

SELF-INSURING EMPLOYERS EVALUATION BOARD

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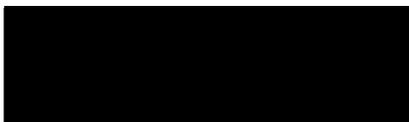
IN THE MATTER OF:

Mondelez International, Inc. (Employer), Risk No. 20002871

and

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

Complaint No. 18032



Mondelez International, Inc.
3 Lakes Dr.
Northfield, IL 60093

Local #17A
1800 Cleveland Avenue NW
Canton, OH 44709-3602

ESIS, Inc.
P.O. Box 6561
Scranton, PA 18505-6561

Dunlevey, Mahan & Furry
110 North Main Street, Suite 1000
Dayton, OH 45402-1738

On September 9, 2013, ██████████ (Claimant) filed a form SI-28, Filing of an Allegation Against a Self-Insured Employer, against Mondelez International, Inc. (Employer). On September 19, 2013, the Employer's representative submitted its response to the Bureau of Workers' Compensation (BWC).

On October 7, 2013, BWC's Self-Insured Complaint Resolution Unit sent a letter finding the complaint to be valid. On October 18, 2013, the Employer's representative filed a request for reconsideration. On January 14, 2013, BWC's Chief of Field Operations reversed the finding that the complaint was valid and dismissed the complaint.

On January 28, 2014, the Claimant's representative filed an appeal of BWC's dismissal of the complaint. The Claimant's representative requested that BWC's determination be reviewed by the Self-Insuring Employers Evaluation Board (SIEEB). On January 30, 2014, 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 March 31, 2014.

Relevant History of the Complaint:

On March 3, 2013, the Claimant filed a form SI-28, Filing of an Allegation Against a Self-Insured Employer, against the Employer, alleging the following:

C-9's date back to December 2012 – denied pending Employer IME. ESIS continues to extend approval of C-9's by extending time period through extention (sic) of scheduling IME and NOT giving notice to Claimant when IME Appt date has been scheduled.

The Claimant's first allegation is that C-9's dating back to December 2012, were denied pending Employer IME, and ESIS continue to extend approval of C-9's by extending time period through extention (sic) of scheduling IME. Ohio Adm.Code 4123-19-03, titled "Where an employer desires to secure the privilege to pay compensation, etc., directly," provides in relevant part as follows:

(K) Minimal level of performance as a criterion for granting and maintaining the privilege to pay compensation directly.

* * *

(5) Within thirty days after receipt of a hospital, medical, nursing or medication bill duly incurred by the claimant, the employer shall either pay such bill, or if the employer contests any of such matters, shall notify the provider, the employee, and, only upon request, the bureau or commission in writing. Such written notice shall specifically state the reason for nonpayment. The employer's notification to the employee shall indicate that the employee has the right to request a hearing before the industrial commission. If the matter is heard by the industrial commission, the employer shall pay compensation and benefits due and payable under an order as provided by section 4123.511 of the Revised Code. If the self-insuring employer allows a claim for benefits or compensation without a hearing, the employer shall pay such benefits or compensation no later than twenty-one days from acquiring knowledge of the claim or the claimant's filing of the C-84 form, whichever is later. The employer shall approve a written request for a change of physicians within seven days of receipt of such request that includes the name of the physician and proposed treatment. The employer shall approve or deny a written request for treatment within ten days of the receipt of the request. If the employer fails to respond to the request, the authorization for treatment shall be deemed granted and payment shall be made within thirty days of receipt of the bill. (Emphasis added.)

Per the Self-Insured Department's Medical Management Guidelines, denials of C-9s should be upon a recommendation from a Clinician's review within 10 days, and notification should be in writing giving the reason for the denial within the required timeframe. These guidelines reflect an industry best practice that has been accepted within the self-insured community.

Ohio Adm.Code 4123-19-03(K)(5) does not include the aforementioned industry best practice as a requirement. It states that the employer must respond to the C-9 (written request for treatment) within 10 days; it does not address the use of a medical clinician's opinion. Further, there is no statutory requirement to have a clinician's opinion.

