The Ohio Self-Insurers Association

NEWSLETTER

News that you can use Vol. 1, Issue 1 • Summer 2007

In This Issue:

FEATURED ARTICLE
A message from BWC Administrator Marsha P. Ryan 1

OSIA "NUTS AND BOLTS" PROGRAM 2

DATES TO REMEMBER 2

OSIA ANNUAL CONFERENCE 3

UNDER REVIEW
Before the BWC 5
Before the Industrial Commission . . 5
Before the Courts 5

CASE LAW SUMMARIES 5

SIEEB HEARING SUMMARIES 7

ON THE MOVE 10

WELCOME
The OSIA's Newest Members 11

OSIA BOARD OF MANAGERS 11

FEATURED ARTICLE

A MESSAGE FROM BWC ADMINISTRATOR MARSHA P. RYAN

After more than 15 years of service at American Electric Power, I understand the challenges that self-insuring employers face on a daily basis. Protecting your workforce in the face of rising healthcare costs is difficult, particularly in an ever-changing global economy.

Uncertain workers' compensation rules and inconsistent policies should not add to these challenges. Instead, the Ohio Bureau of Workers' Compensation should seek to become a stable, trusted component of Ohio's overall economic environment.

As I take the helm at the BWC, instilling trust and developing a stable system will be critical to the future success of this agency. It will also be an important, contributing factor to the future success of Ohio's economy.

To do this, the BWC must professionalize its operations by focusing on ethics and accountability. Equally important are consistent policies and ensuring that those policies are easily understood by our customers. Finally, the BWC must establish a fair and equitable system that encourages economic growth while properly protecting those injured on the job.

The Self-Insured Employer Guaranty Fund, for example, must be secured by using fair and consistent policies that are easily understood. The fund was designed to protect workers and businesses in the event that a company becomes insolvent and cannot cover its workers' compensation costs. Protection of this fund is important and the rules to do so must be applied fairly.

At the same time, however, the BWC must be sensitive to the challenges that Ohio companies face in today's global economy. We must maintain consistent polices that are fair, but we must also understand that unique situations call for creative solutions.

It is my goal that when challenges arise, the BWC and the self-insured community will work together to foster a candid, productive exchange of ideas. Cooperation and a productive dialog such as this will help to facilitate sound solutions to difficult business dilemmas.

At its core, the BWC protects injured workers from hardship, while also protecting state-fund employers from

lawsuits that could result in unexpected financial loss. For self-insured companies, the BWC must fairly oversee self-managed claims and provide consistent, creative solutions to help maintain the Self Insured Guarantee Fund.

In service to all its customers, the BWC must work to protect Ohio's injured workers, avoid unnecessary impediments to growth, and cultivate a healthy, productive economy that benefits all Ohioans.

"NUTS AND BOLTS" PROGRAM

Back by popular demand, the OSIA will once again present a program designed especially for the newcomer to the Ohio workers' compensation system. The educational program will be offered on September 28, 2007 at the Quest Business Center, located conveniently just off the Polaris Parkway in Columbus.

This program will be an introduction to Ohio workers' compensation for new administrators of self-insured programs. The seminar will specifically focus on how to manage workers' compensation claims, administer a workers' compensation program, and will address those areas and forms unique to Ohio. The program will be taught by administrators and managers who have practical, first-hand experience in claims administration.

More information regarding the program's content and registration has been posted on the OSIA website.

NUTS AND BOLTS PROGRAM TOPICS

8:00 – 9:00	Registration
9:00 – 9:15	INTRODUCTION
9:15 – 9:30	CLAIMS PROCESS
9:30 – 9:45	FORMS
9:45 – 10:30	HEARING PROCESS
10:30 – 10:40	Break
10:40 – 10:55	TEMPORARY TOTAL DISABILITY (TTD)
10:55 – 11:05	WAGE LOSS (WL)
11:05 – 11:20	PERMANENT PARTIAL DISABILITY (PPD)
11:20 – 11:35	PERMANENT TOTAL DISABILITY (PTD)
11:35 – 11:45	DEATH BENEFITS
11:45 – 12:00	DISABLED WORKER'S RELIEF FUND (DWRF)
12:00 – 1:30	Lunch on your own
1:30 – 2:00	BWC/IC
2:00 – 2:15	VIOLATION OF SPECIFIC SAFETY REQUIREMENTS
2:15 – 2:30	INTENTIONAL TORT
2:45 – 3:00	MISCELLANEOUS INFORMATION
3:00 – 3:30	Questions & Discussions

