on that, the Board declined to take any further action, stating:

Claimant did not appear, or was otherwise not prepared to proceed. The claimant wrote in to request to withdraw his claim. The carrier raises Section 114-a, misrepresentation. No further action is planned by the Board at this time.

NYC Transit assigned the case to outside counsel, which filed an appeal on July 23, 2010. The appeal was heard by a three-member panel, which affirmed the original decision on February 1, 2011. In deciding not to take any further action, the panel stated:

The claim for workers' compensation benefits has been withdrawn, so there would be no compensation benefit that the claimant can be disqualified from receiving, if a material misrepresentation is found to have been made. Based upon this, it is not a reasonable use of Board's resources to permit development on an issue that has no bearing on the claim. If the claim is reopened, then the carrier is permitted to produce evidence on the issue of Workers' Compensation Law §114-a (1).

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<sup>1</sup> Losurdo v. Asbestos Free, Inc., 1 NY3d 358 (2003) states that, "We hold that a fact is material for purposes of Section 14-a (1) so long as it is 'significant or essential' to the to the issue or matter at hand...; therefore, a false statement need not affect the dollar value of an award to be material within the meaning of Section 114-a (1)." In short, nothing in Section 114-a (1) limits disqualification to cases where the false injury or representation enabled the claimant to receive compensation. However, if the injury would otherwise be compensable, it is up to the judge's discretionary authority to determine whether to assess a discretionary penalty.

Therefore, the Board Panel finds, upon review of the record and based upon a preponderance of the evidence, that there is no current basis to develop the record on the issue of Workers' Compensation Law §114-a(1).

This finding left unaddressed the recovery of the \$2,913.71 in Workers' Compensation benefits that Klimek had already received and which were never returned to NYC Transit.

On March 3, 2011, NYC Transit filed an appeal to have the case heard by the full Workers' Compensation Board. Even though the appeal is still pending, we are transmitting our findings so that appropriate discipline can be initiated.

### **FINDINGS**

Based on its investigation, OIG makes the following findings:

1. Pawel Klimek knowingly made false statements in his February 8, 2010 and February 9, 2010 NYC Transit IOD forms when he falsely stated that he injured his knee walking down the stairs. This was a violation of Rule 8 of NYC Transit's Rules and Regulations.
2. Klimek misrepresented the facts of his injury in applying for and receiving Workers' Compensation benefits. This, too, violated Rule 8.
3. Larry Hollander violated Sections V and V.12 of the Managerial Disciplinary Policy/Instruction (Number 6.5.0, issued November 24, 2008). Section V of the Managerial Discipline Policy/Instruction states: "Managers should be aware that they are held to the highest standards in terms of abiding by and implementing NYC Transit rules, policies, and procedures." When Hollander directed Klimek to falsify the circumstances of his injury, he was complicit in Klimek's violation of Rule 8. Section V.12 of the Managerial Discipline Policy makes falsification of records an offense punishable by dismissal or demotion "in the first instance."

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### **RECOMMENDATIONS**

1. NYC Transit should take appropriate disciplinary action against Bus Dispatcher Pawel Klimek for misconduct in violating Rule 8 of Transit's Rules and Regulations.
2. NYC Transit should take appropriate disciplinary action against Superintendent Larry Hollander under Sections V and V.12 of the managerial disciplinary policy for misconduct and directing Klimek to file a false report.
3. NYC Transit should endeavor to recoup the \$2,913.71 paid to Klimek prior to his withdrawal of his claim.

Please advise me within 30 days of your receipt of this letter of any actions you intend to take with regard to the foregoing. If you have any questions, or need additional information, please let me know.

Very truly yours,

Michael L. Boxer  
Special Counsel