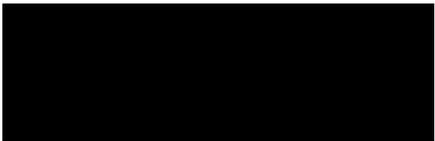


SELF-INSURING EMPLOYERS EVALUATION BOARD
INFORMAL CONFERENCE FINDINGS
IN THE MATTER OF:
Chrysler Group LLC, Dayton Thermal Products (Employer), Risk No. 20003890-12
[REDACTED] (Injured Worker), Claim No. [REDACTED]
Complaint No. 16755



Larrimer & Larrimer, LLC
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Columbus, OH 43152-2486

Chrysler Group LLC
Dayton Thermal Products
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Attn: Lori Terry
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Lexington, KY 40512-4574

FOR THE INJURED WORKER: John Larrimer
FOR THE EMPLOYER: David Korte
FOR THE ADMINISTRATOR: Jean Krum

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board on February 9, 2010 on Complaint No. 16755. The complaint alleged that the self-insuring employer improperly terminated payment of permanent total disability compensation.

The issue before the Board concerns the self-insuring employer's obligation to pay permanent total disability compensation following the issuance of both a Magistrate's Decision and Limited Writ of Mandamus by the Court of Appeals, favorable to the employer, when the injured worker's appeal to the Ohio Supreme Court remains pending. The relevant history giving rise to this issue is set out below.

In an order issued June 28, 2008, the Industrial Commission granted the injured worker permanent total disability compensation. Thereafter, the self-insuring employer protested the award, and filed a mandamus action. In a decision rendered July 30, 2009, the Magistrate recommended that the Court of Appeals issue a writ of mandamus ordering the Industrial Commission to vacate its order finding the injured worker permanently and totally disabled, and directing the Commission to reconsider the matter after discussing the nonmedical disability factors. On August 11, 2009, the injured worker filed objections to the Magistrate's Decision. On or about August 30, 2009, the self-insuring employer ceased payment of permanent total disability compensation, in response to which the injured worker filed the instant complaint on October 7, 2009. On November 3, 2009, the 10th District Court of Appeals issued a Decision and Judgment Entry stating,

...it is the judgment and order of this court that a limited writ of mandamus ordering the Industrial Commission of Ohio to vacate its order finding claimant to be permanently and totally disabled solely on the basis of a medical condition. We return this matter to the commission for further consideration. In doing so, we do not suggest the commission cannot seek clarification of the reports submitted; nor do we suggest claimant is not totally and permanently disabled based on an analysis that includes the nonmedical factors. We conclude only that the evidence the staff hearing officer relied on is not some evidence on which the commission could base an order finding claimant to be permanently and totally disabled solely on the basis of his medical condition....

On November 10, 2009, the injured worker filed an appeal to the Supreme Court of Ohio.

In a letter issued November 12, 2009, the Self-Insured Auditor found the self-insuring employer in violation of R.C. 4123.512(H) and found that the self-insuring employer had an obligation to continue payment of permanent total disability compensation during the pendency of the court appeal. The letter further ordered the self-insuring employer to make payment of such compensation and stated that failure to make payment would result in the complaint being forwarded to the Self-Insuring Employers Evaluation Board.

The employer argues that R.C. 4123.512 applies to appeals to the Court of Appeals, and not mandamus actions. Therefore, the employer argues that reliance on R.C. 4123.512 for a finding that the employer is obligated to continue payment of permanent total disability compensation is misplaced. The Board disagrees, and notes that R.C. 4123.512(H) provides, "An appeal from an order issued under division (E) of section 4123.511 of the Revised Code **or any action filed in court** in a case in which an award of compensation or medical compensation has been made shall not stay the payment of compensation or medical benefits under the award, or payment for subsequent periods of total disability or medical benefits during the pendency of the appeal..." (emphasis added). The Board finds that the emphasized language contemplates mandamus actions, and that the statute requires payment of permanent total disability compensation during the claimant's pending appeal to the Supreme Court.