With the SI-28, the Claimant submitted several C-9's:

The C-9 dated December 7, 2012, requesting "RETRO INJ 20610 J1030" for a date of service of December 6, 2012, was denied as not medically necessary on December 10, 2012, within the 10 days required by Ohio Adm.Code 4123-19-03(K)(5). The C-9 dated April 15, 2013, requesting "Arthroscopy Knee with Lateral Release, Medial Meniscus Debridement and Chondroplasty, Right Knee" was denied pending an IME on May 28, 2013, again within the 10 days required by Ohio Adm.Code 4123-19-03(K)(5).

The C-9 dated March 18, 2013, requesting "MRI RIGHT KNEE" was initially approved and given amended approval on April 2, 2013, outside the 10 days required by Ohio Adm.Code 4123-19-03(K)(5); however, the rule further provides if the employer fails to respond to the request within the required 10 days, the authorization for treatment shall be deemed granted, and payment shall be made within thirty days of receipt of the bill. There has been no assertion the Employer did not make payment within thirty days of receipt of the bill.

The C-9 dated April 29, 2013, requested additional conditions. The request was denied May 7, 2013, pending an IME. The C-9 dated December 11, 2012, requested additional conditions. The request was denied December 13, 2012, pending an IME. The C-9 form specifically indicates, "If you are recommending additional conditions to the claim supporting documentation is required. You may not use the C9 to request additional conditions for claims of self-insuring employers." Despite not being required to respond to the C-9s requesting additional conditions, the Employer did respond, and both C-9's were addressed within the 10 days required by Ohio Adm.Code 4123-19-03(K)(5).

R.C. 4123.651(A) provides that the employer has the right to have the claimant examined by a physician of the employer's choice one time upon any issue asserted by the employee or a physician of the employee's choice or which is to be considered by the Industrial Commission. Thus, the Employer herein, by extending the time period through extension by scheduling an IME, has not committed a violation with respect to the Claimant's allegation regarding the approval of C-9's dating back to December 2012.

As to the Claimant's second allegation – NOT giving notice to Claimant when IME Appt date has been scheduled – a notice of a scheduled IME was sent to the Claimant on July 18, 2013, at 875 Walnut Street, Coshocton, Ohio. On May 25, 2011, the Claimant filed a Change of Address Notification with the BWC. The notice provided the Claimant's new mailing address to be 16463 TR 287, Conesville, Ohio. The Employer asserts its TPA was not notified of the change of address until August 19, 2013; then, it immediately rescheduled the IME and sent notice of the appointment to the Claimant at his correct address.

The Claimant's representative provided copies of e-mail communications between the union representative and the TPA. The e-mails document the union representative contacted the TPA on January 18, 2013, regarding the IME and was informed the TPA was awaiting approval to schedule the IME. An April 1, 2013 e-mail from the TPA indicated the IME would be scheduled upon receipt of the recently approved MRI in order for the MRI results to be included in the IME. Thereafter, e-mails beginning August 12, 2013, demonstrate the TPA's

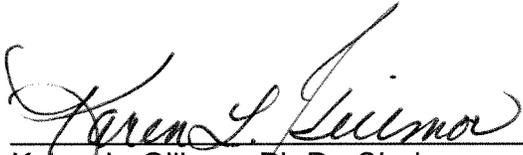
records did not reveal the TPA was notified of the change of address; the TPA required new contact information for the Claimant. Also, the union representative was not copied with the first examination notice. The union representative also asserted the Claimant's address was the same as when the TPA mailed the temporary total disability checks; however, TPA records demonstrated no checks were sent to Conesville. The last check, issued on October 21, 2011, was mailed to the Coshocton address.

The Board finds insufficient evidence the TPA was notified of the Claimant's change of address.

DETERMINATION:

Therefore, based on the foregoing, the Self-Insuring Employers Evaluation Board hereby denies the appeal filed by the Claimant [REDACTED] on January 28, 2014, and finds Complaint No. 18032 filed by Claimant [REDACTED] against the Employer [Mondelez International, Inc.] on September 9, 2013, is invalid and is hereby dismissed.

SELF-INSURING EMPLOYERS EVALUATION BOARD



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



Gary E. Lucas, Member Yes



Christopher J. Royer, Member Yes

DATE MAILED: 18th DAY OF August, 2014