SELF-INSURING EMPLOYERS EVALUATION BOARD

SELF-INSURING EMPLOYERS EVALUATION BOARD

IN THE MATTER OF:

Arconic, Inc. (Employer), Risk No. #20002499

and

[redacted]

Complaint No. 1000818168

[redacted]

Arconic, Inc.
201 Isabella Street, 7th Street Bridge
Pittsburgh, PA 15212

Makridis Law Firm
155 South Park Avenue, Suite 160
Warren, OH 44481

Manchester, Newman & Bennett
144 North Park Avenue
Warren, OH 44481

Complaint

On or about June 26, 2018, the Injured Worker filed with the Self-Insured Department of the Bureau of Workers' Compensation a copy of a letter dated December 15, 2017, from his representative, Irene Makridis, addressed to the Employer's representative, Scott Lanz of Manchester, Newman & Bennett. The letter asserted the Employer wrongfully terminated temporary total disability compensation. The Self-Insured Department construed the letter as a self-insured complaint. Complaint No. 1000818168 was presented to the Self-Insuring Employers Evaluation Board on January 9, 2019.

Complaint History

The Injured Worker alleged a work-related injury on February 10, 2015, when he was going up stairs and felt a pop in his right knee. By Industrial Commission Staff Hearing Officer order issued May 27, 2015, the claim was allowed for right knee sprain/strain. The Employer's administrative appeal was refused and the Employer appealed to court. By Staff Hearing Officer order issued December 5, 2015, the claim was additionally allowed for medial meniscus tear of the right knee. The Employer's appeal was refused and the Employer appealed to court.

The court appeals were consolidated. While in court, the parties entered into a settlement agreement. The agreement noted the Injured Worker was receiving temporary total disability compensation in Claim 15-810297. The agreement provided for settlement of claims 15-810297, 12-830953, 08-885971, and any other claims or causes of action. The Employer agreed to:

(1) pay the Injured Worker $130,000. allocated as $120,000. for Claim 15-810297, $5,000. for Claim 08-885971, and $5,000. for Claim 12-830953;

(2) take all reasonable and necessary steps to determine the amount of Medicare Set-Aside (MSA) in connection with the settlement of Claim 15-810297 and to pay the MSA amount to the Injured Worker to be used to pay future medical expenses for treatment of the conditions alleged in Claim 15-810297;

(3) until such time as the payments provided in the settlement agreement had been tendered to the Injured Worker's counsel, the Injured Worker would continue to receive temporary total disability compensation in Claim 15-810297 as well as physical therapy as recommended by the treating physician; and

(4) allow the Injured Worker to remain an employee through March 31, 2018, and the settlement would not affect any employment benefits.

In September 2017, the Employer paid the Injured Worker $130,000. in three payments as allocated. Thereafter, the Employer terminated temporary total disability compensation. On October 26, 2017, a Staff Hearing Officer found the settlement agreement was not a gross miscarriage of justice nor was it clearly unfair. On January 18, 2018, Judge Ronald J. Rice of the Trumbull County Court of Common Pleas approved the Stipulated Notice of Dismissal signed by the parties. The Medicare Set-Aside has not been resolved.

In the December 15, 2017 letter construed as the self-insured complaint, Ms. Makridis cited the terms of the settlement agreement and asserted the agreement required the Employer to make two payments ($130,000. and the MSA amount) before terminating temporary total disability compensation. Ms. Makridis noted the $130,000. had been paid to the Injured Worker but the MSA payment had not been made and therefore asserted temporary total disability compensation should continue. Ms. Makridis requested reinstatement of temporary total disability compensation. Attached to the letter were e-mails between Ms. Makridis, the Employer, and Mr. Lanz concerning the payment of temporary total disability compensation as well as a letter from the Centers for Medicare & Medicaid Services rejecting the Employer's proposed MSA amount.

In a letter dated July 11, 2018, Mr. Lanz responded to the complaint. Mr. Lanz noted the settlement agreement was reached at a mediation conference conducted by Magistrate Judge Cornicelli on August 31, 2017. Mr. Lanz provided a copy of a transcript of the mediation. Mr. Lanz stated the Employer agreed to continue to pay temporary total disability compensation until the time the indemnity payments were tendered and agreed to continue to pay for required physical therapy until the MSA was funded. The portion of the agreement providing temporary total disability compensation was to continue until the payments provided for in the settlement were tendered to the Injured Worker's counsel was referencing the lump sum indemnity payments totaling $130,000. Mr. Lanz asserted the transcript demonstrated Ms. Makridis agreed that temporary total disability compensation would stop when the $130,000. was received and that physical therapy would stop when the MSA was paid.

In a letter dated August 20, 2018, the Self-Insured Department found the complaint invalid. The finding was based upon the fact that the transcript of the settlement discussions demonstrated the intent of the settlement agreement was to terminate temporary total disability compensation upon payment of the lump sum and to terminate medical treatment upon payment of the MSA.

In a letter dated September 10, 2018, the Injured Worker requested reconsideration of the finding the complaint was invalid with respect to the termination of temporary total disability compensation and added an assertion that physical therapy was denied even though the MSA had not been paid.

Mr. Lanz responded to the request for reconsideration in a letter dated September 20, 2018. Mr. Lanz reiterated the Employer's position with respect to the termination of temporary total disability compensation and stated the Employer continued to pay for physical therapy through March of 2018. In April of 2018, a request for physical therapy was received by the third party administrator (TPA). The TPA requested an explanation from the doctor as to why physical therapy was needed two years post-surgery. No response was received and therefore the treatment was denied. If the Injured Worker or his physician disagreed, the Injured Worker had the right to file a motion requesting a hearing. Mr. Lanz also stated that on July 24, 2018, Ms. Makridis was provided an addendum to the settlement and was advised the Employer was prepared to accept a July 10, 2018 revised MSA and pay the amount to the Injured Worker if he would also accept the revised MSA. No response was received and the Employer was advised that the Injured Worker requested review of the revised MSA.

In a letter dated November 2, 2018, the Administrator's Designee, Karen Thrapp, opined the Bureau of Workers' Compensation Self-Insured Department was not the appropriate forum to address the terms of the settlement. Ms. Thrapp pointed out that self-insured complaints address whether an employer has complied with the laws and rules that govern self-insurers. The issue raised by the complaint involved contractual interpretation. Ms. Thrapp found the Self-Insured Department was not qualified nor did it have jurisdiction to address a contract dispute. It was not for Bureau of Workers' Compensation personnel to determine whether to limit review to the four corners of the contract or to consider additional evidence showing the intent of the parties. Mr. Thrapp also noted the Bureau of Workers' Compensation was not a party to the original contract. Ms. Thrapp found that it was up to the court to determine the contractual dispute. Therefore, the complaint was dismissed.

In a letter dated November 20, 2018, the Injured Worker requested presentation to the Self-Insuring Employers Evaluation Board.

Findings

After review and discussion, the Self-Insuring Employers Evaluation Board affirms the November 2, 2018 findings of the Administrator's Designee. The Board finds neither the Board nor the Bureau of Workers' Compensation has jurisdiction to address the contractual dispute between the Injured Worker and the Employer. The Board therefore dismisses Complaint No. 1000818168.

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: 6th **DAY OF** February **, 2019**