

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:

Aviator Holdings, Inc. (Employer), SI #20005764

and

[REDACTED] (Injured Worker), [REDACTED]

Complaint No. 18743

[REDACTED]

Aviator Holdings, Inc.
10690 Loveland Madeira Rd.
Loveland, OH 45140

On January 27, 2017, the Self-Insured Complaint Resolution Unit (SI Department) of the Bureau of Workers' Compensation (BWC) received a Self-Insured Complaint filed by [REDACTED] (Injured Worker) against Aviator Holdings, Inc. (Employer). The Injured Worker alleged that the Employer had violated Ohio Adm.Code 4129-3-09(A)(6)(a)(2) and (3), 4121-3-30, 4123-19-03(1), and 4123-19-03(K)(5), and (9). The complaint was assigned Complaint No. 18743. Attached to the complaint was a narrative further describing the Injured Worker's complaints.

On February 8, 2017, the SI Department received the Employer's response to Complaint No. 18743. On February 13, 2017, the Injured Worker submitted additional documents by email.

On February 16, 2017, the SI Department, after investigating Complaint No. 18743, issued a letter finding the Complaint was invalid.

On February 21, 2017, the SI Department received the Injured Worker's correspondence, which it construed as the Injured Worker's request for reconsideration of the finding of an invalid complaint. The correspondence included additional pages of emails.

On March 24, 2017, the SI Department requested additional information from the Employer regarding the emails. On March 30, 2017, the Employer submitted the additional information, as requested.

On June 12, 2017, BWC's Central Service Office Manager modified the SI Department's decision only to the extent the complaint was found to be valid for a late filing of the First Report of Injury (FROI).

On June 29, 2017, the SI Department received the Employer's request for reconsideration of BWC's finding of a valid complaint and requested that it be directed to the Self-Insuring Employers Evaluation Board (SIEEB).

This matter came before SIEEB on September 25, 2017.

After review and discussion, it is the decision of the Board to affirm the following findings of the BWC's Central Service Office Manager, issued June 12, 2017:

Ohio Adm.Code 4129-3-09(A)(6)(a)(2) and (3): The rule cited in the Complaint does not exist. After reviewing the allegations made by the Injured Worker concerning delays in scheduling the Employer's independent medical examination (IME); the Employer not waiving the 14-day notice of examination requirement despite the Injured Worker's request to do so; and the assertion that no form for reimbursement of travel expenses was provided, BWC construed the allegation to be directed to Ohio Adm.Code 4123-3-09(C)(5) dealing with the Employer's right to have the Injured Worker examined.

On November 8, 2016, the Employer sent notification to the Injured Worker of an IME scheduled for November 28, 2016. The Injured Worker requested the IME be rescheduled and, in order to allow for the requisite 14-day notice requirements, the IME was rescheduled for December 14, 2016. The Board finds the initial delay in the scheduling of the IME was caused by the Injured Worker's request for it to be rescheduled and there is no requirement for the Employer to waive the notice requirements. Therefore, the Board finds invalid the portion of the complaint asserting unreasonable delay in scheduling the IME and that it was improper for the Employer to decline to waive the 14-day notice requirement.

As far as the allegation regarding travel reimbursement is concerned, the rule requires the Employer to send a travel reimbursement form to the Injured Worker at the time the Employer notifies the Injured Worker of the time and place of the examination. The Employer asserted C-60 Injured Worker Statement for Reimbursement of Travel Expense forms (C-60) were sent to the Injured Worker with the IME notices on November 7, 2016 and November 18, 2016. The Injured Worker faxed a completed C-60 to the Employer on or about January 6, 2017 and the Employer promptly reimbursed the Injured Worker for her travel expenses on January 10, 2016. Although there is no explanation for the gap in time between when the Employer allegedly sent the C-60 forms to the Injured Worker and the date the completed C-60 was faxed to the Employer, the Board finds insufficient evidence the Employer did not provide travel reimbursement forms. Therefore, the Board finds invalid the portion of the complaint asserting the Employer failed to provide travel reimbursement forms.

Ohio Adm.Code 4121-3-30: The rule sets forth that when an emergency exists which requires an immediate hearing, the person for whom the emergency exists shall make a written request with supporting documentation. Upon receipt of a written request, the Industrial Commission (IC) reviews the request to determine whether it meets the requirements set forth within the rule. If the request meets the requirements, an emergency hearing is set.

The Board finds a review of the claim file reveals no such written request for an emergency hearing. Further, requests for emergency hearings are addressed by the IC, not the Employer. Therefore, the Board finds invalid the portion of the complaint asserting a violation of Ohio Adm.Code 4121-3-30.

Ohio Adm.Code 4123-19-03(1): The rule as cited in the Complaint does not exist. After reviewing the allegations within the complaint concerning quick access to health care and light duty work, BWC construed the complaint to be an alleged violation of Ohio Adm.Code 4123-19-03(K)(1). Division (K) of the rule addresses minimum performance levels for self-insuring employers. Paragraph (K)(1) requires self-insuring employers to be able to furnish or make arrangements for reasonable medical services during all working hours. The rule does not require an Employer to provide an Injured Worker with light duty work.

The Board finds the Employer had an on-duty nurse on the date of injury. In light of the fact the Employer had an on-duty nurse on the date of injury and the fact that there is no requirement the Employer provide light-duty work, the Board finds invalid the portion of the complaint asserting there was a lack of quick access to health care and the Employer failed to provide light-duty work.

