

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

EMPLOYEE:

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Valkaria, FL 32950

EMPLOYER:

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CARRIER:

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ATTORNEY FOR EMPLOYEE:

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ATTORNEY FOR EMPLOYER/CARRIER:

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OJCC CASE NO.: 10-002824PTT

D/A: 4/6/2009

ORDER DENYING MEDICAL TREATMENT

THIS MATTER came on for an Expedited Final Hearing before the undersigned Judge of Compensation Claims on April 29, 2010, for a Petition for Benefits filed on February 5, 2010. At the conclusion of the Expedited Hearing, a detailed verbal ruling was issued, with findings of fact and conclusions of law, which are incorporated herein by direct reference. Present and representing the employee was Glen D. Wieland, Esquire. Present and representing the Employer/Carrier was Derrick E. Cox, Esquire. Also present were the Claimant, Peter Starr, and the adjuster, Ms. Wendy Hall.

The issue presented for my determination was authorization of Dr. Ziegler to treat the Claimant's low back injury, plus attorney's fees and costs. The claim was defended on the grounds that Dr. Homi Cooper was authorized to treat the Claimant's compensable low back injury; that Dr. Homi Cooper had not referred the Claimant to an orthopedist for the Claimant's

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low back injury; and that the Claimant had not requested a one-time change in treating physicians. The Employer/Carrier also denied payment of attorney's fees and costs.

The following exhibits were admitted into evidence:

Judge's Exhibits:

1. The Orders/Notices of Expedited Final Hearing dated February 8, 2010; February 9, 2010; and February 11, 2010.

Joint Exhibits:

- 1a. The Joint Expedited Pretrial Stipulation with attachments, filed April 13, 2010.
- 1b. The Claimant's deposition, filed April 12, 2010.
- 1c. The deposition of Dr. Ziegler, filed April 13, 2010.
- 1d. The Response to the Petition for Benefits, dated February 9, 2010, filed February 17, 2010.

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 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 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, approved, and incorporated by reference as if set out at length herein.

2. Based on the evidence that has been presented to me, I hereby deny the Claimant's request for authorization of Dr. Brian Ziegler to treat the Claimant's compensable low back condition.

3. Following the Claimant's work related motor vehicle accident, the Employer/Carrier authorized Dr. Homi Cooper to treat all of the Claimant's injuries sustained in the April 6, 2009 accident, including his low back and left shoulder. On June 9, 2009, Dr. Cooper requested a consultation with Dr. John Hermansdorfer for the left shoulder rotator cuff tear and impingement syndrome. The adjuster authorized Dr. Hermansdorfer, and an appointment was scheduled for July 22, 2009.

The Claimant requested to see a physician other than Dr. Hermansdorfer. As a result, Dr. Brian Ziegler was quickly authorized to evaluate and treat the Claimant's left shoulder, neck and elbow. Dr. Ziegler's office requested that Adjuster Wendy Hall complete a form identifying the authorized body parts, and Ms. Hall completed the physician's required form, giving Dr. Ziegler authorization to treat the Claimant's left shoulder, neck, and left elbow.

During his deposition, Dr. Ziegler was asked questions as to whether he was ever authorized to treat the Claimant's back. Dr. Ziegler testified that the document he received from Ms. Hall suggested authorization of the shoulder, neck, and elbow but not the low back, and he specifically testified that he did not believe he ever received anything stating that he was authorized to treat the Claimant's low back.

The Claimant's deposition was admitted into evidence for substantive weighing, and the Claimant also gave live testimony at the Expedited Hearing. The Claimant testified that Dr. Ziegler told him, at the time of his first appointment, that Dr. Ziegler was not authorized to treat

the Claimant's low back. Following authorized shoulder surgery, the Claimant again talked to Dr. Ziegler about treating his low back, and Dr. Ziegler reiterated that he was not authorized to treat the Claimant's low back. The Claimant acknowledged he was clearly informed that he had the right to request a one-time change in treating physicians, but he did not make a request for a one-time change in treating physicians.

