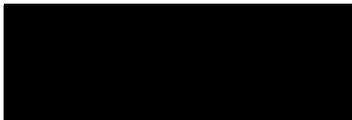


# ORDER

## SELF-INSURING EMPLOYERS EVALUATION BOARD FORMAL HEARING FINDINGS

IN THE MATTER OF: ST. ANN'S HOSPITAL (EMPLOYER); RISK No. 20003694-0  
AND  
[REDACTED] (INJURED WORKER); CLAIM No. [REDACTED]  
COMPLAINT No. 14455



David Lancione & Associates LLC  
ATTN David Lancione  
1041 Summit Street  
Columbus, Ohio 43201

St. Ann's Hospital  
Mt. Carmel West  
ATTN Tammie Hanson  
793 West State Street  
Columbus, Ohio 43229

Porter, Wright, Morris & Arthur, LLP  
ATTN Karl Sutter  
41 South High Street  
Columbus, Ohio 43215-6194

Cantlon Associates/Spooner Inc.  
ATTN Michelle Callahan  
450 W. Wilson Bridge Road, Suite 200  
Worthington, Ohio 43085

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**FOR THE EMPLOYER:** Karl Sutter  
**FOR THE INJURED WORKER:** David Lancione  
**FOR THE ADMINISTRATOR:** Michael Travis

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This matter came before the Board on 09/28/2005, for formal hearing on Complaint No. 14455, alleging that the self-insuring employer refused to pay medical bills ordered by a Staff Hearing Officer of the Industrial Commission on 10/30/2003. Specifically, the complaint referenced "28 office visits from 11/6/02."

The 10/30/2003 Staff Hearing Officer order addressed the injured worker's appeal of a District Hearing Office order from a hearing held 09/04/2003. The District Hearing Officer denied a C-86 filed 06/18/2003. The C-86 motion had requested the SI employer to authorize "the treatment requested by the claimant's treating physician on the attached C-9s." The Staff Hearing Officer included language that granted the C-9 filed 05/06/2003 "to the extent of the order" and stated "denial of the requested closed period of the treatment

from 8/13/02 through 11/5/02 is based on a lack of submission of a treatment plan to the employer prior to 11/05/02 as requested by the employer in their letter to Dr. Appell dated 8/05/02." Subsequently, a Staff Hearing Officer refused the injured worker's appeal on 11/19/2003. On 07/29/2004, a District Hearing Officer denied a C-86 filed 06/24/2004, finding the treatment requested was previously denied by the Staff Hearing Officer on 10/30/2003. On 9/15/04, a Staff Hearing Officer vacated the 7/29/04 District Hearing Office order, finding the matter "res judicata per the 10/30/03 Staff Hearing Officer order."

The injured worker filed a self-insured complaint on this matter on 03/25/2005 alleging that the self-insured employer has refused to pay the medical bills that were ordered paid by the Staff Hearing Officer order dated 10/30/2003. The BWC Self-Insured Department forwarded this complaint to the self-insuring employer on the same day. The employer responded on 03/28/2005, stating in part "the SHO decision does not order the payment of any dates of service, and in fact specifically denies treatment 8/13/02 through 11/5/02."

On 04/01/2005, the BWC Self-Insured Department found the self-insured complaint to be invalid stating that the 10/30/2003 Staff Hearing Officer order did not vacate the District Hearing Office order; the Staff Hearing Officer modified the order and did not grant payment. Therefore, no payment was granted, therefore the complaint is without merit.

The injured worker's representative requested reconsideration of these findings on 04/14/2005, arguing that the Staff Hearing Officer order granted the C-9 filed 05/16/2003 except for the treatment from 08/13/2002 through 11/05/2002. Therefore, the self-insuring employer was to authorize and pay for services from 11/06/2002 through 12/30/2002.