DATES TO REMEMBER

OSIA Nuts and Bolts
September 28, 2008
Quest Business Center
Columbus, OH 43240

OSIA Education Day
January 18, 2008
Quest Business Center
Columbus, Ohio

National Council of Self-Insurers 2008 Annual Conference
June 1-4, 2008
Naples Grande Resort & Club
Naples, Florida

OSIA 2008 Annual Conference
June 18 - June 22, 2008
Renaissance Hotel
Columbus, Ohio 43215

OSIA 2009 Annual Conference
June 17 - June 19, 2009
The Lodge at Sawmill Creek
Huron, Ohio

OSIA ANNUAL CONFERENCE

From June 20-22, the OSIA hosted its 2007 conference at the Hilton Cincinnati Netherlands Plaza. Following the theme of "Workers' Comp and All That Jazz", the distinctive flavor of New Orleans was brought to the educational, networking and social opportunities that have made the OSIA Conference Ohio's premier self-insured employers' conference and seminar.

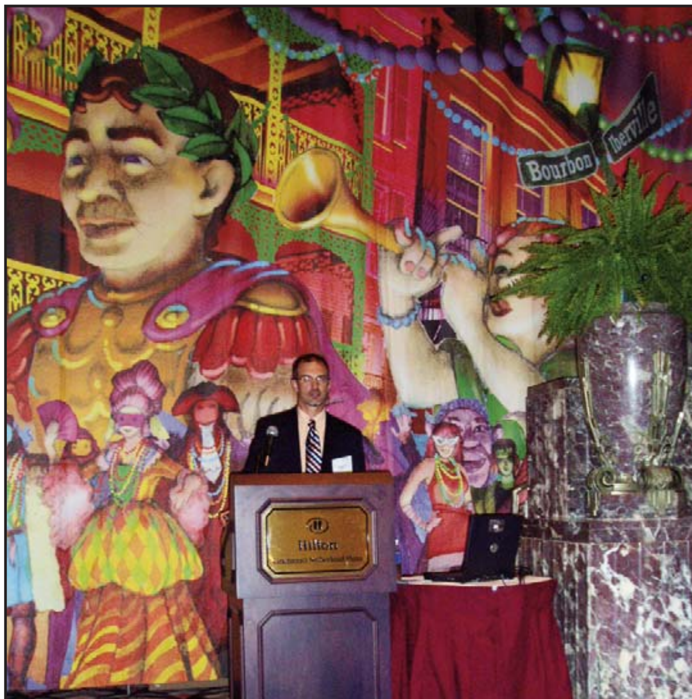
As in the past, the program was designed to include the variety of information that is needed and helpful for the workers' compensation administrator to successfully manage a self-insured program. Drs. David Randolph and Trang Nguyen discussed how disability may be prevented from a medical standpoint. The doctors' presentation was followed then by Cathy Duhigg, Holly Moyer and Teri Shin who presented a multidiscipline approach to managing disability. A key to managing injuries and disabilities is understanding the mechanics of an injury and the efficacies of treatment modalities. Dr. Paul Hogya discussed the mechanics of back injuries from a medical perspective and presented a critical analysis of the various methods of treating such conditions. He also explained the "Miller" criteria for measuring treatment efforts.

Not all claim disputes may be resolved amicably, of course, and once again the Industrial Commissioners and a hearing officer discussed the adjudicatory process, what's on the horizon, and how to effectively state a case. Along that line, George Wilkinson and Dr. Marc Whitsett demonstrated the effective use of the medical deposition.

Workers' compensation and disability management cannot be viewed in vacuum and presenters from Buckingham, Doolittle & Burroughs staged a mock trial involving workers' compensation, FMLA and ADA issues. There are a variety of administrative matters that are always of importance to self-insuring employers, chief among them currently the Bureau's setting of assessment rates and protection of the Guarantee Fund. David Boyd gave a presentation on those topical issues.

