STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
PORT ST. LUCIE DISTRICT OFFICE

Dane Hidden,
Employee/Claimant,

vs.

Day & Zimmerman/Florida Power & Light, Co./Broadspire,
Employer/Carrier/Servicing Agent.
_____/

OJCC Case No. 15-017256RDM

Accident date: 5/22/2015

Judge: Robert D. McAliley

ORDER ON THE MERITS

Claimant maintains that he injured his neck while performing his job duties. Shortly following his initial episode of neck pain, claimant experienced a syncopal episode. The employer/carrier (E/C has controverted this claim from its inception.

I find claimant fails to establish this occurrence, and its sequela, is compensable. An explanation follows.

JURISDICTION AND NOTICE

The parties agree, and I find, the judge of compensation claims (JCC) has jurisdiction over the parties and subject matter. The parties were properly notified of the final hearing.

STIPULATIONS

Although E/C controverts that an accident occurred, in this context it is agreed the appropriate date of accident is May 22, 2015; the accident occurred in Martin County Florida; there was an employer-employee relationship; workers' compensation insurance coverage or its statutory equivalent applies; there is no agreement as to the average weekly wage (AWW) but it is agreed the maximum compensation rate for this date of accident is $842.00 weekly; all issues

pertaining to attorney's fees and costs may be reserved for subsequent hearing.

CLAIMS AND DEFENSES

Claimant seeks the following: a determination that he sustained a compensable injury by accident; establishment of his AWW; temporary total disability benefits (TTD) or temporary partial disability benefits (TPD) for 3 weeks in October although no specific dates are provided; future medical treatment; payment of past medical bills; attorney's fees and costs.

E/C responds stating: claimant did not sustain a compensable injury at work; the major contributing cause (MCC) of claimant's disability and need for medical treatment is unrelated to his employment; compensability denied; all other claims are nonspecific and denied.

At the onset of the hearing E/C clarified it was not pursuing a notice defense pursuant to section 440.185.

BACKGROUND

This 34-year-old claimant was employed as a union carpenter at the FPL nuclear power plant on Hutchison Island in Martin County, Florida. He worked for this employer intermittently for five years. On the date of accident claimant was earning $25.95 hourly and worked approximately 50 hours weekly. No specific wage information is placed in evidence. Hence, I am unable to determine the AWW although given the findings herein doing so is unnecessary.

A question is raised as to whether claimant had an "accident" in the first instance. See §440.02 (1). Claimant reports that he started work at 6:30 on the morning of the alleged accident and, per routine, attended a safety meeting. Afterwards he and other members of his crew went to the location where they were to erect scaffolding.

In preparation of performing the crew's job, claimant lifted the heavy steel lid of a box

containing work materials. In the process claimant was required to squat, something like a lifting a barbell, while grabbing to handles on either side of the lid pushing upwards with his legs. As he was doing so claimant felt nauseous. He felt a "pop" in this neck and pain into the left shoulder area.

Claimant testifies this is the first time that day he felt any neck pain.

Nonetheless, claimant walked to a nearby second box from which he retrieved more work materials. Once this was accomplished claimant attempted to secure the door to this box while bending over. He then felt a more intense pain, had a "prickly" sensation and started sweating abnormally.

Several coworkers observed a marked difference in claimant's physical condition and sat him down whereupon claimant briefly lost consciousness, for 10 seconds according to an emergency medical technician's report. Claimant was transported by ambulance to Martin Memorial Hospital where he was treated at the emergency room. These records are not placed in evidence.

Several coworkers testified in support of claimant's account of the events.

E/C presents the testimony of Adrian S. Cain, the carpenter foreman. Mr. Cain has known claimant for approximately two years and has occasionally been on the same work crew. Like claimant, Mr. Cain is a smoker. This witness testifies that before the safety meeting began he sat down with claimant in a smoking area.

Mr. Cain noted claimant had difficulty turning his head. Claimant would turn his shoulders and head simultaneously. On inquiry, claimant advised Mr. Cain that he, claimant, developed a stiff neck before coming to work but could still perform his job duties. Claimant

denies speaking to Mr. Cain whatsoever on the morning of May 22.

E/C points of this testimony together with some discrepancies between claimant's trial and deposition testimony, in conjunction with inconsistencies in a written statement completed by claimant to support their argument that claimant's account of events in the present proceeding is untrustworthy.

It is not necessary to reach a decision as to whether claimant had an accident since he fails to establish the alleged event and its sequela is compensable in the first instance.

ANALYSIS

Except as to an advance pursuant to section 440.20 (12), in order to receive benefits under the Workers' Compensation Law, claimant must establish the existence and cause of an injury, that is "compensability." Stated differently, compensability is "... the occurrence of an industrial accident resulting in injury...." *Checkers Rest. v. Wiethoff*, 925 So.2d 348, 350 (Fla. 1st DCA 2006) (en banc) (Kahn, C. J. & Padovano, J. concurring in result). See also, §440.09 (1) Fla. Stat. (2015) ("At employer must pay compensation or furnish benefits required by this chapter if the employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.").

