

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

**IN THE MATTER OF:**

**Ford Motor Company (Employer), Risk No. 20002551-13**

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

**Complaint No. 16550**

[REDACTED]  
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Avon Lake, OH 44012

O.G.C. Ford Motor Company  
Attn: Timothy Krantz, Esq.  
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Cleveland, OH 44142-1415

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**FOR THE INJURED WORKER:** David Briggs  
**FOR THE EMPLOYER:** Timothy Krantz  
**FOR THE ADMINISTRATOR:** Jean Krum

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board on February 23, 2010 on Complaint No. 16550. The complaint alleged that the employer failed to comply with District and Staff Hearing Officer orders that clarified a prior percentage of permanent partial disability award to allocate a portion of the award to two fingers for which the injured worker did not receive a total loss of use award. The relevant history giving rise to this issue is set out below.

By Industrial Commission order, the injured worker was awarded 28% permanent partial disability for disability arising from injuries to four fingers of the injured worker's left hand. Thereafter, on February 26, 2008, the injured worker filed a motion requesting a scheduled loss award for loss of use of the left hand. A District Hearing Officer order issued May 6, 2008 awarded 35 weeks of compensation for scheduled loss of use of the left index finger, and 20 weeks of compensation for scheduled loss of use of the left ring finger. The District Hearing Officer further awarded an additional 30 weeks of compensation, finding that the injured worker's disability exceeded the normal handicap. On appeal, the Staff Hearing Officer order issued August 14, 2008 modified the District Hearing Officer order, awarded 55 weeks of compensation for loss of use of the left ring and index fingers, but vacated the additional 30 week award. When paying the scheduled loss award, the employer offset the entire 28% permanent partial disability compensation previously paid.

On August 20, 2008, the injured worker filed a motion requesting that the 28% permanent partial disability previously awarded based on the four fingers of the left hand be apportioned among the four fingers. The motion noted that the injured worker had been awarded a scheduled loss award for total loss of use of the left index and ring fingers which

must be reduced by the permanent partial award. Therefore, it must be determined what percentage of the 28% is attributable to the injured worker's ring and index fingers so that the proper reduction of the loss of use award can be taken. In an order issued November 6, 2008, a District Hearing Officer allocated the 28% award, finding 15% attributable to the index and ring fingers and 13% to the middle and pinky fingers. A Staff Hearing Officer affirmed the finding of the District Hearing Officer in an order issued January 22, 2009. The Staff Hearing Officer further noted that the order is an apportionment of a prior permanent partial disability award, did not constitute an additional award and was therefore not barred by res judicata. The Staff Hearing Officer order concluded with the statement, "The Self-Insured employer is hereby ordered to comply with the above findings."

Thereafter, the employer refused to reimburse the injured worker the previous 13% offset, newly allocated to the middle and ring fingers, which were not subject of the scheduled loss award. The employer asserted there was no clear order to pay.

When the employer refused to pay the 13% allocated by the above orders, the injured worker filed another motion on April 7, 2009. The motion stated that despite the January 20, 2009 Staff Hearing Officer order which allocated 13% of the prior 28% permanent partial disability award to the two fingers for which the injured worker did not receive scheduled loss compensation, an additional 26 weeks of compensation, the employer refused to pay because there was no specific order to pay. That motion was set before a District Hearing Officer. In an order issued May 29, 2009, the District Hearing Officer ordered the employer to pay the awarded loss of use award for 85 weeks of compensation multiplied by the statewide average weekly wage, less the calculated amount of previously paid permanent partial disability for the index and ring fingers. The employer appealed and, in an order issued June 27, 2009, the Staff Hearing Officer ordered the employer to pay the previously awarded loss of use award for 55 weeks of compensation, noting that the loss of use award is offset only by the 15% permanent partial disability award apportioned to the fingers for which the injured worker was awarded the loss of use award.

On April 7, 2009, the injured worker also filed the instant complaint. In a letter issued June 2, 2009, the Self-Insured Department found the complaint valid and unresolved. BWC found the employer failed to timely pay benefits after the hearing of October 27, 2008, order issued November 6, 2008. BWC found the employer in violation of Ohio Adm.Code 4123-19-03(K)(5) as well as R.C. 4123.511 and R.C. 4123.57. The letter further ordered the employer to make payment of benefits within seven days of receipt of the letter and to provide proof of same to the BWC. The employer issued payment on June 4, 2009 for the balance of the award. The employer requested reconsideration and the Administrator's Designee affirmed the finding of a valid complaint. The employer thereafter requested the complaint be referred to the Self-Insuring Employers Evaluation Board.