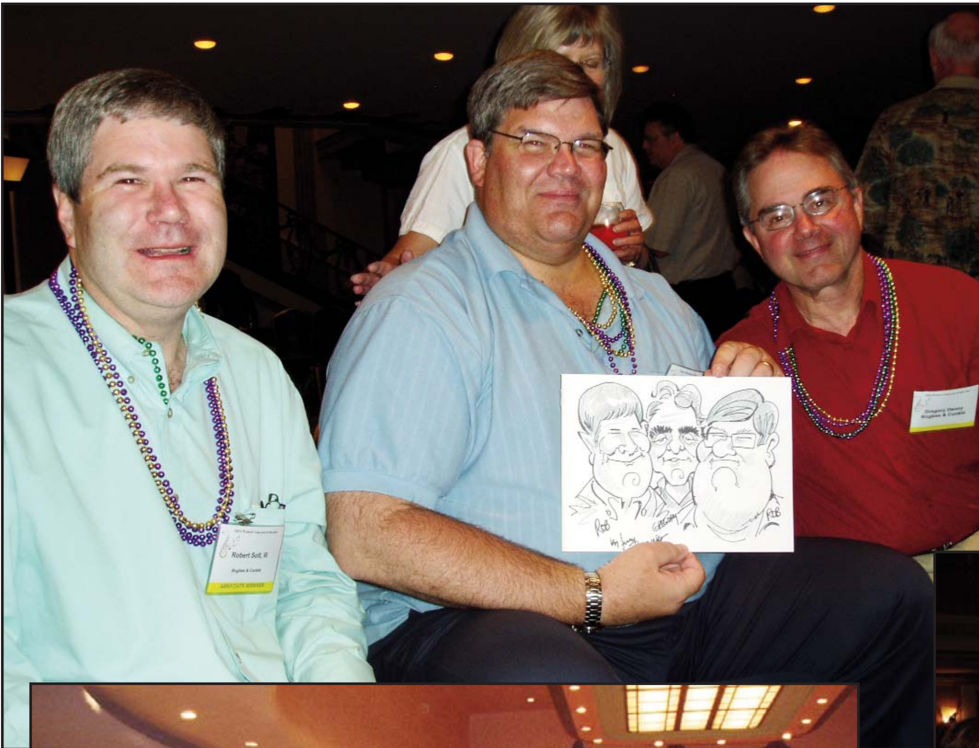
Finally, workers' compensation management requires the administrator to be cognizant of a number of areas such as reserving, mergers and acquisitions and divestitures, in evaluating claims for settlement, and there were presentations given on each. Few, if any, programs offer the breadth of substantive information as the OSIA as is proud to present annually.

It was not all work, of course. The festivities, food, and feel of New Orleans gave rise to opportunities for networking and socializing. The program was announced with the theme Roulez les Bon Temps. The good times rolled indeed.



Dave Boyd of the Bureau's Self-Insured Department addresses the OSIA Annual Conference.

A Krewe enjoys the formal Mardi Gras Ball.



Wednesday night at Jackson Square North.

Jim Sharpe received the Patrick O'Neill Award.

Drs. Randolph and Nguyen.

A conclave of Commissioners past and present.

UNDER REVIEW

BEFORE THE BWC

The Bureau of Workers' Compensation Rule 4123-19-03(K), the rule that governs the time for the payment of compensation. The rule presently provides that in contested claims, payment is to be made in accordance with R.C. 4123.511, which mandates that payment be made on the date of receipt of an order. It being impossible to pay immediately upon receipt, the Bureau has kept the 21 day pay period that was in the predecessor rule and marks the same 21 day period by which payment must be made upon receipt of a Form C-84 in uncontested claims. S.B. No. 7 requires a self-insured employer to hold payment up to 30 days in cases in which there is an attorney representative and a child support order. Obviously, there was a conflict. The rule provides that in cases in which there is a support order, the old guidelines need not be followed. The rule was approved by the BWC Oversight Commission.

BEFORE THE INDUSTRIAL COMMISSION

The Rules Advisory Group of the Industrial Commission is currently conducting a regular review of certain rules. Those rules under review include:

4121-3-09 Conduct of hearings before the commission and its staff and district hearing officers

4121-3-10 Awards

4121-3-13 Disputed self-insuring employer claims

4121-3-15 Percentage of permanent partial disability

4121-3-26 Effect of rules

4121-15-10 Standards of conduct for adjudicators

4125-1-01 Compensation for wage losses

The latter rule is a joint rule of the Industrial Commission and Bureau of Workers' Compensation. Any significant changes will appear on the OSIA website.

