

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

JUAN LANTIQUA,

OJCC#: 07-036115 KSP

Employee/Claimant,

D/A: 7/31/07

v.

JUDGE: KATHRYN S. PECKO

FRANKCRUM and  
BROADSPIRE,

Employer/Carrier.

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Ricardo Morales, Esquire, Counsel for Employee/Claimant

Andrew R. Borah, Esquire, Counsel for Employer/Carrier

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**COMPENSATION ORDER**

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**THIS CAUSE** came before the undersigned Judge of Compensation Claims on November 17, 2011 in Broward County, Florida for a duly noticed final hearing. The hearing record closed on November 17, 2011. The instant Compensation Order adjudicates all outstanding issues in the Petition for Benefits [PFB] filed on May 5, 2011. The Employee/Claimant will be referred to by name or as "Claimant." The Employer and the Carrier will be referred to in their respective individual capacities or collectively as "E/C."

At issue in the instant proceeding is Claimant's request for payment of temporary partial disability [TPD] benefits for the periods of November 22, 2010 to December 13, 2010 and January 11, 2011 to January 18, 2011, plus penalties and interest thereon. Claimant also requests attorney's fees and costs. E/C denied these benefits on the bases that Claimant is at MMI and

voluntary limitation of income. E/C further denied attorney's fees and costs as related to the instant proceeding.

At final hearing, the parties stipulated that all issues relating to attorney's fees and costs as to past benefits obtained would be addressed in a subsequent proceeding. The parties also agreed that if any benefits were found due and owing, the payment of same would be handled administratively. Finally, the parties stipulated that the AWW is \$855.58.

Claimant was the only witness to testify in person before the undersigned Judge of Compensation Claims at the final hearing. The following documentary and testimonial exhibits were also admitted into evidence:

Judge's Comp. Ex. 1	Pretrial Stipulation and E/C Amendment
Clmt. Ex. 1	PFB filed 5/5/11
Clmt. Ex. 2	Depo. Ruby Arias, plus 1 exhibit
Clmt. Ex. 3	No work slip dated 12/1/10 by Dr. Salamon
Clmt. Ex. 4	Claimant Medical Record Composite
E/C Ex. A	Depo. Claimant, no exhibits
E/C Ex. B	Depo. Dr. Joel Salamon, plus CD exhibits
E/C Ex. C	Depo. Dr. Christopher Brown, plus CD exhibits

The undersigned considered all of the testimonial and documentary evidence, notwithstanding that there may not be an express recitation of same within the four corners of the instant Compensation Order, before rendering the following findings and conclusions:

1. The undersigned has jurisdiction over the parties and the subject matter.
2. Dr. Christopher Brown, authorized orthopedic surgeon, placed Claimant at MMI as of January 24, 2008 with a 6% permanent impairment rating. E/C Ex. C at 7, 8, 17, 25. Dr. Brown assigned a 35 pound occasionally lifting restriction. E/C Ex. C at 8. Dr. Brown has not provided any curative treatment from an orthopedic standpoint since January 24, 2008, but did refer Claimant to pain management for epidural injections. E/C Ex. C at 17, 18, 25, 27-28, 31, 33.

Although Dr. Brown subsequently issued some DWC-25 forms and indicated on the forms that Claimant was *not* at MMI, those notations were entered by mistake. E/C Ex. C at 9. Dr. Brown explained that given the fact that the Claimant was not a surgical candidate, he remained at MMI from an orthopedic surgery standpoint notwithstanding that Claimant was doing pain management. E/C Ex. C at 13. Dr. Brown wrote in his office report for March 4, 2010 that Claimant remained at MMI, yet noted on the DWC-25 for that date that Claimant was not at MMI. E/C Ex. C at 15, 16. There was a similar inconsistency in regard to the office visit on September 20, 2010. E/C Ex. C at 16, 17. Dr. Brown has not seen Claimant since the September 20, 2010 office visit and would defer to Dr. Salamon as far as MMI from a pain management perspective. E/C Ex. C at 16, 18, 32.

3. Dr. Joel Salamon, authorized pain management/anesthesiologist, placed Claimant at MMI from a pain management perspective as of March 31, 2009. E/C Ex. B at 13. At the time he placed Claimant at MMI, Dr. Salamon referred Claimant back to Dr. Brown to consider other treatment options which would be surgical in nature. E/C Ex. B at 19. Claimant returned to Dr. Salamon on October 27, 2010 pursuant to Dr. Brown's referral for repeat epidural injections. E/C Ex. B at 13, 14. Dr. Salamon opined that Claimant stayed at MMI when he returned on October 27, 2010. E/C Ex. B at 14-15, 17. The doctor explained that his treatment was palliative because it was not going to cure his disk problems, but it would provide some pain relief. E/C Ex. B at 15, 23, 24, 32; see also 31 (pain treatment is not curative).

