

SELF-INSURING EMPLOYERS EVALUATION BOARD

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

Mike DeWine, *Governor*

SELF-INSURING EMPLOYERS EVALUATION BOARD

IN THE MATTER OF:

Kelly Services, Inc. (Employer), SI 20003671

and

[REDACTED]

Complaint No. 1000792716

[REDACTED]

Kelly Services, Inc.
999 W. Big Beaver Rd.
Troy MI 48084

On May 25, 2018 [REDACTED] IV submitted a complaint to the Bureau of Workers' Compensation (BWC) Self-Insured Complaint Resolution Unit (SI Department). The complaint alleged that the Employer terminated payments for Temporary Total Disability Compensation (TTDC) unilaterally without meeting the necessary requirements to terminate. The Employer representative responded on June 27, 2018, stating that they terminated TTDC benefits after Injured Worker refused a modified-duty work job offer. On July 2, 2018 the SI Department issued a Valid Finding—specifically finding that the employer did not comply with the required conditions for unilaterally terminating temporary total because they did not obtain agreement for the modified duty work job offer from the attending physician. The Employer subsequently filed a request for reconsideration. On October 2, 2018, the BWC Administrator's Designee upheld the initial decision. On November 14, 2018 the SI Department received an appeal to SIEEB and a notice to all parties was subsequently sent on December 17, 2018.

By way of history, Injured Worker suffered an industrial injury on March 20, 2018 and underwent surgery on his left hand immediately thereafter. Injured Worker's doctor, [REDACTED], M.D., submitted a MEDCO-14, dated March 22, 2018 that released Injured Worker to work the next day, but with restrictions of "1 hand duty only [and] [n]o use of left hand." On April 3, 2018, Employer offered Injured Worker a light-duty position requiring right-hand only work, but Injured Worker rejected the light duty job offer the following day upon the advice of counsel and [REDACTED]. On April 9, 2018, Injured Worker's attorney submitted a fax regarding the light duty offer, stating that [REDACTED] agreed that the offer was within the restrictions, but explained that Injured Worker needed to attend post-operative therapy sessions in order to accept the position. On April 17, 2018, Employer terminated Injured Worker's TTDC payments. On April 26, 2018 Injured Worker's attorney sent Employer a letter stating that [REDACTED] would only sign-off on a job offer if it accommodated his scheduled post-operative therapy sessions, "which are in the morning." Injured Worker's attorney stated that the job offer's work schedule, which was from 10:00 a.m. through 6:30 p.m. did not accommodate this schedule and that [REDACTED] would be willing to reconsider an amended offer. No amended light duty job offer is on file.

After Injured Worker appealed to the SI Department, Injured Worker filed two C86 Motions, one dated June 15, 2018 requesting his Average Weekly Wage be reset and one dated July 3, 2018 requesting Temporary Total Disability Compensation from April 18, 2018 and to continue. The second C86 stated that Injured Worker's attorney made a request for an amended light duty job offer, but the employer did not submit one. In an order dated August 18, 2018 a DHO adjudicated the C86 Motion and found TTD payable from April 18, 2018 through July 23, 2018. The order stated that [REDACTED] signed off on the light duty job offer, provided Employer accommodated for Injured Worker's physical therapy sessions. The DHO stated that the Employer never responded to [REDACTED] response to the light duty job offer and granted the requested period of TTDC. The Employer appealed on August 23, 2018.

An SHO vacated the August 18, 2018 DHO order and found TTDC payable only from April 18, 2018 through April 25, 2018, based on the April 25, 2018 [REDACTED] Medco 14. The SHO found that Injured Worker verbally refused the light duty job offer on the advice of counsel and his physician. The SHO stated that [REDACTED] April 25, 2018 letter acknowledged that the job offer was a valid offer within Injured Worker's restrictions. The SHO further noted that [REDACTED] stated that Injured Worker would need to continue therapy for rehabilitation and would need to attend therapy sessions and follow-up appointments or could not accept the position. The SHO noted that an April 17, 2018 treatment note of [REDACTED] only stated that Injured Worker would need to continue with his therapy in order to return to work light duty without specifying any time constraints relative to the light duty position offered, which ran from 10:00 a.m. to 6:30 p.m. Monday through Friday. Therefore, the SHO found that there was no evidence that Injured Worker's therapy schedule conflicted with the proposed work hours that would have prevented him from attempting to return to the light duty position. Moreover, the SHO noted, the attorney's April 26, 2018 refusal letter did not specify any appointments nor show how they conflicted with the proposed work schedule in the job offer. In addition, the SHO did not find any therapy records in the file to support the conflict. The SHO found that because the written job offer was consistent with Ohio Adm.Code 4121-3-32 the Injured Worker's refusal was grounds for denial of temporary total disability compensation for those dates.

An SHO refused Injured Worker's Appeal, dated November 1, 2018, by order dated November 8, 2018. Injured Worker filed a Request for Reconsideration, dated November 27, 2018. There, Injured Worker

contends that that SHO disregarded the SI Department's findings that sustained an appeal on the basis that the Employer had not met the conditions for a reasonable good faith job offer.

Upon review and discussion of the complaint, the Self-Insured Employers Evaluation Board finds the complaint should be dismissed. The complaint represents an unresolved dispute between the Injured Worker and Employer, which by Interlocutory Order dated December 28, 2018, is currently waiting to be set for a Commission Level Reconsideration Hearing.

Chairman Gillmor recused herself from the matter because it is currently waiting to be set for a hearing before the Commission. 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 RECUSED



Carol A. Wilson, Member YES



Steven J. Hatton, Member YES

DATE MAILED: 6th DAY OF February, 2018