

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:

Walmart, Inc. (Employer), Risk No. #20003850

And

Complaint No. 1001519499

[REDACTED]

Barkan Meizlish LLP
250 E. Broad St., 10th Fl.
Columbus, OH 43215-3708

Walmart, Inc.
702 S.W. 8th St., #MS3570
Bentonville, AR 72716

Roetzel & Andress
1375 E. Ninth St.
Cleveland, OH 44114

[REDACTED] was injured in the course of and arising out of her employment with Walmart, on [REDACTED]. Claim No. [REDACTED]

[REDACTED]. By Staff Hearing Officer order issued July 20, 2016, Ms. [REDACTED] was found to be permanently and totally disabled and benefits were ordered to be paid from November 5, 2015.

In an SI-28, Filing of an Allegation Against a Self-Insured Employer dated January 19, 2020, Ms. [REDACTED] asserted Walmart held up payment of her permanent total disability benefits up to two or three days and she had incurred non-sufficient funds fees and overdraft fees as a result.

In a letter dated February 11, 2020, Walmart's representative, Douglas Spiker, responded to the complaint. Mr. Spiker asserted Walmart had not violated any of the statutory requirements concerning a self-insured program. Mr. Spiker explained Ms. [REDACTED] had been receiving permanent total disability benefits for several years and those payments were made automatically. Mr. Spiker provided a printout of permanent total disability payments made through January 22, 2020 and asserted the payments were timely and automatically paid. Mr. Spiker requested the complaint be dismissed and found invalid.

The provided printout demonstrated the first payment of permanent total disability compensation was issued to Ms. [REDACTED] on August 16, 2016, for the period from November 5, 2015 to August 18, 2016, and that thereafter Walmart continued to make payments of permanent total disability benefits.

In a letter dated March 27, 2020, Self-Insured Auditor [REDACTED] found the records demonstrated the payment of permanent total disability benefit was not consistent. He noted some payments were fourteen days apart but some payments were fifteen or sixteen days apart. Mr. [REDACTED] found such behavior could create potential inconsistencies in Ms. [REDACTED] banking habits. Mr. [REDACTED] found Walmart in violation of R.C. 4123.35 and Ohio Adm.Code 4123-19-03 and concluded the complaint was valid.

In a letter dated April 6, 2020, Mr. Spiker requested reconsideration of the finding of a valid complaint. Mr. Spiker stated permanent total disability payments were set up on an auto pay and direct deposit basis and there was no other way to make payment to Ms. [REDACTED] that could be more timely. Mr. Spiker asserted there was no violation of R.C. 4123.35 or Ohio Adm.Code 4123-19-03 and requested the finding of a valid complaint be vacated.

In a letter dated June 11, 2020, the Administrator's Designee, [REDACTED], upheld the finding of a valid and resolved complaint.

In a letter dated June 16, 2020, Mr. Spiker requested referral to SIEEB and noted Walmart was at a loss to understand how it violated any rules or regulations governing self-insurance in Ohio.

Complaint No. 1001519499 came before the Self-Insuring Employers Evaluation Board on July 15, 2020.

After review and discussion, it is the decision of the Board to uphold the June 11, 2020 decision of the Administrator's Designee.

R.C. 4123.35 requires self-insuring employers to pay compensation and furnish services 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.

Ohio Adm.Code 4123-19-03(K) sets forth the minimal level of performance as a criterion for granting and maintaining the privilege to pay compensation and benefits directly. Paragraph (7) provides a self-insuring employer shall pay all compensation as required by the workers' compensation laws of the state of Ohio and 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.

As found by Designee [REDACTED], an award of permanent total disability compensation under R.C. 4123.58(A) is designed to compensate an injured worker for a complete loss of earning capacity by guaranteeing him or her a stream of income for life. Payment of ongoing permanent total disability compensation is to be made in biweekly installments pursuant to Ohio Adm.Code 4123-3-10(A)(2)(b). Further, although Ohio Adm.Code 4123-3-10(A)(4) provides payment of compensation through direct deposit or debit card is the standard method of payment delivery, such mechanism of payment does not absolve Walmart of its obligation to pay permanent total disability benefits in a biweekly manner.

While Walmart has continually met its obligation to pay permanent total disability benefits to Ms. [REDACTED], Walmart has undeniably failed to timely make biweekly permanent total disability payments on several occasions. For this reason, the Board finds Walmart in violation of Ohio Adm.Code 4123-3-10 and therefore finds Complaint No. 1001519499 valid and resolved.

This action is based upon the motion made by Ms. Wilson, seconded by Mrs. Gillmor, and voted on as follows:

SELF-INSURING EMPLOYERS EVALUATION BOARD

E-SIGNED by Karen Gillmor
on 2020-07-30 16:31:01 GMT

Karen L. Gillmor, Chairman	YES
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E-SIGNED by Carol Wilson
on 2020-07-29 14:48:08 GMT

Carol A. Wilson, Member	YES
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E-SIGNED by Tommie Jo Brode
on 2020-07-29 15:20:19 GMT

Tommie Jo Brode, Member	NO
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DATE MAILED: (Day) DAY OF (Month), 2020