

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
MELBOURNE DISTRICT OFFICE
JUDGE PAUL T. TERLIZZESE**

EMPLOYEE:

Mark Braun
6509 West Baker Circle
Cocoa, FL 32927

EMPLOYER:

Brevard County Board of Commissioners
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CARRIER:

Preferred Governmental Claim Solutions
P.O. Box 958456
Lake Mary, FL 32795-8456

ATTORNEY FOR EMPLOYEE:

Ronald S. Webster, Esquire
The Webster Law Group, P.A.
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ATTORNEY FOR EMPLOYER/CARRIER:

Derrick E. Cox, Esquire
Hurley, Rogner, Miller, Cox, Waranch &
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Winter Park, FL 32789

OJCC CASE NO.: 93-000253PTT

D/A: 1/8/1993

ORDER ALLOWING ALLOCATION

THIS MATTER came on for an Expedited Final Hearing before the undersigned Judge of Compensation Claims on March 2, 2010, for a Petition for Benefits filed on December 3, 2009. At the conclusion of the Expedited Final Hearing, a verbal ruling was issued on the record, with findings of fact, and conclusions of law, which are incorporated herein by direct reference. Present and representing the employee was Ronald S. Webster, Esquire. Present and representing the employer/carrier was Derrick E. Cox, Esquire. Also present were the claimant, Mark Braun, and the employer representative, Ms. Linda Allison.

OJCC Case #93-000253PTT
Order on Final Merit Hearing

The issue presented for my determination was whether Dr. Golovac's treatment, and prescriptions would be paid solely for the January 8, 1993, compensable work related accident, (since the claimant requested and received a one-time change in doctors from Dr. Golovac to Dr. Stern for the August 24, 2005 compensable work related accident), or whether Dr. Golovac's treatment would be allocated between the January 8, 1993 accident, and the August 24, 2005 accident. The claimant contended that Dr. Golovac's treatment should be solely and fully paid under the 1993 accident, and the employer/carrier contended that the treatment should be allocated 50% to each accident, and that the Employer/Carrier also remained entitled to a 25% recoupment on the 2005 accident.

The following exhibits were admitted into evidence:

Judge's Exhibits:

1. The Petition for Benefits filed on December 3, 2009, and the Orders/Notices of Expedited Final Hearing.

Joint Exhibits:

1. The Joint Expedited Pretrial Stipulation and attachments, including correspondence between the attorneys, a CVS Pharmacy record, correspondence signed by Dr. Stan Golovac, a Joint Stipulation for Satisfaction of Workers' Compensation Lien on the 2005 accident, and a Response to the Petition for Benefits.

Claimant's Exhibits:

1. The Claimant's Trial Memorandum, which was submitted for argument and identification purposes only.

In making my additional findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the evidence that was presented to me. I have observed or considered the candor and demeanor of the witnesses, and have resolved all of the conflicts in the testimony and evidence. In writing this Order, I have attempted to distill the salient issues together with findings and conclusions necessary to their resolution. Even though I have not attempted herein, nor in the verbal findings, to summarize the testimony of each witness or to state non-essential facts, this does not mean that I have failed to consider all the evidence. After careful consideration of all of the evidence presented, and after having resolved any conflicts therein, I hereby find as follows:

1. The verbal and written stipulations of the parties are factual, accepted, and incorporated by reference as if set out at length herein.

2. Based on all of the evidence that has been presented to me, I hereby deny the claimant's request that Dr. Golovac's bills and prescriptions be paid solely from the January 8, 1993 work related accident. In reaching my decision, I have considered all of the documentary evidence presented, as well as the unpersuasive testimony of the claimant. I find that the claimant in this case sustained two work related neck injuries with Brevard County, which are both paid and serviced by Preferred Governmental Claim Solutions. The first neck injury

occurred on January 8, 1993, and the second neck injury occurred on August 24, 2005. Dr. Golovac was authorized to treat the claimant for both accident dates. At the request of the claimant's attorney, a joint conference, with each party's counsel, was scheduled with Dr. Golovac on July 14, 2009. During the conference, Dr. Golovac opined that each accident was contributing 50% to the claimant's overall need for treatment and disabilities. Dr. Golovac signed two clear and separate statements to this effect, both of which were attached to the Pretrial Stipulation, and admitted into evidence.

