

SELF-INSURING EMPLOYERS EVALUATION BOARD
FORMAL HEARING FINDINGS
IN THE MATTER OF:
Ferguson Construction Co. (Employer), Risk No. 20004238-00
[REDACTED] (Injured Worker), Claim No. [REDACTED]
Complaint No. 16409



Horenstein, Nicholson & Blumenthal
124 East 3rd Street, 5th Floor
Dayton, OH 45402

Ferguson Construction Company
P.O. Box 726
Sidney, OH 45365

Taft, Stettinius & Hollister
110 North Main Street, Suite 900
Dayton, OH 43016

CareWorks Consultants, Inc.
5500 Glendon Court, Suite 300
Dublin, OH 43016

FOR THE INJURED WORKER: Kevin McDougal
FOR THE EMPLOYER: Nick Davis, Jane Tweedy, Jan Ikins
FOR THE ADMINISTRATOR: Erica Bass

This matter was set for formal hearing before the Self-Insuring Employers Evaluation Board on September 22, 2009 on Complaint No. 16409. The complaint alleged that the employer failed to honor the April 25, 2008 Staff Hearing Officer order which granted the C-9 dated November 2, 2007 for ten chiropractic visits.

BWC investigated the complaint and found that the chiropractic treatments authorized by the April 25, 2008 Staff Hearing Officer order were rendered in October and November of 2008, that the injured worker was entitled to such treatments, and that the employer was obligated to pay for the treatments. In a letter issued January 21, 2009 BWC found the employer in violation of R.C. 4123.511 and therefore found the complaint valid. BWC directed the employer to make payment of the benefits within seven days of receipt of the letter and to provide confirmation of payment to BWC. When no such payment confirmation was received, BWC referred the complaint to the Self-Insuring Employers Evaluation Board to consider further action. The Board notes that the employer did not appeal the finding of a valid complaint.

At outset of the hearing, the injured worker's representative expressed the injured worker's desire to continue to seek prosecution of the self-insured complaint to the extent that the complaint remain valid, but deferred to the Board's discretion as to sanctions against the employer. BWC did not seek sanctions against the employer.

The employer pointed out that on August 4, 2009 CareWorks Consultants provided proof that payment as ordered by BWC was issued on January 30, 2009. BWC confirmed with the provider that payment was received.

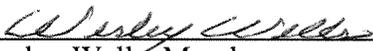
In its response letters to the complaint, and in response to questions from the Board, the employer explained that the delay in payment resulted from the injured worker's failure to obtain the treatment approved by the April 25, 2008 Staff Hearing Officer order, until after a six month period had elapsed. The employer further argued that the delay resulted from the physician of record's request for an updated C-9 approval, in addition to the Staff Hearing Officer order granting the treatment. The updated request was interpreted by the employer's third party administrator as a request for a new period of treatment, and resulted in an independent medical examination upon which the employer relied to deny the perceived "new" C-9 application.

Lacking an appeal of BWC's finding of a valid complaint, the Board declines to address the merits of the complaint. Therefore, BWC's finding of a valid complaint will remain part of the employer's self-insurance risk file. The Board also declines to impose sanctions against the self-insuring employer, based primarily on the lack of pursuit of sanctions by the injured worker and BWC, and based on the employer's explanation for the delay in payment set forth above.

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 