Ohio Adm.Code 4123-19-03(K)(5): Paragraph (K)(5) provides that within 30 days of receipt of a hospital, medical, nursing, or medication bill duly incurred by the claimant, the Employer shall either pay such bill, or if the Employer contests the bill, notify the provider, employee, and only upon request, the BWC and IC. If the matter is heard by the IC, the Employer is required to pay compensation or benefits due and payable under the order as set forth in R.C. 4123.511. If the Employer allows a claim without hearing, the Employer is required to pay compensation and benefits no later than 21 days from acquiring knowledge of the claim or the claimant's filing of a C-84 Request for Temporary Total (C-84), whichever is later. R.C. 4123.511 requires payment of compensation upon receipt of an order of a district hearing officer, staff hearing officer, or the Commission. The statute further provides that payment of medical bills is to be made upon the earliest of either the date of issuance of a staff hearing officer order or the final administrative or judicial determination.

A review of the payment history of medical bills received by the Employer demonstrates such bills were timely paid. As far as temporary total disability is concerned, the Injured Worker completed a C-84 on January 6, 2017. On January 10, 2017, the Employer denied the C-84 and requested a hearing before the IC, well within the 21-days required by the rule. It is also noted that at the district hearing officer hearing on April 13, 2017, the Injured Worker dismissed the request. The Board therefore finds invalid the portion of the complaint alleging a violation of Ohio Adm.Code 4123-19-03(K)(5).

Ohio Adm.Code 4123-19-03(K)(9): Paragraph (K)(9) provides that upon written request by the Injured Worker, the Employer shall make available for review its records pertaining to the claim. The review is to be made at a reasonable time (not to exceed 72 hours) and place.

A review of the materials filed by the Injured Worker failed to demonstrate such written request was ever made. Therefore, the Board finds invalid the portion of the complaint alleging a violation of Ohio Adm.Code 4123-19-03(K)(9).

The Board reverses the BWC Central Service Office Manager's finding of a valid complaint with respect to a violation of Ohio Adm.Code 4123-19-03(K)(3) and 4123-3-03(A).

Ohio Adm.Code 4123-19-03(K)(3) requires the Employer to report claims with seven or more days of total disability in accordance with the provisions of Ohio Adm.Code 4123-3-03(A). Ohio Adm.Code 4123-3-03(A) provides within one week of acquiring knowledge an injury will result in seven or more days of total disability, the Employer shall report such claims to the BWC.

On September 15, 2016, the Injured Worker sustained the injury herein, which she described as: "Injury began on my 3rd day in new facility and job left knee and leg cumulatively worsened until I could no longer walk."

On September 22, 2016, the Injured Worker requested a leave of absence noting an injury to the leg, knee (ankle) and that the condition began on September 15, 2016. Submitted with the request was a note from Firelands Physician Group stating the Injured Worker was unable to work beginning September 16, 2016 until cleared by orthopedics or her primary care physician. The note did not identify the reason the Injured Worker was unable to work or indicate a workers' compensation injury was involved.

The Injured Worker first completed a FROI on September 28, 2016. The Employer asserted it received notice of the Injured Worker's intent to file a workers' compensation claim on October 3, 2016 when it received the FROI. On that same day, the Employer sent the Injured Worker an "injury packet" in order to obtain the information necessary to process the claim.

Family Medical Leave was granted in a letter dated October 4, 2016. On October 7, 2016, the Injured Worker returned to the Employer the uniforms provided to her as well as her badge. Thereafter, on October 11, 2016, the Employer completed an Employee Termination/Resignation Report noting the Injured Worker quit without giving a two-week notice effective October 7, 2016.

On or about October 13, 2016, the Employer received the injury packet and, in a letter to the Injured Worker dated October 24, 2016, the Employer denied the claim. The FROI was also filed that day. On November 1, 2016, the Employer notified the BWC of its denial of the claim and the matter was referred to the Industrial Commission for hearing. Prior to a hearing on the merits of the allowance of the claim, the Employer recognized the claim for sprain of left knee and tear of medial meniscus left knee.

In light of the confusion regarding the nature and extent of the claimed injury and disability, the Board finds the Employer did not initially acquire knowledge the claim would result in seven or more days of total disability and therefore the filing requirements of Ohio Adm.Code 4123-3-03(A) and 4123-19-03(K)(3) were not applicable. Instead, Ohio Adm.Code 4123-19-03(K)(10) applies to the fact pattern herein. Ohio Adm.Code 4123-19-03(K)(10) requires the Employer to inform the Injured Worker and the BWC, in writing, within thirty days from the filing of the claim, what conditions it has recognized and what, if any, it has denied. The same time frame applies when the Employer rejects a medical only claim. The Employer received the FROI on October 3, 2016, notified the Injured Worker of its denial of the claim on October 24, 2016, and notified BWC of its denial of the claim on November 1, 2016. The Board finds both dates of notification were within the 30 days required by Ohio Adm.Code 4123-19-03(K)(10).


In conclusion, the Board finds invalid the entirety of Complaint No. 18743.

The above findings are based upon the motion made by Mr. Hatton, seconded by Ms. Wilson, and voted on as follows:

SELF-INSURING EMPLOYERS EVALUATION BOARD:


Karen L. Gillmor, Chairman YES


Carol A. Wilson, Member YES


Steven J. Hatton, Member YES

DATE MAILED: 29th DAY OF March, 2018