

SELF-INSURING EMPLOYERS EVALUATION BOARD

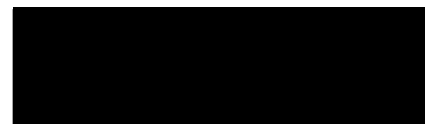
Karen L. Gillmor, Ph.D., *Chairman*
Carol A. Wilson, *Member*
Tommie Jo Brode, *Member*

Mike DeWine, *Governor*

IN THE MATTER OF:

**Rent-A-Center (Employer), Risk No. 20004306
and**

Complaint No. 1001197490



Bashein and Bashein Co., LPA
50 Public Square, #3500
Cleveland, OH 44113-2216

Rent-A-Center East, Inc.
7981 Euclid Avenue
Cleveland, OH 44103-4226

Thomas and Company, LPA
163 N. Sandusky Street, Suite 103
Delaware, OH 43015-1785

Rent-A-Center East, Inc.
Attn: Worker's Compensation Administrator
5501 Headquarters Drive
Plano, TX 75024-5837

Sedgwick Claims Management Services, Inc.
P.O. Box 14669
Lexington, KY 40512-4669

Complaint

In the complaint dated June 12, 2019, the Claimant asserted the Employer failed to provide claim information as requested on March 26, 2019 and May 20, 2019. The complaint further asserted claim information was also requested for an injury of February 7, 2019. The letter from the Claimant's representative, Richard Bashein, accompanying the complaint noted the complaint was copied to Sedgwick Claims Management Services, Inc. (Sedgwick).

Attached to the complaint were copies of the letters from Mr. Bashein to Sedgwick dated March 26, 2019 and May 20, 2019. In the letter dated March 26, 2019, Mr. Bashein requested an itemized statement of benefits, both indemnity and medical. Mr. Bashein also enclosed a C-94-A Wage Statement and asked the Employer to complete the form and return it to him. Mr. Bashein further asked the Employer to advise him what conditions the Employer had allowed in the claim and to advise him of the full and average weekly wage. Lastly, Mr. Bashein requested a copy of the Employer's file. The May 20, 2019 letter repeated the requests made in the March 26, 2019 letter and noted it was a second request.

Relevant History

With a letter dated June 18, 2019, the Bureau of Workers' Compensation (BWC) Self-Insured Department forwarded the complaint to the Employer as well as its representatives via facsimile. The letter noted Ohio Adm.Code 4123-19-09(A) requires the Employer to provide a written response to the complaint within 14 days of receipt of the letter. The Employer did not respond to the complaint.

In a letter dated July 10, 2019, [REDACTED], Interim Director of the BWC Self-Insured Department, found the complaint valid. [REDACTED] found the Employer did not respond to the request for documents or to the complaint. [REDACTED] further noted the requested documents had not been provided as of June 24, 2019. [REDACTED] found the Employer in violation of Ohio Adm.Code 4123-19-03(K).

J. Michael Reidenbach from Thomas and Company requested reconsideration of the finding of a valid complaint in a letter dated July 22, 2019. Mr. Reidenbach conceded that Mr. Bashein's March 26, 2019 request was sent to, and received by, Sedgwick. Mr. Reidenbach stated that the claims examiner responded to the request by providing wage information, but acknowledged that the claims examiner inadvertently did not include copies of the claim file records. Mr. Reidenbach explained that when the claims examiner received the second request, dated May 20, 2019, the claims examiner believed the information had been sent to Mr. Bashein and that the request was a duplicative request made in error. Mr. Reidenbach expressed concern that despite being aware he represented the Employer, Mr. Bashein never contacted him to inquire about the requested claim file information nor did Mr. Bashein provide him a copy of the complaint. Mr. Reidenbach asserted that Mr. Bashein's failure to provide a copy of the complaint to him rendered the complaint defective and significantly hindered the Employer's ability to timely respond and/or remedy the complaint. Mr. Reidenbach asserted the letter from BWC informing the Employer of the complaint was never received by the Employer, Sedgwick, or himself, and therefore the Employer's due process rights were violated. Mr. Reidenbach stated that on June 21, 2019, nine days after receiving a courtesy copy of the complaint from Mr. Bashein, the Employer provided copies of the entire file to the BWC, the Industrial Commission, and Mr. Bashein. Mr. Reidenbach complained that despite receiving the information, Mr. Bashein did not dismiss the complaint. Mr. Reidenbach pointed out that at a July 1, 2019 District Hearing Officer hearing, Mr. Bashein did not raise any of the issues contained in the complaint and the hearing went forward with no harm to the Claimant. Mr. Reidenbach asserted Mr. Sievert's finding the documents were not provided by June 24, 2019 was inaccurate in light of the documents being filed on June 21, 2019. Mr. Reidenbach concluded that for the cited reasons, the finding of a valid complaint must be vacated.