The employer asserted that the employer was not obligated to pay until after the District Hearing Officer order issued May 29, 2009, which was the first time there was a specific order to pay the 13% award; that the prior orders were somewhat ambiguous and did not specifically order the employer to pay the 13% allocated to the two fingers not the subject of the scheduled loss award. In support of the assertion that the November 6, 2008 and January 22, 2009 orders were ambiguous, the employer stated that even the notices of hearing for the May and June, 2009 hearings stated the issue to be heard was clarification of

apportionment between scheduled loss award and permanent partial disability award. The employer further argued that the Industrial Commission speaks through its orders and that while there may have been an apportionment/allocation in the October 27, 2008 and January 20, 2009 orders, at no time was there a specific order to pay the allocated amount. The finally employer asserted that payment of compensation cannot be implied but must be specifically delineated in orders from the Commission.

The injured worker's representative, Mr. Briggs, acknowledged that the August 20, 2008 motion and following hearings were necessary to apportion the permanent partial award so the proper amount could be offset from scheduled loss award. Mr. Briggs asserted that the employer was obligated to pay the 13% owed the injured worker following the Commission orders on the August 20, 2008 motion. Mr. Briggs pointed out that it is disingenuous for the employer to assert that the November 6, 2008 and January 22, 2009 orders were ambiguous and did not specifically order the employer to pay, noting that the permanent partial disability orders also did not specifically order the employer to pay but the employer did make such payments. Mr. Briggs also noted that although the notices of hearing for the hearings held in May and June 2009 stated the issue to be heard was clarification of the apportionment, the motion filed by the injured worker resulting in those hearings clearly was not asking for further clarification but instead asked that the employer be ordered to pay compensation contemplated by the previous orders. Mr. Briggs further argued that the August 20, 2008 motion as adjudicated by the Industrial Commission clearly resolved this matter. Mr. Briggs stated that he telephoned the employer and sent three separate letters, dated November 18, 2008, March 24, 2009, and April 6, 2009 attempting to prompt the employer to pay the compensation owed the injured worker. The compensation was not paid until BWC's Self-Insured Department found the complaint valid and ordered the employer to pay the compensation.

Both parties agreed that the injured worker has now been paid all monies due, with the final payment being made on June 4, 2009.

The Board recognizes that a partial offset of a previously paid amount for permanent partial disability from a subsequent scheduled loss award presented a somewhat unusual set of circumstances to the Hearing Officers addressing the issue. The Board further recognizes that the orders initially addressing the payment of both awards were less than models of clarity. Notwithstanding any early confusion, however, in view of the November 6, 2008 and January 22, 2009 Hearing Officer orders, there is simply no legal basis for the self-insuring employer to have delayed payment until June 4, 2009.

The Board rejects the self-insuring employer's argument that the latter orders did not specifically order reimbursement of the 13% now determined to have been improperly offset from the scheduled loss award. While it is true the Industrial Commission "speaks through its orders," there is no "magic language" requirement the orders must include to require payment. The content of the motion, and the context of the orders, under any standard of reasonable interpretation results in but one conclusion: the November 6, 2008 and January 22, 2009 orders required the self-insuring employer to reimburse the injured worker the 13% permanent partial disability award attributed to the two fingers for which the injured worker did not receive a scheduled loss award.

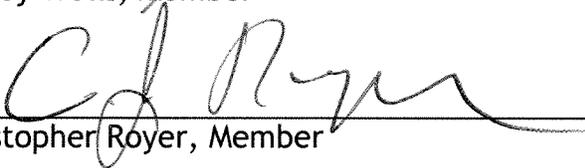
The Board hereby denies the employer's request for further consideration, and upholds the Administrator's finding of a valid complaint.

The Board takes notice that since January 1, 2008, BWC's Self-Insured Department has found four valid complaints against this self-insuring employer. The Board hereby admonishes the self-insuring employer to use this opportunity to review the administration of its self-insurance program and to take any steps necessary to minimize the opportunity for future complaints.

**SELF-INSURING EMPLOYERS EVALUATION BOARD**

  
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Kevin R. Abrams, Chairman YES

  
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Wesley Wells, Member YES

  
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Christopher Royer, Member YES

DATE MAILED: 18<sup>th</sup> DAY OF May, 2010