

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT

Annmarie Limith,
Employee/Claimant,

OJCC Case No.: 11-024253IF

vs.

Accident date: 11/29/2010

Lenox on the Lakes and
Crum & Forsters Insurance Co.,
Employer/Carrier.

Judge: Iliana Forte

_____/

Kevin R. Gallagher, Esquire, Attorney for the Employee
Andrew R. Borah, Esquire, & Joseph R. Kessler, Esquire, Attorneys for the Employer/Carrier

FINAL COMPENSATION ORDER

This matter came before me, the undersigned Judge of Compensation Claims, for a Merits Hearing held on November 12, 2015. The adjudicated Petitions for Benefits were filed with the Division on 2/16/2015, 2/27/2015 and 3/16/2015.

DOCUMENTS RECEIVED

Claimant:

1. None.

Employer/Carrier:

1. Medical Records of U.S. HealthWorks – Docket ID # 46
2. Medical Records of Dr. Harish Thaker – Docket ID # 47
3. Deposition of Arlene Lawson – Docket ID #39

JCC:

1. Pre-trial Stipulation
2. Claimant's Trial Summary
3. E/C's Trial Memorandum

Live witness testimony:

1. None

CLAIMS AND DEFENSES

The claims presented before me were:

PFB filed 2/16/2015:

1. Schedule, authorize and pay follow up appointment with the authorized treating physician.
2. Compensability – not at issue. The parties stipulated that the nose and face had been accepted compensable.
3. Attorney's fees and costs.

PFB filed 2/27/2015:

1. Schedule and authorize and pay follow up appointment with U.S. HealthWorks.
2. Attorney's fees and costs.

PFB filed 3/16/2015:

1. Schedule, authorize and pay for follow up appointment with Dr. Harish Thaker, M.D.
2. Attorney's fees and costs.

The Employer/Carrier ("E/C") defenses were:

1. U.S. HealthWorks Clinic discharged claimant and did not recommend further treatment. Follow-up appointment is no longer medically necessary.
2. Dr. Harish Thaker opined that the need for further treatment is no longer medically necessary.
3. The claimant does not require any further treatment as it relates to her industrial injuries.
4. Claimant's work-related injuries have resolved.
5. No P.I.C.A. due or owing.

FINDINGS OF FACTS

1. The claimant, while present during these proceedings did not testify. Other than argument from counsel, the claimant did not present any documentary evidence or testimony of expert witnesses to support her position.

2. The E/C relies on the medical report from U.S. HealthWorks of 2/7/2014 and the medial report of Dr. Thaker of 3/13/2014 to support their position.

3. The medical report of U.S. HealthWorks reveals that the claimant was seen on 2/7/2014 complaining of constant dull headaches. The headaches have been on and off since the accident; can go two to six months headache free. She was diagnosed with post traumatic headache and she was prescribed tramadol. No work restrictions were imposed and she was discharged from care.

4. Pursuant to the DWC-25 attached to the 2/7/2014 report, the physician at U.S. HealthWorks referred the claimant for a neurological evaluation and indicated therein that the care was being transferred. The DWC-25 also indicates that the claimant was not at maximum medical improvement and further care was anticipated.

5. On 3/13/2014 the claimant was evaluated by neurologist Harish Thaker, M.D. who took a history and performed a physical examination. Her complaints were limited to headaches occurring every month or two that developed after she was punched in the face by a patient. His impression was: history of head injury, headaches possible muscle contraction headaches and anxiety. From a neurologic point of view her examination was normal and nonfocal. He opined that her present headache appeared to be non-specific in nature and did not appear to have any relation to her previous injury four years earlier. Based on the examination,

Dr. Thaker opined that she did not require any further work up or treatment. He recommended she avoid excessive use of analgesics to avoid headaches.

6. The deposition of the Claims Adjuster, Arlene Lawson does not address the current petitions for benefits, but does shed some light on the facts of this case. Ms. Lawson testified that the claimant sustained what was accepted as a compensable accident on 11/29/2010 involving the claimant's face and nose that resulted from a resident punching the employee in the face, causing a headache and pain to the bridge of the nose. Following the accident, the E/C authorized medical treatment with U.S. HeathWorks. She was seen on 11/29/2010 and 12/2/2010. Ms. Lawson testified that the doctor at U.S. HeathWorks placed the claimant at maximum medical improvement on 12/2/2010 with a zero percent impairment.

7. On 6/26/2011, in response to a petition for benefits (not at issue herein) she faxed an authorization to U.S. HeathWorks for the claimant to be seen. However, the claimant was not seen at U.S. HeathWorks until 2/7/2014.

CONCLUSIONS OF LAW

8. The claimant argues that because the E/C accepted compensability of the accident, she has a right to an evaluation with an authorized medical provider, as it is the burden of the E/C to establish a break in the chain of causation or to establish that the accident is no longer the major contributing cause of the need for treatment. Therefore, E/C's defense that follow up treatment is no longer medically necessary is insufficient to deny her right to future medical care.

9. The claimant is correct that it is not her burden to present additional evidence that the industrial accident is the major contributing cause of her need for treatment, as no evidence

has been presented that other causes contributed to her injury. *Walker v. Braodview Assisted Living*, 95 So.3d 942 (Fla. 1st DCA 2012).

10. However, I disagree with the claimant that the E/C must continue to authorize care absent the E/C establishing a break in the chain of causation or major contributing cause. The E/C correctly points out that even in compensable cases the claimant has the burden of proof to establish the medical necessity of the requested treatment. *See Perez v. Southeastern Freight Lines, Inc.*, 159 So.3d 412 (Fla. 1st DCA 2015); and, Section 440.13(2)(a), Fla. Stat. (2006).

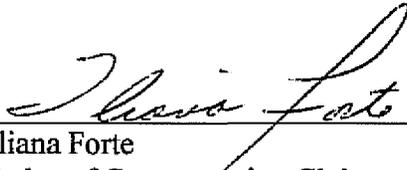
11. The claimant has failed to establish what treatment she is indeed requesting. Her claims are simply for a follow up appointment with either U.S. HealthWorks, Dr. Thaker or both. Her argument is based on the proposition that simply because the physicians didn't believe she needed treatment in the past, does not mean that she may not need treatment in the present or future; an argument that I reject.

12. The claimant is five years post accident. She went four years without seeking medical treatment despite having been provided authorization in June 2011. Ms. Lawson testified that she was previously placed at maximum medical improvement by the physicians at U.S. HealthWorks on 12/2/2010 with a zero percent impairment rating. I accept the unrefuted opinion of Dr. Thaker that she does not require any further work up or treatment for her sole complaints of headaches. *See Echevarria v. Luxor Investments, LLC*, 159 So.3d 991 (Fla. 1st DCA 2015).

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. Authorization of a follow up appointment with the authorized provider, U.S. HealthWorks Clinic is DENIED.
2. Authorization of a follow up with the authorized neurosurgeon, Dr. Harish Thaker is DENIED.
3. Attorney's Fees and Costs are DENIED.

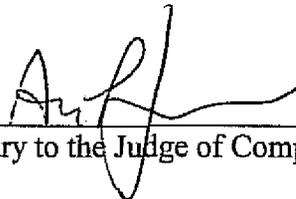
DONE AND ORDERED in Chambers, on November 13, 2015, at Ft. Lauderdale,
Broward County, Florida.



Iliana Forte
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above Order was entered by the Judge of Compensation Claims and a copy was served by electronic transmission on this 13th day of November, 2015 to the parties counsel or by mail if parties are unrepresented.



Secretary to the Judge of Compensation Claims

COPIES FURNISHED:

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