

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

**IN THE MATTER OF:**

**Smurfit Stone Container Enterprises, Inc. (Employer), Risk No. 20003190-2**

**And**

**[REDACTED] (Deceased Injured Worker)**

**[REDACTED] (Widow-Claimant), Claim No. [REDACTED]**

**Complaint No. 15716**

[REDACTED]

Smurfit Stone Container Enterprises, Inc.  
Attn: Workers' Compensation Administrator  
6 Cityplace Drive  
Creve Coeur, MO 63141-7167

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Cincinnati, OH 45242

Crawford & Company  
7271 Engle Road, Suite 303  
Cleveland, OH 44130-8404

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**FOR THE WIDOW-CLAIMANT:** No Appearance  
**FOR THE EMPLOYER:** Robert Corker, Terrie Anderson, Victor Lipari  
**FOR THE ADMINISTRATOR:** Jean Krum

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board (SIEEB) on February 27, 2008 on Complaint No. 15716. The complaint alleged that the self-insuring employer harassed the widow-claimant repeatedly regarding her marital status and most recently about cohabitation in relation to possible termination of continued death benefits. The Administrator's representative argued in favor of upholding the finding of a valid complaint.

In the complaint, filed June 6, 2007, [REDACTED], the decedent's dependent, asserted that she was being harassed by the employer's investigation of her continued receipt of death benefits. She listed as examples, people unexpectedly appearing at her home and attempting to gain entrance, telephone calls, papers she received in the mail, and a prior motion to terminate benefits. Attached to the complaint was a copy of a July 1, 1987 letter from Gates, McDonald explaining her benefits; a March 18, 2005 letter from Crawford and Crawford concerning completion of a Remarriage Check Statement and the completed statement; and a statement [REDACTED] was asked to sign in 2007 certifying that she has not remarried, and that she was not engaged in cohabitation.

In response to the complaint, the employer submitted a letter dated June 22, 2007, with a copy of the investigation report prepared by MJM attached. MJM, it was revealed at the conference, was an investigations entity hired by the employer's third party administrator. The employer stated that pursuant to its rights under R.C. 4123.59(B)(1), it periodically requires ██████████ to sign and return a remarriage affidavit certifying that she has not remarried and thus continues to be eligible for benefits. The employer asserted that ██████████ complaint is vague and lacks merit and evidentiary support. The employer further asserted that it has in no way harassed ██████████. The employer stated it has made every attempt to respect ██████████ privacy and that ██████████ has not been cooperative in its investigation. The employer submitted an additional response dated August 22, 2007 acknowledging that ██████████ cohabitation is irrelevant to continued entitlement to benefits. The employer asserted that the inquiry into cohabitation was an inadvertent error and that ██████████ benefits were not interrupted.

A brief review of the history of this claim reveals that in 1987, Ms. Johnson was awarded death benefits. The employer filed a C-86 motion on November 19, 2001 requesting to have ██████████ continued entitlement to death benefits set for hearing, attaching a July 2001 investigation report. The investigation report included finding a sign near ██████████ front door displaying, "Welcome ██████████ and ██████████." The report also included statements regarding what appeared to be a wedding photo. The investigator reported that a gentleman by the name of ██████████ answered the door and indicated he and ██████████ were in the photo. Prior to hearing, the employer's request for a subpoena for documents including application for marriage license, joint bank accounts, and property deeds was denied by the Industrial Commission. ██████████ submitted tax returns from 1987 through 2001 demonstrating that her filing status was single. In an order issued July 7, 2002 a District Hearing Officer denied the employer's C-86 motion, finding that there was insufficient evidence to terminate benefits. No appeal was taken from that order. In March of 2005, a Remarriage Affidavit was submitted to ██████████ to verify her marital status.

The employer, through its third party administrator, contracted with MJM Investigations (MJM) in 2007 to conduct another investigation into the marital status of ██████████. The investigation report reveals numerous attempts to contact ██████████, including telephone calls and messages as well as cold calls to her home and neighbors. The report states that ██████████ was interviewed on June 4, 2007, that she would not discuss cohabitation and refused to sign the affidavit provided to her.

Deborah DeLong, an auditor in the Self-Insured Department, spoke with ██████████ August 23, 2007. ██████████ explained that the wedding photograph mentioned in the 2000 investigation report contained four individuals, two of which were she and ██████████. ██████████ further explained that she was not the bride in the photograph and, in fact, the bride was actually twenty years younger than herself. In a letter dated September 5, 2007, the Self-Insured Department found the complaint

valid and the employer in violation of Ohio Adm.Code 4123-19-03(I)(2) and (3) for failure to properly provide information and assistance to [REDACTED].

The employer requested reconsideration of the finding of a valid complaint in a letter dated September 19, 2007. The employer asserted that the September 5, 2007 finding of a valid complaint did not identify the specific conduct the auditor found to be in violation of the employer's obligation to provide assistance and information. The employer merely asked a question during the course of a permissible investigation which the employer acknowledges was not obviously irrelevant but instead legally irrelevant.

