

SELF-INSURING EMPLOYERS EVALUATION BOARD

IN THE MATTER OF: CHEMED CORPORATION (EMPLOYER); RISK NO. 20004281-0
AND
[REDACTED] (INJURED WORKER); CLAIM NO. [REDACTED]
COMPLAINT NO. 14493

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[REDACTED]

Chemed Corporation
ATTN: Workers' Comp Admin
255 East 5th Street Suite 2600
Cincinnati, Ohio 45202

Dinsmore & Shohl LLP
ATTN: Michael Squillace, Esq.
175 South Third Street
Columbus, Ohio 43215

Specialty Risk Services
ATTN: Cathy Slabaugh
PO Box 31180
Independence, Ohio 44131-0180

Dear Injured Worker, Employer and Representatives:

This letter is in response to the employer's appeal, dated May 22, 2006, to BWC's finding of a valid complaint in the above-referenced claim. The complaint alleged that the employer did not pay compensation in a timely manner and that the injured worker had received only one check. Upon further review and discussion, the Self-Insuring Employers Evaluation Board finds the complaint invalid, and hereby dismisses the complaint.

The complaint was set forth in the injured worker's letter dated January 9, 2006 in which he alleged that he was not being paid worker's compensation benefits at the proper rate, and that he had only received one check. A review of the letter reveals unresolved issues that pertain to the injured worker's eligibility for compensation, including eligibility for working wage loss compensation after he had returned to light duty employment.

On February 27, 2006, BWC's Self-Insured Department found the complaint valid, as a violation of Ohio Administrative Code Rule 4123-19-03(K)(7), and Revised Code Sec. 4123.56(B). The reason listed to support the finding was that "wage loss compensation was untimely and not paid for the proper periods or amounts." The Self-Insured Department amended its response in correspondence dated March 24, 2006, which appeared to place the burden of proof on the TPA for securing wage information to support the injured worker's request. In addition, the amended letter concluded that the TPA had improperly calculated the injured worker's average weekly wage. Finally, by letter dated May 4, 2006, the BWC Administrator's designee upheld the finding of a valid complaint, reasoning that the TPA "put an onerous burden on the injured worker to come up with information that it easily could have obtained from the self-insuring employer."

After further review, Self-Insuring Employers Evaluation Board finds the complaint should be dismissed. At most, the complaint represents an unresolved dispute between the injured worker and the employer, which should have been set before the Industrial Commission pursuant to Ohio Revised Code Sec. 4123.511. None of the issues raised by the complaint had been heard by the Industrial Commission, and the employer was under no obligation to pay wage loss compensation or adjust the average weekly wage without an order from the Commission. What appears more likely is that the matter was not contested; rather, the employer's TPA did not receive from the injured worker the wage information it had requested. It is uncontested that once the requested documentation was received the IW received payment. The Administrator decided in favor of a valid complaint on grounds that the TPA should have the obligation to obtain the wages from the employer which the TPA requested from the injured worker. Such a position fails to recognize that the burden of proving eligibility for and providing evidence in support of wage loss compensation is placed on the injured worker.

For the foregoing reasons, the employer's appeal is granted, and the BWC finding of a valid complaint is overturned. The complaint is found invalid and hereby dismissed.

SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman



James Sharpe, Member



Wesley Wells, Member

DATE MAILED: 1st DAY OF September, 2006