

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

IN THE MATTER OF:

Securitas Security Services USA, Inc. (Employer), Risk No. 20002934-0

And

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

Complaint No. 15988

[REDACTED]
James A. Whittaker LLC
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Cincinnati, OH 45246-1520

Securitas Security Services USA, Inc.
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FOR THE WIDOW-CLAIMANT: No Appearance
FOR THE EMPLOYER: Michael Williams
FOR THE ADMINISTRATOR: Larry Rhodebeck

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board (SIEEB) on April 23, 2008 on Complaint No. 15988, filed December 27, 2007. The complaint alleged that the self-insuring employer failed to issue payment for an 8% permanent partial disability award that was granted by a Staff Hearing Officer on August 17, 2007.

The relevant history of this matter is as follows. The Self-Insured Department sent a copy of the complaint to the employer by letter dated January 3, 2008. After an exchange of email correspondence and telephone conversations, BWC's Self-Insured Department found the complaint to be valid and unresolved, as set forth in correspondence to the employer dated January 25, 2008. The Self-Insured Department found the employer in violation of Ohio Adm.Code 4123-19-03(K)(5) and R.C. 4123.511 for failure to pay the ordered compensation timely, and directed the employer to pay the award within 21 days. The Self-Insured Department noted the employer's concern regarding its liability for the claim, but also noted that as recently as December 11, 2007, the employer certified the claim for additional conditions and cancelled a hearing on that issue.

The employer did not pay the permanent partial award but did request a hearing before the Self-Insuring Employers Evaluation Board by letter dated January 31, 2008. On February 4, 2008 the employer filed a motion requesting the Industrial Commission to exercise continuing jurisdiction to find that the claim was jurisdictionally closed because the statute of limitations had expired. A March 17, 2008 Staff Hearing Officer order granted the employer's motion, finding the claim statutorily expired on June 25, 1996.

The Self-Insured Department now asserts that despite the March 17, 2008 order finding the claim to be statutorily expired, the finding of a valid complaint should be upheld. The Self-Insured Department argues that at the time the August 17, 2007 order awarding permanent partial disability compensation was issued, the employer believed the claim was active. The Self-Insured Department pointed out that the self-insuring employer certified the claim for an additional allowance in a letter dated December 11, 2007. The Self-Insured Department also pointed out that between the time the August 17, 2007 order was issued and the self-insured complaint was filed, the self-insuring employer never alleged the claim was jurisdictionally closed. The Self-Insured Department concluded that a self-insuring employer is responsible for monitoring the statutory expiration of its self-insured claims.

The employer's legal counsel, Mr. Williams, acknowledged that this claim should have been handled differently, that an appeal of the August 17, 2007 Staff Hearing Officer order would have been a more appropriate avenue to pursue. Counsel further acknowledged that at the time the permanent partial award was granted, the employer believed the claim was jurisdictionally open, and even recognized an additional condition before filing the motion asserting the claim had statutorily expired. Counsel explained that the employer has been a self-insuring employer for several decades and has had several TPAs. When the correspondence in this claim was received, it was sent to the two most recent TPAs. Unfortunately, neither TPA was paid to process a claim this old.

Counsel for the employer further explained that the employer was relying on BWC's processing of the motion to confirm that the claim was still valid, and therefore did not immediately investigate whether the claim had statutorily expired. Mr. Williams noted that BWC's on-line manual instructs staff to dismiss C-92 applications when the claim has statutorily expired. Specifically, Mr. Williams further pointed out that there has been no activity documented in this claim since 1986 and the claim has now been found to be jurisdictionally closed as set forth in the March 17, 2008 Staff Hearing Officer order.

The Board finds itself in a difficult position resulting from the application of relevant statutory law to the facts of this case. R.C. 4123.511 unequivocally provides that payment of compensation "shall commence" upon receipt of an Industrial Commission order granting an award of compensation. This Board, under its current composition, steadfastly maintains that a self-insuring employer who disputes an order may not avail itself of any remedy involving non-payment, when the order requires payment of

compensation. Based on this belief, it is the Board's position that the self-insuring employer should have paid the 8% permanent partial disability award as required by the August 17, 2007 Staff Hearing Officer order.

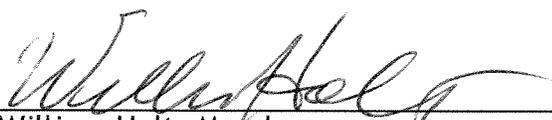
On the other hand, it is equally clear that no payments may be made in a claim that is jurisdictionally closed as a result of the expiration of the limitations period set forth in R.C. 4123.52. By order dated March 17, 2008, the Industrial Commission determined that the claim in which the complaint has been filed is jurisdictionally closed. The Board therefore, is left with a complaint involving an order to pay compensation in a claim that is jurisdictionally closed.

In an attempt to give deference to both statutes, upon motion made by Mr. Holt, seconded by Mr. Wells, the Board finds the employer in violation of Ohio Adm.Code 4123-19-03(K)(5) and R.C. 4123.511 for failure to pay the compensation awarded by the August 17, 2007 Staff Hearing Officer order. Therefore, the Board finds Complaint No. 15988 to be valid. Notwithstanding the finding of a valid complaint, however, the Board finds that it is without jurisdiction to order the self-insuring employer to make payment of the ordered compensation in a claim now determined to have statutorily expired.

SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES



William Holt, Member YES



Wesley Wells, Member YES

DATE MAILED: 19th DAY OF June, 2008