

SELF-INSURING EMPLOYERS EVALUATION BOARD

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SELF-INSURING EMPLOYERS EVALUATION BOARD

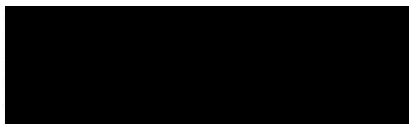
IN THE MATTER OF:

Greater Cleveland Regional Transit Authority (Employer), SI #20005000-0

and

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

Complaint No. 18586



Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, OH 44113

Kendis & Associates
614 West Superior Avenue, L15
Cleveland, OH 44113

Seeley Savidge Ebert & Gourash Co. LPA
26600 Detroit Road
Cleveland, OH 44145

On February 15, 2016, [REDACTED] (Injured Worker) filed a self-insured complaint against the Greater Cleveland Regional Transit Authority (Employer) alleging on October 27, 2015, the Employer filed a Motion to collect an alleged overpayment. The matter was set for hearing but, on January 15, 2016, the Employer requested cancellation of the hearing as it was withdrawing its Motion. Also on January 15, 2016, the Employer sent a letter to the Injured Worker's attorney stating it would be reducing the Permanent Total Disability (PTD) benefits based on the alleged overpayment. On January 22, 2016, the Injured Worker's attorney filed a Motion that "requests the Industrial Commission of Ohio to schedule a hearing on the issue of an alleged overpayment." On February 9, 2016, the Employer reduced the PTD benefits without an administrative or judicial determination pursuant to R.C. 4123.511(K).

On February 29, 2016, the Employer's representative responded to the January 15, 2016 self-insured complaint. The representative noted PTD was awarded pursuant to an order issued June 21, 2005, and the benefits were to begin on June 17, 2005. The Employer began bi-weekly PTD payments of \$1,123.28 based on an Average Weekly Wage of \$842.46. Payment of the benefits at the rate of \$1,123.28 continued through December 14, 2010, at which time a new claims examiner transposed two digits in the payment amount and inadvertently incorrectly increased the bi-weekly PTD rate to \$1,213.28. The \$90 bi-weekly overpayment continued for nearly 5 years and was not discovered until October 2015, when the Employer was reviewing its claims in preparation for an audit by the Self-Insured Complaint Resolution Unit (SI Department) of the Bureau of Workers' Compensation (BWC).

By a letter dated October 15, 2015, the Employer informed the Injured Worker's attorney of the overpayment (\$11,430); in the letter, the Employer reduced the PTD rate to the correct amount of \$1,123.28 as of October 31, 2015. The Employer also filed a Motion with the Industrial Commission to address the overpayment; the Employer later withdrew its Motion and requested cancellation of the Commission hearing.

Thereafter, the Employer reviewed materials provided by Dave Sievert, Acting Director of the SI Department, at a July 2015 quarterly workshop. The materials included a BWC policy that provided recoupment of an overpayment can be pursued until it is recovered in full, regardless of the amount of the overpayment and the time that has passed. The policy further directed employers to notify an injured worker of the nature of the overpayment and the amount, provide a proposal to collect the overpayment, and advise of options should the injured worker disagree.

In reliance on the materials provided by Mr. Sievert, the Employer followed the prescribed procedure and notified the Injured Worker's attorney by letter dated January 15, 2016, of the overpayment error and proposed options for recoupment. The attorney declined the options provided and filed a Motion on January 22, 2016, to address the overpayment. As of the date of the letter, no Industrial Commission hearing had been set. As stated in the letter, the Employer reduced the bi-weekly rate by 25% to \$842.46 beginning February 9, 2016. The Employer's representative asserted the Employer followed the procedures outlined by Mr. Sievert and requested the January 15, 2016 self-insured complaint be found invalid.

In a letter dated March 3, 2016, the SI Auditor found the Employer in violation of R.C. 4123.511(K); therefore, the SI Auditor found the self-insured complaint valid. The Employer was ordered to cease collection activity. The SI Auditor noted the materials from Mr. Sievert did not address continued collection of overpayment amounts when an injured worker contests the overpayment or recovery amount.

