

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

Anson Jean-Pierre,
Employee/Claimant,

OJCC Case No. 96-027093ERA

vs.

Accident date: 12/20/1996

Eli Witt Company, Eli Witt
Company/United States Fire Insurance
Company, and Crum & Forster,
Employer/Carrier/Service Agent.

Judge: Edward Almeyda

FINAL COMPENSATION ORDER

This matter came before me, the undersigned Judge of Compensation Claims, for a merits hearing held on July 20, 2015. The Claimant was represented by William Souza, Esquire, and Robert Krebs, Esquire. The E/C was represented by Andrew Borah, Esquire.

The adjudicated PFB is dated 2/02/2015.

CLAIMS/DEFENSES:

Claims:

1. Evaluation with Dr. David Gilbert, hand surgeon specialist for current care options from Dr. Gilbert, who previously provided such care to Claimant in 2012.
2. PICA

Defenses:

1. Dr. Gilbert is not an authorized treating physician, but a physician who was previously authorized to provide a second opinion only. Therefore there is no entitlement to a follow up with Dr. Gilbert.
2. Deny PICA.

DOCUMENTARY EVIDENCE:

Joint:

- JT1. Stipulation and Order dated 4/12/2012 (172)
JT2. PFB dated 2/2/2015 (175)

Claimant:

1. Dr. Gilbert's reports (173)
2. Pay history (174)
3. Dr. Sandoval's records (176)
4. Dr. Miller's report (178)

Employer/Carrier:

- a. Deposition of Ms. Hoyt (181)

Judges Exhibits:

- J.1 Pretrial (177)
- J.2 Pretrial amendment (179)
- J.3 Motion and Order admitting Dr. Gilbert's records (180)
- J.4. Claimant's trial summary, for ID only (184)
- J.5 E/C trial summary for ID only (169)
- J.6 Mediation agreement (149)

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. This matter was presented without any testimony. In this case, where the Claimant suffered a wrist injury in 1996, the issue is limited to a return to Dr. David Gilbert, who had seen the Claimant in 2012.

2. The documentary evidence reveals that in a stipulation dated 4/12/2012 the parties agreed as follows:

"The E/C agrees to provide an authorized *second opinion* orthopedic appointment. Within 15 days of the filing of this Stipulation the E/C shall authorize, schedule, timely notice Claimant and his counsel and pay/pre-pay as needed, for a *second opinion* orthopedic appointment." (Italics provided by the undersigned).

3. This in turn resulted in an order dated 4/13/2012 which ordered as follows:

"Within 15 days of the filing of the Stipulation the E/C shall authorize, schedule, timely notice Claimant and his counsel and pay/pre-pay as needed, for a *second opinion* orthopedic appointment." (Italics provided by the undersigned).

4. The Claimant in 4/26/2012 and 5/24/2012 then sees Dr. David Gilbert for such a second opinion.

5. Based upon these stipulations and orders, the undersigned finds that Dr. Gilbert's authorization was limited to a second surgical opinion, and not for ongoing treatment.

6. Later in 2/2/2015 a PFB is filed which sought three main items. The first is a return appointment with Dr. Azar, for orthopedic care, the second a current appointment with Dr. Gilbert, a *further opinion provider*, and lastly a return appointment with Dr. Sandoval, a psychiatrist.

7. This in turn resulted in a mediation agreement dated 4/27/2015 whereby it was agreed that the Claimant had received already further care from Dr. Azar and Dr. Sandoval.

8. In support of this claim, the Claimant has presented an IME from Dr. Miller which lays out a full medical history of this claimant's wrist injury and care. The IME concludes as follows:

"If this patient is interested in pursuing the surgical treatment options, it is medically necessary for him to be referred to a physician who is willing to discuss and pursue the surgical options. *The patient has indicated that he would like to return to the office of Dr. Gilbert for further treatment.* I believe this would be a good plan for this patient." (Italics furnished by the undersigned).

