

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

Maria Delgado,
Employee/Claimant,

OJCC Case No. 11-015402SMS

vs.

Accident date: 6/18/2011

Spherion Staffing, LLC/Sedgwick CMS,
ACE USA, and ESIS WC Claims,
Employer/Carrier/Servicing Agent.

Judge: Sylvia Medina-Shore

COMPENSATION ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims for a final hearing on 5/26/16 regarding petitions for benefits (PFBs) filed 8/24/15, 11/12/15, 2/19/16, and 5/26/16. The parties agreed to the adjudication of the 5/26/16 PFB as the claim was thoroughly addressed throughout discovery. The claimant is represented by Bobby Wells, Esquire. The employer and carrier (E/C) are represented by Andrew Borah, Esquire.

Claims:

1. Authorization of follow-up appointment and pain management treatment with Dr. Joel Salamon.
2. Authorization and provision of the following pharmaceuticals: Zantac, Skelaxin, Celebrex, and Lidoderm patches.
3. Payment of medical bill from Orthopaedic Associates USA in the amount of \$50.00 incurred as a result of an alleged no-show to an appointment with Dr. Salamon on 5/29/15.
4. Authorization and provision of lumbosacral corset.
5. Provision of physical therapy per Dr. Wender.

6. Claims for authorization of repeat lumbar MRI and unloader brace for left knee were withdrawn by claimant. Additionally, affirmative defenses of waiver and estoppel were withdrawn by the claimant.

7. Attorney's fees and costs.

Defenses:

1. No further treatment with Dr. Salmon is medically necessary.

2. The major contributing cause (MCC) of the need for further care with Dr. Salamon, if any, is not the industrial accident.

3. The MCC of the need for the medications Zantac, Skelaxin, Celebrex, and Lidoderm patches, lumbosacral corset, and physical therapy is not the industrial accident.

4. Claimant's work-related condition has resolved.

5. There is no evidence of a \$50.00 bill and whether the \$50.00 bill was due to claimant's compensable accident and injuries. Alternatively, the JCC has no jurisdiction to hear payment of medical bills of Dr. Salamon since Dr. Salamon is an authorized provider.

6. Attorney's fees and costs are not due or owing.

Documentary Exhibits:

JCC-

1. Pre-trial stipulation filed 1/22/16 (DE#239).

Joint Exhibit-

A. Deposition of Dr. Salamon filed 3/14/16 (DE#253).

Claimant-

1. PFB filed 8/24/15 (DE#213).

2. PFB filed 11/12/15 (DE#217).

3. Attachments to 11/12/15 PFB (pages 1-7 only) filed 11/12/15 (DE#218).

4. PFB filed 2/19/16 (DE#247).
5. Mediation settlement agreement filed 12/8/15 (DE#219).
6. Deposition of Dr. Langone filed 5/19/16 (DE#265).
7. Deposition of Lisa Marie Filer (the adjuster) filed 5/24/16 (DE#266).

Claimant's Proffer-

- A. Statement from Othorpaedic Associates for \$50.00 no show filed 11/12/15 (pg. 8 of DE#218).

E/C-

1. Deposition of Dr. Wender filed 3/14/16 (DE#252).

Findings of Facts and Conclusions of Law:

1. This claim involves an industrial accident that occurred on June 18, 2011 wherein a rack of clothes fell hitting the claimant on her back and the back portion of her left knee. The claimant did not fall to the ground. The Employer/Carrier accepted the accident as compensable and authorized treatment for the claimant's low back and left knee.

2. On May 5, 2014, the parties attended a final merits hearing on the issue of whether the industrial accident was the major contributing cause of the claimant's need to undergo a left knee arthroscopic surgery. On May 15, 2014, a compensation order was entered holding that the major contributing cause for the need for the claimant's left knee arthroscopy is not the compensable accident or the natural sequelae of the compensable accident. Since that time, the claimant has continued to receive authorized treatment with Dr. Stephen Wender and Dr. Salamon.

Claimant's Testimony-

3. Claimant testified in person at the May 26, 2016 final hearing. Prior to the June 18, 2011 industrial accident at JC Penny, she denied having any pain, treatment or accidents

involving her back. Claimant injured her low back and left knee as a consequence of the instant industrial accident. She denies suffering any subsequent accidents or injuries to her back.

4. Claimant has a lot of back pain today which she attributes to the June 18, 2011 accident. She received authorized lumbar medical treatment from 2011 to 2015 with Drs. Wender and Salamon. Initially, claimant underwent lumbar physical therapy prescribed by Dr. Wender, which provided her with some pain relief. However, while Dr. Wender prescribed another round of physical therapy, E/C did not authorize it. Claimant desires to continue receiving medical treatment with Dr. Wender and Dr. Salamon.

