

# SELF-INSURING EMPLOYERS EVALUATION BOARD

Karen L. Gillmor, Ph.D., *Chairman*  
Gary E. Lucas, *Member*  
Christopher J. Royer, *Member*

John R. Kasich, *Governor*

## INFORMAL CONFERENCE FINDINGS

IN THE MATTER OF:

OfficeMax, Inc. (Employer), Risk No. 20004101-0

and

██████████ (Claimant), Claim No. ██████████

Complaint No. 17110

██████████

O'Connor, Acciani & Levy Co. LPA  
1014 Vine Street, Ste 2200  
Cincinnati, OH 45202

OfficeMax, Incorporated  
263 Shuman Blvd.  
Naperville, IL 60563

Dinsmore & Shohl  
255 E. 9<sup>th</sup> St. Ste. 1900  
Cincinnati, OH 45202

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On October 18, 2010, ██████████ (Claimant) filed Complaint No. 17110 against OfficeMax, Inc. (Employer). On November 16, 2010, the Self-Insured Department of the Bureau of Workers' Compensation (BWC) found the complaint to be invalid. On November 23, 2010, Claimant filed a request for reconsideration. On May 6, 2011, BWC's Director of Business Development and Analysis reversed the finding of an invalid complaint and found the complaint to be valid.

On May 20, 2011, the Employer filed an appeal of BWC's finding of a valid complaint. The Employer requested that the BWC determination of May 6, 2011, be vacated and that the finding of an invalid Complaint be reinstated by the Self-Insuring Employers Evaluation Board. On June 8, 2011, a "Notice of Presentation to the Self-Insuring Employers Evaluation Board" was sent to the parties. This matter then came before the Self-Insuring Employers Evaluation Board on November 21, 2011. The relevant history giving rise to the complaint is set forth below.

On March 27, 2008, Claimant was injured when he slipped on an unknown substance while he was unloading a pallet. The claim was initially allowed by the Employer for a Left Ankle Sprain. Subsequent additional conditions were allowed for Anterior Talofibular Ligament Tear Left; Calcaneofibular Ligament Tear Left; Tenosynovitis of the Peroneal Tendons Left; Deltoid

Ligament Tear Left Ankle; and Post-Traumatic Arthritis Left Ankle. Disallowed conditions included Cervical Strain; Herniated Disc at C6-7; and Fracture Lateral Malleolus Left Ankle.

On July 7, 2010, Claimant submitted a Motion to the Employer requesting "that the self-insured employer be ordered to pay for vocational rehabilitation services based on the June 21, 2010 report from VocWorks. Claimant further requests payment of living maintenance benefits while in the vocational rehabilitation program." Submitted with the Motion was a June 21, 2010 Vocational Assessment from VocWorks.

On July 23, 2010, the Employer notified BWC and Claimant that the Employer "is accepting this motion and initiating a Job Seeking Skills Training program through VocWorks. Living maintenance benefits will be paid while this program is in effect." The Employer indicated that a hearing on Claimant's July 7, 2010 Motion was not necessary.

By a letter dated August 11, 2010, Helmsman Management Services, LLC notified BWC that it [Helmsman] was authorized to assist the Employer with the administration of Employer's self-insured workers' compensation program. "Based on the completion of this program, living maintenance benefits will be paid only through 08/13/10. At that time, [REDACTED] will have the opportunity to file a C-140 application for non-working wage loss and begin a job search."

On August 12, 2010, Claimant filed a C-86 Motion seeking "additional vocational rehabilitation services including but not limited to job search and other rehabilitation service deemed appropriate"; Claimant also requested "payment of living maintenance benefits while in the vocational rehabilitation program" beyond 08/13/2010. On September 7, 2010, BWC issued an IC Referral Letter, referring Claimant's C-86 Motion to the Industrial Commission for consideration "based on the employer's rejection of the injured worker's request."

On August 17, 2010, Claimant filed a "Vocational Grievance" in response to the letter dated August 12, 2010 from the Employer's representative. The grievance included the "Job Seeker Responsibility Guidelines & Service Description" signed by the Vocational Specialist on August 3, 2010; it indicated that the target date for completion of the listed goals was August 13, 2010 for JSST [Job Seeking Skills Training] only.

On October 6, 2010, the District Hearing Officer (DHO) for the Industrial Commission conducted a hearing on Claimant's C-86 Motion. The DHO's order was issued on October 13, 2010, granting additional vocational rehabilitation and denying the requested living maintenance wage loss compensation as being not ripe for determination.

On October 18, 2010, Claimant submitted to BWC a "Filing of an Allegation Against a Self-Insured Employer" (SI-28 form). According to the SI-28 complaint, "Employer improperly terminated my vocational Rehab and Living Maintenance compensation on Aug. 13, 2010." On October 20, 2010, BWC's Self-Insured Complaint Resolution Unit issued a notification letter to the Employer and its TPA and the Claimant.

