

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

EMPLOYEE:)	ATTORNEY FOR EMPLOYEE:
Richard Cooper)	Robert M. Paine, Esquire
2038 West Hickory Street)	1233 Bartow Road
Lakeland, FL 33815)	Lakeland, FL 33801
)	
EMPLOYER:)	ATTORNEY FOR EMPLOYER/CARRIER:
Discount Auto Parts, Inc. – Lakeland)	Andrew R. Borah, Esquire
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Lakeland, FL 33801)	Winter Park, FL 32789
)	
CARRIER:)	OJCC Case No: 04-027897MHH
Crum & Forster)	
Post Office Box 8426)	Accident date: 7/23/1999
Lake Mary, FL 32795-8426)	
)	

FINAL COMPENSATION ORDER

THIS CAUSE came on for a merit hearing regarding a Petition for Benefits initiated by the Claimant on November 7, 2006 requesting psychiatric care and attention resulting from an accident that occurred on July 23, 1999. The Parties represented that earlier claims raised the Petitions September 19, 2006 and October 26, 2006 had been resolved and were no longer at issue. The Claimant was represented by his Attorney, Robert M. Paine, Esquire, of Lakeland, Florida at this hearing. The Employer/Carrier was represented by their Attorney, Andrew Borah, Esquire, of Winter Park, Florida.

As indicated earlier the primary claim was for ongoing psychiatric care and attention. The claim was defended by the Employer/Carrier on the basis that there was no longer any competent, substantial evidence that the major contributing cause of the ongoing need for psychiatric care was the injury sustained in the industrial accident of July 23, 1999.

The Parties submitted the matter for determination upon the following record:

Court Exhibits:

1. Order Approving Pretrial Stipulation and Pretrial Stipulation dated January 18, 2007.
2. Notice of Final Hearing and Pre-Hearing Order dated December 29, 2006 with attached

Petition for Benefits dated November 07, 2006.

Claimant Exhibits:

1. Deposition of Dr. Evaristo P. Badiola, M.D., taken February 08, 2006.
2. Joint Stipulation dated April 25, 2006 and attached Order approving the same dated May 01, 2006.

Employer Carrier Exhibits:

1. Deposition of Dr. Kriti J. Pandya, M.D., taken March 07, 2007 with attached exhibits.

In addition to the above evidence, the Claimant, Richard Cooper, testified live during the course of the hearing. Although the undersigned may not specifically reference all the testimony presented at the hearing and/or all of the testimony represented in depositions or the documents presented in the context of this Order, I have carefully considered the entirety of the of the testimony presented in the contents of the documents in reaching its decision. On the basis of my consideration of that evidence the court finds:

1. The Judge of Compensation Claims has jurisdiction over the Parties and the subject matter of this proceeding.
2. The venue properly lies in Lakeland, Polk County, Florida.
3. The Claimant, Richard A. Cooper, was seriously injured in an industrial accident that occurred on July 23, 1999 and as a result underwent significant medical treatment. The treatment included back surgery to repair the injury sustained in the industrial accident followed by a long-term pain management supervised by Dr. Khan.
4. The present dispute actually began with the filing a Petition for Benefits on January 20, 2005 when the Claimant requested psychiatric care and treatment for anxiety, depression, and pain. The Claimant requested an Independent Medical Examination and received an examination with Dr. Evaristo Badiola on August 11, 2005. As a result of that examination, Dr. Badiola rendered an opinion that Claimant had a pain disorder with associated psychological factors and chronic severe pain due to his back injury. He further opined that the psychiatric condition appeared to be causally related to the industrial accident of July 23, 1999 and recommended that the Claimant be put under the care of a psychiatrist to manage his medication and occasionally counsel regarding emotional stresses secondary to the injury. Dr. Badiola stated that the Claimant was not at psychiatric maximum medical improvement.
5. Subsequently the Employer/Carrier also obtained an Independent Medical Examination with Dr. Kriti Pandya. Dr. Pandya opined that the Claimant had a depression, single episode, severe, which he also related to the effects of industrial accident and injury.

sustained therein on July 23, 1999. Dr. Pandya was also of the opinion that the Claimant was not at psychiatric maximum medical improvement. This evaluation was initially conducted in February 2006. However, the Employer/Carrier felt it was necessary for a re-evaluation which was completed on March 23, 2006 following a determination that the Claimant may not have been totally candid with Dr. Pandya in the presentation of his previous psychiatric history.

