

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

Oswaldo Reyes,  
Employee/Claimant,

OJCC Case No. 18-008725MGK

vs.

Accident date: 11/7/2017

Eagle Doors, Inc./AmTrust North America  
of Florida, and Associated Industries  
Insurance Company,  
Employer/Carrier/Servicing Agent.

Judge: Margret G. Kerr

**FINAL MERITS ORDER ON REHEARING**

THIS CAUSE came before the undersigned Judge of Compensation Claims (hereinafter "JCC"), for a Merits Hearing on September 27, 2018, regarding the Petition for Benefits (PFB) filed on April 11, 2018. The Claimant was represented by Ricardo Morales Esq., and the Employer/Carrier (hereinafter "E/C"), was represented by Andrew Borah Esq. A Final Merits Order was entered 10/3/2018. Claimant filed a Motion for Rehearing which was granted by order entered 10/19/2018 and the Final Merits Order was vacated. This Order on Rehearing ensues.

**EXHIBITS:**

**JOINT:**

1. Translation of correspondence written by Claimant, filed 9/24/2018 (DE#18).
2. Deposition of Adjuster, Arielle Durant, filed 9/24/2018 (DE#19).

**CLAIMANT:**

1. Petition for Benefits filed 4/11/2018 (DE#1).
2. Correspondence written by Claimant in Spanish, filed 9/24/2018 (DE#17).

**E/C:**

1. Deposition of claimant, Oswaldo Reyes, filed 9/24/2018 (DE#20).

**JCC:**

1. Claimant Trial Memorandum, filed 9/24/2018 (DE#15) - identification only.
2. E/C Trial Memorandum, filed 9/25/2018 (DE#21) - identification only.
3. Uniform Pre Trial Stipulation and Questionnaire, filed 7/6/2018 (DE#12).
4. With the agreement of the parties, the undersigned takes judicial notice of the OJCC case docket.

**CLAIMS:**

1. Authorization of Dr. Andres Vega as Claimant's choice of one time change in physician.
2. Attorney's Fees and Costs.

**DEFENSES:**

1. Dr. Saff was timely authorized as Claimant's one-time change.
2. No attorney fees or costs due or owing.

After due consideration of the matter and having the opportunity to review and consider the aforesaid exhibits which were admitted into evidence, and having endeavored to resolve all conflicts of facts in the evidence presented herein, I hereby make the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The undersigned Judge of Compensation Claims has jurisdiction over the parties and the subject matter of this case.

2. Any and all issues raised by way of Petitions for Benefits ("PFB"), but which issues were not dismissed or tried at hearing, are presumed resolved, or in the alternative, deemed abandoned by the claimant and, therefore, are denied and dismissed with prejudice. See, *Scotty's Hardware v. Northcutt*, 883 So.2d 859 (Fla. 1<sup>st</sup> DCA 2004).

3. The parties agreed the undersigned would adjudicate entitlement to attorney's fees and costs, reserving jurisdiction to determine quantum at a later date should the parties be unable to resolve the issue.

4. Claimant is a 48 year old male who has been in the United States for 16 years. He was injured in the course and scope of his employment on 11/7/2017. Subsequent to being terminated from his job, Claimant opened his own company, Home Remodeling Interiors. He testified he speaks only a little English and can write only a little English. He further testified when he emailed the adjuster in English, it was with the assistance of his son. The emails sent to the adjuster were also sent from his son's email address, not his.

5. The case was accepted as compensable and medical care authorized. A referral to an orthopedist was made by the PCP and Dr. Christopher Brown was authorized. Claimant was subsequently referred to pain management and Dr. Joel Salamon was authorized.

6. On 2/28/2018, Claimant wrote a 2 page letter to the adjuster in Spanish, which he sent by email. A certified translation of the letter was entered into evidence. Claimant raised his

concern that he had not received any recent indemnity checks. He also provided mileage reimbursement forms for reimbursement. Further he noted Dr. Salamon had recommended injections for his back. The translation of the letter states “I want my treatment with a different doctor with whom I can speak my own language because these treatment[s] are invasive and I want to understand them well.” He then requested that the adjuster call him to discuss these issues.