The employer further argues that, based on R.C. 2731, the injured worker's failure to obtain a stay from the Court of Appeals decision supports its decision to terminate payment of compensation. Again, the Board disagrees. Neither the Magistrate's Decision nor the court order referenced above vacates the June 28, 2008 Industrial Commission order awarding permanent total disability compensation. While the court issued its entry requiring that the Commission vacate its June 28, 2008 order, the Commission has not, and cannot take such action at this time. The Board finds that pursuant to Rodriquez v. Indus. Comm. (1993), 67 Ohio St.3d 210, the Industrial Commission has no jurisdiction to issue an order in a matter which is pending in court as a result of an appeal or a mandamus action. The Board also finds that in accordance with Pressley v. Indus. Comm. (1967), 11 Ohio St.2d 141, the Court of Appeals judgment is stayed when further appeal is made to the Ohio Supreme Court and therefore the Court of Appeals is divested of its jurisdiction.

In addition, the Board finds guidance from the Ohio Supreme Court's decision in State ex rel. Youghioghney and Ohio Coal Company v. Kohler (1990), 55 Ohio St.3d 109, wherein the Court found that a self-insuring employer should not have ceased making payments of temporary total disability compensation when the Franklin County Court of Appeals had directed the Commission to find that the claimant's condition has become permanent. In Youghioghney, the injured worker appealed to the Supreme Court as well. Thus, the Board finds the rationale in Youghioghney to be applicable with regard to the payment of permanent total disability compensation as well.

Furthermore, the Board notes that it has been the long-standing policy of the Industrial Commission to require continued payment of compensation during the pendency of an appeal. See e.g., The Industrial Commission of Ohio Policy Statement, "Termination of Compensation," September 27, 1990.

The Board upholds the decision of BWC's Self-Insured Department, and finds that the self-insuring employer improperly terminated payment of permanent total disability compensation. Based on R.C. 4123.512(H), the holdings of Rodriquez, Pressley and Youghioghny, and long-standing policy, the Board rejects the employer's argument that Chapter 2731. of the Revised Code requires the injured worker to obtain a stay from the court to prohibit termination of compensation.

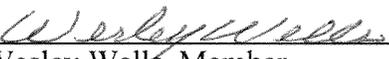
Finally, the employer argued that it took every step necessary to determine its obligation to make payment of compensation, by contacting BWC's Self-Insured Department both before and after the issuance of the finding of a valid complaint. The employer argued that BWC could not direct the employer to any Ohio law requiring payment. While the Self-Insured Department disputed these assertions, the Board finds that the employer's obligation to continue payment of permanent total disability is not relieved by telephone conversations, regardless of the information received. Furthermore, the Board is most concerned that the employer has assumed the role of the Industrial Commission in implementing the Court of Appeals decision. Setting aside for the moment that the Court of Appeals decision has been stayed, there is absolutely nothing in the order that can remotely be interpreted to grant authority to a self-insuring employer to unilaterally terminate permanent total disability compensation. That order is exclusively directed to the Industrial Commission.

Based on the foregoing, on motion made by Mr. Wells, seconded by Mr. Abrams, the Board finds Complaint No. 16755 valid. In addition, the Board orders the self-insuring employer to make payment of permanent total disability compensation from the date of last payment forward within seven days of receipt of this order and that such payments are to continue until further order from the Commission. The Board further orders the self-insuring employer to provide proof of such payment to BWC Self-Insured Department within ten days of receipt of this order. If payment is not forthcoming in the time established by this order, the Self-Insured Department is directed to set this matter for a hearing to be conducted pursuant to Chapter 119. of the Revised Code and the rules of the BWC, after which the Board may recommend revocation of the employer's self-insured status or such other penalty as probation or civil penalty not to exceed \$10,000.00.

SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES



Wesley Wells, Member YES



Christopher Royer, Member YES

DATE MAILED: 23 DAY OF February, 2010