6. From the records available it is apparent that the Claimant had sometime suffered psychological trauma as a result a most unfortunate incident involving the death of his two children in a house fire, which apparently had been intentionally set by his wife at that time. From the records available during the hearing, the evidence presented indicated that the Claimant had in fact sought psychiatric counseling in the 1980's but had not been seeking psychiatric care subsequently until the Petition for Benefits was filed on January 20, 2005.
7. Following Dr. Pandya's completed Independent Medical Examination in March 2006, the Parties entered into a stipulation (Claimant Exhibit number two (#2)), which included in part a representation that the Employer/Carrier would provide psychiatric care and attention. This stipulation was presented to the presiding Judge and an Order was entered on May 01, 2006, (Claimant Exhibit number two (#2)). In approving the stipulation, the Judge stated, "WHEREFORE, it is the Order of the undersigned Judge of Compensation Claims that said Stipulation is hereby approved and the parties are ordered to comply with the provisions thereof."
8. At the hearing the Claimant relied principally upon the theory that this Order, entered by the Judge of Compensation Claims on May 01, 2006, constituted *res judicata* of the issues presented in the Petition for Benefits filed November 07, 2006. At the presentation of the evidence the Claimant argued for a Summary Final Order on a theory of *res judicata*. Because the Petition for Benefits filed November 07, 2006 raise material issues of fact not previously at issue at the time the Order of May 01, 2006 was entered, the argument regarding *res judicata* is inappropriate. A Summary Final Order was not granted, and the Claimant was directed to present additional testimony in support of his petition.
9. That evidence consisted solely of the testimony of the Claimant, Richard Cooper. Material facts stemming from that testimony included that Mr. Cooper is an employee with Saddle Creek Corporation for over two years. In recent months he has become convinced that he physically was unable to continue doing his job. He was "fighting giving up." The Claimant was taking psychiatric medications including Seraquill, Depakote, Xanax, and Paxil CR. The Claimant indicated that he had become more nervous and anxious in recent months, was making more mistakes at work, was losing sleep, and experienced loss of concentration. The Claimant also indicated that he was experiencing difficulty in his relationship with his long-time girlfriend. It is also clear that the Claimant's long-time girlfriend, with whom he lives, was undergoing health issues of her own. The Claimant admitted he had physical issues, including serious heart

surgery over ten years prior to the industrial accident, but received no emotional support regarding that. The Claimant attributes all of his current emotional issues to his low-back injury and ongoing pain. The Claimant believes that the psychiatric care provided by Dr. Pandya was of great assistance, particularly the medications that he was taking. The Claimant stated that he was severely depressed and had started to miss time from work. The Claimant denied representing to Dr. Pandya that the problems with his girlfriend and financial issues were causing him increased anxiety. The Claimant denied seeking a mental health counselor in connection with the death of his children in the 1980's, but did indicate that he saw some sort of counselor for emotional support.

10. The Claimant presented no medical testimony to support his claim of an ongoing need for psychiatric care.
11. The Employer/Carrier presented the deposition of Dr. Kriti Pandya. Dr. Pandya began treating the Claimant following his IME of March 23, 2006. Dr. Pandya first saw the Claimant in June 2006 and again in July 2006. This was followed by a visit in September 2006. Nothing out of the ordinary occurred in the course and scope of that treatment until the September visit. At that time Dr. Pandya testified that the Claimant presented in a high state of anxiety and agitation and expressing uncontrollable anger. The notes from Dr. Pandya are alarming and indicate that the Claimant admitted to him that the Claimant was on the verge of threatening or rendering harm to persons involved in his Workers' Compensation claim, including the Attorneys, the Insurance Claim handlers, and even medical doctors providing treatment. In addition to those frustrations, the Doctor noted that the Claimant had admitted to additional stresses in connection with a serious illness contracted by his live-in girlfriend. Dr. Pandya increased his medications and set a visit for follow-up in October. At that visit, Dr. Pandya noted further decompensation. He believed that the Claimant was more paranoid, indicating that the Claimant was complaining of potentially becoming suffocated in traffic or in deep crowds. Dr. Pandya testified that the Claimant stated that, "Now I understand why people go out their mind and shoot others." Because the medications did not slow the deterioration in the Claimant's mood and anger episodes, Dr. Pandya believed that something other than psychological interaction with a pain disorder was the cause of the Claimant's need for psychiatric care at that time. Dr. Pandya noted that the Claimant was really interested in getting off work. Both in the September office visit and again in October, the Claimant insisted that the Doctor restrict him from work. The Doctor had, in fact, restricted him from work in September 2006. Dr. Pandya indicated that he could not continue to treat the Claimant because he felt threatened and was concerned about the Claimant's increasing restlessness. Dr. Pandya changed his diagnosis to a Bipolar Disorder or a disorder related to the Claimant's cerebral, vascular condition which there is historical evidence. Dr. Pandya felt that at that time, October 02, 2006, the Claimant was suffering from a very chronic personality disorder with an underlying Bipolar Affective Disorder. It was hard for him to connect that condition to an injury that occurred in 1999.
12. Although Dr. Pandya did not testify specifically that the Claimant had reached psychiatric maximum medical improvement from the industrial accident of July 23, 1999, I finds, in

