

SELF-INSURING EMPLOYERS EVALUATION BOARD
INFORMAL CONFERENCE FINDINGS
IN THE MATTER OF: Ralston Purina Company (Employer), Risk No. 20003719-3
And
[REDACTED] (Injured Worker), Claim No. [REDACTED]
Complaint No. 15115

[REDACTED]

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Sedgwick Claims Management
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FOR THE INJURED WORKER: William Polhamus
FOR THE EMPLOYER: Timothy Cowans and Spurgeon Fosnaugh
FOR THE ADMINISTRATOR: Michael Travis

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board on January 17, 2007 on Complaint No. 15115, filed March 27, 2006. The complaint alleged that the employer violated R.C. 4123.511 and Ohio Adm.Code 4123-19-03(K) by failing to timely pay temporary total disability compensation ordered by an Industrial Commission District Hearing Officer.

In correspondence dated April 4, 2006, the employer's representative argued that payment of the temporary total compensation on March 31, 2006 was timely. In a letter dated May 11, 2006, the Self-Insured Department found the employer in violation of Ohio Adm.Code 4123-19-03(K)(5), and therefore found the complaint valid. The Self-Insured Department rejected the employer's argument that the order was incorrectly sent to TPA Sedgwick Claims Management (Sedgwick) instead of third party administrator (TPA) Constitution State Service (CSS). The employer filed a request for reconsideration of the Self-Insured Department's finding.

In a letter dated June 14, 2006, the Administrator's Designee upheld the finding of a valid complaint. In response to the employer's assertion that the wrong TPA received a copy of the order and that the claim was charged against the wrong risk, the Administrator's Designee

found that the claim had been assigned to Risk No. 20003719-3, Ralston Purina, since at least 1997 and that the authorized TPA for that risk and in this claim is Sedgwick Claims Management. The Administrator's Designee found that the District Hearing Officer order was sent to the correct TPA.

Today's conference is a result of the employer's appeal of the Administrator's Designee determination. After a review of the evidence on file and arguments presented at conference, the Board makes the following findings.

The District Hearing Officer order issued February 23, 2006 awarded a closed period of temporary total disability compensation from August 16, 2004 through October 5, 2005. A copy of the order was mailed to Ralston Purina Company, the law firm of Scott, Scriven & Wahoff (which firm's representative was present at the District Hearing Officer hearing), the law firm of Calfee, Halter & Griswold, the law firm of Thompson, Hine, and TPA Sedgwick. On March 6, 2006, the employer's legal counsel (Scott, Scriven & Wahoff) filed a timely appeal from the order of the District Hearing Officer. The appeal form noted that compensation "will be timely paid."

On March 1, 2006, the injured worker's legal counsel, William Polhamus, contacted the offices of the employer's legal counsel, Timothy Cowans, to confirm when payment of the ordered compensation would be made. Several telephone contacts between Mr. Polhamus and staff from Mr. Cowan's office occurred thereafter. Mr. Polhamus asserts that the last contact was on March 16, 2006 when an assistant from the employer's law firm informed him that the check would be mailed on March 17, 2006. After receiving no response to a voice mail message left on March 22, 2006, Mr. Polhamus ultimately filed the self-insured complaint on March 27, 2006. A check for the amount of temporary total disability compensation due was delivered to Mr. Polhamus' office on March 31, 2006.

The employer first argues it should not be held accountable for the delayed payment because the claim is charged against the wrong risk number. On the date of injury in this claim, May 25, 1991, the injured worker was employed by Ralston Purina, Risk Number 20003719. As set forth in a letter to BWC's Self-Insured Department dated March 1, 2000, the employer indicated that as a result of corporate restructuring in April, 1994, Ralston Purina spun off an entity known as Ralcorp Holdings, with Ralston Foods as its wholly-owned subsidiary. Ralston Foods eventually became a division of Ralcorp Holdings, which entity was initially assigned Risk No. 20004092. In 1997, Ralcorp Holdings was assigned Risk No. 20005134. Apparently all claims charged to Risk No. 20004092 were automatically "updated" and charged to Risk No. 20005134. The March 1, 2000 letter inquired whether claims assigned to Risk Number 20003719 could be similarly updated to risk number 20005134. Apparently, claims from the location at which the injured worker was injured had become the financial responsibility of Ralcorp Holdings as a result of Ralston Purina's restructuring, leading to "a lot of confusion" in the payment and reimbursement procedures between Ralston Purina and Ralcorp Holdings. The employer asserts that it had no way of knowing that its letter was ineffective. At the conference, Mr. Boyd acknowledged that the BWC has no record of a written response to the letter but merely has a notation that the claims must remain charged against the original risk.

The Board finds this claim has been and remains charged against Ralston Purina, Risk Number 2003719. The employer was never notified by the BWC that this claim or other claims charged against Ralston Purina's risk number would be reassigned to the risk number for Ralcorp Holdings/Ralston Foods.