9. The notes from Dr. Sandoval, barely legible, are also considered, and it appears that the Claimant suffers from chronic pain.

10. Lastly, in this matter the deposition of Ms. Hoyt is considered. Clearly from this deposition Dr. Gilbert was only a second opinion provider pursuant to the agreement of the parties. This was clearly set forth in the attached letter from the adjuster dated 4/12/2012, and in the authorization form sent Dr. Gilbert on 4/18/2012 (date may be 4/15/2012).

11. In this matter, the Claimant contends that Dr. Gilbert has now become an authorized provider, and as such he is entitled to return to him. This contention is predicated on three main factors. The first is the fact that the E/C paid for Dr. Gilbert's services. The second is the fact

that no subsequent de-authorization was made. And the third factor is the agreement by the E/C that he was an “authorized provider” whose medical records could come into evidence.

12. Not much argument can be made reference to the first contention. Clearly, if Dr. Gilbert was to render a second opinion, he was to be paid for his services. With regards to the second argument, the undersigned finds that a de-authorization was not necessary, as the services were limited to a second opinion, rather than ongoing treatment.

13. Finally, with regards to the third argument, there is a distinction between the term “authorized” for the purpose of admission of medical records pursuant to F.S. 440.29(4), and authorized remedial treatment as found in F.S. 440.13 (2). While a second medical opinion, authorized by the E/C is considered admissible for the purposes of F.S. 440.29 (4), as part of the ongoing diagnosis/treatment, it does not necessarily make it a blanket authorization for ongoing treatment.

14. This concept of a medical request for a second opinion is not distinct from a request for a test such as an MRI, or a blood test, as part of the treatment plan by an ongoing treating physician. A Claimant cannot unilaterally continue to receive these tests without further referral from a treating physician. Yet, the results of such testing are admissible under F.S. 440.29 (4).

15. A glaring and significant item of evidence is missing from the picture presented by the Claimant, which is fatal to their case. This is the opinion of Dr. Azar, the current orthopedic treating physician which apparently saw the Claimant within the last three months.

16. In *Florida Hospital Deland v. Van Wagner-Vick*, 940 So2d 588 (Fla. 1st DCA, 2006), the First District Court stated:

“In a worker’s compensation claim, an authorized physician’s referral of an employee to

the treatment of another health-care provider constitutes sufficient authorization for the treatment of the referred provider if the referral was made in the treating physician's own judgment, rather than at the claimants' request".

17. Herein two of the required factors are missing. First is the referral by Dr. Azar, the treating physician for a current second opinion. Second is the fact that this return to Dr. Gilbert is made at the Claimant's request. This second point is reinforced by Dr. Millers closing comment as quoted above, that: "The patient has indicated that he would like to return to the office of Dr. Gilbert for further treatment."

18. As mandated in *Lombardi v. Southern Wine and Spirits*, 890 So2d 1128 (Fla. 1st DCA, 2004), a JCC must resolve such question (second opinion) after an evidentiary hearing where claimant will bear the burden of demonstrating entitlement.

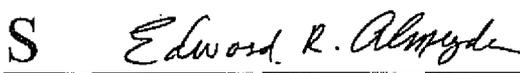
19. Considering the findings and analysis made herein, the undersigned finds and holds that the Claimant at this time has failed to demonstrate entitlement to yet another second opinion visit with Dr. Gilbert. This holding is limited to the current set of facts presented, and should not be intended to adjudicate such an entitlement if the factual predicate changes.

20. The claim for fees and costs for the benefit adjudicated herein is denied.

WHEREFORE, IT IS ORDERED AND ADJUDGED:

1. The Claim for authorization of a return to Dr. David Gilbert for another visit is hereby denied.
2. The Claim for fees and costs on the above benefit is denied.

DONE AND ORDERED this 20th day of July, 2015, in Miami, Dade County, Florida.



Edward Almeyda

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