This request for reconsideration was forwarded to BWC's Administrator's Designee. On 04/28/2005, the Designee found the complaint to be valid, and found the self-insuring employer to be in violation of Revised Code §4123.511(I)(1) and Ohio Adm. Code 4123-19-03(K)(5), which require a self-insuring employer to pay medical bills as ordered by a Staff Hearing Officer.

The employer argues that the Staff Hearing Officer order dated 10/30/2003 does not order any bill paid and provides specific reasoning for denying some portion of the treatment requested. The employer also argues that the treatment requests were addressed again in a Staff Hearing Officer order dated 9/14/2004. The Staff Hearing Officer deemed the C-86 filed 6/24/2004 res judicata per the Staff Hearing Officer order dated 10/30/2003, which previously addressed treatments rendered 8/13/2002 – 11/05/2002. Additionally, the Staff Hearing Officer makes no reference to treatment requests or payment of bills for 11/05/2002 through 12/30/2002. The employer also provided the Board with examples of Industrial Commission orders which contain contradictory language granting compensation or benefits requested in the boiler-plate portion of the order, while the body of the order actually denies the request addressed by the motion filed and at issue at the hearing. In other words, the "boilerplate" on the order states "granted" or "modified" or "reversed" and the body of the order states the opposite. The employer argued that the actual language of the order which grants or denies specific treatment or compensation that is at issue should control what is ordered. Lastly, the employer argued that if the SHO order stated to pay bills, the employer certainly would have complied with the order to pay the bills. However, the employer contends that no Industrial Commission order requires payment of the bills in question.

The injured worker's representative argues that the Staff Hearing Officer order of 10/30/2003 granted the C-9 filed 5/06/2003 "to the extent of this order" and denies treatment for a closed period of 8/13/2002 to 11/05/2002. In other words, the SHO granted the motion for 28 retroactive treatments except for the closed period of 8/13/2002 to 11/05/2002.

The injured worker's representative apparently filed a subsequent motion requesting treatment which gave rise to District Hearing Officer order dated 7/29/2004 and Staff Hearing Officer order dated 9/15/2004 with the intention of obtaining an order from the Commission ordering the employer to pay what was already ordered paid in the Staff Hearing Officer order dated 10/20/2003. However, the Staff Hearing Officer order of 9/15/2004 indicated "res judicata" and made no reference to the payment of bills for the period of 11/06/2002 to 12/30/2002.

Both parties agreed that the issue at hearing before the Board today is the interpretation of the Staff Hearing Office order of 10/30/2003 and the payment of bills for the period of 11/06/2002 to 12/03/2002.

The Board finds itself in the unenviable position of being asked to act as an interpreter of the intention of a Staff Hearing Officer order that is simply not clear from the language of the order. The employer essentially asks the Board to ignore language of the order granting a C-9, when there is no language ordering payment for anything. The injured worker essentially asks the Board to accept an argument from silence: that because the order does not specifically list a reason for denying the entire period for which bills were submitted, the employer must pay the bills for the period for which the Staff Hearing Officer was silent. The Board must decline the invitation to enter this confusion. Any decision to do so must be from the Courts or from the Industrial Commission, with an exercise of continuing jurisdiction, not this Board.

The Board will not find valid a complaint based on an order that does not clearly require the payment of the medical bills at issue in this claim.

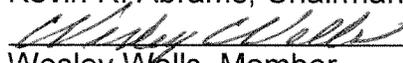
For all of the above reasons, upon motion made by Mr. Sharpe, seconded by Mr. Abrams, the Board finds Complaint No. 14455 is hereby dismissed.

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

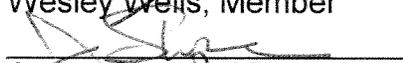
**SELF-INSURING EMPLOYERS EVALUATION BOARD**

  
Kevin R. Abrams, Chairman

YES

  
Wesley Wells, Member

NO

  
James Sharpe, Member

YES

DATE MAILED: 17<sup>th</sup> DAY OF July, 2006