

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
PORT ST. LUCIE DISTRICT OFFICE

Nivia L. Lascaibar,
Employee/Claimant,

OJCC Case No. 13-028208RDM

vs.

Accident date: 11/25/2013

Stack, Fernandez, Anderson &
Harris/Castlepoint Florida,
Employer/Carrier/Service Agent.

Judge: Robert D. McAliley

SUMMARY FINAL ORDER

THIS MATTER was considered pursuant to “Claimant’s Motion for Summary Final Order” filed February 26, 2014, and the employer/carrier’s (E/C) similar motion filed March 19, 2014. A hearing was conducted in order for counsel to present argument. The issue presented concerns an interpretation of section 440.13 (2) (f), the one-time change of physician provision.

The facts are not in dispute. Claimant sustained an industrial accident which was accepted as compensable by E/C. Medical care was provided with a primary care physician who recommended treatment with an orthopedic surgeon. E/C then authorized Dr. Salvadore Ramirez to whom claimant presented on at least one occasion.

Claimant, through counsel, then filed a petition for benefits (PFB) on February 14, 2014, seeking, “Authorization of Dr. Joseph Trina per 440.13 (2) (f).” The standard PFB form utilized also reads: “CLASS OF BENEFIT: Authorization of medical care/testing SPECIFIC TYPE: Neurosurgeon.”

On the same day the foregoing PFB was filed, E/C advised claimant that Dr. Jay Stein, an orthopedic physician, was authorized in compliance with claimant’s request. Dr. Stein is not

professionally affiliated with Dr. Ramirez.

E/C asserts this action fully complies with section 440.13 (2) (f). Claimant contends E/C is not in compliance pointing to the following statutory language: “If the carrier fails to provide a change of physician *as requested by the employee*, the employee may select the physician....” (Emphasis added). In essence, claimant contends that merely providing a change is insufficient. Instead, the “as requested” language requires E/C to provide a doctor who practices in the requested medical specialty. I disagree.

There is no appellate case on point. Hence, I interpret the statute in accordance with the dictates of section 440.015. Section 440.13 (2) (f) requires that on request from the claimant E/C “... shall authorize an alternative physician....” Dr. Stein is a “physician” as defined by statute. Sec. 440.13 (1) (b) *Fla. Stat.* (2013). Nothing in the applicable statute provides the doctor to be provided must also practice in the specialty sought by claimant.

In construing the statute’s meaning, I also consider the *Workers’ Compensation Law* which obviously applies statewide should be interpreted in a manner promoting “... an efficient and self- executing system.” Sec. 440.015 *Fla. Stat.* (2013). Given the short time span in which E/C has to act, and noting that obtaining within 5 days many types of medical specialists including a neurosurgeon would be virtually impossible in rural areas of the state, I find that E/C complied with a one-time change of physician provision of the law.

WHEREFORE, it is

ORDERED AND ADJUDGED as follows:

- 1). Claimant’s motion for summary final order filed February 26 2014, is DENIED.
- 2). The employer/carrier’s motion for summary final order filed March 19, 2014, is GRANTED. Hence, the petition for benefits filed February 14 2014, is DENIED AND

DISMISSED.

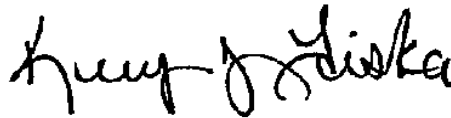
3). Jurisdiction is RESERVED to determine all issues pertaining to attorney's fees and costs.

DONE AND ORDERED this 9th day of April, 2014, in Port St. Lucie, St. Lucie County, Florida.



Robert D. McAiley
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Port St. Lucie District Office
WestPark Professional Center, 544 NW University Blvd., Suite
102
Port St. Lucie, Florida 34986
(772)873-6585
www.fljcc.org

I HEREBY certify that a true and correct copy of the foregoing has been e-mailed to Counsel on April 9th, 2014.



Assistant to Robert D. McAiley

David Scott Benn
Law Office of Richard E. Zaldivar, P.A.
2600 Southwest Third Avenue, Suite 300
Miami, Florida 33129
dbenn@zaldivarpa.com,zaldivaresquire1@gmail.com

Andrew R. Borah, Esquire
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.
1280 SW 36th Avenue, Suite 100
Pompano Beach, Florida 33069
sfournier@hrmcw.com,sdela@hrmcw.com