

OFFICE OF THE INSURANCE COMMISSIONER OF W.VA
WORKERS' COMPENSATION OFFICE OF JUDGES
P.O. Box 2233, Charleston WV 25328 – Telephone: 301-558-1686

IN THE MATTER OF:

[REDACTED]
Claimant

and

RE:

OOJ-Case ID#
Carrier Ref. #

OOJ-[REDACTED]
[REDACTED]

[REDACTED]
Self-Insured Employer

**REPORT TO INSURANCE COMMISSIONER
UPON PETITION ALLEGING FAILURE TO TIMELY RULE OR ACT**

PARTIES:

Claimant, [REDACTED], by counsel, [REDACTED]
Employer, [REDACTED] without counsel

JURISDICTION:

The claimant alleges that the employer has failed to perform an act required by a W.Va. statute or regulation within time limits set by law. The Office of Judges acquires jurisdiction over the matter pursuant to W.Va. Code §23-4-1c(a)(3) and pursuant to procedure set forth in 93 CSR 1 §§18.1 – 18.3.

Specifically, the claimant alleges that the employer failed to timely act upon a request for copies of the claim record. 85 CSR 18 §15.9¹ requires a

¹ Series 18 was amended effective August 7, 2008, and the referenced regulation section was removed.

self-insured employer to provide a copy of the claim record to the claimant's representative within ten (10) working days from the date of receipt².

FINDINGS OF FACT:

1. On August 21, 2008, claimant's counsel wrote to the claim administrator and submitted a contract of representation and a release of medical information. Said letter also demanded "a complete CD-ROM copy of the file".
2. On September 4, 2008, counsel again wrote to the claim administrator and repeated the request for "a complete CD-ROM copy of her file as soon as possible".
3. On September 11, 2008, counsel wrote a third letter to the claim administrator demanding a copy of the file within ten (10) days of the date of the letter or he would request sanctions from the Office of Judges.
4. On September 24, 2008, counsel petitioned the Office of Judges for an order compelling the employer to act upon the requests.
5. On October 17, 2008³, the Office of Judges entered an Order compelling the employer to comply with the applicable regulation and to explain why the claimant was required to invoke this special remedy.
6. No response was filed by the claim administrator.
7. Claimant, on October 29, 2008, resubmitted the evidence which had been attached to the initial petition.
8. [REDACTED], is an authorized self-insured employer and, as such, is subject to the provisions of 85 CSR 18.
9. 85 CSR 18 §15.9 formerly provided⁴:

² Counsel also requested the Office of Judges to compel the employer to acknowledge him as representative of the claimant. No regulatory provision exists which requires the employer to formally acknowledge claimant's counsel. Therefore, this portion of the request was dismissed by Order dated October 17, 2008.

³ The response of the Office of Judges was somewhat delayed because counsel did not utilize the special form created by the Office of Judges for this process. Counsel's petition was initially assigned to the Motions Team before being correctly identified.

⁴ See footnote 1, above.

"The self-insured employer shall provide a copy of the claim record to the claimant or his authorized representative within ten (10) working days of the date the written request is received by the self insured employer."

10. As best as can be determined from the response submitted, the self-insured employer has still not complied with the claim record request.

DISCUSSION:

The claimant's multiple requests for copies of the self-insured employer's claim file appear to have been mailed to the correct address for the self-insured employer's claim administrator. The claimant has used the same address as has been used by the Office of Judges.

The employer has offered no defense for failing to supply the records requested.

The former regulation, which set a time limit for complying with a request by the claimant's representative for a file copy, has been removed from the regulation and no other Regulation or Code provision exists to establish a time limit.

The Office of Judges' jurisdiction provided by West Virginia Code 23-4-1c(a)(3) is limited to those instances in which the claim administrator "fails to timely issue a ruling upon any application or motion as provided by law" (emphasis supplied). The Office of Judges is without legal authority to determine, *sua sponte*, a time limit for action other than any provided by law.

CONCLUSION OF LAW:

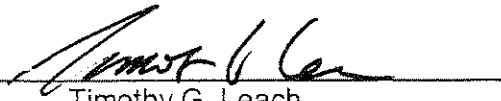
It is concluded that the employer has violated no applicable regulation or law by failing to provide claimant's representative with a copy of the claim file.

REFERRAL TO OFFICE OF INSURANCE COMMISSIONER OF WEST VIRGINIA:

According to the provisions of 93 CSR 1, Section 18.3, these Findings of Fact and Conclusion of Law are now referred to the Office of the Insurance Commissioner of West Virginia for review and further administrative action at the discretion of the Insurance Commissioner.

DATE: November 25, 2008

ENTER:



Timothy G. Leach
Administrative Law Judge

cc: [REDACTED] counsel for claimant

[REDACTED]
Office of the Insurance Commissioner