BEFORE THE COURTS

There are two cases pending before the Ohio Supreme Court that will be of interest to self-insured employers. The first is the case of Douglas Groch v. General Motors Corporation, et al. Mr. Groch was employed by General Motors Corporation (GM) and was injured when a trim press that he was operating came down on his right arm and wrist. He sued his employer, GM, on an intentional tort theory and the manufacturer of the press on a products liability theory. The case was removed to the United States District Court and then certified to the Ohio Supreme Court to answer certain constitutional questions arising under the Ohio Constitution. Specifically, the Court certified six questions involving Senate Bill No. 80, the tort reform law, and three questions as to the constitutionality of the Ohio workers' compensation subrogation statute. The challenges to the subrogation statute argue that the law violates: Section 16, Article I of the Ohio Constitution (due process); Section 19, Article I of the Ohio Constitution (unlawful taking of private property); and Section 2, Article I of the Ohio Constitution (equal protection). The OSIA joined with other employer groups in filing a friend of the court brief arguing for the constitutionality of the subrogation statute.

Also pending before the Court is the case of State, ex rel. Gross, v. Industrial Commission. In this case, an employee blatantly disregarded warnings and instructions regarding the proper method of cleaning a vessel. As a direct result of his misconduct, he injured himself and two co-workers and his employment was terminated. The Industrial Commission held that he was disqualified from temporary total disability compensation under the voluntary abandonment of employment rule. That rule holds that where an employee's voluntary act (such as retirement, misconduct, quitting work) is the reason for his economic loss, he is not entitled to disability compensation under the workers' compensation law for that economic loss. The Supreme Court upheld the Industrial Commission's decision. The Ohio Academy of Trial Lawyers and others requested that the Court reconsider the case and the Court has agreed. Irrespective of the merits of the Gross case, the fundamental principle of voluntary abandonment must be upheld. That is, where the reason for an injured worker's loss of wages is his voluntary act, there is no causal connection between the industrial injury and the loss, and indemnity compensation should not be paid. The Gross case simply is an example of that. If the facts of the Gross case do not support a finding of voluntary abandonment (i.e., the economic loss was not caused by the industrial injury), so be it. The OSIA joined with other employer groups in arguing that what is important is that the Court not disturb the fundamental principle underlying the voluntary retirement rule.

CASE LAW SUMMARIES

Temporary Total Disability (TTD)

State, ex rel. Wagner, v. VI-CAS Manufacturing Co., Slip Copy, 2007 WL 1447805 (Ohio Tenth App. Dist.) (May 17, 2007)

Mr. Wagner sustained an injury to his head and neck on May 2, 2002. He sought treatment with a Dr. Wells who became his attending physician. In January 2003, Dr. Wells prepared two C-9 requests for a consultation and a series of epidural

steroid injections. The claimant underwent two epidural injections in February and March of 2003. On March 28, 2003, Dr. Wells requested approval for a Functional Capacity Evaluation which was conducted on April 3, 2003.

Dr. Wells completed Forms C 84 disabling the claimant from January 14, 2003 through an estimated May 19, 2003. TTD was granted by the Bureau and a District Hearing Officer. On appeal, a Staff Hearing Officer denied benefits from January 15, 2003 through April 28, 2003 because the injured worker was not actually seen by Dr. Wells during that period. The claimant filed a court challenge arguing that the Industrial Commission abused its discretion in denying TTD for the period of January 15, 2003 through April 28, 2003.

In a Decision dated October 30, 2006, the Magistrate found that the SHO misapplied the holding in State, ex rel. Bowie, v. Greater Cleveland Regional Transit Auth. (1996), 75 Ohio St.3d 458, which prohibits an examining physician from rendering a disability opinion retrospective of the examination. The Magistrate distinguished Bowie, finding that Dr. Wells, as the treating physician, examined the claimant both before and after the period in question and was actively involved in the coordination of care during the period in question. As a result, the Magistrate recommended that the Court issue a full writ ordering the Commission to award TTD from January 15, 2003 through April 28, 2003. The Commission filed objections to the Magistrate's decision. The Court overruled the Commission's objections and granted a full writ ordering the payment of compensation.

