

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Robert D. O'Connor,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 11-003967DSR
United Launch Alliance/Broadspire,)	
Employer/ Carrier/ Servicing Agent.)	Accident date: 3/5/2010
_____)	

FINAL COMPENSATION ORDER

This cause was heard before the undersigned at Sebastian, Indian River County, Florida on February 27, 2013, upon the Claimant's claims for medical benefits; unlawful denial of medical care; unlawful cancellation of W/C Pay; reimbursement for medical care paid by Blue Cross/Blue Shield and Claimant's co-pay; workers' compensation pay; penalties, interest and costs. The Petitions for Benefits were filed on July 7, 2011 and July 31, 2012. Mediation occurred on August 17, 2012, and the parties' pretrial compliance questionnaire was filed on September 26, 2012. The Claimant appeared Pro Se. Derrick E. Cox, Esq., was present on behalf of the Employer/Carrier.

The defenses were major contributing cause of Claimant's disability and need for treatment is not due to his accident; all indemnity benefits due and owing have been provided; no standing or jurisdiction for reimbursement to BC/BS or Claimant's co-pays; Employer/Carrier not responsible for unauthorized treatment; no penalties, interest or costs due.

The following documentary items were received into evidence:

1. Pretrial Stipulation Sheet and Order dated September 26, 2012, together with the documentary items required by Rule 9.180 (Judge's Exhibit #1).

2. Attached as Claimant's Exhibits are six pages of Exhibits that the Claimant proffered into evidence. The undersigned has specifically identified the Exhibits not received into evidence by striking through the Exhibit. Additionally, the Claimant proffered two Exhibits at the Hearing that have been marked as Proffer A & B.

3. Objection to Claimant's Exhibits (Employer/Carrier's Exhibit #1).

4. Deposition of Jeffrey Rosen, M.D. taken November 29, 2011 (Employer/Carrier's Exhibit #2).

5. Notice of Denial dated January 6, 2011 and Response dated July 18, 2011 (Employer/Carrier's Exhibit #3).

6. Motion to Admit Medical Records of Dr. Anthony Lombardo dated October 8, 2012 and Order Admitting Medical Records dated October 25, 2012 (Employer/Carrier's Exhibit #4).

At the hearing, the Claimant, Robert D. O'Connor and his wife, Mary O'Connor, appeared and testified before me. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the witnesses' testimony and may not refer to each piece of documentary evidence, I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. The items to which the parties were in agreement on the pretrial stipulation sheet are accepted and adopted as findings of fact.

2. The parties stipulated that the Claimant suffered an industrial accident arising out of and in the course and scope of his employment on March 5, 2010, and suffered an injury to his left knee while climbing into a truck.

3. The accident and injury were accepted as compensable and the Claimant was authorized to treat with Dr. Lombardo. The Claimant underwent arthroscopic surgery to his left knee on May 10, 2010. The parties stipulated that Dr. Lombardo placed the Claimant at MMI on September 13, 2010, with a 6% permanent impairment rating.

4. The Claimant asserts that he suffered another accident and injury on May 14, 2010, while undergoing physical therapy at Aquatic Rehab. The Claimant asserts that he was told to do exercises by a therapist that was not qualified to be treating him and that he suffered a new injury as a result. The Employer/Carrier has not accepted that the Claimant suffered a new accident or any new injuries as a result of the incident at Aquatic Rehab.

5. The Claimant and his wife testified that he had a good result from the arthroscopic surgery performed by Dr. Lombardo. After the incident at Aquatic Rehab, the Claimant refused to continue his therapy there and went on his own to Wuesthoff Physical Therapy. The Claimant is requesting reimbursement for amounts that he personally paid to Wuesthoff, but admitted that they never cashed his check and that eventually the Employer/Carrier paid for his therapy there. There is no competent medical evidence to support the Claimant's claim for reimbursement of any amounts paid to Wuesthoff.