Claimant has the burden of proving entitlement to benefits. See *Fitzgerald v. Osceola County Sch. Bd.*, 974 So.2d 1161, 1164 (Fla. 1st DCA 2008). To meet its burden it is incumbent on claimant to present expert medical evidence establishing a nexus between a given occurrence and an injury. See *Closet Maid v. Sykes*, 763 So.2d 377 (Fla. 1st DCA 2000) (en banc). If, as is presently the case, an injury is not readily observable, it is incumbent on claimant to establish the injuries existence with expert medical evidence. See *Wausau Ins. Co. v. Tillman*, 765 So.2d 123

(Fla. 1st DCA 2000) and the cases cited therein. See also §440.09 (1) Fla. Stat. (2015) (last sentence). The only admissible medical opinions in a workers' compensation case are those of an authorized treating doctor, an independent medical examiner or an expert medical advisor. §440.13 (5) (e) Fla. Stat. (2015).

Claimant testified, without contradiction, that following his discharge from Martin Memorial Hospital he repeatedly asked the employer for medical care but was refused. At that juncture claimant was entitled to utilize the self – help provision of section 440.13 (2) (c) and obtain medical care that is otherwise reasonable and necessary. *Parodi v. Florida Contracting Co.*, 16 So. 3rd 958, 961 (Fla. 1st DCA 2009). The opinions of such physicians treating claimant then become potentially admissible.

However, to establish the treatment provided by a self-help physician was medically necessary because of a compensable medical problem claimant must prove this fact utilizing the expert testimony of a doctor otherwise qualified pursuant to section 440.13 (5) (e). "A claimant cannot use medical opinion evidence barred by section 440.13 (5) (e) to 'bootstrap' itself – – or other medical opinions from the same source – – into evidence." *Miller Elec. Co. v. Oursler*, 113 So. 3rd 1004, 1009 (Fla. 1st DCA 2013).

Accordingly, claimant may not utilize the testimony of Dr. Brown, an orthopedic surgeon, or Dr. Estes, a physical medicine specialist, to establish that his injuries are compensable. Neither doctor was authorized by E/C, employed by claimant as his independent medical examiner, or appointed as an expert medical advisor.

Moreover, the records of Palm Beach Gardens Medical Center pertaining to medical care obtained August 11, 2015, do not establish compensability. Compare *Cespedes v. Yellow*

Transportation Inc., 130 So. 3rd 243 (Fla. 1st DCA 2013). This care is the initial medical treatment claimant maintains that he sought pursuant to the self-help provisions of the law.

Claimant is seen at the emergency department but nothing indicates the health care providers at this facility provided medical services with the intent of determining whether an emergency condition existed. See §§440.13 (1) (e) & 395.002 (10) Fla. Stat. (2015). This, as opposed to using emergency room services in a manner similar to medical care that might be obtained at a walk-in clinic.

Claimant presented to the emergency room as a walk-in patient. He complained of "neck pain on and off since May." According to the medical records claimant "appears in no apparent distress." The hospital record also reports, "This patient does not have any pertinent positive signs or symptoms associated with neck pain."

That issue aside, the record itself, if admissible, does not establish compensability. Upon presentation, claimant reported, "Neck pain on and off since May. Patient reports pain was aggravated after sneezing last night." Later while at this facility claimant gives personnel the following history (HPI): "Onset: The symptoms/episode began/occurred yesterday. Context: The neck injury/problem resulted from chronic condition. Patient diagnosed with C5, 6 herniated disc with WC in May but has not followed up since then."

In summation, the Palm Beach Gardens Hospital records do not contain a specific diagnosis of claimant's condition. Likewise, the origin of claimant's neck pain is not addressed therein.

CONCLUSION

Based on the foregoing findings, it is

ORDERED AND ADJUDGED as follows:

1). The claim for a determination that claimant sustained a compensable injury by accident is denied.

2). The claim for temporary total and temporary partial disability benefits is denied.

3). The claim for payment of past medical care is denied.

4). The claim for future medical treatment is denied.

5). The claim for a determination of the average weekly wage is denied as moot.

6). All issues pertaining to attorney's fees and costs which survive this decision are reserved for subsequent hearing.

DONE AND ORDERED this 17th day of February, 2016, in Port St. Lucie, St. Lucie County, Florida.

Robert D. McAliley
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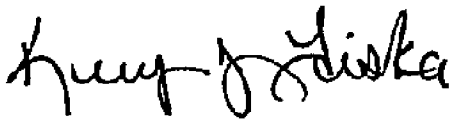
CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing has been e-mailed to Counsel on February 17th, 2016.



Secretary to Judge of Compensation Claims

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