State, ex rel. Omnisource Corp., v. Indus. Comm. of Ohio, (2007) 113 Ohio St.3d 303, 865 N.E.2d 41

On July 1, 2003, the claimant sustained an injury to his left knee during his employment with Omnisource. He was a commercial driver. The claimant worked until November 4, 2003 when he was taken off work by his treating physician. Thereafter, and based upon Forms C 84 from the treating physician, Omnisource began paying TTD. The claimant was charged with driving under the influence and on January 6, 2004, the claimant's driver's license was suspended. On January 15, 2004, the claimant pleaded not guilty and was granted driving privileges for work. Payments of TTD continued. On April 28, 2004, the claimant was convicted of driving under the influence. His sentence included a suspension of his license.

On May 10, 2004, Omnisource advised the claimant that he had to provide a valid commercial driver's license within two days or he would be terminated. As the claimant was unable to comply he was terminated effective May 13, 2004. Thereafter, Omnisource refused to pay further TTD based upon the claimant's discharge constituting a voluntary abandonment of his work. The claimant filed a motion seeking to compel Omnisource to reinstate compensation. A DHO granted the motion, reasoning that the claimant's discharge did not constitute a voluntary abandonment as he was already disabled at the time of his discharge. An SHO affirmed the order and the IC refused hearing. Omnisource filed a complaint in mandamus alleging that the Commission abused its discretion by awarding TTD following the claimant's discharge. The Magistrate agreed with the Commission's decision but granted a limited writ ordering the Commission to reconsider whether the claimant's second drunk driving conviction necessitated a lifetime ban on driving commercially. All parties appealed.

Reversing the appellate court's decision, the Supreme Court focused solely on the issue of whether the claimant was precluded from receiving TTD as a result of his termination; i.e., was receipt of compensation barred by the voluntary abandonment rule. The Court held that, pursuant to its decision in State, ex rel. Pretty Products, a claimant who is already disabled when terminated is not disqualified from temporary total disability compensation because a claimant cannot voluntarily abandon his position of employment if he is physically unable to work at the time of the separation. The claimant was, thus, held entitled to compensation.

State, ex rel. Alston, v. Indus. Comm. of Ohio, Slip Copy, 2007 WL 1334526 (Ohio App. Tenth Dist.) (May 8, 2007)

The claimant was exposed to asbestos while employed with LTV. He stopped working in 1997. In1999, the claimant filed a claim application (FROI-1 alleging an asbestos related lung disease. On November 21, 2005, the Trumbull County Court of Common Pleas journalized a judgment entry granting the claimant the right to participate in workers' compensation benefits for the condition of "asbestos related pleural disease." In December 2005, the claimant filed a motion requesting TTD from May 1, 1997 through the present and continuing. TTD for all periods prior to December of 2003 was denied based upon R.C. 4123.52, the two year limitations period. The Commission denied TTD from December 5, 2003 through November 17, 2005 due to a lack of evidence that the claimant was TTD during that period. TTD from November 17, 2005 forward was granted.

The claimant filed a court challenge seeking an order compelling the Commission to grant both periods of TTD. The claimant argued that the filing of a FROI-1 should be construed as a request for compensation, thereby tolling the statute of limitations. The claimant further contended that the Commission abused its discretion in denying TTD from December 5, 2003 through November 17, 2005. The Magistrate recommended that requested relief be denied.

With respect to the statute of limitations issue, the Court reasoned that no one was put on notice that the claimant was

seeking TTD simply because filed an FROI-1 seeking recognition of his claim and denied the request. With respect to the period from December 5, 2003 through November 17, 2005, the Court, in reviewing the record, found that there was conflicting medical evidence on file from the treating physician and that, as a result, the Commission could "legitimately conclude" that there was insufficient evidence to substantiate the request for TTD.

4123.90 Retaliatory Discharge

Feurer v. Ohio Heartland Community Action Commission, Slip Copy, 2007 WL 1390674 (Ohio Third App. Dist.) (May 14, 2007)

Plaintiff Feurer sustained an injury to his knee on November 25, 2003. He sought treatment the following day and reported the injury on December 1, 2003, his next scheduled work day. Although contested by the employer, Plaintiff's claim was allowed by the Bureau on December 24, 2003. On January 26, 2004, Plaintiff met with the employer to determine his ability to perform his job as a bus driver. Plaintiff assured the employer he was able to perform his job and signed a statement to that effect. Thereafter, the employer sought a list of all of Plaintiff's current medications which included a "pain pill." As a result, the employer determined that Plaintiff could not safely perform his job and terminated him effective February 2, 2004.