6. The Claimant is requesting medical care as a result of the incident at Aquatic Rehab. The medical records of Dr. Lombardo have been received into evidence. Dr. Lombardo was aware of the Claimant's complaints after the incident at Aquatic Rehab and ordered another MRI performed on the Claimant's left knee. After the Claimant had sufficient time to recuperate after his surgery, Dr. Lombardo placed him at MMI on September 13, 2010. The records of Dr. Lombardo indicate that the Claimant did not need additional treatment as a result of the industrial accident and that his need for continuing medical care was as a result of the Claimant's

pre-existing arthritic condition. A review of the MRI performed prior to the surgery shows that the Claimant had degenerative arthritis in his knee at the time of the accident. This arthritis was again recognized when Dr. Lombardo performed the surgery. The post surgical MRI revealed arthritis again and showed that the meniscal tear had been surgically repaired.

7. The Claimant underwent an Independent Medical Evaluation on November 21, 2011, with Dr. Jeffrey Rosen. Dr. Rosen testified by deposition taken November 29, 2011. Dr. Rosen had the opportunity to review the prior medical records of the Claimant and actually reviewed both MRI's. Dr. Rosen testified that his review showed that the Claimant had degenerative arthritis in the initial MRI and that it was again present in the subsequent MRI. Dr. Rosen testified that the treatment the Claimant received with Dr. Lombardo was reasonable and medically necessary. Dr. Rosen agreed with Dr. Lombardo that the Claimant reached MMI on September 13, 2010. Dr. Rosen indicated that the Claimant may actually have only had a 3% permanent impairment rating instead of the 6% if it was shown that he only had a medial meniscus tear and not a torn lateral meniscus as a result of the industrial accident. In any event, Dr. Rosen agreed with Dr. Lombardo that the Claimant did not need any additional medical care as a result of the industrial accident as of the time of his evaluation. The Synovisc injection and brace that Dr. Lombardo recommended for the Claimant were as a result of the pre-existing arthritis and not as a result of the medial tear, and as such, not the responsibility of the Employer/Carrier. The Claimant was not complaining of any pain in his left knee when he saw Dr. Rosen. It was Dr. Rosen's opinion that the Claimant did not suffer any aggravations or exacerbations of his underlying arthritic condition as a result of the industrial accident.

8. Based on the totality of the evidence before me I find that the opinions of Dr. Rosen should be accepted. I find that the Claimant reached MMI on September 13, 2011. The

parties stipulated to a 6% permanent impairment rating that had already been paid out by the Employer/Carrier. I find that the Claimant does not need any additional medical care as a result of the industrial accident, and as such, that claim is hereby denied and dismissed. I accept Dr. Rosen's opinions that the Claimant did not suffer an aggravation or exacerbation of his pre-existing arthritic condition as a result of the industrial accident.

9. Since the Claimant reached MMI on September 13, 2011, he is not entitled to any additional indemnity benefits. That claim is hereby denied and dismissed.

10. The Claimant is requesting reimbursement to Blue Cross/Blue Shield for amounts paid by them for treatment to his knee. The Claimant does not have standing to assert the claim for reimbursement to Blue Cross. As such, that claim is hereby denied and dismissed.

11. The Claimant is claiming reimbursement for his co-pays that he paid as a result of the treatment for his knee. The Claimant has not submitted proof as to the amounts paid. As indicated earlier, I find that the brace and injections were not causally related to the industrial accident and the Employer/Carrier is not responsible for reimbursement of those amounts. As to any other amounts that the Claimant may have paid he has not produced medical testimony that they were reasonable, medically necessary, and causally related to the industrial accident. As such, the claims for reimbursement of any outstanding medical bills and reimbursement of the co-pays are hereby denied and dismissed.

12. Since the Claimant has not prevailed he is not entitled to reimbursement of the taxable costs of these proceedings.

WHEREFORE, it is hereby ORDERED and ADJUDGED that:

All pending claims are hereby denied and dismissed.

DONE AND ELECTRONICALLY SERVED ON COUNSEL and MAILED TO

CLAIMANT this 13th day of March, 2013, in Sebastian, Indian River County, Florida.