5. Likewise, Dr. Salamon provided claimant with the first lumbar epidural injection. Thereafter, E/C mailed claimant a letter with a return appointment to Salamon for May of 2015. Claimant appeared to Dr. Salamon's office however, the doctor did not see her. She received a "no show" missed appointment \$50.00 bill in the mail and does not understand this given that she appeared for the appointment.

MCC of further lumbar pain management treatment, physical therapy, medications including patches, and lumbosacral corset-

6. Dr. Wender is claimant's authorized treating orthopedic physician. His deposition was taken on September 5, 2012 and November 19, 2013. In anticipation of the May 26, 2016 final hearing, his deposition was taken March 8, 2016.

7. Since November 19, 2013, claimant has treated on seven occasions (3/13/14; 7/28/14; 6/4/15; 8/4/15; 11/3/15; 12/1/15; and 12/29/15). Dr. Wender diagnosed claimant with low back sprain which is an overstretching of the muscles and ligaments in the back. He found claimant reached MMI on May 31, 2012 with a 0% permanent impairment rating. Dr. Wender opined, which opinions I accept, that as a result of the instant June 18, 2011 industrial accident claimant suffered a lumbar sprain which resolved. There is no objective or permanent injury in

claimant's lumbar spine as a result of the instant work accident (Pgs. 9-10 of Dr. Wender's deposition).

8. Claimant underwent multiple lumbar MRIs. The December 12, 2011 MRI revealed a herniated disc at L5-S1. The May 2012 and November 12, 2013 MRIs revealed no herniated disc, just really minor bulging at multiple levels, which according to Dr. Wender is just normal age degenerative disease (Pg. 10 of Dr. Wender's deposition). Given that those (degenerative disease) were not present initially, Dr. Wender testified they are new and unrelated to the prior industrial accident. Dr. Wender explained that the 2011 MRI herniated disc could have been a small protrusion that reabsorbed or resolved or it was never present in the first place (Pg. 8 of Dr. Wender's deposition). To that extent, Dr. Salamon also confirmed that herniated discs may reabsorb or resolve (Pg. 9 of Dr. Salamon's deposition).

9. Likewise, Dr. Wender testified that the November 15, 2015 lumbar MRI revealed no herniated disc, just age-related degenerative disk disease. There are no findings on that study whatsoever compatible with any trauma (Pg. 11 of Dr. Wender's deposition). Accordingly, Dr. Wender opined, which opinions I accept, that the instant industrial accident is not the MCC of claimant's lumbar complaints, need for further lumbar medical treatment, including pain management, physical therapy, medications, and lumbosacral corset. Rather, claimant's subjective complaints of pain and need for further lumbar medical treatment is related to her pre-existing age-related degenerative disc disease (Pgs. 9, 12, 13-15, and 21 of Dr. Wender's deposition).

10. Dr. Salamon last treated the claimant on April 16, 2012, administering an epidural injection. Claimant didn't really see an improvement after the first injection. Claimant had an appointment for May 29, 2015 but was a no show. The subsequent August 10, 2015 appointment was cancelled.

11. Dr. Salamon opined that while claimant had not reached MMI as of April 16, 2012, he nonetheless deferred to Dr. Wender as to medical necessity of further pain management treatment as he had not seen the claimant in 4 years. According to Dr. Salamon, he was treating claimant for a herniated lumbar disc. Dr. Salamon was unaware of claimant's medical condition and treatment since April 16, 2012.

12. Dr. Langone, claimant's IME, evaluated the claimant on two occasions: 8/14/13 and 2/8/16. However, Dr. Langone did not have any up-dated medical records as of 8/14/13 nor was aware that claimant had undergone an up-dated lumbar MRI. Nonetheless, he opined the instant industrial accident was the MCC of need for medical treatment in the form of repeat MRI, pain management, medications, therapy, and lumbar corset.

13. While E/C accepted compensability of claimant's back injury, I find that does not mean E/C cannot contest claimant's entitlement to benefits. Checkers Restaurant v. Wiethoff, 925 So.2d 348 (Fla. 1st DCA 2006). In doing so, it is E/C's burden to prove that the 2011 industrial accident is no longer the MCC for claimant's need for medical treatment. It is still claimant's burden on proof of establishing medical necessity for the claimed medical benefits.

14. In the case at hand, I find E/C has proven based on medical evidence that claimant's compensable lumbar sprain is no longer the MCC for the claimed medical treatment. Moreover, I find claimant failed to establish the medical necessity of pain management treatment as relates to her lumbar sprain.

