

SELF-INSURING EMPLOYERS EVALUATION BOARD

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SELF-INSURING EMPLOYERS EVALUATION BOARD

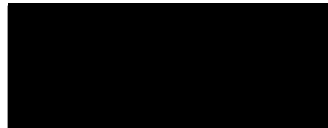
IN THE MATTER OF:

Children's Hospital Medical Center Cincinnati (Employer), SI #20003154-0

and

[REDACTED] (Injured Worker), [REDACTED]

Complaint No. 1000477417



Children's Hospital Medical Center Cincinnati
3333 Burnet Ave. #9008
Cincinnati, OH 45229

Brent Martini
830 Main St., Ste. 607
Cincinnati, OH 45202

Frost, Brown and Todd
3300 Great American Tower
301 E. Fourth St.
Cincinnati, OH 45202

On June 2, 2016, [REDACTED] ("Injured Worker") was assaulted by a large psychotic patient. The Children's Hospital Medical Center Cincinnati ("Employer") certified the claim for head contusion and thoracic strain. The Industrial Commission additionally allowed the claim for concussion and post-traumatic stress disorder.

On June 29, 2017, the Injured Worker's representative sent a request for claim information, including all medical records, to the Employer's third-party administrator ("TPA"). On July 6, 2017, the Injured Worker's representative sent a follow-up email to the TPA and copied the Employer's counsel requesting the same information.

On July 18, 2017, the Injured Worker's representative filed a motion requesting approval of a C-9 for a neuro/TBI consult. The motion was referred to the Industrial Commission for a hearing. The hearing was scheduled for August 11, 2017, but was rescheduled to September 7, 2017, upon granting the Employer's continuance request. The notice of hearing included a reminder for self-insuring employers that they are required to submit certain evidence prior to hearing pursuant to Ohio Adm.Code 4121-3-13(D) and (E).

Approximately 15 minutes before the September 7, 2017 hearing, the Employer's representative provided the Injured Worker's representative a copy of the independent medical report from Dr. Hughes dated September 1, 2017, discussing numerous records that were reviewed but never filed with the IC nor provided to the Injured Worker's representative.

Relevant History of the Complaint:

On September 7, 2017, the Injured Worker filed Self-Insured Complaint #1000477417 against the Employer. The initial allegation was that the Employer had not submitted medical records to the Industrial Commission prior to a hearing on September 7, 2017, despite numerous requests for them and being reminded to do so by the hearing notice.

On September 11, 2017, the Self-Insured ("SI") Complaint Resolution Unit of the SI Department of the Bureau of Workers' Compensation ("BWC") sent the complaint to the Employer.

On September 25, 2017, the SI Complaint Resolution Unit received a response from the Employer's representative.

On October 11, 2017, the SI Department found the Employer did not intentionally delay or refuse to submit any reports to the opposing counsel, and the SI Auditor found the complaint was invalid.

On October 25, 2017, the SI Department received a request for reconsideration of the invalid complaint finding from the Injured Worker's representative.

On October 30, 2017, the SI Department received a rebuttal/response to the request for reconsideration from the Employer's representative.

On February 2, 2018, the BWC Administrator's Designee upheld the invalid complaint finding. On February 6, 2018, the SI Department received the Injured Worker's appeal to Self-Insuring Employers Evaluation Board ("SIEEB").

On February 7, 2018, 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 April 11, 2018.

Ohio Adm.Code 4121-3-09(A) states in relevant part:

- (A) Evidence and discovery.
 - (1) *In every instance* the evidence shall be of sufficient quantum and probative value to establish the jurisdiction of the commission to consider the claim and determine the rights of the injured worker to an award. Evidence may be presented by affidavit, deposition, oral testimony, written statement, document, or other forms of evidence.
 - (a) The parties or their representatives *shall provide to each other, as soon as available and prior to hearing*, a copy of the evidence the parties intend to submit at a commission proceeding.

[Emphasis added.]

