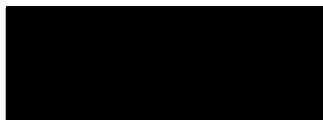


ORDER

**SELF-INSURING EMPLOYERS EVALUATION BOARD
INFORMAL CONFERENCE FINDINGS**

**IN THE MATTER OF: GAR HOLDINGS (EMPLOYER); RISK No. 20004057-0
AND
[REDACTED] (INJURED WORKER); CLAIM No. [REDACTED]
COMPLAINT No. 14821**



Mark A. Adams
261 West Johnstown Road
Columbus, Ohio 43230

Gar Holdings
ATTN Paulette Harris-Rogers
5000 Austell Powder Springs Rd. Ste 300
Austell, Georgia 30106

Vorys, Sater, Seymour and Pease LLP
ATTN Bradley Sinnott
52 East Gay Street
PO Box 1008
Columbus, Ohio 43216-1008

Frank Gates Service Company
ATTN Bruno Frank
PO Box 182364
Columbus, Ohio 43218

FOR THE EMPLOYER: Bradley Sinnott, Bruno Frank, Carol Ignat
FOR THE INJURED WORKER: Mark Adams
FOR THE ADMINISTRATOR: Michael Travis

This matter came before the Board on 2/22/2006, for informal conference on Complaint No. 14821, alleging that the self-insuring employer has not provided copies of the medical records to the injured worker as requested.

On behalf of BWC's Self-Insured Department, Mr. Travis summarized the complaint, noting that the injured worker's representative, Mark Adams sent a request for records dated 2/7/2005, along with a copy of his R2 card to the employer and the employer's third party administrator (TPA), Frank Gates Service Company. The letter requested all medical and indemnity records for the injured worker's claim from July 2004 to date in accordance with OAC 4123-19-03 (K) (9) and R.C. 4123.35. After no response from the employer or the TPA, the injured worker's representative sent a second request to both parties on 3/15/2005 indicating that he had not yet received a copy of the requested information. A third request was sent to both parties on 8/10/2005. Consequently, after no response from these three

requests, the injured worker's attorney filed the self-insured complaint on 10/12/2005. BWC's Self-Insured Department sent notification of the complaint to the employer's Austell, Georgia address as well as to the TPA, Frank Gates on 10/13/2005.

The TPA responded to the complaint on 10/28/2005 expressing its position that the complaint was invalid for several reasons. The TPA asserted that the complaint should be found invalid because the TPA attempted to fax the information on 3/18/2005 and because the injured worker did not inform the employer that Mr. Adams was representing him. Additionally, the TPA indicated that because the request was sent directly to the employer, the response was delayed because the person it was sent to had been on medical leave.

On 10/28/2005 BWC's Self-Insured Department found a valid complaint on grounds that the employer was in violation of R.C. 4123.35 and OAC 4123-19-03 (K)(9). The employer failed to make available for review all the employer's records pertaining to the claim, despite three written requests made by the injured worker's representative. Subsequently, the Self-Insured Department requested a hearing before the Board.

On 1/6/06, the injured worker's attorney sent a letter to the Board indicating that he had received the requested information on 11/28/2005, the matter was resolved and the informal conference was unnecessary. The Board, however, informed the parties that the informal conference would go forward as scheduled.

The Board received correspondence dated 2/21/2006 from attorney Bradley Sinnot indicating that his office was recently retained as counsel to the employer, and advised the Board he would be in attendance at the informal conference scheduled for 2/22/2006.

The employer's attorney acknowledged that the employer did not provide the requested information within the 72-hour requirement set forth in OAC 4123-19-03 (K)(9). He also indicated that the claim in question was from a location that the employer had closed. To rectify any potential problems with those claims, the files for the closed location have been moved to the employer's Mentor, Ohio facility. He also stressed the employer has no other violations in its workers' compensation program.

The Board finds that the employer is in violation of OAC 4123-19-03 (K)(9) which provides "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 Board also finds that the employer has remedied the complaint by providing the requested information to the injured worker's representative on 11/28/05. The Board further finds that the matter is resolved and the complaint valid. No further action is necessary at this time in view of steps taken by the employer to minimize future occurrence of the lack of action giving rise to this finding of a valid complaint.

For all of the above reasons, upon motion made by Mr. Wells, seconded by Mr. Sharpe, the Board finds Complaint No. 14821 to be valid.

A copy of this order shall be placed in the Self-Insured Department's file.

SELF-INSURING EMPLOYERS EVALUATION BOARD

Kevin R. Abrams
Kevin R. Abrams, Chairman YES

Wesley Wells
Wesley Wells, Member YES

James Sharpe
James Sharpe, Member YES

DATE MAILED: 17th DAY OF July, 2006