

## SELF-INSURING EMPLOYERS EVALUATION BOARD

Karen L. Gillmor, Ph.D., *Chairman*  
Carol A. Wilson, *Member*  
Steven J. Hatton, *Member*

John R. Kasich, *Governor*

## SELF-INSURING EMPLOYERS EVALUATION BOARD

### IN THE MATTER OF:

Cinergy Corp. System (Employer), SI #20005148-0

and

**Complaint No. 100043108**

Cinergy Corp.  
Dec 40C  
550 S. Tryon St.  
Charlotte, NC 28202

Clements, Taylor, Butkovich and Cohen  
125 E. Court St., Suite 800  
Cincinnati, OH 45202

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

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In December 2016, [REDACTED] ("Injured Worker") was using a jack when his shoulder popped. Cinergy Corp. ("Employer") certified the claim for supraspinatus tendon tear left shoulder and began paying temporary total ("TT") disability compensation.

On July 18, 2017, the Employer issued a \$1,770.00 check to the Injured Worker for TT compensation for July 6, 2017 through July 19, 2017. The Injured Worker was released to return to work on July 18, 2017.

On July 20, 2017, the Employer's third-party administrator ("TPA") called the Injured Worker's representative to advise of the overpayment and that the TPA was stopping payment on the check and re-issuing the check since the Injured Worker returned to work and he was being paid TT compensation for beyond the return-to-work date. The TPA asked that the Injured Worker be contacted since the check had not yet cleared the bank. The Injured Worker's representative was to call the TPA after contacting the Injured Worker so that the stop payment could be initiated and a replacement check re-issued. The Injured Worker deposited the check on July 20, 2017, without having heard from his representative.

According to a note in the Employer's TPA's file:

Just rec'd MEDCO14 releasing the IW to FD on 7/18/17. Reviewed TTD and find [sic] that a check was just sent paying him through 7/19/17 but it appears to not have been cashed yet. Called IW's attorney to advise and ask that they contact their client to let him know not to cash the check. She will call him and get back to me so that I can issue a stop payment and reissue.

Since I did not hear back from your office, after giving you fair warning, I stopped the check as it is not our practice to overpay an IW when we know they have returned to work and the check had not been cashed yet. As you see from the screen print below, the check was issued on 7/18/17 and I stopped it 7/21/17. It was reissued at the correct amount after sufficient time passed for the stop payment to be done.

Relevant History of the Complaint:

On August 1, 2017, the Injured Worker filed Self-Insured Complaint #100043108 against the Employer. The initial allegation was that the Employer had not paid compensation timely due to a stop payment of a temporary total disability compensation (TT) check.

On August 4, 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. The Employer did not respond within the requested 14 days.

On August 30, 2017, the SI Department found the Employer in violation of Ohio Adm.Code 4123-19-03(K)(7), and the SI Auditor found the complaint was valid with no response from the Employer.

On August 31, 2017, the Employer's TPA contacted the SI Auditor to advise that the complaint was never received. On September 13, 2017, the Employer filed with BWC a request for reconsideration of the SI Auditor's valid finding.

On February 20, 2018, the BWC Administrator's Designee upheld the initial decision and found the complaint to be valid, but now resolved. On March 15, 2018, the SI Department received the Employer's appeal to Self-Insuring Employers Evaluation Board ("SIEEB").

On March 29, 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.

R.C. 4123.35(B) provides in relevant part as follows:

Employers who will abide by the rules of the administrator and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge employers who apply for the status as a self-insuring employer a reasonable application fee to cover the bureau's costs in connection with processing and making a determination with respect to an application.

Ohio Adm.Code 4123-19-03(K)(7) states in part:

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

\* \* \*

- (7) The employer shall pay all compensation as required by the workers' compensation laws of the state of Ohio. By becoming self-insuring, the employer agrees to abide by the rules and regulations of the bureau and commission and further agrees to pay compensation and benefits subject to the provisions of these rules. The self-insuring employer shall proceed to make payment of compensation or medical benefits without any previous order from the bureau or commission and shall start such payments as required under the Workers' Compensation Act, unless it contests the claim.

As the Administrator's Designee found in the February 20, 2018 decision, the Employer was in full compliance with its payment obligations to the Injured Worker through July 18, 2017. The Administrator's Designee also found the following:

The self-insuring employer also had the right to terminate benefits when it received the Medco-14 form. However, termination of benefits does not equate to the right to stop payment on a check. There is an overpayment collection mechanism in place within Ohio Rev. Code Sec. 4123.511(K).

It is the Employer's abandonment of the statutory collection mechanism in favor of the self-help approach via the stop payment of the check that violates the foregoing statutory provision and administrative rule. In addition, by stopping payment and then re-issuing a corrected check on July 26, 2017, the Employer unilaterally created a delay in the payment of TT compensation to the Injured Worker in violation of Ohio Adm.Code 4123-19-03(K)(7). The re-issuance of payment to the Injured Worker took place 27 days after the most recent TT payment had been made (June 30, 2017).

DETERMINATION:

Based on the foregoing, the Self-Insuring Employers Evaluation Board hereby finds the Employer (Cinergy Corp.) failed to make timely payment of temporary total disability compensation to the Injured Worker (██████████) when the Employer issued a check on July 18, 2017, but stopped payment on the check on July 21, 2017, resulting in the Injured Worker incurring bank fees because of the check being stopped. Therefore, Complaint No. 100043108, filed by the Injured Worker against the Employer on August 1, 2017, is **valid** and **resolved**. In addition, the Board strongly encourages the Employer, if it has not done so already, to make the Injured Worker whole by reimbursing him for the \$12.00 bank fee and any other fees incurred as the result of the Employer issuing a check to him on July 18, 2017, and then stopping payment on that check on July 21, 2017.

**SELF-INSURING EMPLOYERS EVALUATION BOARD:**

  
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Karen L. Gillmor, Chairman

YES

  
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Carol A. Wilson, Member

YES

  
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Steven J. Hatton, Member

YES

DATE MAILED: 1976 DAY OF June, 2018