

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

EMPLOYEE:

Woodrow Sweet
28 W. 525 Gary's Mill Road
Winfield, IL 60190

EMPLOYER:

Brevard County Board of County
Commissioners
1040 S. Rockledge Drive
Rockledge, FL 32955

CARRIER:

Preferred Governmental Claim Solutions
Post Office Box 958456
Lake Mary, FL 32795-8456

ATTORNEY FOR EMPLOYEE:

Glen D. Wieland, Esquire
Wieland, Hilado & DeLattre, P.A.
790 N. Orange Avenue
P.O. Box 944
Orlando, FL 32802

ATTORNEY FOR EMPLOYER/CARRIER:

Derrick E. Cox, Esquire
Hurley, Rogner, Miller, Cox, Waranch &
Westcott, P.A.
1560 Orange Avenue, Suite 500
Winter Park, FL 32789

OJCC #: 97-026524PTT

Accident Date: 11/13/1997

FINAL COMPENSATION ORDER

After proper and timely notice to all parties, an Expedited Final Hearing was held on a Petition for Benefits filed on September 25, 2009, in Melbourne, Brevard County, Florida, on January 21, 2010, before the Honorable Paul Terlizzese, Judge of Compensation Claims. Present at the trial was the Employee, Woodrow Sweet appearing by phone; his attorney, Glen D. Wieland, Esquire; and the attorney for the Employer/Carrier, Derrick Cox, Esquire. At the conclusion of the Hearing, and the close of the record, the Court verbally announced its findings of fact, and conclusions of law regarding the Claimant's Petition for Benefits filed September 25,

2009. Those findings of fact, and conclusions of law, are incorporated into this Order by direct reference.

The parties stipulated to a Joint Pre-Trial Outline for Expedited Hearing, filed January 6, 2010. The parties stipulated specifically to the following:

1. Proper jurisdiction and venue is Brevard County.
2. There was an employee/employer relationship on the date of the accident.
3. Workers' Compensation insurance was in effect on the date of the alleged accident/injury.
4. There was timely notice of the Hearing.
5. The Court has jurisdiction over the subject matter and the parties.
6. A Petition for Benefits was electronically filed on September 25, 2009, seeking authorization for podiatric evaluation and treatment by Dr. Robin L. Pastore, located at 1N141 County Farm Road, Suite 106, Winfield, IL 60190, telephone number (630)510-0098, per prescription from Dr. Noam Stadlan, who is the authorized treating physician. The prescription and request were sent to the carrier on August 5, 2009, and in accordance with Florida Statute Section 440.13, this care shall be authorized as carrier has consented to it; in addition, psychiatric/psychological, authorization for psychiatric evaluation and treatment by Dr. Melvin Hess, located at 27 W. High Lake Road, Winfield, IL 60190, telephone number (630)933-4650, per prescription from Dr. Stadlan, who is the authorized treating physician. The prescription and request were sent to the carrier on August

5, 2009, and in accordance with Florida Statute Section 440.13, this care shall be authorized as carrier has consented to it. The Claimant also is seeking costs and attorney's fees.

The Employer/Carrier defended the claim on the basis that there is no causal relationship between the need for any of the requested care and the industrial accident; that the evaluation/care is not medically necessary or related to the industrial accident; no compensable psychiatric injury related to the industrial accident; and no need for treatment related to the industrial injury; the Claimant has not met his burden of proof as to need for treatment; and that no costs or attorneys' fees are due.

The above stipulations of the parties are proper, found to be factual, and are adopted by the undersigned.

The following documentary items were admitted into evidence:

1. **Judge's Exhibit 1:** consisting of the Petition for Benefits filed on September 25, 2009; Response to Petition for Benefits, filed September 30, 2009; Notices of Hearing dated: September 25, 2009; October 14, 2009; October 15, 2009; Claimant's Motion to Appear Telephonically; and this Court's Oder allowing telephonic testimony dated December 9, 2009.

2. **Joint Exhibit 1:** Joint Pretrial Outline dated January 6, 2010, and all documentary evidence attached thereto specifically:
 - a. Petition for Benefits filed September 25, 2009, with attachments

- b. Medical records of Dr. Stadlan
 - c. January 4, 2010 Deposition of Dr. Stadlan
 - d. Medical records of Dr. Hurley and Chicago Institute of Neurosurgery and Neuroresearch.
 - e. Prescription/order of Dr. Stadlan for evaluations for Claimant in podiatry and behavioral medicine.
 - f. Medical records of Dr. Edmundo Rivera
 - g. Medical records of Dr. Fariz Matuk.
 - h. Dr. Stadlan's professional qualifications
 - i. Dr. Daniel Hurley's professional qualifications
 - j. Response to Petition for Benefits dated September 30, 2009
 - k. Employer/Carrier/Servicing Agent Independent Medical Evaluation report of Dr. J. Roderick Hundley
 - l. Dr. J. Roderick Hundley's Curriculum Vitale
 - m. Payout Ledger of Employer/Carrier
3. **Claimant's Exhibit 1:** Deposition of Dr. Stadlan, taken on January 4, 2010, and filed with the Court on January 6, 2010, along with medical records attached thereto.
4. The Court also takes judicial notice of the Pre-Hearing Information Checklists filed by Counsel; the September 25, 2009 Petition for Benefits; and the October 6, 2009 Response to the September 25, 2009 Petition for Benefits.

