

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

IN THE MATTER OF:

**Bishop of Roman Catholic Diocese of Cleveland (Employer), Risk No. 20003507-0
[REDACTED] (Injured Worker), Claim No. [REDACTED]
Complaint No. 17066**



Phillip Marnecheck
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Bishop of Roman Catholic Diocese of Cleveland
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Memphis, TN 38103

Rademaker, Matty & McClelland
Attn: Workers' Compensation Dept.
55 Public Square, Suite 1775
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FOR THE INJURED WORKER:	No Appearance
FOR THE EMPLOYER:	Dennis Rademaker and Kathy Pierce
FOR THE ADMINISTRATOR:	Jean Krum

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board on April 12, 2011 on Complaint No. 17066. The complaint alleged "On 7/22/10 the DHO granted temporary total disability compensation to be paid from 2/22/10 through 4/12/10 and to continue. The self-insured employer paid TT through 4/12/10 but refuses to pay compensation beyond 4/12/10." The relevant history giving rise to this complaint is set out below.

The injured worker was injured on February 28, 2007. This claim has been allowed for sprain left wrist; left radial styloid tenosynovitis and disallowed for left carpal tunnel syndrome.

The claim was set for hearing before a District Hearing Officer on July 22, 2010 on the issue of temporary total disability compensation. In an order issued July 24, 2010, the District Hearing Officer awarded temporary total disability compensation from February 22, 2010 through April 12, 2010 and "to continue upon submission of appropriate medical proof." The District Hearing Officer relied upon a C-84 from Cyril Marshall, M.D. dated March 29, 2010 and a narrative report from Dr. Marshall dated July 21, 2010. The C-84 from Dr. Marshall dated March 29, 2010 certified temporary total disability to April 12, 2010. On file at the time of the District Hearing Officer hearing, but not relied on by the District Hearing Officer, were C-84 forms from Dr. Marshall dated April 13, 2010 and July 19, 2010 certifying disability to October 13, 2010.

On or about August 16, 2010, the injured worker filed the instant self-insured complaint. On August 19, 2010, the employer paid the injured worker temporary total disability compensation for the period February 22, 2010 through April 12, 2010. Further compensation was not paid.

After several continuances, the employer's appeal of the District Hearing Officer order was heard on October 14, 2010. In an order issued October 16, 2010, the Staff Hearing Officer modified the District Hearing Officer order and awarded temporary total disability compensation from February 22, 2010 through the date of hearing, October 14, 2010, and to continue upon submission of medical evidence. The Staff Hearing Officer relied on the C-84 reports of Dr. Marshall dated March 29, 2010, October 4, 2010 (the date filed for another copy of the C-84 dated March 29, 2010), September 22, 2010 (the date filed for the C-84 dated September 16, 2010) and July 21, 2010 (the date filed for the C-84 dated July 19, 2010) as well as the narrative report of Dr. Marshall dated July 21, 2010. The Staff Hearing Officer did not rely upon the C-84 dated April 13, 2010. The Staff Hearing Officer further noted that the injured worker was scheduled for surgery for the allowed conditions on October 28, 2010. The employer acknowledged at informal conference that the October 28, 2010 surgery was paid for by the employer.

The employer responded to the complaint by letter dated October 1, 2010. The employer noted that the District Hearing Officer ordered payment of temporary total disability compensation from February 22, 2010 through April 12, 2010 and to continue upon submission of appropriate medical proof. The employer argued that the C-84 forms received prior to and subsequent to the District Hearing Officer hearing did not represent submission of appropriate medical proof. The employer further argued that the C-84 forms and medical records clearly demonstrate that the injured worker was being treated for non-allowed conditions, particularly carpal tunnel syndrome. The Board notes that by Staff Hearing Officer order issued April 5, 2011, the claim has been disallowed for left carpal tunnel syndrome. Further appeal was refused by order issued April 28, 2011.

