

FILED
LUCAS COUNTY

2019 MAY 14 PM 4:11

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

CHRISTINA BRASEL
9719 Minx Road
Temperance, Michigan 48182

Plaintiff-Appellant,

v.

MERCY HEALTH – ST. CHARLES
HOSPITAL, LLC
c/o Steven C. Hahn
2409 Cherry Street, MOB 1, 4th Floor
Toledo, Ohio 43608

and

STEPHANIE B. MCCLOUD,
ADMINISTRATOR
Ohio Bureau of Workers' Compensation
30 West Spring Street
Columbus, Ohio 43215

Defendants-Appellees.

G-4801-CI-0201902448-000

Case No. Judge
MYRON C. DUHART

BWC (

Judge:

PLAINTIFF-APPELLANT'S
COMPLAINT WITH JURY DEMAND

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*Attorneys for Plaintiff-Appellant Christina
Brasel*

Now comes Plaintiff-Appellant Christina Brasel, by and through counsel, and for her
Complaint avers as follows:

1. Plaintiff-Appellant is and at all relevant times was a resident of Temperance, Monroe County, Michigan.
2. Plaintiff-Appellant was at all relevant times an employee of Defendant-Appellee, employed at Mercy Health – St. Charles Hospital, LLC in Toledo, Lucas County, Ohio.

3. At all times relevant herein, Defendant-Appellee Mercy Health – St. Charles Hospital, LLC was a company amenable to Ohio workers’ compensation law, having a place of business in Lucas County, Ohio.
4. Stephanie B. McCloud, Defendant-Appellee herein, is the duly appointed and acting Administrator of the Bureau of Workers’ Compensation for the State of Ohio.
5. On or about March 5, 2015, Plaintiff-Appellant Christina Brasel sustained an injury to her neck and head in the course of and arising out of her employment with Defendant-Appellee Mercy Health – St. Charles Hospital, LLC.
6. On or about March 24, 2015, Plaintiff-Appellant Christina Brasel notified Defendant-Appellant Mercy Health – St. Charles Hospital, LLC of her injury. She filed a FROI-1 with the Bureau of Workers’ Compensation and was assigned Claim Number 15-813229.
7. On or about November 12, 2018, Plaintiff-Appellant Christina Brasel filed a C-86 Motion for additional allowances of xerostomia, abscessed tooth #19, decay on #21-MOD, #22-DF, #23-DFL, #24-MIDL, #25-MIBL, #26-MLDF, #27-MIL, #28-MOB, #29-DOB, #30-MODB, ill fitting maxillary complete denture.
8. On or about December 6, 2018, Defendant-Appellee Mercy Health – St. Charles Hospital, LLC requested a hearing on the additional allowances.
9. In the Record of Proceedings mailed February 16, 2019, District Hearing Officer Brian Vennekotter issued a finding that:

“it is ordered that this claim be ALLOWED for: XEROSTOMIA; ABSCESSED TOOTH NUMBER 19; DECAY TOOTH NUMBER 21; DECAY TOOTH NUMBER 22; DECAY TOOTH NUMBER 23; DECAY TOOTH NUMBER 24; DECAY TOOTH NUMBER 25; DECAY TOOTH NUMBER 26; DECAY TOOTH NUMBER 27; DECAY TOOTH NUMBER 28; DECAY TOOTH NUMBER 29; DECAY TOOTH NUMBER 30; and ILL FITTING MAXILLARY COMPLETE DENTURE.”

10. Defendant-Appellee Mercy Health – St. Charles Hospital, LLC filed a timely appeal to the District Hearing Officer’s decision.

