

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
West Palm Beach District**

EMPLOYEE:

Coretta Lewis Baker
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ATTORNEY FOR EMPLOYEE:

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EMPLOYER:

Alpha Staff Group, Inc.
800 Corporate Drive, Suite #600
Ft. Lauderdale, FL 33334

ATTORNEY FOR EMPLOYER/CARRIER:

Andrew R. Borah, Esquire
Hurley, Rogner, Miller, Cox,
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CARRIER:

Zurich American Insurance Company
BR 84 - Orlando
P.O. Box 968084
Schaumburg, IL 60196

OJCC CASE NO.: 10-011460TMB
D/A: 3/11/2010

FINAL COMPENSATION ORDER

THIS CAUSE came on for hearing before the undersigned Judge of Compensation Claims on January 10, 2012, at West Palm Beach, Palm Beach County, Florida. The Claimant, Coretta Lewis Baker, was present and represented by Richard B. Berman, Esquire, The Employer, Alpha Staff Group, Inc., and the Carrier, Zurich American Insurance Company, were represented by Andrew R. Borah, Esquire.

CLAIMS WERE MADE FOR THE FOLLOWING

1. Authorization of Dr. Stuart Krost, physiatrist, as Claimant's one-time change.
2. Attorney fees and costs,

THE CLAIMS WERE DEFENDED ON THE FOLLOWING GROUNDS:

1. Claimant is not entitled to Dr. Krost as her one-time change.
2. Employer/Carrier timely authorized Dr. Seth Wachsman as Claimant's alternate physician.
3. Alternatively, Claimant is not entitled to one-time change from Dr. Fox as Claimant never showed up to receive treatment with Dr. Fox.
4. Attorney fees and costs are not due or owing.

THE PARTIES ENTERED INTO THE FOLLOWING STIPULATIONS:

1. That a physiatrist and an anesthesiologist are doctors who practice in different specialties that are separate and unique from each other.

COURT'S EVIDENCE

1. Pretrial Stipulation approved by the Judge of Compensation Claims on December 8, 2011, and Claimant's Amendment to Pretrial Stipulation dated December 7, 2011.

CLAIMANT'S DOCUMENTARY EVIDENCE

1. Composite Exhibit of Dr. John Baker's records.

JOINT DOCUMENTARY EVIDENCE

1. Transcript of Rebecca Rose, Adjuster, taken on December 13, 2011 with attached exhibits.

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all the evidence presented. The Claimant was the only witness to testify in person before the undersigned at the final hearing. I have observed the candor and demeanor of the Claimant; have resolved all conflicts in the testimony and evidence, and considered the argument and memoranda of law filed by respective counsel. Further, in making the determination set forth herein, I have attempted to distill the testimony and salient facts together with the findings and conclusions necessary for the resolution of this claim. Based on the foregoing, I hereby make the following findings of fact and conclusions of law:

BACKGROUND

The Claimant sustained a compensable work accident on March 11, 2010, injuring her low back, left knee, and left thumb. Dr. John Baker is the Claimant's authorized treating orthopedic physician. Dr. Baker treated the Claimant for all her conditions. Dr. Baker placed the Claimant at overall MMI on October 26, 2010, assigning a 3% impairment rating for the Claimant's left knee condition.

In regards to the Claimant's low back condition, on May 11, 2010, Dr. Baker recommended that the Claimant undergo a pain management evaluation for consideration of epidural steroid injections. In response to such recommendation, the Employer/Carrier authorized Dr. Ira Fox to be the Claimant's authorized treating pain management physician. Dr. Fox is an anesthesiologist. The Claimant declined to treat with Dr. Fox since the Claimant was not interested in receiving injections.

On April 26, 2011, the Claimant faxed a letter to the Adjuster requesting a one-time change to a physiatrist. In response to the Claimant's request for a one-time change, the Adjuster authored a letter dated April 28, 2011, authorizing Dr. Seth Wachsman as the Claimant's one-time change. Dr. Wachsman is an anesthesiologist, just like Dr. Fox. On May 5, 2011, the Claimant's attorney sent a letter to the Employer/Carrier specifically requesting that an appointment be set up with Dr. Stuart Krost, a physiatrist, as the Claimant's one-time change in treating physicians. On June 10, 2011, the Claimant filed a petition requesting authorization of Dr. Stuart Krost, a physiatrist, as the Claimant's one-time change, pursuant to F. S. §440.13(2)(f).

CONCLUSIONS OF LAW

The issue in this case is whether the Claimant is entitled to her one-time change in treating provider with Dr. Stuart Krost, a physiatrist, under F. S. §440.13(2)(f). In this case, the Employer/Carrier agreed to authorize an anesthesiologist as the Claimant's alternate physician in response to her one-time change request, but not a physiatrist as the Claimant requested.

Notwithstanding a Claimant's absolute right to a one-time change in physicians, F. S. §440.13(2)(f) provides: "If the carrier fails to provide a change of physician as requested by the employee, the employee may select a physician and such physician shall be considered authorized *if the treatment being provided is compensable and medically necessary,*"(emphasis added). Once the Claimant specifically designated Dr.

Krost as her one-time change, it became incumbent on the Claimant to establish that the treatment provided by Dr. Krost was compensable and medically necessary. While Dr. Baker recommended physical/occupational therapy, chiropractic, osteopathic or comparable physical rehabilitation in the DWC-25 forms dated September 28, 2010 and October 26, 2010, absent further specificity, such recommendation does not amount to a referral to a physiatrist. In this case, there is no medical evidence that treatment with a physiatrist is compensable or medically necessary, and specifically, no evidence that the Claimant has treated with Dr. Krost. I find that Claimant did not meet her burden of proof that it is medically necessary for the Claimant to treat with Dr. Stuart Krost for any compensable condition. Therefore, the Employer/Carrier is not required to authorize Dr. Krost in this case.

WHEREFORE, it is ORDERED and ADJUDGED that:

1. The claim for authorization and provision of Dr. Krost as Claimant's one-time change in physician is **DENIED**, and
2. The claim for attorney fees and costs is **DENIED**.

DONE and ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 25 day of January, 2012.



Timothy M. Basquill
HONORABLE TIMOTHY M. BASQUILL
Judge of Compensation Claims

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the foregoing Order was entered and a true and correct copy was furnished by electronic mail on this 25th day of January, 2012, to counsel of record, or by regular U.S. Mail, if unrepresented.

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