



Self-Insuring Employers Evaluation Board
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Columbus, Ohio 43215

Kevin Abrams
Industrial Commission
Chairman, **SIEEB**
(614) 466-3010

Christopher Royer
Ohio Self-Insurers Association
Member, **SIEEB**
(330)471-3456

Gary Lucas
Ohio AFL-CIO
Member, **SIEEB**
(614)888-6784

June 21, 2011

Mr. John Albert
500 S. Front St., Suite 1200
Columbus, OH 43215-7619

Re: Claim No.: [REDACTED]
Injured Worker: [REDACTED]
Employer: AutoZone, Inc.
Risk No.: 20004139-00
Complaint No.: 17026

Dear Mr. Albert:

Please be advised that after investigation and discussion of Complaint No. 17026 at its meetings held April 12, 2011, and May 10, 2011, the Self-Insuring Employers Evaluation Board finds the complaint valid, and upholds the decision of the Administrator's Designee set forth in the November 17, 2010 correspondence from Jeremy Jackson. Greatly summarized, the complaint, filed July 2, 2010, alleged that the employer improperly delayed payment pursuant to a settlement agreement originally reached in March, 2010 and filed May 27, 2010. The Injured Worker alleged that payment had not been made as of the date the complaint was filed. The relevant history giving rise to this complaint is set out below.

The parties entered into a settlement agreement in the amount of \$5,500.00. The settlement agreement included an additional term that provided, "The Claimant is responsible to reimburse Medicare for any conditional payments or other liens." The settlement agreement was signed by the injured worker on March 19, 2010 and forwarded to the employer. After receipt of the signed settlement agreement, the employer requested the injured worker to sign a release for a third-party Medicare vendor to conduct a Medicare lien search. The injured worker signed the release but objected to delaying the settlement and demanded the same be filed with the Industrial Commission. The employer's representative signed the settlement agreement on May 26, 2010 and the agreement was filed with the Industrial Commission on May 27, 2010. Pursuant to R.C. 4123.65(D), on June 16, 2010, an Industrial Commission Staff Hearing Officer reviewed the settlement agreement.

R.C. 4123.65(C) provides, "No settlement agreed to under division (A) of this section or agreed to by a self-insuring employer and the self-insuring employer's employee shall take effect until thirty days after the administrator approves the settlement for state fund employees and employers, or after the self-insuring employer and employee sign the final settlement agreement." The Board notes that the injured worker signed the settlement agreement on March 19, 2010 and the employer's

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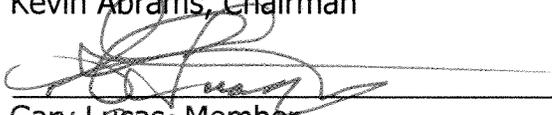
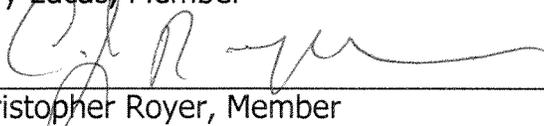
representative signed the settlement agreement on May 26, 2010. Therefore, as provided in R.C. 4123.65(C), the settlement agreement became final on June 25, 2010. Payment of the settlement was not made as the employer was awaiting completion of the Medicare lien search.

On July 18, 2010, the injured worker filed a motion with the Industrial Commission requesting the Commission to exercise continuing jurisdiction and order the employer to pay the settlement. Prior to the final Industrial Commission hearing on January 27, 2011, based on Medicare information provided by the injured worker, the employer issued a warrant to the injured worker and her attorney, Suzanne Stocker, in the amount of \$4,149.78. At the same time, a second warrant was issued to the injured worker, Suzanne Stocker, and Medicare in the amount of \$1,350.22, representing the amount for Medicare conditional payment reimbursement. The injured worker returned the \$1,350.22 warrant to the employer. In a final administrative determination issued April 2, 2011, the Industrial Commission ordered the employer to pay \$1,350.22, which represented the unpaid balance of the \$5,500.00 settlement to which the parties agreed. The Industrial Commission specifically found that there was no provision in the settlement agreement for the employer to pay any party other than the injured worker and further noted that the parties specifically agreed in the settlement that the injured worker would be responsible to reimburse Medicare for any conditional payments or other liens. The self-insuring employer provided BWC proof the balance of the settlement was paid on April 11, 2011.

While the Board acknowledges the employer's concerns regarding liability for Medicare conditional payments and the frustrations encountered in the process of determining Medicare liability, the Board agrees with the finding of the Administrator's Designee that the time to address the issue was before entering into the settlement agreement. Once the settlement agreement became final, there is no authority for the employer to delay payment.

After review and discussion, upon motion made by Mr. Lucas, seconded by Mr. Abrams and voted on as follows, the Board hereby upholds BWC's finding of a valid complaint.

SELF-INSURING EMPLOYERS EVALUATION BOARD

 _____ Kevin Abrams, Chairman	YES
 _____ Gary Lucas, Member	YES
 _____ Christopher Royer, Member	YES

cc:


Suzanne Stocker
AutoZone, Inc.
Gallagher & Bassett Services
Self-Insured Department, BWC