On July 29, 2004, Plaintiff filed a complaint alleging: retaliatory discharge in violation of R.C. 4123.90; wrongful discharge in violation of general Ohio public policy; wrongful discharge in violation of public policy as established in R.C. 4123.56; unlawful employment discrimination in violation of R.C. 4112.01; and wrongful discharge in violation of public policy as set forth in R.C. 4112.01. On August 25, 2006, the trial court granted summary judgment in favor of Heartland. Feurer appealed, arguing that the trial court erred in disregarding his affidavit and in granting summary judgment as to Feurer's causes of action.

Reversing the trial court, the Court of Appeals for Marion County found that there was a question of material fact as to whether Plaintiff was asked to list his medications as claimed by Heartland. With respect to the remaining assignments of error, the Court found that the closeness in time between the filing of his claim and his termination could be evidence of retaliatory action and that there were genuine issues of material fact as to whether the reasons for termination were legitimate or pretextual. In addition, the Court found that Plaintiff was terminated while on TTD for a work injury and, again, there were genuine issues of material fact as to the reason for the termination. Finally, the Court found that there were genuine issues of material fact as to whether Plaintiff was actually disabled and unable to perform his job or was wrongfully perceived as disabled and terminated contrary to law. Because there were genuine issues of material fact, summary judgment was deemed inappropriate and the case was remanded for further proceedings.

SELF-INSURING EMPLOYERS EVALUATION BOARD

HEARING SUMMARIES

Complaint No. 13462

Decided: November 7, 2005

Issue:

The injured worker alleged that the self-insuring employer failed to pay temporary total disability compensation as ordered by a staff hearing officer. The employer had asked for additional information beyond that which was on file at the time of the issuance of the order to pay.

Factual Background:

On September 22, 2003, a staff level hearing was held on the questions of an additional allowance and the payment of temporary total disability compensation. The staff hearing officer granted the additional allowances and ordered temporary total disability compensation paid from April 2, 2003 to the date of the hearing and “to continue upon submission of competent proof.” The initial period of benefits was based on a Form C-84 authored in August, 2003. The self-insuring employer paid temporary total disability compensation through September 14, 2003. The employer did not pay for the period of September 15, 2003 through September 22, 2003. The employer, through its third party administrator, notified the injured worker’s treating physician that it required confirmation of the estimated return to work date on a Form C-84. Clarification was provided by the attending physician and submitted to the employer. The employer then denied payment stating that the estimated return to work date was beyond a three month period and that the employer required a progress note. The self-insuring complaint followed.

Resolution:

The Self-Insuring Employers Evaluation Board (the "Board") did not find the employer's argument, that it was entitled to withhold payment pending clarification of the August, 2003 C-84, to be persuasive. That is, the employer's challenge to the adequacy of the C-84 was not a valid basis on which to withhold compensation. The order of the staff hearing officer was based on the same Form C-84. The Board wrote that the employer's opportunity to challenge the sufficiency of the Form C-84 was at the September 22 hearing, or on further appeal, but not by refusing to follow the order. The complaint was, thus, found to be valid.

Complaint No. 14180

Decided: November 16, 2005

Issue:

The complaint alleged that the self-insuring employer failed to pay compensation in a timely manner. The underlying complaint was determined to be invalid. However, the Bureau's Self-Insured Department found a valid complaint on the grounds that the employer failed to respond to the underlying complaint in a timely manner.

Factual Background:

The complaint was filed on October 5, 2004. The Self-Insured Department sent notification of the complaint to the employer's Minnesota address on October 13, 2004. Notification was also sent to the work location, the corporate office, and to the third party administrator. The employer's legal representative was not named in the notice, however, and was not provided with a copy. Counsel for the employer responded to the complaint on November 9, 2004. In the response it was asserted that neither the lawyer nor the law firm received notification of the complaint. An affidavit to that effect was filed. While the BWC SI Department found the injured worker's self-insured complaint to be invalid with regard to the allegation of the untimely payment of compensation, the SI Department found a valid complaint because the employer did not respond within 14 days.