The Board rejects the employer's argument that it should be excused from timely payment because the claim should be charged against a different self-insured risk number. A self-insuring employer is not permitted to withhold payment of compensation when clearly ordered by the Industrial Commission to make such payment, even if the order is ultimately determined to be wrong. R.C. 4123.511, 4123.512, and State ex rel. Sysco Food Servs v. Indus. Comm. (2000), 89 Ohio St. 3d 612, outline in detail the appeal procedures a self-insuring employer must follow when it disagrees with an Industrial Commission order, and withholding payment is not included in those procedures. While a self-insuring employer may obtain reimbursement from the surplus fund if it prevails on appeal, it may not refuse to make payment required by an Industrial Commission order. In this case, even if the employer had successfully argued that it had been improperly named on the Industrial Commission order, the employer's remedy is clear: file an appeal. The Board notes that the employer properly exercised this right and did file an appeal.

The employer next argues that late payment should be excused because the incorrect TPA was mailed a copy of the order. The order was mailed to Sedgwick, while the employer argues that the correct TPA for this claim is CSS. In support of this assertion, the employer provided a copy of an AC-2 Permanent Authorization form dated August 31, 2005 advising the BWC that CSS has been the authorized representative for Ralcorp Holdings since December 1, 1998. The employer further argues that prior Industrial Commission hearing notices and orders as well as BWC correspondence were appropriately sent to CSS and that sometime in early 2005, the TPA in this claim was inexplicably changed to Sedgwick.

The employer asserts that CSS is entitled to receive a copy of the order pursuant to R.C. 4123.511(C) and R.C. 4123.522. Because the proper TPA was not on notice of the ordered compensation until it received an e-mail from Mr. Cowan's office on March 10, 2006, the employer argues that it had 21 days from that date in which to make timely payment. The employer concluded that because the check was delivered to the injured worker's representative on March 31, 2006, payment of compensation was made timely.

Initially, the Board observes that Ohio Adm.Code Rule 4123-19-03(K)(5) was amended on November 14, 2003 to eliminate the 21-day time frame and instead provides that the employer shall pay compensation as required by R.C. 4123.511. In relevant part, R.C. 4123.511(H) provides,

“... payment of compensation to a claimant or on behalf of a claimant as a result of any order issued under this chapter shall commence upon the earlier of the following: ... (4) the date of receipt by the employer of an order of a district hearing officer, a staff hearing officer, or the industrial commission issued under division (C), (D), or (E) of this section.”

The Board acknowledges that the 21-day time frame previously provided in the rule continues to be the working time frame used by many parties, usually accompanied by the argument that the statutory language “shall commence,” along with pragmatic consideration contemplates a reasonable amount of time for the employer to cut a check after receiving the order. Even applying this time frame as a “guideline,” however, the Board finds that payment on March 31, 2006 would not have been timely for an order issued February 23, 2006.

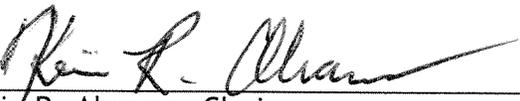
This Board has no jurisdiction to determine whether or not a party or its representative received notice pursuant to R.C. 4123.522. Such determination is exclusively within the province of the Industrial Commission. The Board notes, however, that BWC records indicate that Sedgwick is the authorized TPA for Ralston Purina. It follows, then, that because BWC records list Ralston Purina and not Ralcorp Holdings as the employer, Sedgwick would be provided notice as the TPA. The Board further notes that the AC-2 dated August 31, 2005 provided by the employer is for Ralcorp Holdings, not Ralston Purina. Like the parties at this conference, the Board is unable to discern why correspondence in this claim may have, at times, been copied to CSS rather than Sedgwick.

Not only does the Board lack jurisdiction over the notice issues, the Board declines the invitation to rule on the timeliness of receipt of the hearing order by the proper TPA because it is not necessary to adjudicate the complaint filed herein. The remedy provided by R.C. 4123.522 is the right to file an appeal from an order that was not received timely. The employer filed a timely appeal. R.C. 4123.522 does not absolve the self-insuring employer of its obligation to pay compensation required by the order from which it seeks appeal. The relief requested by the employer in this instance is tantamount to permitting a delegation of its authority as a self-insuring employer to its TPA. No such remedy exists. R.C. 4123.35 and the Ohio Administrative Code rules adopted thereunder establish criteria for self-insuring employers, not TPAs.

For the reasons listed above, upon motion made by Mr. Wells and seconded by Mr. Abrams, the Board finds Complaint No. 15115 valid and the employer in violation of Ohio Adm.Code Rule 4123-19-03(K)(5) and R.C. 4123.511. A copy of this decision will be placed in the Self-Insured Department's file.

The Board would be remiss if it failed to recognize the deep commitment and highest priority afforded to the employer's self-insurance program revealed by the testimony of Mr. Fosnaugh, its in-house workers' compensation administrator. The Board acknowledges there have been no other valid complaints against the employer and accepts Mr. Fosnaugh's assurance that he will use his best efforts to minimize the possibility of any future violations. The Board is also of the opinion that slow payment in this case was a one-time event resulting from a number of ministerial acts and omissions, only part of which were a result of the employer's administration of its workers' compensation program. For these reasons, no further action is necessary on this matter.

SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES



Wesley Wells, Member YES



William Holt, Member YES

DATE MAILED: _____ 20th _____ DAY OF February, 2007