Donna S. Remsnyder
Judge of Compensation Claims
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STATE OF FLORIDA
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P.O. Box 30539
Tampa, FL 33630

OJCC CASE NO.: 11-003967PTT
D/A: 3/15/2010

**CLAIMANT'S LIST OF DOCUMENTARY EVIDENCE TO THE
UNIFORM STATEWIDE PRETRIAL STIPULATION**

Ex. 1	(p. 1)	Certified Mail Receipts for Attorney Derrick E. Cox	Claimant
Ex. 2	(p. 1)	Certified Mail Receipts for six (6) Deponents	Claimant
Ex. 3	(pp. 1-2)	Subpoena for Darin Pranzoni, Wuesthoff Rehab	Claimant
Ex. 4	(pp. 1-2)	Subpoena for Cynthia Christopher, Aquatic Rehab	Claimant
Ex. 5	(p. 1)	Receipt of Certified Mail signed by Cynthia Christopher	Claimant
Ex. 6	(pp. 1-2)	Certificate of Non-Appearance of Cynthia Christopher	Claimant
Ex. 7	(p. 1)	Florida Bar registration of Attorney Linda McCullough	Claimant
Ex. 8	(pp. 1-2)	Subpoena for Connie Crabtree, ULA, Human Resources	Claimant
Ex. 9	(pp. 1-2)	Certificate of Non-Appearance of Connie Crabtree	Claimant
Ex. 10	(pp. 1-2)	Subpoena for Patricia Kent, ULA, Workers Compensation	Claimant

CLAIMANT'S EXHIBITS

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
Melbourne District

CLAIMANT'S LIST OF DOCUMENTARY EVIDENCE TO THE
UNIFORM STATEWIDE PRETRIAL STIPULATION
CONTINUED

Ex. 11	(pp. 1-2)	Certificate of Non-Appearance of Patricia Kent	Claimant
Ex. 12	(pp. 1-2)	Subpoena for Penny Shellhorn-Schutt, Broadspire	Claimant
Ex. 13	(pp. 1-2)	Certificate of Non-Appearance of Penny Schutt	Claimant
Ex. 14	(p. 1)	MRI Report of Claimant's Left Knee 04-05-2010	Claimant
Ex. 15	(p. 1)	Dr. Lombardo's P/T Referral/Care Plan	Claimant
Ex. 16	(p. 1)	Dr. Lombardo's description of Meniscectomy	Claimant
Ex. 17	(p. 1)	Aquatic Rehab new patient information form page 2	Claimant
Ex. 18	(p. 1)	Photo of Claimant's Left Knee 05-11-2010	Claimant
Ex. 19	(p. 1)	Cross-Step Exercise	Claimant
Ex. 20	(p. 1)	Aquatic Rehab calendar notation on 05-14-2010	Claimant
Ex. 21	(p. 1)	Roderick Foster, MT, License Verification	Claimant
Ex. 22	(p. 1)	Cynthia Christopher, PTA, License Certification	Claimant
Ex. 23	(p. 1)	Photo of Claimant's Left Leg on 05-19-2010	Claimant
Ex. 24	(pp. 1-4)	Dr. Lombardo Office Visit Report of 05-18-2010	Claimant
Ex. 25	(pp. 1-5)	Email May 20, 2010 to Penny Schutt, Broadspire	Claimant
Ex. 26	(p. 1)	Claimant's Check to Wuesthoff Rehab	Claimant
Ex. 27	(p. 1)	Darin Pranzoni, PT, License Certification	Claimant
Ex. 28	(pp. 1-5)	Dr. Lombardo Office Visit Report of 06-08-2010	Claimant
Ex. 29	(p. 1)	Non-Certification of OrthoVisc of 06-15-2010	Claimant
Ex. 30	(p. 1)	Non-Certification of Knee Brace of 06-15-2010	Claimant

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CLAIMANT'S LIST OF DOCUMENTARY EVIDENCE TO THE
 UNIFORM STATEWIDE PRETRIAL STIPULATION
 CONTINUED

