

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

**IN THE MATTER OF:**

**AutoZone, Inc. (Employer), Risk No. 20004139-0**

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

**Complaint No. 17046**



Marchese and Monast  
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**FOR THE INJURED WORKER:** No Appearance  
**FOR THE EMPLOYER:** John Albert and Wendy Jacko  
**FOR THE ADMINISTRATOR:** Jean Krum

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board on February 1, 2011 on Complaint No. 17046. The complaint alleged "the employer representative is refusing to pay a continuous period of temporary total compensation as ordered by the District Hearing Officer on July 6, 2010." The relevant history giving rise to this complaint is set out below.

The injured worker was injured on July 14, 2007. This claim has been allowed for cervical strain, thoracic strain, lumbar strain, head contusion, and concussion. The claim has been disallowed for somatic dysfunction and allergic reaction.

The claim was set for hearing before a District Hearing Officer on July 6, 2010 on the issue of temporary total disability compensation as well as requests for medical services. In an order issued July 8, 2010, the District Hearing Officer granted the medical services requested and awarded temporary total disability compensation from March 24, 2010 through May 31, 2010. The District Hearing Officer relied upon a C-84 from Michael Davis, D.C. dated May 3, 2010, and filed May 5, 2010. The order also required that "[f]urther temporary total disability compensation shall be paid upon submission of medical evidence

documenting the Injured Worker's continued temporary total disability to have been caused by the allowed conditions in the claim."

The District Hearing Officer order was issued on July 8, 2010. The injured worker was examined by her physician of record on July 14, 2010, who completed and filed a C-84 on the same date. The C-84 certified disability from June 2, 2010 until September 1, 2010. By letter dated July 19, 2010, the employer's third party administrator responded that payment based on the C-84 would be withheld "pending the report of an Independent Medical Exam to be scheduled." As set forth above, the injured worker filed a complaint July 22, 2010.

The employer responded to the complaint by letter dated August 18, 2010, indicating that the self-insuring employer had paid the closed period of temporary total disability compensation ordered by the District Hearing Officer. The employer argued, however, that the C-84 filed July 14, 2010 was not evidence to support further payment of temporary total disability compensation because it was not "current" as required by Ohio Adm.Code 4123-6-20 and Ohio Adm.Code 4123-07-08, it inappropriately backdated disability to June 2, 2010, and that it considered conditions not allowed in the claim. The employer also argued that the physician of record improperly "amended" the C-84 sometime thereafter, and backdated his signature to June 2, 2010.

The employer's appeal of the District Hearing Officer order was heard on August 18, 2010. The Staff Hearing Officer affirmed the District Hearing Officer order concerning payment of temporary total disability compensation, relying only on the May 3, 2010 medical evidence from the physician of record. With respect to future temporary total disability compensation, the Staff Hearing Officer order required benefits "to continue upon submission of appropriate medical evidence documenting the injured worker's disability to be due to the allowed conditions in this claim." The Board finds particularly significant the fact that the Staff Hearing Officer had on file three C-84 forms addressing compensation beyond June 1, 2010: C-84 dated June 2, 2010 and filed August 4, 2010, C-84 dated July 14, 2010 and filed July 14, 2010, and C-84 dated August 17, 2010 and filed August 17, 2010. Such C-84s certified temporary total disability through September 1, 2010. Further appeal of the Staff Hearing Officer order was refused by an order issued September 22, 2010.

The employer did not pay further temporary total disability compensation upon receipt of the Staff Hearing Officer order. By letter dated August 20, 2010, the injured worker expanded his complaint to include his argument that the Staff Hearing Officer order required payment of temporary total disability compensation beyond the closed period ordered by both the District Hearing Officer and Staff Hearing Officer. By letter dated August 25, 2010, injured worker's attorney again requested payment, and by letter dated September 9, 2010, the injured worker threatened a bad faith/Balyint lawsuit if payment was not forthcoming.

By letter dated September 23, 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 September 28, 2010, the employer provided verification of payment, prompting BWC to issue a second letter dated September 30, 2010 finding the complaint valid, resolved. The employer requested reconsideration of the finding of a valid complaint. By letter dated November 4,

2010, the Administrator's Designee upheld the finding of a valid complaint. The Designee found that once temporary total disability was awarded, subsequent C-84s constituted evidence that the disability continued. The Designee stated that while Ohio Adm.Code 4123-6-20 obligates treating physicians to issue reports at least every thirty days, BWC did not believe a six week gap in treatment should inure to the benefit of the employer, noting that the employer was contesting the injured worker's right to treatment and thereby the physician of record's right to payment. If the employer wished to contest the right to ongoing compensation, Ohio Adm.Code 4121-3-32 requires the employer to request a hearing. The Designee found that the employer's failure to pay compensation based on the C-84 dated July 14, 2010 likely prompted the submission of a second C-84 that may be questionable on its face, in response to the employer's argument that the C-84 considered non-allowed conditions.

The injured worker was not represented at conference. Instead, the injured worker's most recent representative, Kyle McKenzie, submitted a letter dated January 25, 2011. In that letter, Mr. McKenzie stated that the employer chose not to comply with the Industrial Commission order to pay compensation, resulting in hardships for the injured worker. Mr. McKenzie noted the C-84s certifying disability through March 3, 2011 and asserted that where the employer disputes a medical report, payment of compensation may be terminated only upon application and a hearing by a District Hearing Officer. As to evidence for non-payment Mr. McKenzie pointed to a letter dated September 7, 2010 from John Albert stating that ongoing temporary total disability was denied for various reasons and to a letter dated September 14, 2010 from Wendy Jacko indicating that the C-84 would not be paid pending a new independent medical examination to be scheduled.

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 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.

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. While the Board does not endorse the Self-Insuring Employer's actions in this case, with only the benefit of hindsight it is the Board's conclusion that the employer's position has been determined valid by the Staff Hearing Officer's refusal to rely on the very medical evidence which the injured worker asserts requires payment. More specifically, the three C-84 forms filed after the District Hearing Officer hearing on July 14, August 4 and August 17, 2010, respectively, were all before the Staff Hearing Officer at the hearing held August 18, 2010. The Staff Hearing Officer, however, chose not to rely on those medical reports to extend temporary total disability compensation beyond June 1, 2010. The Staff Hearing Officer, therefore, implicitly rejected the very medical evidence upon which the injured worker relies, thereby validating the employer's position that the subsequently filed C-84s did not impose a duty to continue temporary total disability beyond the closed period set forth in the District Hearing Officer and Staff Hearing Officer orders.

Based on the foregoing, the Board hereby reverses BWC's finding of a valid complaint, and dismisses the injured worker's complaint filed July 22, 2010 as invalid.

SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES



Gary Lucas, Member NO



Christopher Royer, Member YES

DATE MAILED: 12<sup>th</sup> DAY OF April, 2011