Ohio Adm.Code 4121-3-13(D) and (E) state:

- (D) *Prior to the hearing in a contested claims matter the parties or their authorized representatives shall file the information necessary to comply with the provisions of paragraph (A)(1) of rule 4121-3-09 and paragraph (A)(2) of 4121-3-09 of the Administrative Code. Such information shall include, but not be limited to, medical reports received by the parties or their authorized representatives from the treating physician and physicians who have seen the injured worker in consultation for the allowed injury or occupational disease for which the claim has been filed.*
- (E) Notwithstanding paragraph (D) of this rule, a self-insuring employer, or its authorized representative, shall provide to the commission and to the injured worker, or the injured worker's representative in claims where the injured worker is represented, the following information in writing, prior to the date of hearing of a contested claims matter:
 - (1) A copy of the first report of injury, occupational disease, or death, or an equivalent document; and
 - (2) A statement listing the specific conditions that are recognized in the claim by the self-insuring employer, including conditions that were originally recognized as related to the injury or occupational disease for which the claim has been filed, as well as any conditions that are subsequently recognized by the self-insuring employer as being related to the injury or occupational disease; and
 - (3) Where the contested claims matter concerns a dispute as to the full weekly wage or average weekly wage, the information used to calculate the full weekly wage or average weekly wage, depending on which is at issue, shall be submitted unless the full weekly wage or average weekly wage had been previously established by a final order of the commission; and
 - (4) A statement setting forth the date of last payment of compensation and the date of the last payment of a medical bill where the employer intends to raise the issue of the statute of limitations pursuant to section 4123.52 of the Revised Code.
 - (5) A statement setting forth the date of last payment of a medical bill where the contested claims matter concerns a dispute over entitlement to, or extent of, medical benefits.
 - (6) A statement setting forth the date of last payment of compensation where the contested claims matter concerns entitlement to compensation.

[Emphasis added.]

Ohio Adm.Code 4123-19-03(K)(9) states:

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

* * *

- (9) *Upon written request by the claimant or claimant's representative, the employer shall make available for review all the employer's records pertaining to the claim. Such review is to be made at a reasonable time (not to exceed seventy-two hours) and place. The claimant, upon written request, shall provide the employer or its representative with an appropriate written authorization to obtain medical reports and records pertaining to the claim.*

Except as provided for in this rule, an employer may not assess a fee or charge the claimant or the claimant's representative for the cost of providing a copy of the employer's records pertaining to the claim. Where the employer has previously provided a copy of the record or records pertaining to the claim to the claimant or the claimant's representative, the employer may charge a fee for the copies. The employer's fee shall be based upon the actual cost of furnishing such copies, not to exceed twenty-five cents per page.

[Emphasis added.]

The initial allegation in Complaint #1000477417 was that the Employer did not submit numerous medical records to the Industrial Commission and the Injured Worker's counsel prior to a hearing. The Injured Worker's representative had requested the records prior to the scheduled hearing.

On the morning of the September 7, 2017 hearing, the Employer's counsel provided the Independent Medical Exam (IME) report, but not the associated medical records, to the Injured Worker's counsel. The Employer's counsel filed the medical records later on the day of the hearing.

Pursuant to Ohio Adm.Code 4121-3-09(A)(1)(a), the Employer had an obligation to provide the medical records when initially requested (along with the IME report) *and* prior to the hearing. When the Employer's counsel provided the IME report, but not the associated medical records, to the Injured Worker's counsel prior to the hearing, the Employer did not fulfill this obligation.

Pursuant to Ohio Adm.Code 4121-3-13(D) and (E), the parties or their authorized representatives, prior to the hearing in a contested claims matter, shall file the information necessary to comply with the provisions of paragraph (A)(1) of rule 4121-3-09 and paragraph (A)(2) of 4121-3-09 of the Administrative Code. When the Employer's counsel provided the IME report, but not the associated medical records, to the Injured Worker's counsel prior to the hearing, the Employer did not fulfill this obligation.

Pursuant to Ohio Adm.Code 4123-19-03(K)(9), the Employer, upon written request by the Injured Worker or the Injured Worker's representative, shall make available for review all the employer's records pertaining to the claim. Such review is to be made at a reasonable time (not to exceed seventy-two hours) and place. When the Employer's counsel provided the IME report, but not the associated medical records, to the Injured Worker's counsel prior to the hearing, the Employer did not fulfill this obligation.

DETERMINATION:

Based on the foregoing, the Self-Insuring Employers Evaluation Board hereby finds the Employer ("Children's Hospital Medical Center Cincinnati") had an obligation to provide the medical records to the Injured Worker [REDACTED] when initially requested along with the Independent Medical Exam report and prior to the hearing. The Employer did not fulfill this obligation. Therefore, Complaint No. 1000477417, filed by the Injured Worker against the Employer on September 7, 2017, is **valid and resolved**.

SELF-INSURING EMPLOYERS EVALUATION BOARD:

Karen L. Gillmor
Karen L. Gillmor, Chairman YES

Carol A. Wilson
Carol A. Wilson, Member YES

RECUSED
Steven J. Hatton, Member

DATE MAILED: 19th DAY OF June, 2018