The adjuster, Ms. Wendy Hall, also testified live at the merits hearing. Ms. Hall testified that Dr. Cooper was authorized to treat all compensable conditions, including the Claimant's left shoulder and low back. Ms. Hall further testified that Dr. Hermansdorfer, an orthopedist, was timely authorized to evaluate the Claimant's left shoulder at the request of Dr. Cooper. However, since the Claimant requested a different doctor, Ms. Hall voluntarily agreed to alternatively authorize Dr. Brian Ziegler, for the neck and upper extremity. Ms. Hall specifically testified that she never authorized Dr. Ziegler to evaluate or treat the Claimant's low back. Rather, Dr. Ziegler's authorization was limited to treatment of the Claimant's neck, left shoulder and elbow. Ms. Hall further testified that Dr. Hermansdorfer's authorization did not extend to the low back, either. Ms. Hall testified that Dr. Homi Cooper remains authorized to treat the Claimant's low back injury. Ms. Hall further testified that Dr. Cooper has not referred the Claimant to an orthopedist for treatment of the low back. Finally, Ms. Hall testified that the claimant has not requested a one-time change in treating physicians in writing, thus that option remains for the future.

4. I find that Ms. Hall is an honest and truthful witness, and I accept her testimony in its entirety. I find that Ms. Hall timely, and in good faith, provided all medically necessary treatment required for the Claimant in this case. Ms. Hall even exceeded her statutory

obligation, by voluntarily allowing the Claimant to treat with Dr. Brian Ziegler at the Claimant's request, rather than requiring the Claimant to be seen by Dr. Hermansdorfer. I further find that Ms. Hall also acted promptly and diligently in responding to the Petition for Benefits, by immediately authorizing a return appointment with Dr. Homi Cooper, within 24 hours of her receipt of the February 5, 2010 Petition for Benefits, which was received by the Carrier on February 8, 2010.

Overall, I find that the Employer/Carrier has provided all reasonable and medically necessary treatment to the Claimant, in accordance with the Workers' Compensation Statute and case law. I find that the Employer/Carrier timely authorized Dr. Cooper to treat the Claimant's low back, and Dr. Cooper remains authorized. Therefore, the Claimant has the right to return to Dr. Homi Cooper for treatment. I find that Dr. Homi Cooper is qualified to treat the Claimant's low back complaints, based on local knowledge of Dr. Cooper, and the testimony of Dr. Ziegler. I further find that Dr. Ziegler is not uniquely qualified to treat the Claimant's low back complaints in this case based on his own testimony that he is one of many physicians who can provide the necessary non-surgical treatment. Therefore, I find that the Claimant failed to prove that it is medically necessary for Dr. Ziegler to take over the Claimant's care and treatment. There is also no evidence of a referral to an orthopedist, for treatment of the Claimant's low back.

I find that the Claimant maintains his right to request a one-time change in treating physicians, if he chooses to do so. The Claimant can return to Dr. Homi Cooper for further treatment of his low back injury. The Claimant can also return to Dr. Homi Cooper, to discuss

the possibility of an orthopedic referral for his low back. Therefore, the Claimant has been timely presented with multiple options for future treatment of his low back injury, by the Carrier.

WHEREFORE, for the foregoing reasons, the undersigned hereby finds as follows:

1. The Claimant's request for authorization of Dr. Brian Ziegler to treat the Claimant's low back injury is denied and dismissed.
2. Since the benefits requested in the February 5, 2010 Petition are denied, the Claimant's request for payment of attorney's fees and costs is also denied.
3. Since the Employer/Carrier prevailed at the April 29, 2010 Expedited Final Hearing, the Employer/Carrier is entitled to reimbursement of related and taxable Court Costs as the prevailing party. Jurisdiction is reserved to determine the amount of taxable Court Costs.

DONE and ORDERED in Melbourne, Florida, this 5th day of May, 2010.



Honorable Paul T. Terlizese
Judge of Compensation Claims

THIS IS TO CERTIFY that the foregoing Order was entered on the 5th day of May, 2010, and that a copy thereof was sent by electronic mail to Counsel.

Judicial Assistant