Resolution:

The Board found the complaint to be invalid. The Board found that notice to the legal representative was dictated by basic principles of due process. The Board also relied on State, ex rel. Nicodemus, which provides that notice is to be provided to the legal representative, even when notice has been supplied to the TPA. The Board noted that supplying notice of the complaint to the legal representative should reduce the frequency of employee defenses claiming a failure to receive notice. The Board made it clear that nothing in its order should be construed to require the BWC's Self-Insured Department to send notice to every address of the self-insured employer with multiple locations. "This order only requires that when a self-insured complaint is filed, and Self-Insured Department is aware or should be aware that the employer's represented by legal counsel, a copy of the Notice of Filing of Self-Insured Complaint must be sent to the employer's attorney."

Complaint No. 14403

Decided: November 7, 2005

Issue:

The BWC's Self-Insured Department found a valid complaint because of the employer's failure to provide proper reimbursement to a provider. The SI Department had "construed" a request for assistance to be a complaint. The Board reversed.

Factual Background:

A rehabilitation group submitted bills for services to the employer's third party administrator. Based on the reimbursement codes, the bills were paid at the BWC reimbursement rate. The reimbursement codes as published by the BWC were plainly erroneous. The rehabilitation provider contacted the third party administrator but received no response. The provider then contacted the BWC asking for assistance regarding the reimbursement rate. The BWC Self-Insured Department interpreted the provider's request to be a self-insured complaint and found the complaint to be valid.

Resolution:

The Board found that the intent of the provider's communication was not to file a self-insured complaint but, rather, to obtain action from the BWC to correct its earlier error. Further, there was no basis for finding a valid complaint against a self-insuring employer which paid pursuant to the BWC's reimbursement rate, even if the reimbursement code error was obvious.

Complaint No. 14541

Decided: May 8, 2006

Issue:

The SI complaint alleged that the employer improperly calculated the injured worker's full weekly wage. A complaint was filed before a hearing was held on the issue. The Self-Insured Department found a valid complaint. The Board reversed.

Factual Background:

The claimant was injured in 2002. However, the claimant did not lose time from work until 2005. The employer calculated the full weekly wage in accordance with its interpretation of the Bureau and Commission policy statement. The injured worker had missed work for a considerable amount of time prior to her industrial injury due to non-industrial reasons. However, the injured worker had been continuously employed. The question came down to whether "worked" and "continuously employed" meant the same thing in the agencies' policy statement. The injured worker argued that "continuously employed" should be equated with "work" within the context of the policy, that those weeks she did not work prior to her injury should be excluded from the calculation of the full weekly wage, and that she should be entitled to the alternative calculation of her full weekly wage. The employer disagreed, notified the injured worker of the dispute, and the matter was referred to the Industrial Commission for hearing. Prior to the matter's being set for hearing, a self-insuring complaint was filed alleging that the employer had improperly set the full weekly wage. The BWC's Self-Insured Department found the complaint to be valid. The employee appealed.

Resolution:

The Board found the complaint involved a disputed issue that was properly set before the Industrial Commission hearing officers. The Board found that the employer had not violated any statute, rule or order of the Commission and found that the complaint process should not be used for matters that are properly the subject of hearing process for disputed issues. The Board found the complaint to be invalid, even though the Bureau of Workers' Compensation Self-Insured Department found a valid complaint. To hold otherwise, the Board wrote, would mean that the Board would be in the position of setting the full or average weekly wage, which is plainly not within its jurisdiction.

Complaint No. 14675

Decided July 10, 2006

Issue:

This matter came before the Board on a complaint alleging that the employer failed to provide copies of an independent medical examination report to the injured worker in a timely manner.

Factual Background:

On February 9, 2005 the injured worker filed a Form C-84 requesting temporary total disability compensation for a period beginning January 7, 2005 to May 1,2005. The injured worker underwent an MRI on February 1, 2005. The employer disputed the payment of compensation and scheduled the claimant for an independent medical examination with Dr. Rutherford on March 28, 2005. On June 29, 2005, the employer's representative sent a letter to the injured worker stating that the report of Dr. Rutherford was not complete pending a review of the MRI results. On July 19, 2005 the injured worker filed a self-insuring complaint asserting that the employer had not provided him with a copy of the report of Dr. Rutherford. The claimant's counsel had made multiple requests to obtain a copy of Dr. Rutherford's report. Specifically such requests were made on June 9, June 14, and August 26, 2005. It was not until approximately one hour before the September 15, 2005 hearing that the claimant's counsel received the original report of Dr. Rutherford, dated March 28, 2005. The attorney for the employer confirmed that the employer received Dr. Rutherford's initial report on or about April 24, 2005. The assertion was that an MRI was to have been reviewed by Dr. Rutherford and at that time his report would have been completed.