In a letter dated October 25, 2007 Ms. Joy Bush, the Administrator's Designee, upheld the finding of a valid complaint. Ms. Bush noted that as the employer is now aware, cohabitation is irrelevant to [REDACTED] continued entitlement to benefits. Ms. Bush pointed out that marriage is a matter of public record and can be determined by methods far less burdensome to the employer and [REDACTED] than sending an investigator to her home. Ms. Bush found that the 2001 motion to terminate benefits would not constitute a valid complaint since the actions occurred more than two years ago. The affidavit provided to [REDACTED] in 2007 asked her to swear that she has not engaged in cohabitation or remarried. Ms. Bush found this affidavit to go beyond an annual certification that a widow-claimant has not remarried, and therefore inconsistent with R.C. 4123.59. Ms. Bush further found that a thorough reading of Ohio Adm.Code 4123-19-03(I) requires the self-insuring employer to have an administrator who is knowledgeable and experienced with the requirements of the Ohio Workers' Compensation Act and rules. Ms. Bush concluded by finding that the employer's actions were clearly at odds with the statute governing death benefits and demonstrated a lack of competence which would prevent the employer from assisting or providing accurate information to a claimant or widow-claimant. In a letter dated November 7, 2007 the employer requested a hearing before SIEEB.

In addition to the arguments made in its letters dated June 22, 2007, August 22, 2007 and September 19, 2007, the employer pointed out at the conference that Industrial Commission Resolution R04-1-01 specifically authorizes TPAs to conduct investigations and secure statements as to facts and that it is permissible for the employer to use an outside vendor to conduct investigations. The employer routinely conducts yearly checks into the marital status of widow-claimants and "alive and well" checks on injured workers receiving permanent total disability. The employer stated that "in-person" verification is preferred by the employer and well within its rights.

The Board inquired into the relationship between the workers' compensation administrator and Crawford as well as who ordered the 2007 investigation and how much control was exerted over that investigation. Ms. Anderson testified that she is the workers' compensation administrator and meets quarterly with Crawford to discuss each claim. In February of 2007, Ms. Anderson took over administering claims from a sister plant, including this claim. When she reviewed [REDACTED] claim she discovered that the marital status was last verified in 2005 and therefore she directed

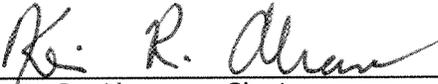
that Crawford investigate the matter. Crawford contracts with MJM for investigations. Ms. Anderson indicated that she is not involved in the method or nature of an investigation and was unaware of the cohabitation language contained in the affidavit when it was provided to [REDACTED]. The employer asserted that while Ms. Anderson and Crawford are aware that the question of cohabitation is irrelevant, MJM is a nationwide company that was likely unaware of that fact.

While the Board is not unsympathetic to the concerns articulated by the Administrator's representative, the Board finds that the employer's actions do not violate a specific statute or rule and therefore do not rise to the level of a valid complaint. The Board finds that it is within the employer's right to periodically investigate the marital status of an individual receiving death benefits. While other means of determining an individual's marital status may be less burdensome, costly and invasive, it is the employer's right to determine the method of verifying this information.

The Board notes that the employer is ultimately responsible for the actions of its TPA and any investigative firm hired. While the question as to cohabitation is regrettable and irrelevant to [REDACTED] continued receipt of benefits, the inclusion of that clause in the affidavit supplied by MJM, does not constitute a valid self-insured complaint. The Board also finds that the employer's actions do not demonstrate a lack of competence on the part of the employer's workers' compensation administrator.

Based on the foregoing, upon motion made by Mr. Holt, seconded by Mr. Abrams, the Board finds Complaint No. 15716 to be invalid.

**SELF-INSURING EMPLOYERS EVALUATION BOARD**

  
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Kevin R. Abrams, Chairman YES

  
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William Holt, Member YES

**DISSENTING OPINION:**

I disagree with the majority decision in Complaint No. 15716.

I agree employers have the right to determine the marital status of widows receiving death benefits.

However, in the instant case the employer through their third party administrator contracted with an out-of-state investigative agency, M.J.M., who was not knowledgeable and experienced with the requirements of the Ohio Workers' Compensation Act and rules.

The investigative agency went beyond an annual certification that a widow-claimant has not remarried, consistently harassing and coercing the claimant to sign an affidavit she was not cohabitating or remarried which is inconsistent with R.C. 4123.59.

The affidavit the claimant was requested to swear to contained language that the claimant had not engaged in cohabitation or remarried, which was totally inappropriate.

Ohio Adm.Code 4123-19-03(I) requires the self-insuring employer to have an administrator who is knowledgeable and experienced with the requirements of the Ohio Workers' Compensation Act and rules.

It is crystal clear the employer, their third party administrator and their investigative agency M.J.M. went over and above what could have been considered reasonable and in compliance with Ohio Adm.Code 4123-19-03(I).

An affidavit sent to the claimant's home by certified mail to certify she had not remarried would have served the same purpose.

The finding of a valid complaint should have been upheld by the Self-Insuring Employers Evaluation Board.

  
Wesley Wells, Member



DATE MAILED: 23rd DAY OF April, 2008 *JB*