11. Defendant-Appellee Mercy Health – St. Charles Hospital, LLC’s appeal was then heard by Staff Hearing Officer Karen E. Asbury on March 26, 2019, who subsequently issued a Record of Proceedings which read, in part, as follows:

“The Hearing Officer finds that this claim is ADDITIONALLY ALLOWED for XEROSTOMIA. This claim is DISALLOWED FOR ABSCESSSED TOOTH NUMBER 19; DECAY TOOTH NUMBER 21; DECAY TOOTH NUMBER 22; DECAY TOOTH NUMBER 23; DECAY TOOTH NUMBER 24; DECAY TOOTH NUMBER 25; DECAY TOOTH NUMBER 26; DECAY TOOTH NUMBER 27; DECAY TOOTH NUMBER 28; DECAY TOOTH NUMBER 29; and DECAY TOOTH NUMBER 30. The request for ILL FITTING MAXILLARY COMPLETE DENTURE is dismissed as this is not a condition but a description of a symptom.”

12. Plaintiff-Appellant filed a timely appeal to the Staff Hearing Officer’s decision on April 9, 2019 asking for allowance of the decayed teeth conditions as flow-through conditions of the allowed condition of Xerostomia. Staff Hearing Officer Robert Cromley issued an order, which stated in pertinent part as follows:

“Pursuant to the authority of the Industrial Commission under R.C. 4123.511(E), it is ordered that the Injured Worker’s appeal, filed 04/09/2019, from the Staff Hearing Officer order, issued 04/03/2019, be refused and that copies of this order be mailed to all interested parties.”

13. The order of the Industrial Commission of Ohio by Staff Hearing Officer Robert Cromley mailed April 23, 2019 was a final order denying Plaintiff-Appellant’s request for additional allowances under her claim. The order was received by Plaintiff-Appellant’s counsel on or about April 26, 2019.

14. Plaintiff-Appellant filed a Notice of Appeal with this Court. The Notice of Appeal meets the statutory requirements set forth in R.C. 4123.512. This issue is whether or not Plaintiff-Appellant is entitled to participate in the Self-Insured Employers’ Fund/Workers’

Compensation Fund as a result of an accidental injury, which occurred in the course of and arising out of her employment with Defendant-Appellee Mercy Health – St. Charles Hospital, LLC, and specifically whether the additional allowances of ABSCESED TOOTH NUMBER 19; DECAY TOOTH NUMBER 21; DECAY TOOTH NUMBER 22; DECAY TOOTH NUMBER 23; DECAY TOOTH NUMBER 24; DECAY TOOTH NUMBER 25; DECAY TOOTH NUMBER 26; DECAY TOOTH NUMBER 27; DECAY TOOTH NUMBER 28; DECAY TOOTH NUMBER 29; and DECAY TOOTH NUMBER 30 occurred in the course of and arising out of said employment or as a flow-through conditions of the allowed condition of Xerostomia.

WHEREFORE, having set forth the basis of the Court's jurisdiction over this action, Plaintiff-Appellant Christina Brasel demands judgment against the Defendant-Appellee for the right to participate under the Self-Insured Employers' Fund/Workers' Compensation Act, for an additional allowance of ABSCESED TOOTH NUMBER 19; DECAY TOOTH NUMBER 21; DECAY TOOTH NUMBER 22; DECAY TOOTH NUMBER 23; DECAY TOOTH NUMBER 24; DECAY TOOTH NUMBER 25; DECAY TOOTH NUMBER 26; DECAY TOOTH NUMBER 27; DECAY TOOTH NUMBER 28; DECAY TOOTH NUMBER 29; and DECAY TOOTH NUMBER 30, for attorney fees provided by law, for costs and expenses herein, and for such other relief as to which she may be entitled under R.C. 4123.512.

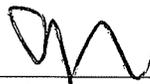
Respectfully submitted,



Charles E. Boyk
Attorney for Plaintiff-Appellant

JURY DEMAND

Plaintiff-Appellant hereby requests a trial by jury on all issues triable by right by jury herein.



Charles E. Boyk
Attorney for Plaintiff-Appellant

PRAECIPE FOR SERVICE

Please serve summons and complaint on Defendant-Appellees MERCY HEALTH – ST. CHARLES HOSPITAL, LLC and STEPHANIE B. MCCLOUD at the addresses listed within the captioned via certified mail, return receipt requested.



Charles E. Boyk
Attorney for Plaintiff-Appellant