In response to the Employer's request for reconsideration, the Administrator's Designee, Karen Thrapp, issued a decision dated September 4, 2019. Ms. Thrapp found the complaint to be valid and resolved. Ms. Thrapp found the Employer in violation of Ohio Adm.Code 4123-19-03(K)(9) for failing to make available the claim documents within 72 hours of the request.

In a letter dated September 30, 2019, Mr. Reidenbach requested referral to the Self-Insuring Employers Evaluation Board. Mr. Reidenbach reiterated arguments raised in his July 22, 2019 letter. Mr. Reidenbach also asserted that he first learned of the complaint when he received the July 10, 2019 letter finding the complaint valid. Mr. Reidenbach provided a copy of a letter dated July 25, 2019 from Mr. Bashein to the BWC Self-Insured Department requesting that the complaint be dismissed and/or withdrawn. Mr. Reidenbach concluded by asserting the complaint is moot and the Administrator's Designee had no authority to deny the Employer's request for reconsideration because the Claimant dismissed the complaint on July 25, 2019.

Complaint 100197490 came before the Self-Insuring Employers Evaluation Board on November 13, 2019.

Determination

The Employer asserts that the Claimant's failure to provide the complaint directly to the Employer rendered the complaint defective. The Board finds no obligation on the part of the Claimant to provide a copy of the complaint to the Employer. Instead, complaints are provided to employers and their representatives by the BWC Self-Insured Department. The Board finds the complaint would not be rendered defective because it was not provided to the Employer by the Claimant.

Even if it were true that the Claimant had an obligation to provide the complaint directly to the Employer, in the June 12, 2019 letter from Mr. Bashein accompanying the complaint, Mr. Bashein indicated the letter and complaint were copied to Sedgwick. Further, Mr. Reidenbach stated in his letter dated July 22, 2019 that he received a "courtesy copy" of the complaint from Mr. Bashein nine days prior to June 21, 2019.

The Employer further asserts the June 18, 2019 BWC letter forwarding the complaint to the Employer was not received by the Employer, Sedgwick, or Thomas and Company. The Board notes the BWC informed the Board that staff verified the facsimile numbers used to transmit the complaint to the Employer and its representatives were accurate.

Ohio Admin.Code 4123-19-03(K)(9) provides in pertinent part:

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 Employer concedes that the March 26, 2019 and May 20, 2019 letters requesting, among other items, a copy of the Employer's claim file were received by its third-party administrator, Sedgwick. The Employer also concedes that Sedgwick did not provide the claim file records at that time. Instead, the records were provided on June 21, 2019, after receipt of the complaint. The Employer asserts, however, that since the records were provided prior to the July 1, 2019 District Hearing Officer hearing and the hearing went forward on the merits, there was no harm to the Claimant. The Board rejects the assertion the complaint should be found invalid for the reason there was allegedly no harm to the Claimant because the hearing went forward. A self-insuring employer's obligations as set forth in Ohio Adm.Code 4123-19-03(K) are not obviated by the forward progress of the adjudication of a contested claim. The Board finds the Employer violated Ohio Adm.Code 4123-19-03(K)(9) when it did not make the requested records available within 72 hours.

As to the Employer's assertion there is no jurisdiction to find the complaint valid since the Claimant's representative requested the complaint be dismissed or withdrawn, the Board holds such a finding would violate BWC policy. BWC Policy SI-03-03 provides an injured worker may withdraw a complaint at any point until a finding is published. In this case, the July 10, 2019 and July 22, 2019 valid complaint findings were issued prior to the July 25, 2019 letter from the Claimant's representative requesting the complaint be dismissed or withdrawn. Therefore, the Board rejects the Employer's assertion there is no jurisdiction to address the complaint.

Based upon the above-cited findings, the Board affirms the findings of the Administrator's Designee contained in the decision issued September 4, 2019 and finds the Employer in violation of Ohio Administrative Code 4123-19-03(K). Therefore, the complaint is found valid and resolved.

This action is based upon a motion by Ms. Wilson, seconded by Ms. Brode, and voted on as follows.

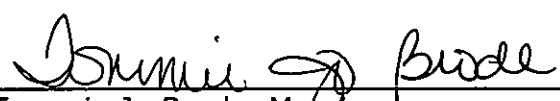
SELF-INSURING EMPLOYERS EVALUATION BOARD



Karen L. Gillmor, Chairman YES



Carol A. Wilson, Member YES



Tommie Jo Brode, Member YES

DATE MAILED: 12/23/19 **DAY OF** December 23rd, 2019