

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

IN THE MATTER OF:

International Truck & Engine Corporation (Employer), Risk No. 20000597-0

And

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

Complaint No. 15746

[REDACTED]
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FOR THE INJURED WORKER: Jim Monast
FOR THE EMPLOYER: Robert Minor, Deb Baker
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. 15746. The complaint alleged that the self-insuring employer refused to timely pay a lump sum advancement awarded by a District Hearing Officer.

The relevant history of this matter is as follows. The injured worker filed an IC-32 Application for Payment of Lump Sum Advancement on February 2, 2007. In a letter dated February 9, 2007, the employer objected to the lump sum advancement and BWC referred the matter to the Industrial Commission for hearing. A District Hearing Officer order, issued June 1, 2007, awarded a lump sum advancement of \$17,339.00 for home repairs pursuant to Ohio Adm.Code 4123-3-37. The order directed the self-insuring employer to provide the advancement and adjust the injured worker's permanent total disability rate in accordance with the advancement. On June 20, 2007, the employer filed an appeal. In an order issued July 20, 2007, a Staff Hearing Officer affirmed the order of the District Hearing Officer granting the lump sum advancement. Further appeal was refused in an order issued August 2, 2007.

The instant complaint was filed on July 2, 2007. The employer responded to the complaint in a letter dated July 10, 2007 asserting that payment of the lump sum advancement was not required until a final decision is rendered. In a letter dated July 17, 2007, the Self-Insured Department found the complaint to be valid, finding the employer in violation of R.C. 4123.511(H)(4). The letter further ordered the employer to make payment of benefits within seven days of receipt of the letter and to provide proof of payment to BWC. The employer provided proof that payment was processed on July 27, 2007 and in a letter dated July 26, 2007 requested reconsideration of the finding of a valid complaint.

In a letter dated October 25, 2007, the Administrator's Designee, Joy Bush, upheld the finding of a valid complaint. Ms. Bush specifically found that lump sum advancements are governed by R.C. 4123.64(C) which provides that decisions on applications for lump sum advancements are appealable pursuant to R.C. 4123.511. Ms. Bush further found that R.C. 4123.511(H)(4) states that payment of compensation by a self-insuring employer shall begin on the date the employer receives an order of a District Hearing Officer. Ms. Bush addressed the employer's argument that a lump sum advancement is not compensation by finding that Ohio Adm.Code 4123-3-37(A)(1) provides that a lump sum advancement is made from an award of compensation. Ms. Bush set forth BWC's position that a lump sum advancement is compensation and therefore payment must be made pursuant to R.C. 4123.511(H). Ms. Bush finally noted that R.C. 4123.95 requires workers' compensation laws to be construed liberally in favor of injured workers. The employer requested a hearing before SIEEB in a letter dated November 7, 2007.

In its letters dated July 10, 2007, July 26, 2007, and November 7, 2007 as well as in arguments made at hearing, the employer made several assertions in support of its position that payment of the lump sum advancement was not required until the employer had exhausted its administrative appeals. The employer asserted that while R.C. 4123.511 outlines the time frames for payment of compensation, the employer continued to timely pay all compensation to which the injured worker was entitled during the pendency of its appeals of the lump sum advancement orders. The employer disputed BWC's conclusion that a lump sum advancement is an award of compensation and that it must be paid in accordance with R.C. 4123.511(H). The employer acknowledged that a lump sum advancement is made from an award of compensation, but argued that the advancement is not magically transformed into compensation governed by R.C. 4123.511(H). The employer argued that Ohio workers' compensation law recognizes a distinction between payment of compensation for lost wages and payment for other types of awards. The distinction, it is argued, requires a public policy recognition that delaying payment of wage replacement compensation creates a hardship on the injured worker and that accordingly the employer should bear the risk of recovering an overpayment if the award is eventually overturned. The employer asserted that in the case of permanent partial awards or lump sum advancements, no such hardship exists.

The employer also asserted that requiring payment of the lump sum advancement upon receipt of the District Hearing Officer order is a violation of its right to due process. Mr. Minor stressed that Ohio Adm.Code 4123-3-37, which governs lump sum advancements, does not specify when a lump sum advancement is to be paid and that he could find no other guidance as to when a lump sum advancement is to be paid.

Mr. Minor further argued that lump sum advancements are advancements of permanent total disability compensation and R.C. 4123.35 provides exclusive jurisdiction over permanent total disability to Staff Hearing Officers. The employer concluded its arguments by stating that barring specific guidance, rule, or statute directing when payment of a lump sum advancement must be made, a finding of a valid complaint is legally erroneous.

The employer's arguments are not well taken, and the Board finds that lump sum advancements are compensation payable pursuant to the provisions of R.C. 4123.511(H). In reaching this conclusion, the Board relies on the following statutory provisions.

R.C. 4123.64(A) provides, "The administrator of workers' compensation, under special circumstances, and when the same is deemed advisable for the purpose of rendering the injured or disabled employee financial relief or for the purpose of furthering his rehabilitation, may commute payments of compensation or benefits to one or more lump-sum payments." R.C. 4123.64(C) provides, "An order of the administrator issued under this section is appealable pursuant to section 4123.511 of the Revised Code..."

R.C. 4123.511(H) provides, "Except as provided in section 4123.63 of the Revised Code and division (J) of this section, payments 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 employer's attempt to avoid the application of these provisions by defining an advancement as something other than compensation is further rejected based on a review of R.C. 4123.35(M). "Paid compensation" for purposes of assessments is defined in R.C. 4123.35(M) to include lump sum advancements made pursuant to R.C. 4123.64. Specifically, R.C. 4123.35(M) provides, "As used in this section, 'paid compensation' means all amounts paid by a self-insuring employer for living maintenance benefits, all amounts of compensation paid pursuant to sections 4121.63, 4121.67, 4123.56, 4123.58, 4123.59, 4123.60, and 4123.64 of the Revised Code,..." As previously recognized by the Administrator, a lump sum advancement is an award paid pursuant to R.C. 4123.64. This analysis is also consistent with Ohio Adm.Code 4123-3-37(A)(1) which provides, "The administrator may only grant a lump sum payment to an injured worker from an award of compensation made pursuant to

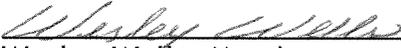
section 4123.58 of the Revised Code or from division (B) of section 4123.57 of the Revised Code.” (Emphasis added).

Based on the foregoing, upon motion made by Mr. Wells, seconded by Mr. Abrams, the Board finds the self-insuring employer in violation of R.C. 4123.511(H) and therefore Complaint No. 15746 is found to be valid. The Board finds that a lump sum advancement of permanent total disability compensation is compensation subject to the payment schedule set forth in R.C. 4123.511(H). The employer’s delay in the payment of compensation is a violation of R.C. 4123.511(H)(4), and Complaint No. 15746 is found to be valid. As acknowledged by the injured worker’s representative, the advancement has been paid, and no further action is necessary on this matter and it is hereby considered resolved.

SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES



Wesley Wells, Member YES



William Holt, Member YES

DATE MAILED: 26th DAY OF March, 2008 *LCB*