

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

Maikel Adrian Rodriguez,)	
Employee/Claimant,)	
)	OJCC Case No. 15-009051MGK
vs.)	
)	Accident date: 1/31/2015
USA BOUQUET LLC/AmTrust North)	
America of Florida,)	Judge: Margret G. Kerr
Employer/Carrier/Servicing Agent.)	
_____)	

FINAL MERITS ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims (hereinafter “JCC”), for a Merits Hearing on October 19, 2015, regarding the Petition for Benefits (PFB) filed May 4, 2015. The record was closed at 5:00pm on October 20, 2015. The Claimant was represented by Jose J. Larraz Esq. The Employer/Carrier (hereinafter “E/C”) was represented by Andrew R. Borah Esq., and Joseph Kessler Esq. This Order ensues.

EXHIBITS:

CLAIMANT:

1. Deposition of the Claimant, taken 10/14/2015, filed in 2 parts 10/20/2015 (ID#s 33,34).
2. Petition for Benefits filed 5/4/2014 (ID#8).
3. The E/C objected to the attachment to the petition based on unauthenticated hearsay. The objection was sustained. The attachment was allowed as a required attachment to the petition for identification only but not as evidence and was proffered by Claimant (ID#9).¹

E/C:

1. Medical records of Dr. Adam Ringler, filed 9/14/2015, with Order (ID#23,24).

¹ Claimant offered a letter written from the Claimant to Dr. Ringler. The letter was written in Spanish and Claimant offered an interpreter to read an English translation into the record. The E/C objected as the letter was not listed on the Pre Trial Stipulation, objection sustained. Claimant argued the letter in Spanish was in evidence as part of Dr. Ringler’s records, but this was not the case. Claimant did not have the original letter and did not provide the translation of the letter to the opposing party prior to the Final Hearing. The objection is sustained and the live translation was therefore excluded.

2. Deposition of Dr. Erik Carrasco and attached exhibits, taken 10/06/2015, filed 10/14/15 (ID#25). Claimant objected on grounds of relevance. The objection is overruled.²

JCC:

1. Claimant's Trial Memorandum, filed 10/16/2015 (ID#29) - identification only.
2. E/C's Trial Memorandum, filed 10/14/2015 (ID#27) - identification only.
3. Uniform Pre Trial Stipulation and Questionnaire, filed 9/8/2015 (ID#22).

CLAIMS:

1. Authorization and provision of an orthopedic specialist per the referral from Concentra.
2. Entitlement to attorney fees and costs, reserve jurisdiction on quantum.

DEFENSES:

E/C:

1. The authorization of Dr. Adam Ringler (podiatrist) satisfies the referral for orthopedic specialist
2. No costs or attorney's fees owed.

After due consideration of the matter and after 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. 1st DCA 2004).

3. At the outset of the hearing, the parties stipulated the issues of reimbursement for 189 miles and payment of the medical bill of ER Physicians for d.o.s. 2/2/2015 in the amount of

² The Claimant objected and argued: 1) Dr. Carrasco was not a treating physician, an IME or an EMA. As Dr. Carrasco was the supervising emergency room physician at Palmetto General Hospital, an authorized provider, the objection is overruled. 2) Dr. Carrasco did not generate the referral in question and is therefore not qualified. As this goes to the weight of Dr. Carrasco's testimony rather than its admissibility, the objection is overruled. 3) Claim is based on a referral from Concentra, not Palmetto General Hospital and therefore Dr. Carrasco's testimony is irrelevant. As Dr. Carrasco testified to the very facts which are central to the claims raised, his testimony is relevant and the objection is overruled.

\$1,027.00 requested in the petition for benefits have been resolved.

4. The Claimant is a 29 year old dispatcher who sustained a fracture of his left ankle in the course and scope of his employment on 1/31/2015. The case was accepted as compensable and the Claimant received initial treatment at Concentra and Palmetto General Hospital.

5. Although neither the records of Concentra nor Palmetto General Hospital were admitted into evidence, the parties agree the Claimant was instructed to follow up with an orthopedist for his ankle injury upon his discharge from the emergency room at Palmetto General Hospital.