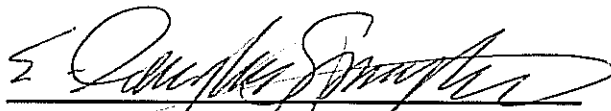
affect, that the testimony rendered by Dr. Pandya as to his findings on October 02, 2006 constitute maximum medical improvement and that the Claimant is at psychiatric medical improvement as a result of this industrial accident of July 23, 1999 as of October 02, 2006.

13. Although the Claimant's testimony may, if competent and substantial, be a proper basis for determining major contributing cause for the ongoing need for psychological and psychiatric care, because the Claimant's testimony in certain critical instances contradicted the testimony of Dr. Pandya, specifically in the reference to whether he related to Dr. Pandya his concerns about his girlfriends medical condition as one of the psychological stressors, the Claimant was vague and not forthcoming with regard to the nature of the threats represented in Dr. Pandya's records during his testimony at the hearing, I concludes that the Claimant's testimony presented during the hearing was more self-serving and, as a result, is not reliable. Accordingly I find that the Claimant failed to present competent, substantial evidence to support his Petition for Benefits dated November 07, 2006 regarding the ongoing need for psychiatric care.
14. Lastly, at the conclusion of the testimony of the Claimant, the Employer/Carrier made an *ore tenus* motion to amend their pretrial defenses to include a misrepresentation defense. The Employer/Carrier argued that during the course of testimony the Claimant misrepresented the nature of his concerns about his girlfriends health condition and the nature of the threats made to Dr. Pandya during the course and scope of his treatment with Dr. Pandya in an effort to gain favor with the undersigned, which testimony would therefore constitute a basis for a misrepresentation defense. This defense is denied for two reasons:
 1. I finds specifically that the testimony presented by the Claimant during the course of the hearing not to be sufficient competent, substantial evidence to support a claim for misrepresentation.
 2. Further, I find that the motion made at the conclusion of cross examination of the Claimant in the middle of a hearing to be untimely. The Employer/Carrier cited the case of *Marie Isaac v Green Iguana*, 871 So.2d 1004, for the proposition that a motion made under that context was appropriate. I disagrees and finds that the holding of *Marie Isaac v Green Iguana*, 871 So.2d 1004 (law First DCA 2004), to be contrary to the Employer/Carrier's position.

WHEREFORE, on the basis of the foregoing it is hereby ordered:

1. The Petition for Benefits dated November 07, 2006 requesting psychiatric care, costs and attorney's fees is denied.
2. The Employer/Carrier's assertion of the misrepresentation defense pursuant to section 440.10(4) Florida Statutes is denied.

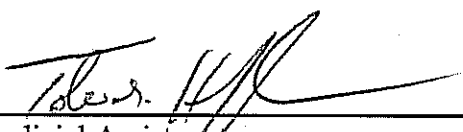
DONE AND ORDERED in Chambers this **Friday, April 13, 2007** in Lakeland, Polk County Florida.



E. Douglas Spangler
Judge of Compensation Claims

CERTIFICATE

THIS IS TO CERTIFY that the foregoing Order was entered on ____ day of .
APR 13 2007, 2007, by the Judge of Compensation Claims, and that a copy thereof was sent
on said date by U.S. Mail to:



Judicial Assistant to
Judge of Compensation Claims