

ORDER

SELF-INSURING EMPLOYERS EVALUATION BOARD  
FORMAL HEARING FINDINGS

IN THE MATTER OF: OMNISOURCE CORPORATION (EMPLOYER); Risk No. 20005002-0  
AND  
[REDACTED] (INJURED WORKER); CLAIM No. [REDACTED]  
COMPLAINT No. 14381

[REDACTED]

Thompson, Meier & Doersom  
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**FOR THE EMPLOYER:** Richard Johnson; Matt Reynolds

**FOR THE INJURED WORKER:** Adam Leonatti

**FOR THE ADMINISTRATOR:** Michael Travis

This matter came before the Board for formal hearing on August 17, 2005, on Complaint No. 14381, alleging that the self-insuring employer improperly terminated temporary total disability compensation without a hearing. The Board makes the following findings and conclusions:

On 3/3/2004, the self-insuring employer reinstated temporary total disability compensation based on medical evidence submitted by the injured worker's treating physician, Jeffrey LaPorte, M.D. The reinstatement of temporary total disability compensation was precipitated by a flow-through injury sustained by the injured worker on 3/2/2004, when he fell down some steps at work. He had returned to work at the end of February, 2004, with light duty restrictions. The injured worker had received temporary total disability compensation for several months prior to his restricted return to work.

The employer continued to pay temporary total disability compensation until 5/04/2004. The employer explained that it had become aware of the injured worker's incarceration as a result of a newspaper article dated 5/07/2004 (7/02/2004 DHO Hearing transcript, p.33) (hereafter, "tr."). On or about 5/10/2004, correspondence between the employer's representative and the injured worker's representative confirmed that the injured worker had been incarcerated from

5/04/2004 through 5/09/2004. As of 5/10/2004, temporary total disability compensation had been paid through 5/04/2004, but ended at that date. The injured worker, through counsel, requested the employer to reinstate benefits as of 5/10/2004. The employer refused, on grounds the injured worker had been terminated on or about 5/12/2004 as a result of his failure to produce a valid commercial driver's license (tr. p. 30).

On 6/2/2004, the injured worker filed a C-86 motion requesting payment of temporary total disability compensation from 5/10/2004 forward. This request was heard by a District Hearing Officer, who awarded compensation from 5/10/2004 forward and to continue. This decision was affirmed by a Staff Hearing Officer, who rejected the employer's argument that the injured worker voluntarily abandoned his employment when he was fired on 5/12/2004. An appeal was filed from this decision, which was refused. A request for reconsideration filed by the employer was also refused. Thereafter, the injured worker filed this self-insured complaint. The employer subsequently requested a writ of mandamus ordering the Industrial Commission to vacate its award of temporary total disability compensation beginning May 10, 2004, on grounds that the injured worker voluntarily abandoned his employment.

The injured worker argues that there are only three circumstances under which a self-insuring employer may terminate temporary total disability compensation without a hearing, set forth in R.C. 4123.56 and Ohio Adm. Code 4121-3-32(B)(1). Neither incarceration nor voluntary abandonment is a basis for unilateral termination. The injured worker therefore argues that compensation was improperly terminated by the employer, regardless of the injured workers' incarceration. The Board notes specifically, however, that the injured worker has never claimed eligibility for temporary total disability compensation during his incarceration. The injured worker concludes that temporary total disability compensation should have been immediately reinstated, without hearing, on 5/10/2004.

The employer argues that compensation was properly terminated because of the injured worker's incarceration, and that any request for compensation after the injured worker's release from prison constitutes a "new" period of compensation subject to objection by the self-insuring employer. The employer further argues that it properly objected to payment of compensation after the injured worker's release from prison on grounds that the injured worker had voluntarily abandoned his employment because of his termination.

The Board finds merit with both positions, but adopts neither. The injured worker has properly set forth the proper circumstances under which temporary total disability compensation may be terminated without a hearing, while acknowledging that R.C. 4123.54 prohibits payment of temporary total disability compensation during incarceration. Indeed, the injured worker has never claimed eligibility for temporary total disability compensation for his period of incarceration. When compensation is not payable because of incarceration, and the application of R.C. 4123.54 is not contested, the Board finds that there is no authority for such payment, and consequently, no requirement that the self-insuring employer continue payment under such circumstances. On the other hand, neither is there authority for a self-insuring employer to use a 5-day period of incarceration as a triggering event for objecting to a "new" period of compensation, when the medical evidence supporting ongoing temporary total disability is uncontested. The Board emphasizes that its decision pertains only to termination of temporary total disability compensation, and must be distinguished from a determination of eligibility for temporary total disability compensation. As of this writing, the matter of eligibility is pending before the Supreme Court on the injured worker's appeal.

For the foregoing reasons, the Board finds that the employer should have resumed payment of compensation immediately after the injured worker's release from prison, and its failure to do so is tantamount to an improper termination of temporary total disability compensation. While the employer's argument that the injured worker's termination amounted to a voluntary abandonment is grounds for a hearing, it is not adequate grounds to refuse to reinstate temporary total disability compensation under the facts of this case. The complaint filed by the injured worker is therefore found to be valid.

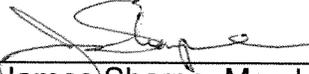
For all of the above reasons, upon motion made by James Sharpe, seconded by Wesley Wells, the Board finds Complaint No. 14381 to be valid.

A copy of this order shall be placed in the Self-Insured Department's file.

**SELF-INSURING EMPLOYERS EVALUATION BOARD**

  
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Kevin R. Abrams, Chairman YES

  
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Wesley Wells, Member YES

  
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James Sharpe, Member YES

DATE MAILED: 8<sup>th</sup> DAY OF May, 2006