6. Dr. Carrasco, the emergency room physician at Palmetto General Hospital, testified via deposition. Dr. Carrasco was the supervising physician in the emergency room when Claimant presented on 2/2/2015. He supervised the physician assistant, PA Orochena. As the supervising physician, he reviewed PA Orochena's notes and signed off on them, although he did not review the specific referral to the orthopedist.

7. Dr. Carrasco testified Claimant was diagnosed with a closed, non-displaced ankle fracture. The discharge instructions were to follow up with an orthopedist and the prescribed pain medication. He further testified he reviewed the whole chart and approved the overall plan rather than the specific discharge instructions.

8. Dr. Carrasco testified a when Claimant was referred to an orthopedist for the ankle fracture, a podiatrist would also have been appropriate. (deposition of Dr. Carrasco, page 8). He further testified he is familiar with Dr. Ringler and Claimant did not need to see an orthopedist in addition to Dr. Ringler. (deposition of Dr. Carrasco, pages 9-10).

9. On cross examination, Dr. Carrasco testified he was comfortable with the care provided to the Claimant and he received the proper care for the injury base on the records of Dr. Ringler. (deposition of Dr. Carrasco, pages 13-14, page 24).

10. Following a referral for orthopedic follow up care, the carrier authorized Dr. Adam Ringler (podiatrist), who saw the Claimant on 9 occasions.

11. Dr. Ringler's initial examination was 2/5/2015, 5 days after the industrial accident. He diagnosed a left fracture of the fibula above the ankle and applied a fiberglass cast and returned the Claimant to sedentary work with crutches.

12. On 2/19/2015, Dr. Ringler examined the Claimant, removed the cast, took x-rays

and re-applied the cast, assigning the same restrictions.

13. On 3/5/2015, Dr. Ringler saw the Claimant in follow up, removed the cast and took x-rays. Noting the fracture was stable, he re-applied a CAM Walker boot the Claimant was initially provided and again released him to sedentary work with crutches.

14. On 3/19/2015, Dr. Ringler examined the Claimant and took x-rays which showed the area was stable. He prescribed physical therapy and kept the same work restrictions.

15. On 4/9/2015, Dr. Ringler examined the Claimant and took x-rays. He dispensed a Game Day ankle brace to provide support for the ankle as the Claimant transitioned to athletic shoes and renewed the prescription for physical therapy. Work restrictions were lifted to 50% seated and the Claimant was encouraged to ice and elevate the ankle for pain or inflammation.

16. On 4/27/2015, Dr. Ringler examined the Claimant, and allowed him to return to full weight-bearing with no assistive device, using athletic shoes, although he was still transitioning to this status. Physical therapy was again renewed. Work restrictions were reduced to 40% seated and no lifting over 20lbs.

17. On 5/11/2015, Dr. Ringler examined the Claimant, and noted he was having a slower than usual transition to full weight-bearing. He noted some swelling to the ankle, and encouraged the Claimant to use an elastic bandage to control the swelling. As Claimant was not able to fully weight-bear for the entire work day, Dr. Ringler assigned restrictions of 25% seated and no lifting over 20lbs. He continued the Claimant using athletic shoes and renewed the prescription for physical therapy. A follow up appointment was scheduled for 5/26/2015.

18. There is no record of a visit on 5/26/2015. Claimant was next seen on 7/29/2015, and the record indicates Claimant missed the appointment due to a family emergency. The Claimant complained of "lots of pain" when he finishes work. Dr. Ringler noted the Claimant presented with a letter written at the request of his attorney complaining of pain, inflammation and walking with a limp, and states he cannot run. Further, he states he had to leave work early due to pain and swelling.

19. Dr. Ringler examined the Claimant's ankle and noted only very minimal swelling. Further, he noted range of motion was within normal limits. Dr. Ringler noted Claimant had completed 9 sessions of physical therapy and had no instability of the ankle joint and normal strength. Dr. Ringler noted no pain on palpation at the area of the fracture, and further noted the objective findings did not support the extent of the Claimant's subjective complaints. As the

Claimant had an uneventful recovery from a simple fracture and was now 6 months post injury, Dr. Ringler placed him at MMI with a 0% PPI rating, released him to regular work with regular shoes and advised him to use a compression type bandage when swelling occurs. Dr. Ringler further noted “The patient was very upset when he left the office as he wants to have continued treatment and does not feel he is ok. said [sic] some very choice words to say to and about me to the office before leaving the office.”

