

**SELF-INSURING EMPLOYERS EVALUATION BOARD
INFORMAL CONFERENCE FINDINGS**

IN THE MATTER OF:

Kindred Healthcare Operating, Inc. (Employer), Risk No. 20005225-0

[REDACTED] (Injured Worker), Claim No. [REDACTED]

Complaint No. 15875

[REDACTED]
Thompson, Meier & Dersom
Attn: Adam H. Leonatti
929 Harrison Avenue, Suite 205
Columbus, OH 43215

Kindred Healthcare Operating, Inc.
Attn: Nita Potts
680 South Fourth Street
Louisville, KY 40202-2407

Thomas & Company, LPA
Attn: Jennifer Myers
163 North Sandusky Street, Suite 103
Delaware, OH 43015

Constitution State Services
Attn: Edward Gopal
P.O. Box 94922
Cleveland, OH 44101-4922

FOR THE INJURED WORKER: Adam Leonatti
FOR THE EMPLOYER: Jennifer Myers
FOR THE ADMINISTRATOR: Jean Krum

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board (SIEEB) on August 27, 2008 on Complaint No. 15875, filed September 18, 2007. The complaint alleged that the self-insuring employer never implemented the Industrial Commission's August 21, 2006 order reinstating the injured worker's rehabilitation plan. The Self-Insured Department found the complaint invalid. By letter dated December 19, 2007, BWC's Executive Director of Employer Management Services (Administrator's Designee) found that the issue involved in this complaint revolved around whether or not the employer complied with the order to reinstate the rehabilitation plan. The Designee found, based upon a lack of rule or statutory authority outlining the employer's specific obligations in this matter, the complaint would remain dismissed.

At the conference, each of the representatives made cogent, compelling arguments. The injured worker argued that the employer incurred obligations as a result of the Industrial Commission order and rehabilitation rules and that the employer failed to meet those obligations. Specifically, the injured worker argued that the employer had an obligation to contact the injured worker and provider to establish the rehabilitation plan. The injured worker pointed out that she should not have to establish her own plan, especially in light of the employer's third party administrator's insistence in 2005 that the injured worker use its vocational rehabilitation provider.

The employer asserted that it was ready, willing and able to meet its obligations. The employer further argued that there is no rule or case law and nothing in the Industrial Commission decision setting forth

the specific obligations described by the injured worker's attorney. The employer noted that it was blindsided by the complaint, filed by an attorney in the law firm representing the injured worker other than the attorney with whom the employer's attorney was simultaneously conducting settlement negotiations. The employer pointed out that it had previously approved rehabilitation and that this issue arose after the employer alleged non-compliance with the rehabilitation program. The employer acknowledged that its challenge was ultimately refused by Staff Hearing Officer order of August 21, 2006, but pointed out that that order reinstated the previous program. The employer argued it was only reasonable to expect the injured worker to contact her rehabilitation counselor, Tina Hayes, in view of the already established relationship between the two.

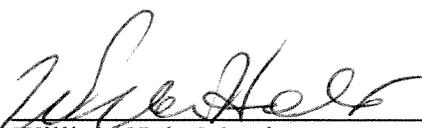
In the absence of a violation of a specific rule, law, or policy, this Board is reluctant to find a valid self-insured complaint. In this case, the Board finds no such specific violation, and therefore dismisses the complaint as invalid. While the self-insuring employer certainly could have taken the affirmative act of directing the injured worker to again contact her rehabilitation counselor, the Board finds no specific obligation to do so under the facts of this case. It is also the Board's opinion that the injured worker certainly could have taken the affirmative act to contact the self-insuring employer sooner than eight months after the Staff Hearing Officer order reinstating vocational rehabilitation. It is further the Board's desire that issues such as the one presented here be addressed by the parties, with each other, prior to the filing and adjudication of a self-insured complaint. A telephone call between attorneys willing to compromise on difficult issues will accomplish far more than a decision by this Board.

Based on the foregoing, upon motion by Mr. Holt, seconded by Mr. Abrams, the Board finds Complaint No. 15875 invalid, and it is hereby dismissed.

SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES NO



William Holt, Member YES NO



Wesley Wells, Member YES NO

DATE MAILED: 1st DAY OF October, 2008
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