

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

Bette Peters,  
Employee/Claimant,

OJCC Case No. 97-028443ERA

vs.

Accident date: 12/8/1997

Miami Palm Restaurant Inc/Crum &  
Forster,  
Employer/Carrier/Service Agent.

Judge: Edward Almeyda

FINAL COMPENSATION ORDER

This matter came before me, the undersigned Judge of Compensation Claims, for hearings held on 8/7/2015 and 8/17/2015 to adjudicate the merits of the pending petitions. The Claimant was represented by Robert Krebs, Esquire, and the E/C by Andrew Borah, Esquire.

The adjudicated petition is dated 3/12/2015.

**CLAIMS AND DEFENSES:**

Claims as petitioned:

1. Claimant's IME with Dr. Bryce Epstein.
2. Provide authorized physiatrist. While Claimant does not have a referral, and IME is requested for this purpose.
3. PICA

Claims as set forth in pretrial:

4. Provide IME with Dr. Dorto, as Dr. Epstein no longer appropriate.
5. Provide authorized physiatrist. While Claimant does not have a referral, and IME is requested for this purpose. Initial status of Dr. Epstein in this role not currently clear or accepted by Claimant.
6. PICA

Defenses:

- a. Claimant was provided with a physiatrist for evaluation and treatment related to the accident through Dr. Epstein.
- b. No dispute to warrant an IME as Claimant provided with a physiatrist for evaluation and treatment. Claimant not entitled to an IME.
- c. Deny PICA.

**DOCUMENTARY EVIDENCE:**

Claimant:

1. Adjuster's notes (289\*)
2. Pay History (291\*)
3. Mediation impasse (252\*)

Employer/Carrier:

- a. Response to PFB (239\*)
- b. Deposition of Lorraine Crenco (295\*)
- c. Deposition of Mike Rumberger (296\*)

Joint exhibits:

- Jt1. Pretrial stipulation (266\*)
- Jt2. Prepay invoice to Dr. Epstein (290\*)

Judges exhibits:

- J1. Pretrial stipulation (238\*)
- J2. Claimant's trial summary (for Id. Only) (288\*)
- J3. Order denying continuance (277\*)
- J4. Claimant's motion to compel and IME (269\*) (Judicial notice)
- J5. Order on motion to compel an IME (274\*) (Judicial notice)
- J6. E/C motion for a continuance (276\*) (Judicial notice)
- J7. Claimant's objection to motion for a continuance (283\*) (Judicial notice)
- J8. Claimant's notice that Dr. Dorto can perform an IME (271\*) (Judicial notice)

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW:**

The issues on this case, involving an accident which occurred on 12/8/1997, are straight forward. The first is the petitioned provision of an IME (whether by Dr. Epstein or Dr. Dorto), and the second provision of an evaluation and treatment by a physiatrist.

The chronology of this litigation is as follow:

1. PFB dated 3/12/15 seeking an IME with Dr. Epstein and separately evaluation and treatment by a physiatrist.
2. E/C response dated 3/19/15 authorizing Dr. Epstein to perform evaluation and treatment, and denying IME as there is no dispute.
3. Lorraine Crenco, analyst and assistant to the adjuster, receives an email on 3/16/15 from the adjuster requesting she set up an appointment with Dr. Epstein.
4. On 3/17/15 she sets up an IME with Dr. Epstein, taking that request from the PFB filed. The IME is scheduled for 3/31/2015.
5. Adjuster contacts Ms. Crenco on 3/25/15 stating that Claimant needs new

- appointment date, for evaluation and treatment, not an IME.
6. Ms. Crenco contacts on 3/25/15 Maria and leaves a message for Maxine, in Dr. Epstein's office, rescheduling appointment.
  7. Ms. Crenco speaks with Maria on 3/26/2015 ensures she understood it was for evaluation and treatment. The prepayment is modified to include records review within the \$2000.00 fee, not in addition to said fee.
  8. Pretrial approved on 6/22/15
  9. Claimant files motion for IME with psychiatrist Dorto on 7/9/15
  10. Claimant notices the Dr. Dorto can perform the IME on 7/16/15
  11. Order granting IME with Dr. Dorto entered 7/17/15.
  12. E/C requests a brief continuance on 7/29/15
  13. Claimant objects to said continuance on 7/30/15
  14. Order denying continuance entered on 7/30/15.

Given this chronology, it is apparent that the issue of the IME is now moot, as that was resolved in the order dated 7/17/15, granting said benefit.

The crux of this case is over the second issue, treatment by psychiatrist Epstein. It is the Claimant's position that because of the initial mistake by Ms. Crenco in scheduling Dr. Epstein as an IME, he would be disqualified from treating the Claimant, in spite that said mistake was corrected within nine days of the original scheduling of the appointment, and before the Claimant was examined by the doctor.

The Claimant supports her argument with the fact that maybe more than one mistake was made in this scheduling. Indeed, it does appear as if several errors were made in the handling of this matter, the question being whether they were fatal in the authorization of Dr. Epstein.

In determining this, the testimony of Ms. Crenco was considered and accepted. It is essentially as recapitulated in the above mentioned chronology; therefore, it will not be restated.

Likewise, the testimony of the adjuster, Mr. Rumberger, was considered. As the Claimant noted, the transcript is flawed, yet these flaws, when considering the testimony of Ms. Crenco, is not fatal to establish the events that transpired during the scheduling of the appointment with Dr. Epstein. In view of that fact, to the extent that this testimony sets forth the events of this case, it

is accepted by the undersigned.

The biggest non present critical element is the absence of any testimony from Dr. Epstein or his staff. At this juncture, this vacuum does not fill the necessary gap to in the void of the facts to resolve this dispute. It is noted that the Claimant, who has the burden of proof, never sought to adduce any such evidence.

Thus, considering the accepted testimony, and the chronology set forth above, the undersigned finds that the E/C's authorization of Dr. Epstein to evaluate and treat is appropriate. The evidence does not show that the original error in the designation of Dr. Epstein as an IME, has been demonstrated to be prejudicial to said authorization. In making this ruling it is noted that Dr. Epstein's office acknowledged the designation of his capacity by changing the pay status from a flat fee plus costs, to a flat fee. The latter being the "evaluate and treat" fee charged by his office.

**WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:**

1. The claim for an IME is denied as moot.
2. The claim for authorization of a psychiatrist is denied as moot, as the E/C has authorized Dr. Epstein.
3. Reserve jurisdiction of issues of fees and costs, not litigated herein.

DONE AND ORDERED this 17th day of August, 2015, in Miami, Dade County, Florida.



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