

SELF-INSURING EMPLOYERS EVALUATION BOARD

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SELF-INSURING EMPLOYERS EVALUATION BOARD

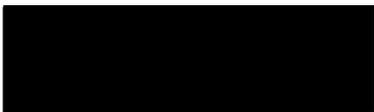
IN THE MATTER OF:

McMaster-Carr Supply Company (Employer), SI #20005211-1

and

██████████ (Injured Worker), Claim No. ██████████

Complaint No. 18515



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On September 17, 2015, ██████████ (Injured Worker) filed a complaint against McMaster-Carr Supply Company (Employer). The Injured Worker states he entered into a vocational rehabilitation plan on August 21, 2015, but the plan does not specify that living maintenance will be paid and the rate of pay; the Employer is not paying living maintenance, but instead is paying wage-loss compensation to use up his wage-loss time; the Employer told him it will only pay his weekly benefit, which would be living maintenance, upon weekly receipt of 15 job contacts. Since the plan started, he had only been paid from August 21-30, 2015; an Employer representative misrepresented to the physician of record that the only way the Injured Worker could enter a vocational rehabilitation plan was if the doctor indicated the Injured Worker was at maximum medical improvement (MMI); the vocational rehabilitation provider did not help the Injured Worker make a resume and provided little assistance in trying to get him back to work; and the Injured Worker needs retraining for a job within his restrictions, but the Employer is refusing.

On October 8, 2015, the Employer's representative provided a response to the complaint. The Employer's representative stated that there is no requirement that requires a vocational rehabilitation plan specify the type of compensation or the rate of pay; the Injured worker is

involved in a job search and is receiving assistance with developing employment leads and in interviewing; requiring proof of a valid and good-faith job search during rehabilitation does not violate any Bureau of Worker's Compensation (BWC) policies; and the Injured Worker has been paid in a timely manner.

The Employer's representative also stated that when one of its representatives reviewed a form showing permanent restrictions but not MMI, she questioned the doctor as to why, but the Employer's representative denied telling the physician of record the Injured Worker had to be at MMI before he could get into vocational rehabilitation; the MMI finding on the MEDCO-14 and its subsequent removal through a "corrected" MEDCO-14 form did not affect the Injured Worker's compensation under the vocational rehabilitation plan.

The Employer's representative further stated that the case manager has assisted the Injured Worker in resume preparation and has been meeting with the Injured Worker and assisting him in finding appropriate jobs; the Injured Worker had not requested retraining until after August 2015.

On November 2, 2015, the Self-Insured Complaint Resolution Unit (SI Department) of the Bureau of Workers' Compensation (BWC), after investigation of Complaint No. 18515, issued a letter finding the Complaint was invalid.

On November 11, 2015, the Employer filed a C-86 Motion requesting a hearing to determine whether the maximum number of weeks of non-working wage loss had been reached. Attached to the motion was a print-out of payments. Initial periods were in 2008 and 2009, apparently when Injured Worker was in a previous rehabilitation program. The print-out also showed payments for the period August 24, 2015 – November 1, 2015.

On November 12, 2015, the Injured Worker's representative filed a request for reconsideration of the finding of an invalid complaint. The Injured Worker's representative noted that the Injured Worker was in a rehabilitation plan and contended that he should not be paid non-working wage loss, but living maintenance instead.

On February 24, 2016, BWC's Central Service Office Manager granted the request for reconsideration, reversed the initial decision, and found the complaint to be valid. BWC's Central Service Office Manager found that Ohio Adm.Code 4123-18-04(A) was controlling.

On March 18, 2016, the Employer filed an appeal of BWC's finding of a valid complaint to the Self-Insuring Employers Evaluation Board (SIEEB). On May 12, 2016, a "Notice of Presentation to the Self-Insuring Employers Evaluation Board" was sent to the parties. This matter then came before the Self-Insuring Employers Evaluation Board on July 13, 2016.

Relevant Ohio Administrative Code Rules:

Ohio Adm.Code 4123-18-04(A) provides as follows:

The bureau shall order living maintenance to be paid from the surplus fund, established by section 4123.34 of the Revised Code, to each injured worker in accordance with the guidelines listed below. Living maintenance payments are compensation under Chapters 4121. and 4123. of the Revised Code.

An injured worker is eligible for living maintenance payments in accordance with the guidelines of this rule.

(A) Living maintenance payments shall begin on the date that the injured worker actually begins to participate in an approved vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan as defined in rule 4123-18-05 of the Administrative Code. Living maintenance is not payable on the date of referral for vocational rehabilitation services, nor the date the injured worker signed the rehabilitation agreement. Activities performed prior to the injured worker's active participation in the approved vocational rehabilitation assessment plan and/or comprehensive vocational rehabilitation plan are considered pre-plan activities for which living maintenance is not paid.

If salary continuation is offered by the employer of record, an injured worker maintains the right to choose to receive either salary continuation or living maintenance during vocational rehabilitation. However, if temporary total or living maintenance has been paid in the claim, the injured worker shall be paid living maintenance when participating in an approved vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan. Whenever salary continuation is paid by the employer, it must be paid at the injured worker's regular (full) salary level.

Ohio Adm.Code 4123-18-16(A) and (E) provides as follows:

(A) Employers who provide compensation and benefits pursuant to section 4123.35 of the Revised Code shall furnish all eligible and feasible injured workers with vocational rehabilitation services equal to or greater in quality and content than the services administered by the bureau and managed by the MCOs.

