

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

Keith Wienckowski  
Employee/Claimant,

OJCC Case No. 14-008308NSW  
Accident date: 8/3/2013  
(Cases consolidated to this OJCC Case No.)

vs.

Manor at Blue Water Bay/The Health Center  
of Blue Water Bay  
and  
Premier Group Insurance  
Employer/Carrier/Servicing Agent.

OJCC Case No. 14-010348NSW  
Accident date: 2/27/2008

OJCC Case No. 14-010351NSW  
Accident date: 12/16/2008

Judge: Nolan S. Winn

**FINAL EVIDENTIARY ORDER DENYING CLAIMANT'S  
MOTION FOR SUMMARY FINAL ORDER**

**THIS CAUSE** came on for consideration in Pensacola, Escambia County, Florida on 08-11-14 upon the Claimant's Motion for Summary Final Order. The Motion was filed 07-08-14, thirty-four (34) days prior to consideration and this Order was entered one (1) day thereafter.

**JUDGE'S EXHIBITS MARKED FOR THE RECORD:**

- #1. Claimant's Motion for Summary Final Order filed 07-08-14.
- #2. E/C's Response to Motion for Summary Final Order.

From review of the pleadings, the Claimant's Motion and the E/C's Response, I find:

1. In this consolidated matter and solely with regards to OJCC case No. 14-010348 and 14-010351, the Claimant filed Petitions for Benefits on 05-07-14 regarding two industrial accidents: the first accident being on 02-27-08 and the second on 12-16-08. E/C asserted the statute of limitations as a defense to both petitions.
2. Claimant contends in the pending motion that E/C is estopped to assert the statute of limitations defense and Claimant is entitled to a Summary Final Order denying such defense as E/C failed to obtain an MMI date and an impairment rating following either accident. Claimant contends he is so entitled based upon the Court's holding in Gauthier v. Florida International University, 38 So.3d 221 (Fla. 1<sup>st</sup> DCA 2010).
3. The Court in Gauthier did find "the duty to obtain a date of MMI and a PIR from authorized medical providers belongs to E/Cs and that this E/C abandoned that duty by excusing or overlooking the failure of its chosen medical provider to provide legally required information that would have advised E/C of a PIR and alerted it that benefits were due and owing as early as June 2007.... To hold otherwise would permit E/Cs

'to shirk their responsibilities and obligations to notify claimant[s] of possible benefits under the Workers' Compensation Act.'"

4. The Court further stated "E/C is estopped from relying on a statute of limitations defense because claimant showed by uncontested evidence that the E/C failed to act when it was under a duty to do so and that claimant was misled to her detriment due to the E/C's omission... The E/C failed to obtain a date of MMI or a PIR from the medical provider that it selected, authorized, and paid to treat claimant's injury. As a result of the E/C's omission, claimant did not receive the impairment benefits, or even notice of her potential entitlement to such, to which she was entitled. Claimant, unaware of her entitlement to such benefits, failed to file a timely claim, and thereby lost the opportunity to toll the statute of limitations."

5. While Claimant argues E/C abandoned its duty to obtain an MMI and PIR, he presented no evidence to support his argument such as the deposition of the adjuster admitting to such failure. Nor did Claimant present evidence how he was misled to his detriment in this matter or any evidence of what benefit he has not been provided as a result. There being genuine issues of material fact, it is,

**ORDERED AND ADJUDGED** that:

1. Claimant's Motion for Summary Final Order is **DENIED**.

**DONE AND SERVED** this 12th day of August, 2014, in Pensacola, Escambia County, Florida.



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Nolan S. Winn  
Judge of Compensation Claims  
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