On October 28, 2010, the Employer's representative submitted a response to the SI-28 complaint. According to the response, the SI Complaint concerned "a misunderstanding between the Claimant and his Case Manager at VocWorks," which had been explained to Claimant. The Employer had agreed to provide JSST services to the Claimant; those services

were provided. Claimant wanted additional vocational services, but the Employer had not agreed to provide those services.

On November 16, 2010, the BWC Self-Insured Complaint Resolution Unit issued a letter to the Claimant and his counsel and the Employer and its counsel. The letter stated:

Recently a motion for vocational rehabilitation service beyond JSST went to hearing on October 6, 2010. The DHO granted the motion, and approved further vocational rehabilitation services. The DHO further indicated that living maintenance benefits would be paid to the injured worker **upon the start of his additional vocational rehabilitation program.** [Emphasis in original.]

The letter also stated that Claimant's first meeting with VocWorks had been held on October 27, 2010, and checks had been issued on November 11 and 15 to Claimant. The letter concluded with the finding that the complaint was invalid.

On November 23, 2010, Claimant filed a letter requesting reconsideration of the November 16, 2010 dismissal. On that day, the BWC Self-Insured Complaint Resolution Unit issued a "Notice of Request for Reconsideration" to the Claimant and his counsel and the Employer and its counsel.

On May 6, 2011, the BWC Director of Business Development and Analysis issued a letter reversing the finding of the BWC Self-Insured Complaint Resolution Unit that the complaint was invalid. By a letter dated May 20, 2011, the Employer's counsel filed a letter with BWC requesting that the May 6, 2011 determination be vacated and that the November 16, 2010 finding of an invalid complaint be reinstated.

On June 8, 2011, a "Notice of Presentation to the Self-Insuring Employers Evaluation Board" was sent to the Claimant and his counsel and the Employer and its counsel. The letter advised that the complaint would be presented to the Self-Insuring Employers Evaluation Board. The Self-Insuring Employers Evaluation Board met on November 21, 2001; at that time, Complaint No. 17110 filed by Timothy Cross was reviewed.

Ohio Adm. Code 4123-18-16 addresses "Self-insuring employer's obligation to provide vocational rehabilitation services" and provides in relevant part as follows:

(A) Employers who provide compensation and benefits pursuant to section 4123.35 of the Revised Code shall furnish all eligible and feasible injured workers with vocational rehabilitation services equal to or greater in quality and content than the services administered by the bureau and managed by the MCOs.

\* \* \*

(C) The bureau shall inspect and review the quality and content of all authorized self-insuring employers' vocational rehabilitation services in order to determine whether or not such services are equal to or greater in quality and content than the services administered by the bureau and managed by the MCOs. Such inspections and reviews shall be conducted upon receipt of evidence indicating that a self-insuring employer's vocational rehabilitation

services are of a lesser quality than the services administered by the bureau and managed by the MCOs.

(D) The bureau may direct complaints of sub-standard vocational rehabilitation programs to the bureau's self-insured department for review.

Claimant exercised his right in the rule above to have his complaint about an allegedly "sub-standard vocational rehabilitation program" reviewed by BWC's self-insured department. But this rule and the statute that it amplifies do not give a separate review process for disputes like herein where the self-insuring employer and the claimant do not agree on the scope of the vocational rehabilitation to be offered.

In his letter dated May 6, 2011, the BWC Director of Business Development and Analysis noted that Claimant was exercising his right to go through the Industrial Commission hearing process seeking services beyond JSST. The statutory process for hearings before the Industrial Commission was properly invoked when the Claimant filed his C-86 Motion on August 12, 2010, and BWC referred the matter for consideration by the Commission on September 7, 2010.

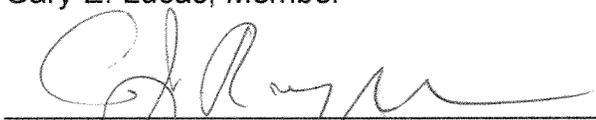
When BWC's Self-Insured Complaint Resolution Unit investigated the complaint herein and found that it was "a dispute regarding the language and intent of the Vocational Rehab contract signed by the parties, it determined that this matter was outside the jurisdiction of BWC. When the BWC Director of Business Development and Analysis exercised jurisdiction over the dispute, he acted beyond BWC's jurisdiction. Consequently, the May 6, 2011 determination must be vacated, and the November 16, 2010, determination must be reinstated.

Therefore, based on the foregoing, the Self-Insuring Employers Evaluation Board hereby grants the appeal filed by the Employer [OfficeMax, Inc.] on June 8, 2011, vacates BWC's finding of a valid complaint on May 6, 2011, reinstates BWC's finding of an invalid complaint on November 16, 2010; and dismisses as invalid Complaint No. 17110 filed by Claimant [Timothy Cross] on October 20, 2010.

**SELF-INSURING EMPLOYERS EVALUATION BOARD**

  
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Karen L. Gillmor, Ph.D., Chairman YES

  
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Gary E. Lucas, Member YES

  
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Christopher J. Royer, Member YES

DATE MAILED: 26<sup>th</sup> DAY OF April, 2012