

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Lourdes Muro,
Employee/Claimant,

vs.

OJCC Case No. 12-023144DSR

Alphastaff, Inc./AmTrust North America,
Employer/ Carrier/Servicing Agent.

Accident date: 8/10/2012

FINAL COMPENSATION ORDER

This cause was heard before the undersigned at Sebastian, Indian River County, Florida on September 19, 2013, via Video Teleconference from Miami, upon the Claimant's claims for Temporary Total/Temporary Partial Disability Benefits from February 15, 2013, and forward; authorization for a return appointment with Dr. Dan Cohen and Dr. Berkower for examination and treatment; authorization of a different physical therapy facility; attorney's fees, costs, penalties, and interest. The Petition for Benefits was filed on March 4, 2013. Mediation occurred on May 20, 2013, and the Parties' Pretrial Compliance Questionnaire was filed on June 4, 2013. Frank A. Cerino, Esq., was present on behalf of the Claimant. Andrew R. Borah, Esq., was present on behalf of the Employer/Carrier.

The defenses were that the entire claim is denied pursuant to Florida Statutes 440.105(4) and 440.09(4); the industrial accident is no longer the major contributing cause of the Claimant's need for treatment; no TTD/TPD due or owing as the Claimant has been placed at MMI with a 0% impairment rating from all authorized physicians; that no penalties, interest, costs or attorney's fees due or owing.

The following documentary items were received into evidence:

1. Pretrial Stipulation Sheet and Order dated June 4, 2013, together with the documentary items required by Rule 9.180 (Judge's Exhibit #1).
2. Medical Records of Jackson Memorial Hospital and Medical Records of Dr. David Berkower filed on September 17, 2013 (Claimant's Exhibit #1).
3. Deposition of Dr. Kenneth R. Hodor taken on July 30, 2013 (Claimant's Exhibit #2).
4. Deposition of Dr. Dan Cohen taken on September 16, 2013 (Employer/Carrier's Exhibit #1).

5. Deposition of Dr. Morton Corin taken on September 6, 2013 (Employer/Carrier's Exhibit #2).
6. Deposition of Dr. Dominic Maggio taken on April 2, 2013 (Employer/Carrier's Exhibit #3).
7. Deposition of Lourdes Muro taken on January 22, 2013 (Employer/Carrier's Exhibit #4).

At the hearing, the Claimant, Lourdes Muro, appeared and testified before me. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the witness' testimony and may not refer to each piece of documentary evidence, I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. The items to which the parties were in agreement on the pretrial stipulation sheet are accepted and adopted as findings of fact.
2. The parties stipulated that the Claimant suffered an industrial accident arising out of and in the course and scope of her employment on August 10, 2012, and that she suffered injuries to her back and neck.
3. The parties stipulated that average weekly wage was not an issue for determination at the hearing.
4. It is the Claimant's position that she has not attained Maximum Medical Improvement (MMI). The Employer/Carrier asserts that MMI was reached with a zero percent impairment rating either on January 29, 2013, as found by Dr. Corin, or on January 31, 2013, as found by Dr. Cohen.
5. The parties stipulated that the last benefits the Employer/Carrier provided were paid on February 15, 2013.
6. The Claimant is a 53 year old individual who graduated from High School and has some college education. The Claimant worked as a property manager. The Claimant's duties included overseeing five different residential property complexes, supervising the leasing and maintenance staff, performing property inspections, and overseeing some aspects of construction.
7. At the time of the Claimant's accident, she was performing a property inspection when she fell down four to five wet concrete stairs. The Claimant reported that she fell on her

right side, injuring her neck, her entire back, and her head. After the fall, an ambulance was called to the scene, which transported the Claimant to Jackson Memorial Hospital for emergency care. The fall was witnessed by 3 co-employees.

8. The Employer/Carrier accepted compensability of the accident. After receiving emergency treatment at Jackson Memorial Hospital, the Claimant followed up at the Occupational Medical Center. The physician there treated the Claimant for neck and back pain, headaches, and placed her on a no-work status.

9. When the Claimant's back and headache symptoms did not go away, the Occupational Medical Center recommended that she follow up with an orthopedist and neurologist. The Employer/Carrier authorized Dr. Dan Cohen and Dr. Morton Corin, respectively.

10. The Claimant initially saw Dr. Cohen on September 25, 2012. The Claimant complained of pain in the back of her neck that went all the way down her back to her lower back and into her buttocks. Dr. Cohen's September 25, 2012, report indicates that "She states she has never had any problems with her spine before. Dr. Cohen took the Claimant's back complaints seriously and he kept her on a no-work status. Dr. Cohen still had the Claimant on a no-work status when he placed her at MMI on January 31, 2013. Dr. Cohen referred the Claimant to pain management and the Employer/Carrier authorized Dr. David Berkower, a pain management specialist, who provided the Claimant with injections.

