

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

Marta Cortez,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 08-029358JTF
)	
Fern Park, LLC,)	Accident date: 2/9/2007
)	
Employer,)	
)	
and)	
)	
Crum & Forster,)	
)	
Carrier/Service Agent.)	
_____)	

Final Compensation ORDER

After proper notice to all of the parties, a hearing was held on this matter before the undersigned Judge of Compensation Claims in Orlando, Orange County, Florida on August 25, 2009.

Prior to the hearing, the parties made certain stipulations as indicated in the pre-trial stipulation which are approved, accepted and adopted by the undersigned. In this Order, the Employee/Claimant shall hereinafter be referred to as the "Claimant" and the Employer/Carrier shall hereinafter be referred to as the "E/C".

In addition to the documents listed in Rule 9.180, Workers' Compensation Rules of Appellate Procedure, the record will consist of the following exhibits which were admitted into evidence:

Court's Exhibits:

- 1.) Pretrial Stipulation & Pretrial Compliance Questionnaire (with any attachments)
- 2.) Claimant's Trial Brief/Hearing Information Sheet, with any attachments (argument)
- 3.) E/C's Hearing Information Sheet, with any attachments (argument)

Claimant's Exhibits: (NOTE = all references to depositions in this Order include all records attached to such depositions)

- 1.) Deposition of George White, M.D. taken August 5, 2009
- 2.) Report/letter from George White M.D. dated August 18, 2009 (initial objection to admissibility by E/C was later withdrawn).

E/C's Exhibits: (NOTE = all references to depositions in this Order include all records attached to such depositions)

- 1.) Composite medical exhibit of records from Drs. Friedman and Schwartzberg.
- 2.) Medical records from Jeffrey Friedman, M.D. dated 05/13/09.

The following witnesses testified live at the hearing:

- 1.) Marta Cortez (Claimant)

The issues submitted for determination by the Claimant were:

- 1.) Temporary Partial Disability (TPD) benefits from 10/07/08 to date and continuing until Maximum Medical Improvement (MMI).
- 2.) Penalties, Interest, Costs, Attorneys Fees (PICA).

The defenses submitted for determination by the E/C were:

- 1.) All due & owing TPD benefits have been paid
- 2.) Claimant reached MMI 10/07/08
- 3.) Claimant's loss of income is not causally related to industrial accident/injuries.

In making the determinations set forth below, I have attempted to distill the testimony and salient facts together with the findings and conclusions necessary to the resolution of this claim. I have not attempted to painstakingly summarize the substance of any live or deposition witness, nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence.

After giving careful consideration to the stipulations of the parties, the documentary evidence, the candor and demeanor of the live witnesses and after resolving all of the conflicts in the evidence and hearing argument of counsel, I make the following findings of fact and conclusions of law:

1.) To be entitled to TPD benefits, the Claimant must be pre-MMI and show a causal connection between his injury and subsequent wage loss. To determine whether an injury and a subsequent wage loss are causally connected, a JCC is to consider the totality of the circumstances. The Claimant's burden to show causation may be met by proof which encompasses medical evidence or evidence of a good faith work search. The Claimant must prove that the compensable injury caused continued unemployment. Although no longer statutorily required as a precondition to receiving temporary indemnity benefits, an unsuccessful job search may help provide such proof. Section 440.15(4) Florida Statutes; Arnold v. Florida's Blood Ctrs., Inc. 949 So 2d 242 (Fla. 1st DCA 2007).

2.) I find that the Claimant reached MMI on 10/07/08. I base this finding on the medical opinions of the Claimant's prior and current treating physicians, Randy Schwartzberg, M.D. and Jeffrey Friedman, M.D. who concurred with Dr. Schwartzberg regarding MMI. I note that George White, M.D., the Claimant's IME physician, agreed that the Claimant would be at MMI if she has no further treatment. I specifically reject the opinion of Dr. White that the Claimant had not reached MMI as of 02/12/09 (the date of the IME) or 08/18/09 the date of his last report. Dr. White based this opinion primarily on his diagnosis (based on a review of the Claimant's MRIs of 04/16/07 and 04/15/09) of a recurrent rotator cuff tear, the cause of which he admitted he did not know. Dr. Friedman, the Claimant's treating physician, opined that the Claimant's clinical exam on 05/13/09 was better than it had been on 11/17/08 and this exam therefore did not confirm or corroborate the MRI suggestion of a recurrent rotator cuff tear. Dr. Friedman further opined that further surgery for the Claimant is not reasonable, necessary or appropriate for this patient and

that although the Claimant had some subjective complaints on 05/13/09, her objective findings did not show anything significant. I find the opinions of Dr. Friedman to be much more consistent with logic and reason and reject any contrary opinions expressed by Dr. White as being supported by speculation rather than objective relevant medical findings.

3.) Even if the Claimant was not at MMI, I find that she has not met her burden to prove that there is a causal connection between her injury and her subsequent wage loss. I base this finding on the Claimant's live testimony that she has only applied for one job since October 2008 which I further find does not constitute a good faith work search. The Claimant also testified that she applied for Social Security Disability in July 2008 and again in October 2008 alleging that she was totally unable to work due to an admittedly unrelated back condition. It is therefore clear to the undersigned that even the Claimant admits, albeit indirectly, that any wage loss during the time period claimed is not causally related to her industrial accident of 2/9/2007.

It is therefore ORDERED AND ADJUDGED that:

1.) The Claimant's claims for Temporary Partial Disability (TPD) benefits from 10/07/08 to date and continuing until Maximum Medical Improvement (MMI) are denied and dismissed with prejudice.

2.) The Claimant's claims for Penalties, Interest, Costs, Attorneys Fees (PICA) are denied and dismissed.

3.) All other ripe, due and owing Claims are DISMISSED.

4.) The E/C is the prevailing party and is awarded reasonable COSTS. Jurisdiction is reserved to determine the amount of such COSTS if the parties cannot otherwise agree.

DONE and ORDERED in Chambers in Orlando, Orange County, Florida.

SEP 23 2009



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CERTIFICATE OF SERVICE

This is to certify that the above order was entered in the Office of the Judge of Compensation Claims and a copy was served by e-mail to counsel and by mail to the parties.

SEP 23 2009

Secretary to the Judge

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