Ex. 31	(pp. 1-2)	MRI Report of Claimant's Left Knee 07-22-2010	Claimant
Ex. 32	(p. 1)	Broadspire letter of 08-09-2010	Claimant
Ex. 33	(pp. 1-5)	Dr. Lombardo Office Visit Report of 08-24-2010	Claimant
Ex. 34	(p. 1)	Compensation pay/benefits received spreadsheet	Claimant
Ex. 35	(pp. 1-2)	Patricia Kent Email of 09-08-2010 also sent to Broadspire	Claimant
Ex. 36	(p. 1)	ULA Return to Work 09-13-2010	Claimant
Ex. 37	(pp. 1-5)	Dr. Lombardo Office Visit Report of 09-13-2010	Claimant
Ex. 38	(p. 1)	OHF Medical Disposition report of 09-13-2010	Claimant
Ex. 39	(p. 1)	Broadspire letter of 09-30-2010 MMI was set	Claimant
Ex. 40	(pp. 1-6)	Dr. Lombardo office visit report of 10-26-2010	Claimant
Ex. 41	(pp. 1-5)	Dr. Lombardo office visit report of 01-04-2011	Claimant
Ex. 42	(pp. 1-2)	Vera Sports Medicine Invoice of 08-15-2011	Claimant
Ex. 43	(p. 1)	Notice Of Denial from Broadspire of 01-06-2011	Claimant
Ex. 44	(pp. 1-5)	Dr. Lombardo office visit report of 04-21-2011	Claimant
Ex. 45	(pp. 1-2)	Invoice for Knee Brace and Check 5799	Claimant
Ex. 46	(pp. 1-2)	Listing of costs paid by Claimant	Claimant
Ex. 47	(p. 1)	Worker's Compensation Pay Received	Claimant
Ex. 48	(p. 1)	Florida Impairment Benefits	Claimant
Ex. 49	(p. 1)	Anthem Payment Statement - Lombardo Visit 01/04/11	Claimant
Ex. 50	(p. 1)	Email to Connie Crabree - Failure to Appear	Claimant

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CLAIMANT'S LIST OF DOCUMENTARY EVIDENCE TO THE
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CONTINUED

Ex. 51	(p. 1)	Email Read Receipt from Connie Crabtree	Claimant
Ex. 52	(p. 1)	Crabtree Email Read Receipt from Derrick Cox	Claimant
Ex. 53	(p. 1)	Email Patricia Kent - Failure to Appear	Claimant
Ex. 54	(pp. 1 - 3)	Email Patricia Kent - Undeliverable	Claimant
Ex. 55	(p. 1)	Email Patricia Kent - Read Receipt from Cox	Claimant
Ex. 56	(p. 1)	Email Penny Schutt - Failure to Appear	Claimant
Ex. 57	(pp. 1 - 3)	Email Penny Schutt - Undeliverable	Claimant
Ex. 58	(p. 1)	Email Penny Schutt - Read Receipt from Cox	Claimant

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D/A: 3/15/2010

CLAIMANT'S LIST OF ADDITIONAL EXHIBITS FOR FINAL HEARING

Ex. 59	(p. 1)	Certificate of Authenticity - NSI MRI of 04/05/2010	Claimant
Ex. 60	(p. 1)	Certificate of Authenticity - NSI MRI of 07/022/2010	Claimant
Ex. 61	(p. 1)	Certificate of Authenticity - Weiss/Lombardo	Claimant
Ex. 62	(p. 1)	Certificate of Authenticity - Viera Sports/Lombardo	Claimant
Ex. 63	(pp. 1-6)	Sports Medicine Bible - Cover & Pages 120, 123, 127-129	Claimant

NOT OFFERED INTO EVIDENCE

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CLAIMANT'S ADDITIONAL EXHIBITS FOR FINAL HEARING

Ex. 64	(pp. 1 - 2)	Broadspire Claim Progress Notes - Pages 122 - 123	Claimant - <i>PROFFER A</i>
Ex. 65	(pp. 1 - 5)	Dr. Lombardo Office Visit Report dated July 13, 2010	Claimant <i>IN EVIDENCE</i>
Ex. 66	(p. 1)	ULA Return to Work Form dated February 3, 2011	Claimant <i>IN EVIDENCE</i>
Ex. 67	(pp. 1 - 5)	Dr. Lombardo Office Visit Report dated May 16, 2011	Claimant - <i>IN EVIDENCE</i>
Ex. 68	(pp. 1 - 15)	ULA Email dated November 17, 2010 with 14 Page Aerospace Technician Requirements document	Claimant - <i>PROFFER B</i>

Ex 69
DEPOSITION PENNY SHELLER - SCOTT TITLEN
OCTOBER 23, 2012.