Dr. Salamon, like Dr. Brown, had DWC-25 reports that were inconsistent with his March 31, 2009 MMI assessment. On the October 27, 2010 DWC-25 report, the doctor indicated that "anticipated MMI date cannot be determined at this time." E/C Ex. B at 16. Dr. Salamon testified that he does not recall why he checked that box, but posited that he probably

could not find the MMI date in the record when he was filling out the form. E/C Ex. B at 16. Dr. Salamon noted that Claimant went approximately one and a half years without treating with him before returning in October 2010, so it is "pretty simple" that Claimant was at MMI. E/C Ex. B at 31.

Claimant received another series of epidural injections in November, 2010, January, 2011, and August, 2011. E/C Ex. B at 27. Dr. Salamon clarified that on the day of the injection and the next day there is a work status change to no work, but thereafter the patient returns to his/her pre-injection work status and restrictions. E/C Ex. B at 34.

4. The undersigned finds that Claimant remained at overall MMI as of March 31, 2009, when Dr. Salamon placed him at MMI from a pain management perspective. Claimant's request for TPD benefits is denied.

Dr. Brown testified that he did not render any further treatment after placing Claimant at MMI.<sup>1</sup> Dr. Salamon explained that the injections were intended to address the pain caused from the bad disks, but did nothing to fix the disks themselves.

The DWC-25 forms, when *accurately* filled out by the health care provider, provide a carrier with a concise synopsis of the medical provider's assessment of the injured worker's condition during the office visit. However, the key component is accuracy.

Unfortunately, neither Dr. Brown nor Dr. Salamon embraced the notion of accuracy when completing DWC-25 reports. Dr. Salamon testified that he has filled out thousands of these forms. Both physicians completed DWC-25 forms that were inconsistent with their own office notes. The adjuster compounded the problem when she did not make any

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<sup>1</sup> At some point after his MMI assessment, Dr. Brown ordered an MRI to determine whether Claimant was a surgical candidate. The doctor concluded that Claimant was not and no surgery was performed or modality of treatment such as physical therapy was prescribed.

inquiry of the doctors after receiving these forms containing inconsistent information. Rather, the adjuster ignored them because she knew that the doctors previously placed Claimant at MMI. A simple phone call to the doctor's office could have nipped this misinformation in the bud and obviated the need litigate this issue. The undersigned finds the doctors' dictated office notes to be more reliable than the DWC-25 forms.

The fact that Dr. Salamon or someone in his office issued a Work/School Excuse on December 1, 2010 stating that Claimant was unable to work until further notice does not require a different result. The issuance of such a note by Dr. Salamon and/or his staff is no doubt careless and inexcusable. However, Claimant had a series of epidural injections with Dr. Salamon in 2008 or 2009. There is no evidence that any similar type of no work until further notice was issued for the first series of epidurals. Dr. Salamon in deposition was quite clear that his patients that undergo the injections are put on a no work status for the day of the procedure and the next day, and then return to pre-injection restrictions.

5. E/C paid attorney's fees and costs as related to legal services rendered and costs incurred for the instant proceeding are denied. Jurisdiction is reserved for all other issues relating to attorney's fees and costs. Based on the foregoing, it is hereby

**ORDERED AND ADJUDGED** as follows:

1. Claimant's requests for payment of TPD benefits, plus penalties and interest thereon for the periods of November 22, 2010 to December 13, 2010 and January 11, 2011 to January 18, 2011 are denied.

2. E/C paid attorney's fees and costs as related to legal services rendered and costs incurred for the instant proceeding are denied; the undersigned reserves jurisdiction as to any other outstanding issues relating to attorney's fees and costs.

3. The PFB filed on May 5, 2011 is dismissed with prejudice.

**DONE AND ORDERED** in Chambers, Lauderdale Lakes, Broward County, Florida.



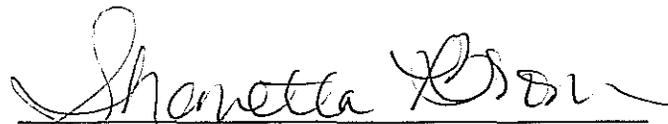
*Kathryn S. Pecko*

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KATHRYN S. PECKO  
JUDGE OF COMPENSATION CLAIMS

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing Order was entered by the  
**Judge of Compensation Claims** and a copy was served by electronic transmission on  
December 19, 2011 to the parties' counsel of record or by  
**mail if parties are unrepresented.**

  
**Secretary to the Judge of Compensation Claims**