

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
MIAMI DISTRICT OFFICE**

Carmine Ballister,
Employee/Claimant,

OJCC Case No. 18-028338JJJ

Accident date: 2/21/2017

vs.

Judge: Jeffrey I. Jacobs

South Beach Group/Normandy Insurance
Company,
Employer/Carrier/Service Agent.

COMPENSATION ORDER

The undersigned Judge of Compensation Claims conducted a Final Hearing in this matter on August 23, 2019 to adjudicate the Petition for Benefits filed February 14, 2019. Claimant appeared pro se and by telephone. Andrew R. Borah, Esquire represents Employer/Carrier (E/C).

Claims and Defenses

Claimant filed a Petition for Benefits on February 14, 2019 claiming authorization of a neurologist. E/C denied the claim asserting the accident is not the major contributing cause of the need for a neurologist and a neurological evaluation is not medically necessary.

Motion for Continuance

At the commencement of the Final Hearing, Claimant requested a continuance because he relocated from Miami Beach to New Jersey to live with his family in early July 2019 and wished to be present in person at the hearing. Claimant admitted he drove from Miami to New Jersey, but claimed he could not afford to travel to Miami for the hearing, despite receiving financial support from his family. As explained below, the undersigned denied the continuance because Claimant failed to demonstrate the reason for requesting the continuance arose from circumstances beyond his control. *See* § 440.25(4)(b), Fla. Stat.

On February 14, 2019, the undersigned served the initial notice scheduling the instant Final Hearing. Claimant appeared pro se for a Final Hearing on June 11, 2019 to adjudicate the Petition for Benefits filed November 19, 2018. At Claimant's request, the undersigned reserved jurisdiction to adjudicate the Petition for Benefits filed February 14, 2019, which the parties mediated on May 7, 2019, and agreed to hear that petition on August 23, 2019. On June 17, 2019, the undersigned entered an order requiring the parties to attend the Final Hearing on August 23, 2019 to adjudicate the petition filed February 14, 2019. Claimant acknowledged he knew of his obligation to attend the Final Hearing on August 23, 2019 before he moved from Miami, but took no action to attend in person.

The undersigned permitted Claimant to appear by telephone, but he insisted that he needed to appear in person to shave his head to show the undersigned a bump to prove his claim although E/C accepted compensability of Claimant's accident and Claimant's scalp contusion. Claimant chose not to present documentary evidence or testimony despite given repeated opportunities to do so. Claimant listed a friend as a witness on the Pretrial Stipulation, but that witness did not appear. Claimant did not identify any medical witnesses or exhibits on the Pretrial Stipulation.

Exhibits

The undersigned admitted the following exhibits in evidence.

Judge's Exhibits

1. Pretrial Stipulation filed July 18, 2019 (DN 53).
2. Compensation Order entered June 17, 2019 (DN 50).
3. E/C's Trial Memorandum filed August 21, 2019 (DN 54) (for argument purposes only).

Findings of Fact and Conclusions of Law

The parties did not admit any additional exhibits or present any testimony.

1. Based on the Pretrial Stipulation, E/C accepted compensability of Claimant's February 21, 2017 accident and Claimant's scalp contusion. In the Pretrial Stipulation, Claimant asserts he sustained a neck injury, impaired motor function, impaired cognitive function, pressure in his head, sensitivity to all impacts, and depression. On June 17, 2019, the undersigned entered a Compensation Order denying compensability of Claimant's neck injury, ringing in ears, and depression.
2. Claimant has the burden to prove entitlement to workers' compensation benefits. *See Fitzgerald v. Osceola County School Board*, 974 So. 2d 1161, 1164 (Fla. 1st DCA 2008). Claimant has the burden of proof to establish through medical evidence the accident is the major contributing cause of his claimed injuries. *See* § 440.09(1), Fla. Stat. Furthermore, Claimant has the burden to present expert medical evidence establishing a causal connection between the requested benefits and the compensable accident. *Wausau Insurance Company v. Tillman*, 765 So. 2d 123, 124 (Fla. 1st DCA 2000). Claimant's subjective complaints, standing alone, are insufficient to establish the medical necessity of the requested neurological care. *See MBM Corporation v. Wilson*, 186 So. 3d 574, 576 (Fla. 1st DCA 2016); *see also Vero Beach Care Center v. Ricks*, 476 So. 2d 262 (Fla. 1st DCA 1985) (finding that lay testimony is legally insufficient to support finding of causation between claimant's medical condition and industrial accident, where medical condition involved is not readily observable). The undersigned finds Claimant's purported injuries (impaired motor function, impaired cognitive function, pressure in his head, and sensitivity to all impacts) are not readily observable, and that lay testimony is

insufficient to support the claim for authorization of a neurologist. The undersigned finds Claimant failed to present any medical evidence that the accident is the major contributing cause of his claimed injuries or the need for authorization of a neurologist. Claimant also failed to present any medical evidence that authorization of a neurologist is medically necessary. *See* § 440.13(2)(a), Fla. Stat.; *see also Ascension Benefits & Insurance Solutions of Florida v Robinson*, 232 So. 3d 1178, 1180 (Fla. 1st DCA 2017) (Claimant has the burden of proving medical necessity). For these reasons, the undersigned concludes Claimant failed to meet his burden of proof and therefore denies the claim for authorization of a neurologist.

Wherefore it is ORDERED and ADJUDGED that the Petition for Benefits filed February 14, 2019 is denied and dismissed with prejudice.

DONE AND SERVED this 23d day of August 2019, in Miami, Dade County, Florida.



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