

# 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:

**American National Red Cross (Employer), Risk No. #20004000**

**And**

[REDACTED]

## Complaint No. 1394361

[REDACTED]

American National Red Cross  
431 18<sup>th</sup> Street Northwest  
Washington, DC 20006

Michael A. Bruno  
405 Madison Avenue, Suite 1200  
Toledo, OH 43604-1223

Dinsmore & Shohl, LLP  
191 W. Nationwide Blvd, Suite 300  
Columbus, OH 43215

Sedgwick Claims Management Services, Inc.  
P.O. Box 14661  
Lexington, KY 40512-4661

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[REDACTED] was injured on [REDACTED] and the claim has been allowed for slap tear of the right shoulder, right shoulder strain, and unspecified injury of the right shoulder and upper arm.

On July 18, 2019, the Injured Worker underwent surgery performed by [REDACTED], M.D. Following surgery, Dr. [REDACTED] did not provide restrictions as he believed light-duty work was not available. On September 19, 2019, the Employer contacted Dr. [REDACTED] to inform him light-duty work was available and to request he provide work restrictions. Dr. [REDACTED] provided restrictions of no lifting, pushing, or pulling more than ten pounds and no overhead activity.

The Employer offered the Injured Worker light-duty work via certified letters dated September 17, 2019 and September 24, 2019. On September 27, 2019, the Employer stopped payment of temporary total disability compensation because the Injured Worker did not respond to the light-duty job offers.

On October 15, 2019, the Injured Worker's representative informed the Employer that the job offer letters were sent to an incorrect address and the Employer reinstated temporary total disability compensation. On the same day, the Employer sent a light-duty job offer to the Injured Worker via certified mail. The Employer again stopped payment of temporary total disability compensation after October 20, 2019. The Injured Worker returned to work on October 29, 2019.

In a District Hearing Officer order issued February 5, 2020, the District Hearing Officer granted a closed period of temporary total disability compensation from October 20, 2019 through October 28, 2019 and found the Injured Worker returned to work on October 29, 2019. The District Hearing Officer noted the Employer argued at hearing that during the awarded period of compensation the Employer submitted light duty job offers to the Injured Worker, but the Injured Worker testified she did not receive the offers timely. The District Hearing Officer denied temporary total disability compensation from November 12, 2019 through the date of hearing with a finding there was insufficient medical documentation to support temporary total disability for the allowed conditions. No appeal was filed from the order.

In a SI-28, Filing of an Allegation Against a Self-Insured Employer, dated June 3, 2019, the Injured Worker alleged the Employer inappropriately contacted her surgeon seeking to increase or change her restrictions to bring her back to work, terminated temporary total disability compensation without prior notification, and harassed her throughout her claim.

A copy of the complaint was sent to the Employer on October 16, 2019, with instructions to respond within 14 days.

In a letter dated October 30, 2019, Sedgwick Claims Management Services, Inc. (Sedgwick) responded to the complaint. Sedgwick acknowledged Dr. [REDACTED] was contacted and informed the Employer had light-duty work available. Sedgwick also acknowledged requesting Dr. [REDACTED] provide restrictions, if Dr. [REDACTED] felt the Injured Worker would be able to return to work in a modified capacity. Sedgwick asserted Dr. [REDACTED] office provided work restrictions that the Employer was able to accommodate. Sedgwick noted job offers were sent to the Injured Worker on September 17, 2019 and September 24, 2019, but that the Injured Worker did not respond. Because no response was received, temporary total disability compensation was suspended as of September 27, 2019. Sedgwick further acknowledged it was informed on October 15, 2019 that the job offers were sent to the wrong address and asserted that upon receipt of such information, compensation was reinstated. Sedgwick also noted a new light-duty job offer was sent to the Injured Worker on October 15, 2019.

In a letter dated October 30, 2019, [REDACTED], Self-Insured Department External Auditor, found the complaint invalid. Ms. [REDACTED] noted that once the Employer was informed the job offers had been sent to the incorrect address, the Employer reinstated temporary total disability compensation.

In an e-mail dated November 5, 2019, the Injured Worker requested reconsideration of the finding the complaint was invalid.

In a letter dated March 2, 2020, the Administrator's designee, [REDACTED], found the light-duty job offers failed the minimum standard for presentation of a legally sufficient light-duty job offer. Therefore, Ms. [REDACTED] found the complaint valid and resolved.

In a letter dated March 11, 2020, the Employer's attorney, Mike Squillace, requested referral to SIEEB. Mr. Squillace first asserted the Bureau of Workers' Compensation was without jurisdiction over the complaint as it involves a matter concerning the Injured Worker's right to compensation. Mr. Squillace asserted the Injured Worker's later acceptance of a light-duty job offer rendered the complaint moot and noted the Injured Worker's Motion requesting temporary total disability was adjudicated by a District Hearing Officer. Mr. Squillace disputed Ms. [REDACTED] finding the light-duty job offer was deficient and stated the issue was resolved at the February 5, 2020 hearing and asserted the only deficiency was that the offer was not received by the Injured Worker. Mr. Squillace asserted that if the light-duty job offer was deficient, the hearing offer would have so found. Mr. Squillace concluded it is the duty of the Industrial Commission, not the Bureau of Workers' Compensation, to determine the sufficiency of the light-duty job offer.

After review and discussion, the Board finds the sufficiency of the light-duty job offers, and the authority of the Board to address such issue, need not be addressed. Instead, the Board's focus is on the fact that when the Employer stopped payment of compensation on September 27, 2019, the written light-duty job offers had not been received by the Injured Worker because the offers were sent to an incorrect address. The Board finds termination of compensation under such circumstances inappropriate. For this reason, the Board finds Complaint 1001394631 valid and resolved.

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

#### **SELF-INSURING EMPLOYERS EVALUATION BOARD**

E-SIGNED by Karen Gillmor  
on 2020-07-14 20:32:03 GMT

Karen L. Gillmor, Chairman	YES
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E-SIGNED by Carol Wilson  
on 2020-07-14 16:52:27 GMT

Carol A. Wilson, Member	YES
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E-SIGNED by Tommie Jo Brode  
on 2020-07-14 18:28:20 GMT

Tommie Jo Brode, Member	YES
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DATE MAILED: 15th DAY OF July, 2020