

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
PORT ST. LUCIE DISTRICT OFFICE

Kathy Vixamar,
Employee/Claimant,

vs.

OJCC Case No. 13-006232RDM

Solstas Lab Partners/Oracle
Diagnostics/Amerisure Insurance,
Employer/ Carrier/ Servicing Agent.

Accident date: 8/16/2012

FINAL COMPENSATION ORDER

Claimant, appearing before me in proper person, contends she sustained an occupational disease as a result of an extended exposure to polluted, moldy air in her workplace. Claimant fails to present any evidence whatsoever, much less the enhanced degree of evidence required by statute, to support her contentions as further explained below. Hence, her claim is denied and dismissed with jurisdiction reserved to determine the issue of taxable costs.

JURISDICTION AND NOTICE

The parties agree, and I find, the judge of compensation claims (JCC) has jurisdiction over the parties and subject matter. The parties were properly notified of the final hearing.

STIPULATIONS

Although the employer/carrier (E/C) denies that an industrial accident occurred, it is agreed that August 16, 2012, is the appropriate "date of accident" for administrative purposes and said accident occurred in St. Lucie County Florida. There was an employer employee relationship on that date. Workers' compensation insurance coverage applies. No indemnity benefits are at issue. All issues pertaining to attorney's fees and costs may be reserved for

subsequent hearing.

ISSUES

Claimant seeks a determination she sustained a compensable injury by accident or occupational disease as a result of exposure to poor air quality in her workplace. As result of her alleged injuries claimant seeks the provision of a primary care physician as well as costs of litigation.

E/C responds stating: Claimant was working in the course and scope of her employment on that date but the medical condition that is alleged did not result from an accident as defined by section 440.02; the employer was not notified or untimely notified of the alleged occurrence; claimant suffers from idiopathic or unrelated medical problems; claimant's injury, if any, was and is an ordinary disease of life; assuming an exposure did occur, August 16, 2012, is not the date of last injurious exposure; at all material times claimant's medical problems resulted from a pre-existing condition; claimant does not meet the clear and convincing evidentiary standard for establishing compensability; general denial of all remaining benefits. E/C further seeks costs as the prevailing party.

PETITION FOR BENEFITS (PFB)

The only outstanding PFB was filed March 18, 2013. E/C responded on March 21, 2013, stating the claim was denied in its entirety and refused to provide claimant with a primary care physician.

BACKGROUND

Claimant is a 37-year-old Haitian national who immigrated to the United States in 1992. She has a high school education. Claimant is divorced and has two teenage children.

She has special training as a medical assistant and as a cosmetologist. In addition to these

fields, claimant has worked as a convenience store cashier. Claimant was employed as a phlebotomist for this employer.

Claimant makes a pleasant appearance as a witness. She appears to be in good general health.

PURPORTED INDUSTRIAL ACCIDENT

Claimant was initially employed to work in this employer's Palm Beach County office. She was then transferred to St. Lucie County eventually going to work at the employer's Port St. Lucie office in May 2012.

Claimant contends that she immediately detected an unpleasant odor and other uncomfortable atmospheric conditions in the Port Saint Lucie office. This was promptly reported to her supervisor, "Barbara." According to claimant's testimony the office's adverse conditions were partially, but not completely, addressed by the landlord in piecemeal fashion.

The purported "date of accident", August 16, 2012, is not what claimant contends is the date of last injurious exposure. See Sec.440.151(5) *Fla. Stat.* (2012). Instead, claimant reported to the hospital on August 16 with neurological symptoms akin to a transient ischemic attack. Although the dates vary, according to one of claimant's accounts, her last day at work, and last exposure, was in May 2013.

Claimant gave her deposition testimony on May 20, 2013. Her contentions regarding many of her symptoms are remarkably less extensive on deposition than presented at trial. It is noted that claimant presently contends she lost her job in 2013 because of a back injury due to a supervisor placing a stool behind her while claimant was making copies resulting in a trip and fall.

On deposition claimant reported developing back pain the night before, adding, "I don't

know what (caused the back pain). I was sweeping the floor and then it started to hurt." The sweeping was performed at claimant's home. Claimant explains this discrepancy is due to memory problems stemming from her occupational exposure.

ANALYSIS

The question of claimant's credibility, however, does not enter into the decision-making process. Claimant presents no medical evidence whatsoever as to the cause of any medical expense she wishes addressed ranging from April 2012 through July 2013, 170 separate medical bills in all. No medical evidence is presented as to claimant's symptoms or their cause at any point in time.

Claimant simply fails to present clear and substantial medical evidence based on a reasonable medical probability as to any aspect of her claimed damages either as to medical specials or residual impairment.

In the interest of completeness I do accept claimant's testimony that she repeatedly complained to her employer of poor air quality at her workplace.

CONCLUSION

Based on the foregoing determinations, it is

ORDERED AND ADJUDGED that all pending claims against the employer carrier be and the same are hereby

DENIED AND DISMISSED WITH PREJUDICE

Jurisdiction is RESERVED to determine all issues pertaining to costs.

DONE AND ORDERED this 31st day of October, 2013, in Port St. Lucie, St. Lucie County, Florida.

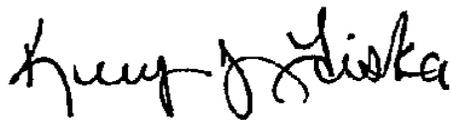


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I HEREBY certify that a true and correct copy of the foregoing has been mailed via U.S. Mail to the Claimant and e-mailed to Counsel on October 31st, 2013.

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