

SELF-INSURING EMPLOYERS EVALUATION BOARD

Karen L. Gillmor, Ph.D., *Chairman*
Christopher J. Royer, *Member*
Carol A. Wilson, *Member*

John R. Kasich, *Governor*

SELF-INSURING EMPLOYERS EVALUATION BOARD

IN THE MATTER OF:

United Parcel Service (Employer), SI #20003162-4

and

██████████ (Injured Worker), Claim No. ██████████

Complaint No. 18470

██████████
United Parcel Service
5101 Trabue Road
Columbus, OH 43228

Shapiro, Marnecheck & Palnik
1468 W. 9th Street, Suite 425
Cleveland, OH 44113-1269

Frank Gates Service Co.
P.O. Box 182364
Columbus, Ohio 43218

Garvin & Hickey, LLC
181 E. Livingston Avenue
Cleveland, OH 44114-1607

On June 26, 2015, ██████████ (Injured Worker) filed a complaint against United Parcel Service (Employer) alleging the Employer had failed to provide requested medical documentation to support a deduction in a loss-of-use award. On July 13, 2015, the Employer's representative responded to the complaint asserting the Staff Hearing Officer authorized the offset, the Employer provided the requested medical information, and the condition had already been compensated.

On July 14, 2015, the Self-Insured Complaint Resolution Unit (SI Department) of the Bureau of Workers' Compensation (BWC), after investigation of Complaint No. 18470, issued a letter finding the Complaint was invalid.

On July 28, 2015, the Injured Worker's representative filed a C-86 Motion requesting reconsideration of the dismissal of the Injured Worker's allegation against the Employer as BWC failed to recognize the issue with the self-insuring employer's offset. On November 5, 2015, BWC's Central Service Office Manager upheld the earlier finding that the complaint was invalid.

On November 20, 2015, the Injured Worker filed an appeal of BWC's finding of an invalid complaint to the Self-Insuring Employers Evaluation Board (SIEEB). On May 11, 2016, 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 July 13, 2016.

Relevant History of the Complaint:

On November 20, 2012, the Injured Worker was walking back to a car when she tripped over a curb in the dark. She caught herself with her left hand, but she bent back her left ring finger. She filed a claim for benefits that was ultimately allowed for **LEFT HAND FRACTURE; FRACTURE OF PROXIMAL PHALANGE, LEFT FOURTH AND FIFTH FINGER; NON-UNION FRACTURE, LEFT HAND; TWO-THIRDS LOSS OF USE DUE TO ANKYLOSIS OF LEFT FIFTH FINGER**. The claim was also disallowed for **TOTAL LOSS OF USE OF LEFT FOURTH FINGER**.

On June 10, 2014, the Injured Worker filed a C-92 Application for Determination of Percentage of Permanent Disability or Increase of Permanent Partial Disability. On August 5, 2014, BWC issued a Tentative Order awarding a ten percent permanent partial disability, which becomes final unless one of the parties files an objection to the tentative order within 20 days. On August 14, 2014, the Injured Worker filed an objection to the order.

On October 2, 2014, a hearing on the C-92 Application was held. The District Hearing Officer order was issued on October 8, 2014; the order awarded 14% based upon the medical reports of John Cook, D.O., dated August 4, 2014, and Catherine Watkins-Campbell, M.D., dated August 29, 2014.

On November 5, 2014, the Injured Worker filed a C-86 Motion requesting that she be awarded a total loss of use of the left 4th and 5th fingers. On December 1, 2014, the Employer denied the C-86 Motion and requested the matter be set for a hearing before a District Hearing Officer of the Industrial Commission.

On February 15, 2015, a hearing on the C-86 Motion was held. The District Hearing Officer order denying the motion was issued on February 17, 2015. On February 27, 2015, the Injured Worker appealed the District Hearing Officer order. Subsequently, a hearing on the C-86 Motion was conducted by a Staff Hearing Officer. A Staff Hearing Officer order was issued April 11, 2015, vacating the District Hearing Officer order, granting the C-86 Motion to the extent of the order, and finding "the Injured Worker has suffered a 2/3 loss of use due to ankylosis of the left fifth (pinky) finger." The order stated that the finding was based on the 08/04/2014 report of John Cook, D.O.

The Staff Hearing Officer order contained the following instructions regarding payment of the compensation: "Accordingly, compensation pursuant to R.C. 4123.57(B) is ordered paid commencing 08/04/2014. Any compensation which has previously been awarded for ankylosis of these joints is to be offset."

In the complaint before the Board, the Injured Worker states:


The employer rep reduced the payment for the loss of use indicating that a previous payment from a percentage of permanent partial disability was allocated for this condition. We requested medical documentation that supported the deduction. On 5/19/15 employer rep Kim G (Frank Gates) faxed a copy of the BWC IME dated 8/4/2014. To date we have not received medical documentation supporting the deduction.

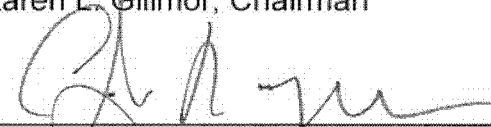
The Employer provided the medical report of Dr. Cook, dated August 4, 2014, which was relied upon by the Staff Hearing Officer order issued April 11, 2015. The Employer's offset of payment was authorized by the Staff Hearing Officer order issued April 11, 2015.

DETERMINATION:

Therefore, based on the foregoing, the Self-Insuring Employers Evaluation Board hereby finds the exercised right-to-offset dispute as to amount of offset is an Industrial Commission issue, not an issue for SIEEB; further, the Employer paid the Percentage Permanent Partial Disability Award according to the Staff Hearing Officer order issued April 11, 2015. Thus, Complaint No. 18470, filed by [REDACTED] (Injured Worker) against United Parcel Service (Employer), is invalid.

SELF-INSURING EMPLOYERS EVALUATION BOARD

 8-11-16
Karen L. Gillmor, Chairman YES

 8/12/16
Christopher J. Royer, Member YES

 8/12/16
Carol A. Wilson, Member YES

DATE MAILED: 15th DAY OF August, 2016