

ORDER

SELF-INSURING EMPLOYERS EVALUATION BOARD INFORMAL CONFERENCE FINDINGS

IN THE MATTER OF: WEYERHAEUSER COMPANY (EMPLOYER); RISK No. 20002788-0
AND
[REDACTED] (INJURED WORKER); CLAIM No. [REDACTED]
COMPLAINT NO. 14675



Stewart Jaffy & Associates
ATTN Stewart Jaffy
306 East Gay Street
Columbus, Ohio 43215-3212

Weyerhaeuser Company
ATTN Workers' Comp Admin
PO Box 9777
Federal Way, WA 98063

Reminger & Reminger Co., LPA
ATTN Ronald Fresco
55 East State Street 4th floor
Columbus, Ohio 43215

Weyerhaeuser Company
ATTN Tina Reiff
PO Box 688
New Bern, NC 28563-0688

FOR THE EMPLOYER: Ronald Fresco
FOR THE INJURED WORKER: Stewart Jaffy
FOR THE ADMINISTRATOR: Michael Travis

This matter came before the Board on 01/12/2006, for informal conference on Complaint No. 14675, alleging that the self-insuring employer failed to provide copies of an independent medical examination (IME) report to the injured worker in a timely manner, which delayed payment of compensation.

A review of the file information reveals the injured worker filed a C-84 form on 02/09/2005 requesting temporary total disability compensation from 01/07/2005 to 05/01/2005. The injured worker underwent an MRI on 02/21/2005. The employer disputed the payment of temporary total compensation, evidenced by letters to the injured worker's attorney dated 03/02/2005 and 03/08/2005. The employer, through counsel, also scheduled the injured worker for an independent medical examination with Dr. Rutherford on 03/28/2005. Mr. Travis, on behalf of BWC, summarized that on 6/29/2005 the employer's representative sent a letter to the injured worker's attorney stating that the report of Dr. Rutherford was not

complete pending a review of the MRI results, presumably in response to opposing counsel's request for a copy of the report.

On 7/19/2005 the injured worker filed the self-insured complaint asserting that the employer had not provided him a copy of the report of Dr. Rutherford. On the same day, BWC sent a notice of complaint to the employer. In a letter dated 7/21/2005, the employer responded, stating that once the report was available, it would be provided to the injured worker. The Self-Insured Department found the complaint to be valid in a letter dated 8/08/2005. The Administrator's Designee, John Romig, upheld the finding of a valid complaint in a letter dated 11/28/2005. The employer then requested a hearing before SIEEB and submitted a position statement on 1/11/2006.

Chairman Abrams noted that the employer had supplied a copy of a prior SIEEB decision on an identical issue in a different claim, in which the complaint was found invalid (Complaint #13308). Chairman Abrams inquired as to the position of BWC's Self-Insured Department in view of the prior decision. Mr. Travis replied that BWC's position was expressed in Mr. Romig's 11/28/2005 letter upholding the finding of a valid complaint and responded that the SIEEB decision provided by the employer was fact-specific. Mr. Abrams then asked if he was correct in his understanding that the medical report of the 3/28/2005 examination was not provided to the injured worker until immediately prior to the hearing of 9/15/2005. Mr. Jaffy confirmed that he did not receive the original report until after an addendum was prepared, shortly before the hearing. Mr. Jaffy stated that several requests were made by his office to obtain a copy of Dr. Rutherford's report. In the position statement filed by the injured worker's attorney, a timeline indicates attempts were made on 6/9/2005, 6/14/2005 and 8/26/2005. On 9/14/2005, the injured worker's attorney received the addendum report by Dr. Rutherford, but not the original report. It was not until approximately an hour before the 3:00p.m. hearing on 9/15/2005 that Mr. Jaffy's office received a copy of the original report of Dr. Rutherford, dated 3/28/2005.

Mr. Fresco asserted that it was his decision not to release Dr. Rutherford's report until after Dr. Rutherford had the opportunity to review the MRI. Mr. Fresco argued that as the employer's counsel, he is entitled to have a privileged discussion with the physician and that a medical release was needed for the MRI. After the release was received, a radiologist was needed to review the MRI. Mr. Fresco asserted that he based his decision not to release the report on the Ohio Administrative Code and the prior SIEEB decision in Complaint #13308. Mr. Fresco further asserted that nine months is not an unreasonable amount of time under the circumstances of this case. He argued that there should be a strict construction of the rules for self-insured complaints. Mr. Fresco stated that the Ohio Administrative Code does not provide a specific time frame for providing the report, and that a rule cannot be imposed that does not exist. Finally, Mr. Fresco suggested that this matter was a discovery dispute addressed by OAC 4121-3-09. He pointed out that Paragraph (B) provides for pre-hearing conferences, and also suggested the matter could be raised at hearing. He argued that if the Hearing Administrator had instructed the employer to provide the report to the injured worker and the employer refused, only then would a self-insured complaint be warranted.

Chairman Abrams asked when the employer received the report from Dr. Rutherford's 3/28/2005 IME. After considerable discussion, Mr. Fresco confirmed that the employer received the first report from Dr. Rutherford around 4/24/2005. Mr. Fresco again asserted that the results of the MRI were essential for Dr. Rutherford's review. The initial report was received in April without the MRI review and then the addendum report was received in September. Mr. Fresco noted that Dr. Cain's report of the MRI was received in July, and it took until September to receive the addendum report from Dr. Rutherford. At that time, both reports were given to Mr. Jaffy.

Mr. Jaffy asserted that the report was improperly withheld because the employer's counsel was not satisfied with the original report and so he wanted the MRI reviewed. Further, Mr. Jaffy argued that the rules do provide a time frame within which the employer must provide a copy of the report to the injured worker, and that time is "upon receipt." He directed the Board's attention to OAC 4123-03-09 (C)(5)(a) which provides the employer a right to have an injured worker examined, but also states in relevant part:

"a copy of the examination report shall be submitted to the bureau or commission **and to the claimant's representative upon the employer's receipt of the report from the doctor.**" (Emphasis added)

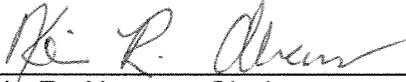
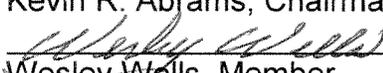
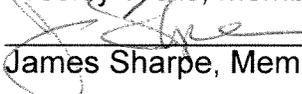
The Board finds the employer has clearly violated the rule by delaying the release of the report from the independent medical examination. In this case, the employer received the first report from Dr. Rutherford (dated 3/28/2005) around 4/24/2005. The employer should have forwarded the initial report once it was received from Dr. Rutherford. Despite any arguments that Dr. Rutherford required an MRI interpretation in order to make a complete report, it is clear that the employer received a report that should have been forwarded upon receipt.

The Board recognizes this decision cannot be reconciled with its previous decision in Complaint #13308. In view of the clear requirement of the Ohio Administrative Code cited above, the Board declines to find any precedential value with that decision.

For all of the above reasons, upon motion made by Mr. Wells, seconded by Mr. Sharpe, the Board finds Complaint No. 14675 to be valid.

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

SELF-INSURING EMPLOYERS EVALUATION BOARD

	
Kevin R. Abrams, Chairman	YES
	
Wesley Wells, Member	YES
	
James Sharpe, Member	YES

DATE MAILED: 17th DAY OF July, 2006