The employer also asserted that the attending physician certified disability for extended periods of time during which he did not see or treat the injured worker. The employer filed a motion with the Industrial Commission requesting that the issue of temporary total disability compensation beyond April 12, 2010 be set for hearing. Therefore, the employer argued the issue raised by the complaint is a matter for adjudication before the Industrial Commission and requested that the complaint be determined invalid. The Board notes that by order issued October 23, 2010, the Industrial Commission dismissed the employer's motion, finding it moot pursuant to the Staff Hearing Officer order issued October 16, 2010.

By letter dated October 20, 2010, the Self-Insured Department found the employer in violation of Ohio Adm.Code 4121-3-32 and R.C. 4123.56 and therefore found the complaint valid, unresolved. The letter further ordered the employer to make payment of benefits within seven days and directed that proof of payment be provided to BWC.

On October 22, 2010, the employer paid temporary total disability compensation for the period April 13, 2010 to October 14, 2010. Compensation has been paid on an ongoing basis since that time.

On October 29, 2010, the employer provided verification of payment, prompting BWC to issue a second letter dated November 4, 2010, finding the complaint valid, resolved. The employer's October 29, 2010 letter also requested reconsideration of the finding of a valid complaint. By letter dated December 20, 2010, the Administrator's Designee upheld the finding of a valid complaint. The Designee found that the employer violated R.C. 4123.56

and Ohio Adm.Code 4121-3-32 by failing to pay compensation in accordance with the District Hearing Officer order. The Designee further found that despite receiving several C-84 forms certifying temporary total disability beyond April 12, 2010, the employer refused to pay compensation until after the Staff Hearing Officer ruled on the matter. The Designee found that none of the factors necessary to justify terminating compensation without a hearing were present.


The injured worker was not represented at conference and subsequent to the filing of the self-insured complaint, has not submitted further correspondence regarding the complaint. It is noted, however, that the injured worker filed a bad faith/Balyint-styled tort action in the Cuyahoga County Court of Common Pleas.

At conference the employer reiterated the arguments previously set forth in its position statements. At the risk of oversimplification, the employer's essential argument was that the C-84 forms submitted both prior and subsequent to the District Hearing Officer hearing did not constitute valid medical evidence upon which the employer is required to pay temporary total disability compensation. The employer specifically pointed out that despite the fact that C-84 forms were on file certifying disability through October 13, 2010, the District Hearing Officer awarded a closed period of compensation through April 12, 2010.

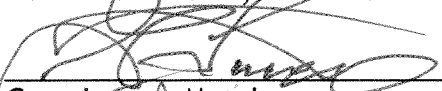
It is not the role of this Board to weigh medical evidence to determine whether a self-insuring employer has complied with an order of an Industrial Commission Hearing Officer. However, the Board finds particularly significant the fact that on July 22, 2010 the District Hearing Officer had on file two C-84 forms addressing compensation beyond April 12, 2010: C-84 dated April 13, 2010 and filed April 19, 2010 and C-84 dated July 19, 2010 and filed July 21, 2010. Such C-84 forms certified temporary total disability through October 13, 2010. The District Hearing Officer chose not to rely on such C-84 forms to extend temporary total disability compensation beyond April 12, 2010, thereby implicitly rejecting such C-84 forms. Therefore, the Board finds the employer did not have a duty to continue temporary total disability compensation based upon the C-84 forms dated April 19, 2010 and July 19, 2010.

Based on the foregoing, the Board hereby reverses BWC's finding of a valid complaint, and dismisses the injured worker's complaint filed on August 16, 2010 as invalid.

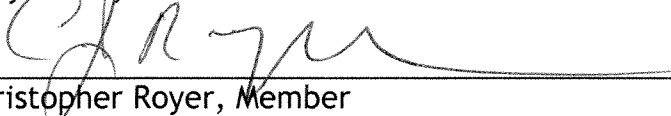
SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES



Gary Lucas, Member YES



Christopher Royer, Member YES

DATE MAILED: 21 DAY OF June, 2011