(E) The self-insuring employer shall promptly pay living maintenance, wages in lieu of compensation, or salary continuation directly to the injured worker. Payments shall be made in accordance with paragraph (A) of rule 4123-18-04 of the Administrative Code.

Relevant History of the Complaint:

On August 1, 2005, the Injured Worker was lifting a box from a UPS cart; the box weighed approximately 67 pounds. He was working as a Material Handler for the Employer. When he lifted the box, he felt a pull in his back and down his left leg. He fell to the ground. He notified the Employer of his lower-back injury the same day.

He filed a FROi-1 First Report of Injury, Occupational Disease or Death on April 3, 2006. The claim was ultimately allowed for RECURRENT HERNIATED DISC L4-L5; AGGRAVATION OF PRE-EXISTING DEGENERATIVE DISC DISEASE L4-5 WITH FORAMINAL STENOSIS. The claim was disallowed for DEPRESSIVE DISORDER; PANIC DISORDER WITHOUT AGORAPHOBIA.

The Injured Worker underwent rehabilitation in 2007. He obtained his GED and CDL. He obtained employment as a truck driver, which he performed until his surgery in 2014. On July 16, 2015, the attending physician requested referral to vocational rehabilitation.

On August 21, 2015, the Injured Worker signed the Individual Written Rehabilitation Program, which began his vocational rehabilitation. The rehabilitation plan provided vocational counseling and guidance, job-seeking-skills training, transferable-skills assessment, and job development and placement. The vocational goal was to obtain employment with a local employer within occupations consistent with functional abilities and transferable skills. The plan did not mention living-maintenance or living-maintenance wage-loss benefits. The plan was to be completed by November 20, 2015.

On September 17, 2015, the Injured Worker filed the self-insured complaint herein, asserting:

Claimant entered into a vocational rehabilitation plan on 8/12/2015. The plan does not specify that living maintenance will be paid and the rate of pay. Further, the self-insured employer is not paying living maintenance but instead is paying wage loss compensation to use up his wage loss time. Further, they state that they will only pay his weekly benefit upon weekly receipt of 15 job contacts. Since the plan has started he has only been paid from 8/21/15 to 8/30/15. Further Michelle Hernandez misrepresented to the physician of record, Dr. Cremer, that the only way claimant could enter a vocational rehabilitation plan was if the doctor stated he was MMI ("maximum medical improvement"). The vocational rehabilitation provided did not help claimant make a resume and has provided little assistance in trying to get him back to work. Claimant needs retraining for a job within his restriction and the employer is refusing.

On October 8, 2015, the Employer's representative filed a response to the complaint, alleging that the Employer is not required to pay the Injured Worker living maintenance; that the Injured Worker was paid \$560.89 per week during the vocational rehabilitation plan; and that the payment of compensation to the Injured Worker was always timely. The Employer's representative admits Dr. Cremer was asked whether the Injured Worker was MMI, but denies that Dr. Cremer was told that the Injured Worker must be MMI in order to receive vocational rehabilitation. Further, the rehabilitation case manager assisted the Injured Worker in resume preparation, has been meeting with the Injured Worker, and assisted him in finding jobs for which to apply.

Ohio Adm.Code 4123-18-04(A) provides in relevant part as follows:

If salary continuation is offered by the employer of record, an injured worker maintains the right to choose to receive either salary continuation or living maintenance during vocational rehabilitation. However, if temporary total or living maintenance has been paid in the claim, the injured worker shall be paid living maintenance when participating in an approved vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan. Whenever salary continuation is paid by the employer, it must be paid at the injured worker's regular (full) salary level.

In light of the foregoing rule, the Employer – by paying wage loss compensation rather than living maintenance benefits – violated Ohio Adm.Code 4123-18-04(A), 4123-18-16(A), and 4123-18-16(E). The portion of the complaint dealing with payment of compensation is valid and resolved.

The complaint alleges the Employer misrepresented to the physician of record that the only way the Injured Worker could enter a vocational rehabilitation plan was if he was declared MMI by the physician. The Employer denies making such a misrepresentation. The evidence before SIEEB is insufficient to support the allegation and a finding of a violation. This portion of the complaint is invalid.

The complaint alleges the rehabilitation case manager failed to help the Injured Worker complete a resume and has provided little assistance in trying to get the Injured Worker back to work. The Employer's representative contested the charges, asserting the rehabilitation case manager assisted the Injured Worker in resume preparation, had been meeting with the Injured Worker, and assisted him in finding jobs for which to apply. The evidence before SIEEB is insufficient to support the allegation and a finding of a violation. This portion of the complaint is invalid.

DETERMINATION:

Therefore, based on the foregoing, the Self-Insuring Employers Evaluation Board hereby finds (1) the issue of the payment of non-working wage loss versus living maintenance should be found valid and resolved; (2) the issue of needing a MMI finding to be in a vocational rehabilitation plan should be found invalid for insufficient evidence; and (3) the issue of the rehabilitation case manager not assisting the Injured Worker should be found invalid for insufficient evidence.

SELF-INSURING EMPLOYERS EVALUATION BOARD

Karen L. Gillmor 8-11-16
Karen L. Gillmor, Chairman YES

Christopher J. Royer 8/12/16
Christopher J. Royer, Member YES

Carol A. Wilson 8/12/16
Carol A. Wilson, Member YES

DATE MAILED: 15th DAY OF August, 2016