20. On 9/11/2015, Claimant returned to Dr. Ringler who noted the main complaint was pain to the foot at the peroneal insertion of the fifth metatarsal base, which is unrelated to the ankle fracture. Dr. Ringler injected the site and noted immediate relief of the pain. He advised the Claimant to ice the area and take anti-inflammatory medication.

21. The Claimant testified via deposition, not live before me.

22. In his deposition, taken on 10/14/2015, the Claimant testified he did not tell Dr. Ringler his pain had significantly improved, but further testified he told Dr. Ringler he only had pain from time to time, his pain was continuous at the beginning, but “after that, it’s when I worked much that it really hurt.” (deposition of the Claimant, page 32).

23. The Claimant went on to testify he was not happy with his care with Dr. Ringler because a podiatrist is not the same as an orthopedist, and what he “most received is fungus treatment”. (deposition of the Claimant, page 33). He testified his understanding an orthopedist is a “carpenter for the bones” which is what he needed. (deposition of the Claimant, page 34). He admitted however, he had no knowledge of the training required for either an orthopedist or a podiatrist but believed they studied in different schools. (deposition of the Claimant, page 34).

24. Claimant argues the E/C substituted its own judgment for that of the treating physician by providing a podiatrist to treat the Claimant’s ankle instead of an orthopedist. He further argues it is irrelevant whether the care provided by Dr. Ringler was appropriate as the relevant event is the referral, not the actual treatment provided.

25. Claimant further argues Dr. Carrasco testified he did not know which specialty the Claimant was sent to but could have picked any specialty, but didn’t discuss the referral with his PA. (deposition of Dr. Carrasco, page 42). Claimant argues Dr. Carrasco is unfit to testify after the fact that the provision of a podiatrist satisfies the referral to an orthopedist.

26. E/C argues the only medical testimony is that of Dr. Carrasco, the supervising emergency room attending physician. The discharge notes refer the Claimant to the on call

orthopedist, but Dr. Carrasco testified a podiatrist was adequately qualified to treat the Claimant's ankle injury. Further, the provision of Dr. Ringler satisfied the referral to an orthopedist.

27. E/C further argues Claimant has the burden of proof but has introduced no medical testimony to support his claim. The only evidence introduced by the Claimant is his own deposition testimony, which is insufficient as he is a lay witness.

28. E/C further argues Claimant has waived his right to an orthopedist as he continued to treat with Dr. Ringler from February through September 2015.

29. Claimant has the burden of proof in establishing the medical necessity of the requested benefit, in this case, an orthopedist. *Perez v. Southeastern Freight Lines, Inc.*, 159 So.3d 412 (Fla. 1st DCA 2015).

30. The records of Palmetto General Hospital were not introduced into evidence.

31. The records of Concentra were not introduced into evidence.

32. I find the Claimant has failed to carry his burden to provide medical evidence to show he is entitled to an orthopedic physician.

33. I further find Claimant acquiesced to the treatment provided by Dr. Ringler in lieu of an orthopedist by continuing to treat with him over a period of 8 months. *Pruitt v. Southeast Pers. Leasing, Inc.*, 33 So.3d 112 (Fla. 1st DCA 2010).

34. The only medical testimony is that of Dr. Carrasco, the authorized emergency room physician, who states the actions of the E/C satisfy the referral made at the emergency room.

35. I conclude that the Claimant has not met his burden of proof to show the provision of Dr. Ringler does not satisfy the referral to an orthopedist for treatment for the Claimant's ankle.

Based on the foregoing, it is hereby:

ORDERED AND ADJUDGED THAT:

1. The claim for authorization of an orthopedist is DENIED.
2. The claim for attorney fees and costs at the expense of the E/C is DENIED as to the issues adjudicated herein.
3. The petition for benefits filed on 5/4/2015 is hereby DISMISSED WITH PREJUDICE.

DONE AND ORDERED this 28th day of October, 2015, in Miami, Dade County, Florida.



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