

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

IN THE MATTER OF:

Federal Express Corporation (Employer), Risk No. 20004238-00

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

Complaint No. 16205



Brown, Lippert & Laite
30 Garfield Place, Suite 640
Cincinnati, OH 45202-4300

Federal Express Corporation
3620 Hacks Cross Road, Bldg. 8
Memphis, TN 38125

Dinsmore & Shohl
191 W. Nationwide Blvd, Suite 300
Columbus, OH 43215

Sedgwick Claims Management Services, Inc.
P.O. Box 14661
Lexington, KY 40512-4661

FOR THE INJURED WORKER: No Appearance
FOR THE EMPLOYER: Michael Williams, Lori Terry
FOR THE ADMINISTRATOR: Erica Bass

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board (SIEEB) on September 22, 2009 on Complaint No. 16205. The complaint alleged that the employer failed to comply with the Staff Hearing Officer order issued February 5, 2008 which authorized chiropractic treatment.

The injured worker received chiropractic treatment from Michael Miller, D.C. on September 1, 2006 and on that date Dr. Miller completed a C-9 Physician's Request for Medical Services requesting chiropractic treatment at a frequency of five visits over a three month period. The C-9 listed dates of service to begin September 1, 2006 and end December 1, 2006. On September 6, 2006, the third party administrator, Sedgwick Claims Management Services, Inc., (TPA) denied the C-9 for the reason that the claim was medically inactive. On September 8, 2006, the injured worker filed a C-86 motion requesting that the claim be reactivated and treatment authorized as set forth in the C-9 signed by Dr. Miller on September 1, 2006. Inexplicably, the C-86 motion was not referred to the Industrial Commission for hearing until September 12, 2007. After hearings set for October 4, 2007 and October 31, 2007 were continued at the request of the employer, a hearing before a District Hearing Officer was finally held on December 13, 2007. In an order issued December 15, 2007, the District Hearing Officer ordered the following:

Therefore, it is hereby the order of the District Hearing Officer that the Injured Worker's request for re-activation and authorization of treatment specifically chiropractic manipulation, therapeutic exercise, neuromuscular reeducation, and intersegmental traction 5 visits times 3 months from dates of service 09/01/2006 through 12/01/2006 as requested per C-9 dated 09/01/2006 from Dr. Miller is granted.

The employer appealed the District Hearing Officer order and in an order issued January 31, 2008, the Staff Hearing Officer affirmed the District Hearing Officer order, granted the C-86 motion, and authorized chiropractic treatment as set forth in the September 1, 2006 C-9.

Following the issuance of the Staff Hearing Officer order, the injured worker resumed treatment with Dr. Miller on February 27, 2008. On March 31, 2008, Dr. Miller submitted bills to the TPA for dates of service of September 1, 2006, February 27, 2008, March 5, 2008, March 12, 2008 and March 19, 2008. On April 4, 2008, the TPA denied payment for the February to March 2008 treatments for the reason that the treatments were not pre-authorized. The TPA issued payment for the September 1, 2006 treatment on May 6, 2008.

The injured worker's representative filed the instant self-insured complaint on June 26, 2008. The complaint did not list the specific dates of treatment at issue, but did reference the September 1, 2006 C-9. In a letter dated August 12, 2008, BWC Self-Insured Department found the employer in violation of Ohio Adm.Code 4123-19-03(K)(5) and R.C. 4123.511(I) for failing to make payment of the fee bills submitted by Dr. Miller for the treatments rendered February to March, 2008. Finding the complaint valid, the Self-Insured Department ordered the employer to make payment of the benefits within seven days of receipt of the letter.

As directed by BWC, the employer issued payment to Dr. Miller on August 26, 2008 for the dates of service February 27, 2008, March 6, 2008, March 12, 2008 and March 19, 2008. In a letter dated August 26, 2008, the employer protested payment of the bills and requested the matter be scheduled for formal hearing before SIEEB. BWC construed the employer's August 26, 2008 letter as a request for reconsideration and referred the matter to the Administrator's Designee. In a letter dated April 16, 2009, the Administrator's Designee, Joy Bush, upheld the finding of a valid complaint. Ms. Bush found that while BWC agreed that an order granting a C-9 does not constitute approval for treatments indefinitely, the employer's position that approval is limited to the specific dates on a C-9 would render the hearing process inconsequential in many cases. Ms. Bush further suggested that many physicians are aware that if treatment is rendered prior to approval, there is a risk of non-payment in the event retroactive treatment is not approved. BWC's position was that the number and types of treatment authorized would be limited to those specified on the C-9. The employer's representative again requested a hearing before SIEEB in a letter dated April 24, 2009.

In its letters in response to the complaint and at hearing, the employer's representative, Michael Williams, asserted that the motion filed September 8, 2006 and adjudicated by the Industrial Commission requested a closed period of medical treatment commencing on September 1, 2006 and ending on December 1, 2006 and that the Industrial Commission adjudicated only that narrow issue. Mr. Williams asserted that the injured worker was attempting to "carry over" the treatment that was authorized by the Industrial Commission beyond the closure date listed on the approved C-9.

Mr. Williams pointed out that Ohio Adm.Code 4121-3-16(C) provides, "A motion shall fully set forth the question presented together with a succinct statement of the act or relief sought." Ohio Adm.Code 4121-3-09(C)(5) provides, "At hearing with notice, consideration shall be confined to the issues presented in the adjudication of the claim and the parties shall be prepared to fully present their respective positions in regard to such issues." Mr. Williams further argued that the employer was being held responsible for obligations that exceeded those listed on the motion and ruled upon by the Industrial Commission. Further, Mr. Williams asserted that the injured worker had the opportunity to file an open ended treatment request and that the injured worker's failure to do so should not result in negative findings against the employer.

This case epitomizes the challenges confronted by both parties when immediate chiropractic treatment is requested, that treatment is contested, and the dispute is subject to the adjudicative process. Here, the treatment was requested in September 2006, to continue until December 1, 2006. The dispute was not resolved until January 31, 2008, pursuant to a Staff Hearing Officer order issued that date. Treatment was rendered in February and March of 2008. While the Board understands that delays are inherent in the

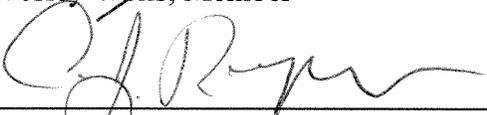
adjudication process and is sympathetic to the dilemma injured workers and their providers face when attempting to secure timely treatment while at the same time ensuring that payment will be made, the finding of a valid complaint is an extraordinary remedy and therefore applicable rules must be applied strictly. The C-9 that is the subject of this complaint listed a specific beginning and ending date for treatment. The District Hearing Officer order not only granted the C-9 but specifically listed the treatment period authorized, and that order was affirmed by the Staff Hearing Officer. The Board simply cannot find that approval for chiropractic treatment specifically to have been rendered from September through December 2006 is tantamount to approval of chiropractic treatment actually rendered in February and March 2008.

Based on the foregoing, and upon motion made by Mr. Royer, seconded by Mr. Abrams, the Board finds Complaint No. 16205 invalid and it is hereby dismissed.

SELF-INSURING EMPLOYERS EVALUATION BOARD


Kevin R. Abrams, Chairman YES


Wesley Wells, Member YES


Christopher Royer, Member YES

DATE MAILED: 29th DAY OF October, 2009 