15. Claimant argues that E/C cannot demonstrate break in the causal chain as required by the Cespedes v. Yellow Transportation Inc., 130 So.3d 243 (Fla. 1st DCA 2013) case as there is no evidence of a pre-existing condition or a subsequent accident. I reject claimant's argument based on two reasons. First, I find that claimant's lumbar degenerative disc

disease which Dr. Wender believes is the current cause of the claimant's subjective symptoms can be classified as either a preexisting or subsequent condition that would break the causal chain.

16. Further, in order to demonstrate a break in the causal chain, I find E/C is not limited to just showing a pre-existing condition or a subsequent event. I find there are other ways of showing a break in the causal chain such as when a non-permanent industrial injury completely resolves. As indicated above, Dr. Wender diagnosed the claimant with a low back strain. Dr. Wender testified that the claimant's industrial low back strain completely resolved as of November 15, 2015. That is MCC evidence of a break in the causal chain.

17. Case law has clarified that the mere occurrence of a compensable injury does not guarantee an injured worker the right to receive medical care for life. The injured worker remains so entitled only for as long as the compensable injury continues to cause the need for additional treatment. See, Echevarria v. Luxor Investments, LLC, 159 So.3d 991 (Fla. 1st DCA 2015). In the present case, I find the medical evidence supports that claimant's resolved lumbar sprain is no longer the cause (MCC) for the need for additional medical treatment.

Medical Necessity for further pain management treatment-

18. Irrespective of the MCC of claimant's low back condition, I find it is not medically necessary for the claimant to receive further pain management treatment with Dr. Salamon. Dr. Salamon testified that since he had not seen the claimant since April 16, 2012 and Dr. Wender has been actively treating the claimant since that time, that Dr. Wender would be in a better position to opine as to what treatment the claimant needed at this time. He deferred to Dr. Wender as to whether it would be medically necessary for the claimant to return to see him (Pgs. 6-7 of Dr. Salamon's deposition).

19. Dr. Wender opined pain management treatment is not medically necessary and

in fact, is contraindicated as no abnormalities were revealed on the recent lumbar MRI studies requiring anything invasive to be done to the claimant's spine (Pgs. 12-13 of Dr. Wender's deposition). I accept Dr. Wender's opinions over those of Dr. Langone as his (Dr. Wender's) opinions are based on complete medical records and diagnostic studies, objective evidence and reason. Further, Dr. Langone has only evaluated claimant one two occasions while Dr. Wender has evaluated the claimant on numerous occasions throughout many years.

Payment of \$50.00 bill from Orthopaedic Associates, USA for a May 29, 2015 no-show with Dr. Salmon should be denied-

20. I find claimant has failed to demonstrate that E/C is responsible for payment of the aforementioned bill, as the medical bill was not admitted into evidence. Thomas v. Yoder Brothers, Inc. 882 So.2d 442 (Fla. 1st DCA 2004). Dr. Salamon's deposition was taken in this matter however the issue of whether Dr. Salamon has an outstanding \$50.00 bill for a May 29, 2015 no-show fee was not addressed at the deposition. While the claimant testified to receiving a bill from Dr. Salamon, she failed to overcome E/C's hearsay objection.

WHEREFORE, IT IS ORDERED:

1. Claim for authorization of follow-up appointment and pain management treatment with Dr. Joel Salamon is denied.
2. Claim for authorization and provision of the following pharmaceuticals: Zantac, Skelaxin, Celebrex, and Lidoderm patches are denied.
3. Claim for payment of medical bill from Orthopaedic Associates USA in the amount of \$50.00 incurred as a result of an alleged no-show to an appointment with Dr. Salamon on 5/29/15 is denied.
4. Claim for authorization and provision of lumbosacral corset is denied.
5. Claim for provision of physical therapy per Dr. Wender is denied.

6. Jurisdiction is reserved on entitlement to and amount of attorney's fee and costs, if any, for a future hearing, in the event the parties are unable to resolve it.

DONE AND E-MAILED TO THE ATTORNEYS OF RECORD AND THE CARRIER THIS 2ND DAY OF JUNE OF 2016. THE ATTORNEYS OF RECORD SHALL PROVIDE A COPY OF THE INSTANT COMPENSATION ORDER TO THEIR RESPECTIVE CLIENTS UPON RECEIPT OF IT.



Sylvia Medina-Shore
Judge of Compensation Claims

D. Robert "Bobby" Wells, Esquire
Law Office of Richard Zaldivar, P.A
bwells@zaldivarpa.com,zaldivaresquire1@gmail.com

Andrew R. Borah, Esquire
Hurley, Rogner, Miller, Cox, & Waranch, P.A.
aborah@hrmcw.com,sfournier@hrmcw.com

Sedgwick CMS
FLOJCCInbox@sedgwickcms.com

ACE USA
TamWCClientFNOL@esis.com

ESIS WC Claims
TamWCClientFNOL@esis.com