11. Dr. Corin treated the Claimant for her headache and dizziness complaints. While Dr. Corin believed the Claimant showed signs of symptom magnification, he gave her the benefit of the doubt and provided neurological treatment for her headache complaints and prescribed medications.

12. The Claimant's deposition was taken on January 22, 2013. In her deposition the Claimant testified that her headaches began immediately after her industrial accident. The Claimant testified that she had never treated with a doctor for headaches prior to August 10, 2012. The Claimant testified that she did not have any trouble with headaches before the industrial accident and she denied being prescribed any medication prior to the industrial accident. The Claimant denied suffering from migraines and denied having any prior neck or back pain or problems. When asked if she had seen a primary care physician, the Claimant referenced a Dr. "Dominic", but then said no that it was another doctor that she saw with a different name.

13. The Employer/Carrier provided the Claimant with indemnity and medical benefits until they received a medical record from Dr. Dominic Maggio, an internal medicine specialist. The Carrier performed a search on the Claimant and came upon the report of an evaluation by a Dr. Maggio who had treated the Claimant on June 8, 2012, two months prior to the industrial accident. The Claimant presented to Dr. Maggio with complaints of headaches and dizziness for the past four months. The Claimant also gave Dr. Maggio a history of back pain and in the History and Physical Form that the Claimant filled out before seeing Dr. Maggio, she acknowledged having a history of migraine headaches, frequent headaches, dizzy spells, neck pains, and back pains. Dr. Maggio prescribed Naproxen and referred the Claimant to a neurosurgeon for further treatment.

14. The Employer/Carrier's attorney conference with both Dr. Cohen and Dr. Corin. Both physicians immediately placed the Claimant at MMI with no impairment rating and no restrictions as a result of the industrial accident. Both physicians were deposed and testified that in light of the Claimant's prior history and complaints that they no longer believed that the accident was the major contributing cause of the Claimant's condition or need for treatment.

15. Based on the totality of the evidence before me I find that the Claimant has provided false statements about her medical history to Dr. Corin and Dr. Cohen, as well as in her January 22, 2013, deposition. The Claimant first presented to Dr. Corin on September 14, 2013, with complaints of headaches, dizziness, and back pain. Dr. Corin testified that he specifically asked the Claimant if she experienced any of these symptoms prior to her industrial accident and the Claimant responded that she rarely had headaches and she generally denied having any of the other symptoms she complained of. When presented with the Claimant's record from Dr. Maggio, Dr. Corin indicated that the medical history the Claimant provided him was inconsistent with the history she provided Dr. Maggio. While the Claimant told Dr. Corin that she rarely had headaches prior to her industrial accident, the Claimant indicated on the History and Physical Form prior to seeing Dr. Maggio that she experienced frequent headaches. On such History and Physical Form, the Claimant also acknowledged having dizzy spells, neck pain, and back pain, all of which the Claimant denied having to Dr. Corin. Due to the headache and dizziness complaints that the Claimant provided Dr. Maggio on June 8, 2012, he referred her to see a neurologist.

14. When the Claimant initially saw Dr. Cohen on September 25, 2012, she complained of pain in the back of her neck that went all the way down her back to her lower

back and into her buttocks. Dr. Cohen's September 25, 2012, report indicates that "She states she has never had any problems with her spine before. The records of Dr. Maggio contradict this as she did acknowledge having a history of neck and back pain.

15. By the time the Claimant underwent an Independent Medical Evaluation by a physician of her choosing, Dr. Kenneth Hodor, on July 1, 2013, she did report that she had a history of prior back and neck pain, but by then her claim had been denied by the Employer/Carrier based on her misrepresentations.

16. It is unfortunate that the Claimant felt the need to hide her prior complaints of neck and back pain as it does not seem that she really had very much treatment for these conditions and it does not appear that her complaints were even bad enough that she previously had any diagnostic testing done. In fact, Dr. Maggio testified that the back wasn't even her main complaint when she came to see him and he didn't feel that she needed treatment for her back when he evaluated her. I cannot accept the Claimant's trial testimony that she only went to Dr. Maggio for a routine check up and that her headaches were caused by her need for new glasses based on the History and Physical Form she completed at that time. The Claimant suffered a fairly severe fall that was witnessed by co-workers and required being taken by ambulance to the hospital as a result of the industrial accident. She probably sustained injuries as a result of that fall, but her misrepresentations to the physicians and under oath at her deposition require me to find that she is not entitled to any Workers' Compensation Benefits pursuant to Florida Statutes Sections 440.105 and 440.09(4).

17. All pending claims are hereby denied and dismissed.

WHEREFORE, it is hereby ORDERED and ADJUDGED that:

All pending claims are hereby denied and dismissed.

DONE AND ELECTRONICALLY SERVED ON COUNSEL AND CARRIER this
25th day of September, 2013, in Sebastian, Indian River County, Florida.



Donna S. Remsnyder
Judge of Compensation Claims
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