

SELF-INSURING EMPLOYERS EVALUATION BOARD

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SELF-INSURING EMPLOYERS EVALUATION BOARD

IN THE MATTER OF:

The Kroger Co. (Employer), SI #20002847-0

and

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

Complaint No. 18525

[REDACTED]
The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202

Philip J. Fulton
89 East Nationwide Blvd., Suite 300
Columbus, OH 43215

Sedgwick
P.O. Box 14661
Lexington, KY 40512

Dinsmore & Shohl
P.O. Box 2547
Cincinnati, OH 45201-2547

On October 19, 2015, [REDACTED] (Injured Worker) filed a complaint against The Kroger Co. (Employer) alleging the Employer was delaying certification of the claim that was filed. On October 30, 2015, the Employer submitted a response to the complaint; also on that date, an Auditor of the Self-Insured Complaint Resolution Unit (SI Department) of the Bureau of Workers' Compensation (BWC) spoke with the Employer's representative.

On November 4, 2015, the SI Department of BWC, after investigation of Complaint No. 18525, issued a letter finding the Complaint was valid. Also on November 4, 2015, an Auditor of the SI Department of BWC received another phone call from the Employer's representative stating he had been in contact with the Injured Worker's representative who had agreed to withdraw the complaint.

On November 5, 2015, an Auditor of the SI Department of BWC received additional correspondence from the Employer's representative, again requesting that the complaint be withdrawn.

On November 13, 2015, the Employer's representative requested reconsideration of the finding of a valid complaint. On February 4, 2016, BWC's Central Service Office Manager upheld the earlier finding that the complaint was valid.

On February 19, 2016, the Employer filed an appeal of BWC's finding of a valid complaint to the Self-Insuring Employers Evaluation Board (SIEEB). On May 10, 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 Ohio Administrative Code Rule:

Ohio Adm.Code 4123-19-03 provides in relevant part as follows:

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

* * *

(10) The employer shall inform a claimant, and the bureau of workers' compensation, in writing, within thirty days from the filing of the claim, as to what conditions it has recognized as related to the injury or occupational disease and what, if any, it has denied. The same timeframe shall apply when the employer rejects a medical only claim.

Relevant History of the Complaint:

On May 7, 2015, the Injured Worker, a Floral Clerk for the Employer, twisted her right knee while she was repetitively taking hanging potted plants off racks. On July 9, 2015, the Injured Worker notified her store co-manager, [REDACTED], of the injury; an incident report was completed on that date.

On August 17, 2015, the Employer was notified that the Injured Worker wished to file a claim. The First Report of Injury, Occupational Disease or Death (FROI) was signed by the Injured Worker on August 25, 2015. On September 24, 2015, BWC sent an Employer Certification Request to the Employer. The form stated:

Per Ohio Administrative Code (OAC) 4123-19 03 (K)(10) [sic], self-insuring employer has 30 days from the filing of the claim to advise the Ohio Bureau of Workers' Compensation (BWC) and the injured worker in writing the conditions recognized or denied. Failure to comply with this rule and to adhere to this timetable will be considered a violation of BWC rules and may be construed as a valid complaint.

On September 28, 2015, the Injured Worker filed with BWC the FROI.

On October 28, 2015, BWC issued a letter indicating it was "referring this claim to the Industrial Commission of Ohio (IC) for reconsideration of the FROI filed by the injured worker on 09/28/2015," regarding the issue of claim allowance. The letter stated further, "There has been no response from the SI employer to the BWC Employer Certification Request letter mailed on 9/24/2015. * * * This referral is based on lack of response from the employer."

Also on October 28, 2015, the Employer's representative filed a response to the Employer Certification Request letter. The Employer denied certification of the claim. The denial of the claim was issued more than three months after the Injured Worker notified her store co-manager and the July 9, 2015 incident report was completed.

On October 30, 2015, the SI Department issued its initial finding that the complaint in this matter was valid.

On January 8, 2016, a hearing on the FROI-1 was held. The District Hearing Officer order was issued on January 11, 2016. The District Hearing Officer found that the claim was **ALLOWED** for the condition, "**RIGHT KNEE SPRAIN AND STRAIN.**" This finding was based on several documents, including the FROI and the July 9, 2015 Incident Report.

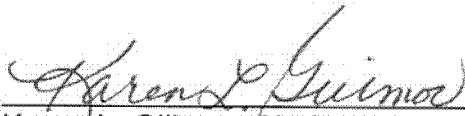
The District Hearing Officer further found the following:

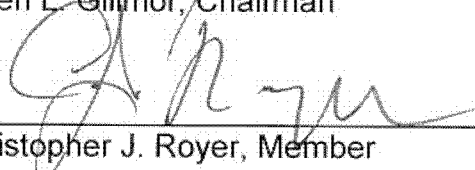
The District Hearing Officer finds that while there was a delay in the completion of an official incident report, the Injured Worker's direct lead person and the store manager were aware that the Injured Worker did sustain an injury on the above-cited date [5/07/2015]. The District Hearing Officer finds credible the Injured Worker's testimony that she is an experienced massage therapist and attempted to self treat [sic] with massage and NSAIDs, to no avail.

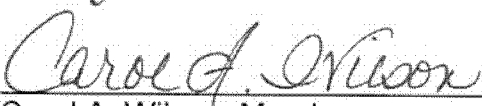
DETERMINATION:

Therefore, based on the foregoing, the Self-Insuring Employers Evaluation Board hereby finds The Kroger Co. (Employer) was aware of the claim by [REDACTED] (Injured Worker) as early as July 9, 2015, but did not provide a certification decision within 30 days. This delay violates Ohio Adm.Code 4123-19-03(K)(10). Thus, Complaint No. 18525, filed by the Injured Worker against the Employer, is valid.

SELF-INSURING EMPLOYERS EVALUATION BOARD


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


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


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

DATE MAILED: 15th DAY OF August, 2016