Resolution:

The Board found the complaint to be valid. Rule OAC 4123-03-09(C)(5)(a) provides the right to have the injured worker examined but, also, requires the report to be submitted to the claimant's representative on receipt. "The Board [found] the employer [had] clearly violated the rule by delaying the release of the report from the independent medical examination."

[This also comports with the Supreme Court's later issued decision involving a disciplinary matter, Dayton Bar Association v. Korte].

Complaint No. 15395

Decided: March 14, 2007

Issue:

A self-insuring complaint was filed alleging that the employer improperly terminated the payment of permanent total disability compensation on receipt of a favorable decision from an appellate court.

Factual Background:

The Industrial Commission awarded the claimant permanent total disability compensation. The employer challenged the decision in an action in mandamus. On August 1, 2006 the Court of Appeals for the Tenth Appellate District ordered the Industrial Commission to vacate its order awarding permanent total disability compensation and to rehear the application. The injured worker filed an appeal to the Supreme Court and the Commission did not comply with the appellate court's decision because the matter was on appeal. The employer stopped paying disability compensation as of August 1, 2006, based on the court of appeals' decision. A self-insuring complaint was filed.

Resolution:

The Board in a two-to-one decision found a valid complaint, reasoning that until the Commission issued a decision in compliance with the Court's order, the employer was required to continue payment despite the Court's finding until the Commission's order constituted an abuse of its discretion.

This summary of the decisions of the Self-Insuring Employers Evaluation Board ("SIEEB") is the first compilation of such decisions to appear in the OSIA newsletter. The editors anticipate this being a regular feature. We have obtained decisions issued in the last three calendar years and will summarize those that we believe to be the most instructive and important to the self-insured community. Readers are invited to submit any decisions that they have received or become aware of for consideration for publication.

ON THE MOVE

Gary M. DiCeglio

On July 1, 2007, Gary M. DiCeglio became Chairman of the Industrial Commission of Ohio. Commissioner DiCeglio replaced Commissioner Patrick Gannon, who served the limit of two terms as the employee representative and had been appointed Chairman of the Industrial Commission of Ohio by Governor Strickland. Chairman DiCeglio worked for 27 years at Goodyear in Akron, graduated cum laude from the University of Akron School of Law, and, most recently, was the Director, Compensation and Safety, of the Ohio AFL-CIO.

Marsha Ryan

In May, Marsha Ryan was appointed Administrator/CEO of the Ohio Bureau of Workers' Compensation, replacing Acting Administrator/CEO Tina Kielmeyer. (Please see lead story.) Ms. Kielmeyer continues to serve in the Ohio Bureau of Workers' Compensation in the position of Chief of Customer Services. Her duties will include oversight responsibility for the Self-Insured Department, Safety and Hygiene Division, claims policy, and the field service offices.

Robert Coury

Bob Coury joined the BWC team as Chief of Medical Policy and Compliance. A former prosecutor with a background in accounting, Mr. Coury will oversee medical services and will serve as the Chief Ethics Officer for the BWC. The Medical Policy and Compliance Division will also oversee the Special Investigations Department.

Valerie Ogg

Valerie Ogg has retired from Bob Evans Farm, Inc. Val served as an OSIA Board member for over 16 years and was the President of the OSIA for two years. The Board wishes Val all the best on her retirement and extends the thanks of the entire association for Val's service.

Patrick Gannon

Pat Gannon has been named Executive Director of the IC. Mr. Gannon is a former chair of the Industrial Commission.

WELCOME - THE OSIA'S NEWEST MEMBERS

Trinity Medical Center East
Kelly Wellington

Confidential Investigative Services, Inc.
Michael Lewis

JTM Food Group
Larry Yanca

Republic Engineered Products, Inc.
F. Wayne Fox

Steptoe & Johnson PLLC
B. Toney Stroud

V & A Risk Services
Deborah Sandusky

Venia Innovations, LLC
Doug Blair

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Cooper Tire & Rubber Company

Denise Evans
CBS Personnel Holdings, Inc.

William Holt
Daimler Chrysler Corporation

Edward Opett
Greater Cleveland RTA

Bill Schick
Duke Energy

Mary Stacy
The Andersons