The claimant had settled a third party claim for the August 24, 2005 accident for \$15,000.00. After obtaining the above opinion from Dr. Golovac, the parties entered into a written Joint Stipulation on August 13, 2009, whereby there would be a 25% offset for all future benefits paid for the August 24, 2005 accident, until the Servicing Agent was fully reimbursed. A copy of the Joint Stipulation for Satisfaction of Workers' Compensation Lien was admitted into evidence.

After the Joint Stipulation for Satisfaction of Workers' Compensation Lien was entered into by the parties, the claimant almost immediately requested a one-time change from Dr. Golovac only for the August 24, 2005 accident. During the hearing, the claimant stated that Dr. Golovac was "the best" doctor he had seen over the years of treatment. The claimant further candidly admitted that the only reason he requested a change from Dr. Golovac for the August 24, 2005 accident, was so that he could avoid the out-of-pocket expense he would have to incur pursuant to the Joint Stipulation for Satisfaction of Workers' Compensation lien, entered into for the August 24, 2005 accident. It is clear to me that the claimant filed this claim, solely in an

attempt to avoid his obligation to repay the employer/carrier, pursuant to the terms of the Joint Stipulation for Satisfaction of Workers' Compensation Lien entered into by the parties.

This case is governed by Florida Statute §440.42(4), involving allocation between two or more carriers. In this case, the unrefuted and authorized medical evidence from Dr. Golovac shows that each accident is contributing 50% to the claimant's disability and ongoing need for treatment for the neck injuries. The Claimant failed to carry his burden of proof by presenting any contrary medical evidence to support a different allocation. Dr. Golovac opined that the January 8, 1993 neck injury involved the C5-6 level and the August 24, 2005 neck injury involved the adjacent C4-5 level. Practically speaking, I do not see any evidence on how Dr. Golovac can prescribe medication only for the C5-6, level without treating the C4-5 level as well. I find that Dr. Golovac's pain management opinions are well reasoned, and based on competent, substantial evidence, and I accept his clear and unequivocal opinions in their entirety. I also find Dr. Golovac's opinions to be persuasive and credible, because they were rendered pursuant to a joint conference involving both attorneys.

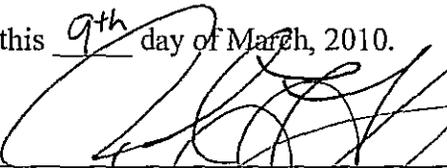
As indicated above, I find that the claimant openly and intentionally tried to sidestep his agreement to reimburse the employer/carrier pursuant to the terms of the Joint Stipulation for the August 24, 2005 accident, to attempt to get full payment of his prescriptions and treatment with Dr. Golovac artificially under only the January 8, 1993 accident. The Petition at issue only involved the January 8, 1993 accident. The Claimant and his counsel chose not to file any claims on issues arising from the 2005 accident. Based on my review of the two CVS prescriptions involving Dr. Golovac, I find that CVS has been paid more than 50% of the charged amount for

the two prescriptions issued by Dr. Golovac. Therefore, I find that the employer/carrier has satisfied their allocation obligation to pay 50% of Dr. Golovac's prescriptions for the January 8, 1993 accident, which was the only accident brought to trial. All benefits requested by the claimant are hereby denied. Any ripe issues, that were not raised at the time of hearing, are hereby waived. See Florida Statutes Section 440.25(4)(d). The Claimant did not file any Petition for Benefits for a correct determination of any payments under the 2005 date of accident, nor any payment issues for the many other prescribing physicians, from the CVS Pharmacy payment history.

WHEREFORE, it is the finding of the undersigned Judge of Compensation Claims as follows:

1. The claimant's request that Dr. Golovac be paid at 100% under soley the January 8, 1993 accident is denied and dismissed with prejudice, along with all other benefits requested in the December 3, 2009 Petition for Benefits.
2. The claimant's request for costs and attorney's fees is denied and dismissed with prejudice.
3. I find that the claimant's need for treatment for his neck injury is allocated 50%/50% between the January 8, 1993 work related accident, and the August 24, 2005 work related accident. See Roy Pearson v. Paradise Ford, 951 So.2d 12 (Fla. 1st DCA 2007).
4. I hereby retain jurisdiction to consider the entitlement and any award of costs to the employer/carrier for prevailing on these issues.

DONE and ORDERED in Melbourne, Florida, this 9th day of March, 2010.



Honorable Paul T. Terlizzese
Judge of Compensation Claims



THIS IS TO CERTIFY that the foregoing Order was entered on the _____ day of March, 2010, and that a copy thereof was sent by regular U.S. Mail to all parties noted previously at their last known address.



Judicial Assistant