

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

Miriam Hector,  
Employee/Claimant,

OJCC Case No. 18-017844SMS

vs.

Accident date: 10/24/2017

Latin Cafe Restaurant/AmTrust North  
America of Florida, and Associated  
Industries Insurance Company,  
Employer/Carrier/Servicing Agent.

Judge: Sylvia Medina-Shore

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**COMPENSATION ORDER**

**THIS CAUSE** came before the undersigned Judge of Compensation Claims for a final hearing on 4/3/19 regarding petition for benefits (PFB) filed 7/24/18. Claimant is represented by James Payer, Esquire. The employer and carrier (E/C) are represented by Andrew Borah, Esquire.

**Claims:**

1. Authorization of primary care physician (PCP) for evaluation and/or treatment of claimant's lower back injuries.
2. Penalties, interest, attorney's fees and costs (PICA).

**Defenses:**

1. Low back is not a compensable body part.
2. Industrial accident is not the major contributing cause (MCC) of claimant's need for treatment for low back.
3. Treatment for low back is not medically necessary.
4. At the final hearing, **E/C withdrew** their defense that claimant did not provide timely notice of low back injury.

5. No PICA due or owing.

**Documentary Exhibits:**

JCC-

1. Pre-trial stipulation filed 10/31/18 (DE#33).

Joint Exhibits-

- A. Deposition of Dr. Baylis with records filed 3/28/19 (DE#67).
- B. Deposition of Pablo Pacheco filed 7/28/19 (DE#70).

Claimant-

1. PFB filed 7/24/18 (DE#1).
2. Amendment to Pre-trial stipulation filed 12/6/18 (DE#35).
3. Second amendment to pre-trial stipulation filed 1/17/19 (DE#52).
4. Deposition of Dr. Suite filed 3/28/19 (DE#73).
5. Medical records of Dr. Steiner filed 3/28/19 (DE#72).
6. (Proffer) Deposition of Normal Irizarry filed 4/1/19 (DE#75)-E/C's relevancy

objection is sustained.

7. Photo of claimant's bruise filed 4/4/19 (Pg.5 of DE#78).
8. Intake sheet of Rite Care clinic filed 4/4/19 (Pgs. 3 &4, DE#78).

E/C-

1. Claimant's deposition filed 3/28/19 (DE#65) and attachments filed 4/4/19 (Pgs. 7 & 8, DE#78).
2. Medical records of Rite Care Clinic filed 12/6/18 (DE#36) and Order approving motion to admit medical records entered 12/21/18 (DE#38).
3. Deposition of Magalys Vega filed 3/28/19 (DE#71).

**Stipulations-**

1. Claimant's AWW is \$629.55.
2. Claimant paid TTD/TPD 9/18/18 to 3/1/19 with penalties and interest.

Accordingly, the claims within the 10/10/18 PFB, excluding claims for fees and costs, were resolved. The undersigned reserves jurisdiction on the claims for fees and costs as it relates to the 10/10/18 PFB for determination at a future hearing, if necessary.

**Findings of Facts and Conclusions of Law:**

1. Claimant testified in person at the final hearing. She was employed as a waitress by the employer herein, working 2 days a week. Claimant has also been employed as a full-time mental health technician for Citrus Health Network since 2009. She has not worked for the employer herein since 9/17/18 as she travelled for one week to visit her family in Cuba and then underwent authorized right shoulder surgery.

2. On 10/24/17, claimant slipped and fell to the floor. She fell on the right side of her body hitting the back of her head, right shoulder and elbow, low back, and finger. A co-worker helped her off the floor and Pablo, claimant's supervisor was summoned. Claimant explained the accident to Pablo and he completed the Notice of Injury report. Claimant reported to Pablo having pain in her right shoulder and elbow, finger, and low back.

3. As a consequence of the 10/24/17 accident, claimant felt right shoulder and elbow pain, low back pain, pain in her finger, and bruising to her right hip. Claimant went home after the accident and on the following day, she took a photograph of her bruise. Claimant did not request medical care until 1/24/18, three months after the accident. Claimant explained she does not like doctors and believed her pain would improve with time. However, as her pain did not improve, claimant requested medical care. E/C authorized Rite Care Clinic.

4. Claimant reported right shoulder and elbow pain, and low back pain to the nurse at Rite Care clinic. X-rays were taken of her shoulder and elbow. She followed-up care at Rite

Care clinic seeing nurses for two more visits. Claimant was then referred to an orthopedic physician and E/C authorized Dr. Steiner.

5. Claimant reported injuring her right shoulder and elbow, low back and right hand to Dr. Steiner. She completed intake forms drawing the areas of pain, including low back. However, the carrier did not provide Dr. Steiner with authorization to evaluate and/or treat claimant's low back. Dr. Steiner referred claimant to Dr. Baylis, a shoulder specialist.

6. Claimant testified reporting right shoulder, right elbow and low back pain to Dr. Baylis. She likewise completed the intake forms drawing the areas of pain, including low back. However, Dr. Baylis did not treat her low back. Rather, Dr. Baylis treated her shoulder injury, performing surgery on 10/2/18. Claimant last saw Dr. Baylis on 3/11/19.

7. The only doctor to evaluate claimant's back was Dr. Suite. Claimant wants to see a doctor authorized by E/C for her lower back complaints.

8. Claimant is working with right shoulder and low back pain. While her shoulder has improved post-surgery, claimant's low back has not improved. Claimant admitted to suffering from sciatica pain in 2007 and sought treatment for same. However, claimant's sciatic pain resolved. Claimant worked full duty and she did not seek any medical attention until the instant accident. Claimant did not have any physical restrictions prior to the instant accident.