7. On 3/14/2018 the Claimant again sent a letter in Spanish by fax to the adjuster with essentially the same concerns, again requested a different doctor with whom he could converse in his own language and again requested the adjuster call him.

8. The adjuster testified that prior to receiving the letter, her communications with the Claimant, both verbal and written had been in English. Attached to the deposition are four emails from Claimant to the adjuster, all in English during the period 12/28/2017 through 1/23/2018. She further testified Claimant spoke English with only a slight accent. The adjuster does not speak Spanish. A co-worker or the adjuster interpreted both Claimant’s letters as requesting an interpreter at his appointments with Dr. Salamon.

9. On 4/2/2018, counsel for Claimant spoke to the adjuster regarding the indemnity issue. On that date, he advised the adjuster Claimant wanted a one-time change in physician as requested in the letter. The adjuster advised counsel she had no clear request for a one-time change and the request must be in writing. Counsel in turn advised the adjuster the letter from Claimant was a request for a one-time change in physicians. The adjuster testified that when her co-worker read the letters, it was not clear that Claimant wanted a one-time change in doctors; rather, it appeared Claimant wanted someone who spoke Spanish at his appointments. The adjuster did not call the Claimant after receipt of either of the letters.

10. The adjuster received a petition for benefits on 4/11/2018 requesting a one-time change in physician and she authorized Dr. Saff as the alternate physician on 4/13/2018.

11. Claimant testified by deposition and live before me that he wrote the two letters to the adjuster seeking another doctor. Claimant read portions of the letters aloud which were translated by the certified interpreter present at the hearing. He received no response to the letters, either by telephone or in writing. He testified he speaks only a little English and can write only a little English. He further testified he used his son, who has the same name as him, to write emails to the adjuster and speak on his behalf over the telephone.

12. In his deposition testimony, Claimant testified he wrote the 2 letters to the adjuster in Spanish because he felt he could no longer impose on his son. He conceded he was represented at the time he sent the letters. He testified he wanted a second opinion from a doctor who spoke Spanish.

**E/C Argument:**

13. E/C argues Claimant is focusing on only one sentence within the letter, which is translated to “I want my treatment with a different doctor with whom I can speak in my own language because these treatments are invasive and I want to understand them well.” E/C further argues this is not a one-time change request; rather it is a detailed request for a doctor who speaks Claimant’s own language. However Claimant is not entitled to request a Spanish speaking physician unless it is medically necessary.

14. E/C further argues that in Claimant’s deposition he asked for a second opinion with a doctor who spoke his language. The focus was on Claimant wanting a doctor who spoke his language, a request the E/C has no obligation to provide. Neither in his deposition nor his live testimony did Claimant testify he would have accepted any doctor other than Dr. Salamon. Instead he continues to state all he wants is a Spanish speaking doctor. Claimant didn’t give the E/C the opportunity to provide an interpreter because Claimant made no attempt to return to Dr. Salamon.

15. E/C further argues by the time Claimant wrote his first letter, he was already represented by counsel, who knew how to request a one-time change of physicians on behalf of his client. The letter is not a request for a one-time change, it’s a request for a doctor who speaks his language. When Claimant finally requested a one-time change on April 11, 2018, the E/C timely provided Dr. Saff.

**Claimant Argument:**

16. Claimant argues whichever translation is used, Claimant requested a different doctor. E/C had 5 days to provide a different doctor, even if non-Spanish speaking, and their failure to do so entitles Claimant to choose his own physician.

17. On rehearing, claimant also states that the undersigned failed to rule on his argument that Dr. Saff is not geographically reasonable since the claimant lives in Miami-Dade County and Dr. Saff practices in Broward County.

18. **Findings of Fact and Conclusions of Law:**

19. The certified translation of Claimant's letters is "About that, I want my treatment with a different doctor with whom I can speak in my own language because these treatment[s] are invasive and I want to understand them well."