In a letter dated March 15, 2016, the Employer requested reconsideration of the finding of a valid self-insured complaint, asserting the Employer fully complied with the guidelines provided by BWC, and the guidelines did not prohibit or otherwise refer in any way to a restriction or limitation of the Employer's collection of overpaid amounts. If an employer is restricted in actual collection of an overpayment, then the BWC publication should state the precise manner and specific extent to which an employer is prohibited.

The Employer also pointed to a document in the BWC's online library entitled Adjustment of Overpaid Compensation Policy (Policy # CP-01-08). At IV(D)(1), the policy provides that when overpayment is created by some means other than a reversal, upon appeal, of a decision to pay compensation, the BWC is not bound by R.C. 4123.511(K); however, it is BWC's policy to recoup the overpayment according to R.C. 4123.511(K) as the recoupment method is reasonable to recover overpaid funds.

The PTD overpayment was the result of an inadvertent clerical error. Thus, according to the BWC policy, the BWC and the Employer are not bound by R.C. 4123.511(K). The Employer asserted the SI Auditor's finding that the Employer was in violation of R.C. 4123.511(K) chastises the Employer for simply recouping in the manner prescribed in the publications from the SI Department and the BWC's own policy. Imprecision in the language or omission from the BWC's publications upon which the Employer relied for proper administration of its program cannot be foisted upon the Employer. Following the guide is what the Employer did, nothing more and nothing so egregious to warrant sanction by the body whose ambiguity caused it.

In a letter dated April 6, 2016, the Injured Worker's attorney requested dismissal of the reconsideration request. He asserted Ohio Adm.Code 4123-19-09 does not provide a provision for reconsideration of a finding of a valid self-insured complaint.

In a letter dated June 24, 2016, the Administrator's Designee upheld the finding that the self-insured complaint was valid. The Designee found R.C. 4123.511(K) makes it evident that the withholding methodology may not be utilized until after final administrative or judicial determination. While the Employer may have thought it was complying with information provided by the SI Department, it began collecting an overpayment that was contested prior to a final administrative decision. The action that the Employer took in withholding amounts under the method prescribed was premature. The Employer took immediate corrective action by stopping collections. Therefore, the Administrator's Designee found there was no ongoing violation, and the matter was resolved.

In a letter dated July 19, 2016, the Employer requested referral to SIEEB. On August 16, 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 November 28, 2016.


By a Corrected Order issued August 6, 2016, the Staff Hearing Officer found an overpayment of \$11,430 was created due to a clerical error (paying at \$1,213.28 instead of \$1,123.28). The Staff Hearing Officer found the overpayment was not due to any fault of the Injured Worker. Applying a reasonableness standard, the Staff Hearing Officer limited the recoupment to two years from the date of the Employer's October 27, 2015 Motion requesting an overpayment. The Employer did not appeal the Staff Hearing Officer order.

R.C. 4123.511 provides for recoupment of an overpayment only after final administrative or judicial adjudication for overpayments created by a determination reversing the award of compensation. The provision does not address overpayments created by clerical errors. Further, BWC's Adjustment of Overpaid Compensation Policy (Policy # CP-01-08) provides when an overpayment is created by some means other than a reversal, upon appeal, of a decision to pay compensation, BWC is not bound by R.C. 4123.511(K), but that it is BWC's policy to recoup such overpayments according to R.C. 4123.511(K) as the BWC determined the recoupment method to be reasonable.

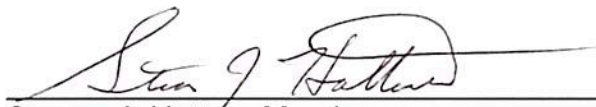
DETERMINATION:

Therefore, based on the foregoing, the Self-Insuring Employers Evaluation Board hereby finds that, lacking a statutory provision, rule, or policy clearly requiring a self-insuring employer to wait until a final administrative or judicial adjudication before collecting an overpayment created by a clerical error, there is no clear violation by the Employer (Greater Cleveland Regional Transit Authority). Therefore, Complaint No. 18586, filed by the Injured Worker [REDACTED] on January 27, 2016, is invalid and resolved.

SELF-INSURING EMPLOYERS EVALUATION BOARD:


Karen L. Gillmor, Chairman YES


Carol A. Wilson, Member NO


Steven J. Hatton, Member YES

DATE MAILED: 15th DAY OF February, 2017