9. Pablo Pacheco testified in person at the final hearing. He was claimant's supervisor with the employer herein. On the night of the accident, Mr. Pacheco was in his office. A worker summoned him as claimant had had an accident. Mr. Pacheco completed the accident report with the claimant writing claimant injured the left side of her body. He did not remember claimant reporting any other injuries until 2 to 3 months later. Specifically, when claimant began receiving medical treatment, Mr. Pacheco remembers claimant reporting a back injury.

10. Mr. Renee Rodriguez, nurse practitioner, testified in person at the hearing. He works under the supervision of a doctor at Rite Care clinic and conducted the initial evaluation of claimant. He had no independent recollection of the claimant. Therefore, Mr. Rodriguez testified consistent with the initial report, wherein claimant asserts injuring her right shoulder and elbow with no mention of back pain. He testified that if claimant complained of back pain, same would be included in the report. However, he also explained that if certain complaints are missing from the initial visit, ordinarily same complaints are included in subsequent visits.

11. Claimant has the burden of proving she suffered an accidental injury that arose out of and occurred during the course of employment. The injury must be established to a reasonable degree of medical certainty, based on objective relevant medical findings, and the injury must be the MCC of any resulting injuries. I find claimant has satisfied her burden of proof in the instant case.

12. The fact that claimant suffered an industrial accident on 10/24/17 is undisputed. Claimant slipped and fell onto the floor landing on her right side while at work. The co-worker heard her fall and helped claimant off the floor. The dispute arises as to whether claimant suffered a lumbar injury as a consequence of the industrial fall and if so, whether the work accident is the MCC of the lumbar injury.

13. Claimant reported injuring her entire side of the body to her supervisor, Pablo Pacheco. Mr. Pacheco completed the injury report documenting claimant fell on her left side and complained of left side pain. However, claimant reported injuring the entire right side of her body. The picture of claimant's bruise was to her right thigh. I accept claimant's testimony and find Mr. Pacheco may have made an error in reporting the left side as being injured.

14. Claimant did not seek or receive medical care for approximately three months after the accident as she believed her complaints would improve. As her complaints did not

improve, she sought medical care from the employer. I accept claimant's testimony and find her credible.

15. Claimant testified to informing the Rite Care clinic nurse practitioner of injuring her right shoulder, right elbow, and low back. The Rite Care clinic medical records however, do not document low back complaints. Nurse Practitioner Rodriguez did not document low back complaints on 1/24/18. The other nurse practitioners of the clinic did not document low back complaints either on 2/1/18 and 2/15/18. The first documentation of low back complaints from claimant was to Dr. Steiner on 3/14/18.

16. Claimant was not seen by a physician at the clinic. While low back complaints are not documented in the clinic records, Mr. Rodriguez admitted that documentation of symptoms are not always perfect. I accept claimant's testimony that she reported low back pain to the nurse practitioner.

17. Mr. Pacheco testified claimant shared suffering from low back pain due to the accident when she began receiving medical care. Claimant reported back pain to Dr. Steiner and Dr. Baylis also. Accordingly, I find claimant was forthcoming about her injuries, including low back pain, to her employer and authorized physicians.

18. E/C relies on Dr. Baylis' opinion that claimant did not have a work injury affecting her low back in 2017 if the clinic records failed to document low back pain or problems. However, Dr. Baylis is not aware of claimant's low back complaints to the employer during same time period. More importantly, Dr. Baylis did not examine claimant's lumbar spine at all. E/C only authorized Dr. Baylis' (and Dr. Steiner) to examine and treat claimant's right shoulder and elbow. As such, I find Dr. Suite who examined claimant's lumbar spine is in the best position to opine as to whether claimant suffered a lumbar injury and if so, the MCC of said lumbar injury.

19. Dr. Suite, board certified neurologist and claimant's IME, examined claimant's lumbar spine. His physical examination revealed positive examination results including but not limited to reduced range of motion, muscle spasm and tenderness to palpation; lumbar herniated disk with nerve root irritation on the right side; and right shoulder complaints. Claimant admitted to a prior sciatic injury in 2007. Accordingly, Dr. Suite opined that at a minimum, claimant suffered an aggravation of a pre-existing condition and at worst, a whole new problem. He further opined that the MCC of claimant's lumbar back condition is the 10/24/17 work accident. I accept Dr. Suite's opinions. E/C has failed to present any medical evidence addressing major contributing cause.

**IT IS ORDERED:**

1. E/C shall authorize a primary care physician to examine and treat, if medically necessary claimant's low back injury.
2. Claimant's attorney is entitled to an E/C paid attorney's fee and costs for securing the benefits herein. Jurisdiction is reserved on the amount of the fees and costs for future determination, in the event the parties are unable to amicably resolve it.
3. The 7/24/18 and 10/10/18 PFBs are dismissed, excluding the claims for fees and costs, with prejudice.

**DONE AND E-MAILED TO THE ATTORNEYS OF RECORD, THE CARRIER, AND TO THE CLAIMANT VIA U.S. MAIL LISTED BELOW, THIS 10<sup>TH</sup> DAY OF APRIL OF 2019. THE ATTORNEYS OF RECORD SHALL PROVIDE A COPY OF THE INSTANT ORDER TO THEIR RESPECTIVE CLIENTS UPON RECEIPT OF IT.**

*Sylvia Medina-Shore*

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Sylvia Medina-Shore  
Judge of Compensation Claims

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