20. In his live testimony, through a certified interpreter, the first letter was translated as "with respect I would like my treatment with another doctor with whom I can talk in my own language being that these treatments might be invasive and I would like to understand them well." The second letter was translated as "with respect I would like my treatment with another doctor with whom I can talk in my own language being that these treatments are invasive and I would like to understand them well."

21. One certified translator interpreted the letters as requesting a different doctor and another certified translator interpreted the letters as requesting another doctor. The Claimant in his deposition requested a second opinion, and the petition for benefits requested a one-time change in physician.

22. Claimant's deposition was taken on 5/16/2018, two months after the second letter. Claimant testified at that time that what he wanted was a second opinion with a Spanish speaking physician. In his deposition at page 53-54, lines 12-25, 1-7, Claimant testified:

Q. And you said that you wanted another doctor?

A. Yes.

Q. Why is that?

A. Because for that reason that treatment put me to sleep to be able to put in a lot of injections and I wanted a second opinion.

Q. So you wanted a second opinion?

A. Yes.

Q. And did you write a letter to the adjuster?

A. Yes

Q. Asking her for a second opinion?

A. Yes.

Q. Did you tell her that the reason you wanted a second opinion was because you wanted a doctor that spoke Spanish?

A. Yes.

Q. Is that true?

A. Yes.

Q. So you wanted a doctor that spoke your language?

A. Yes

23. Claimant did not state at that time that he wanted a change in physician away from Dr. Salamon, but rather he wanted a second opinion. I find a second opinion physician could be

called another doctor, which is consistent with the Claimant's testimony as interpreted by the certified interpreter at the Final Hearing.

24. After the letters were written, counsel spoke to the adjuster and clarified his position that his client wanted a one-time change. The adjuster immediately requested it be put in writing and when the petition was received she provided a one-time change within 2 days.

25. This case turns on whether Claimant successfully requested a one-time change in treating physician prior to the filing of the petition for benefits on 4/11/2018. I find that he did not.

26. Both Claimant and E/C offer their interpretation of Claimant's request. The request itself is not clear and is open to several interpretations. The two certified translators gave different versions of Claimant's words, and in deposition, Claimant testified his letters were a request for a second opinion.

27. I find Claimant's own testimony in deposition clarifies he was asking for a second opinion from a doctor who speaks Spanish. This is consistent with his request for "another" or a "different" doctor.

28. A request for a one-time change in physicians should be clear on its face and not subject to interpretation. I find Claimant's requests contained in the 2 letters were seeking a second opinion with a Spanish speaking doctor and therefore did not constitute a request for a one-time change in doctor pursuant to F.S. 440.13(2)(f). Claimant later filed a petition for benefits for a one time change to Dr. Vega and I accept E/C's argument this was the first written request for a one-time change in physicians.

29. I find under the facts of this case, Claimant did not request a one-time change in physician until his 4/11/2018 petition for benefits. I conclude the E/C timely offered Dr. Saff within 5 days of the request.

30. In Claimant's trial memorandum, he raises geographic reasonableness. A trial memorandum is not evidence but argument and was entered into evidence for identification purposes only.

31. E/C must provide medical care when requested, which I find they did with Dr. Saff. The burden then shifts to Claimant to show the physician provided by E/C is not within a reasonable distance. Claimant presented no evidence in support of his argument. There was no evidence as to the distance between the claimant's residence and Dr. Saff's office, which would be

necessary to argue that Dr. Saff is not geographically reasonable. The fact that Dr. Saff is located in Broward County and the claimant resides in Miami-Dade County, without more is insufficient to show the distance Claimant is required to travel is unreasonable. I find Claimant has failed to carry his burden of proof to show Dr. Saff is located an unreasonable distance from Claimant.

Based on the foregoing, it is hereby:

ORDERED AND ADJUGED THAT:

1. The claim for authorization of Dr. Vega as Claimant's one-time change in is DENIED.
2. The claim for attorney fees and costs is DENIED.
3. The petition for benefits filed 4/11/2018 is dismissed with prejudice.

DONE AND ENTERED this 22nd day of October, 2018, in Miami, Miami-Dade County, Florida.



Margret G. Kerr  
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