The Claimant, Woodrow Sweet, was the only live testimony taken at the Hearing. He presented via sworn telephonic testimony to this Court, in a most credible, believable, and straightforward manner. I accept the Claimant's testimony as to his continuing problems, lack of intervening accidents and chronic pain.

In making my additional findings of fact and conclusions of law in this claim, I have carefully considered and weighed all the evidence presented to me, both by deposition testimony and by the live/telephonic testimony of the Claimant presented at the Hearing. I have listened carefully to the testimony of the Claimant, who testified before me, and I have resolved any of the conflicts of the evidence. Based upon the foregoing, the evidence and the applicable law, I make the following findings of fact and determinations of law:

1. The Judge of Compensation Claims has jurisdiction of the parties and subject matter.
2. That venue properly lies in Brevard County, Florida.
3. The written and verbal stipulations of the parties are approved and adopted by me.

In making the additional determination set forth below, I have attempted to distill the testimony and salient facts, together with the findings and conclusions necessary to the resolutions of this claim. I have not attempted to summarize the substance of the Employee's testimony, or the deposition testimony or records of any witness in minute detail, 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.

The parties stipulated that the Claimant was in the course and scope of his employment on

November 13, 1997, when he suffered an accident at work. The Claimant eventually underwent an authorized back surgery, and since his surgery, has had continuing symptoms and treatment for chronic pain in his back, radiating down his leg and into his foot. He has treated on an authorized basis with several physicians over the last thirteen years for his related and ongoing chronic pain and problems. He has also had authorized psychiatric care in Brevard County, Florida, through Dr. Edmundo Rivera, for psychological and psychiatric problems relating to the chronic pain in his back and into his leg.

Claimant moved from Brevard County, Florida, to the Chicago, Illinois area in late 2005 to early 2006. The Employer/Carrier authorized neurosurgical care for him in Illinois, with Dr. Noam Stadlan. Dr. Stadlan has been treating the Claimant on a consistent basis for continuing chronic pain in his back, leg, and radiating into his foot. I accept the Claimant's testimony that he is willing to undergo a podiatric evaluation, though he thinks that the pain in his foot is radiating from his back. He also wants an evaluation with a psychologist/psychiatrist to help him deal with the chronic pain, resulting irritability, and other mental issues stemming from his chronic pain. He wants to get better, wants to get relief, and learn to deal with his chronic pain.

Dr. Stadlan has been providing authorized care to the Claimant since April, 2006, and his objective findings are consistent with the mechanism of injury and subsequent treatment. I accept Dr. Stadlan's opinions that the most likely cause of the Claimant's chronic and radiating pain, is nerve root irritation from his injury, and subsequent spinal surgery and treatment. This is consistent and logical with the history and the industrial accident suffered by the Claimant. Dr. Stadlan was not familiar with Florida law, but his testimony taken as a whole demonstrated that

he had a comprehensive understanding of the industrial injury, surgery, and prior treatment from when the Claimant lived in Florida.

Dr. Stadlan testified that it would be helpful in his treatment of the Claimant to rule in, or rule out, podiatric and psychological/psychiatric issues. He stated that it would help him, in both his diagnosis and treatment, to know if the chronic pain in the foot was coming from the back and nerve root irritation, or if it were coming from a problem in the foot, like a bone spur. I accept his opinion that the Claimant needs a psychological/psychiatric evaluation to help the Claimant deal with his chronic back pain radiating into the leg and foot, and that this would provide additional information for Dr. Stadlan to help determine the causation, and to treat the Claimant.

As to the Employer/Carrier's objection to the admission of the medical opinions contained in the medical records of Dr. Hurley, a partner of Dr. Stadlan, this Court finds that the Employer/Carrier paid for Dr. Hurley's care, and there is no evidence before this Court that this payment was a mistake, or was not knowingly made by the carrier. The records show that the payout specifically listed an individual physician payment for that date of service, and the only doctor to have seen the Claimant on October 16, 2006, was Dr. Hurley. Payment was made for that visit by check dated November 9, 2006. Therefore, I find that Dr. Hurley's care and treatment was authorized care, and his medical opinions are admissible as an authorized physician.

The Employer/Carrier has authorized, and paid for, back care with radiating symptoms for this Claimant for well over a decade. This Court does not accept the argument by the Employer/Carrier that the current need for care and treatment is not related to the industrial accident and subsequent surgery. The symptoms and treatment to the Claimant since his

industrial accident has been consistently in his back, and radiating into his leg and foot. His symptoms today per the medical records, and the Claimant's live testimony is still back pain, radiating into his leg and foot. I therefore find that the care and treatment is related to the industrial accident, and that the industrial accident is the major contributing cause of the Claimant's need for treatment for his back pain with radiating symptoms, or at the very least, the evaluations are necessary to rule in or out the causation.

I find that the Employer/Carrier has been on notice of the Dr. Stadlan's request for these evaluations since at least August, 2009. The Employer/Carrier has never offered alternative physicians to perform these evaluations, and the Carrier has been aware of the specifics of the requested evaluating physicians, Dr. Hess and Dr. Pastore. Since no alternatives were offered, this Court finds that the Carrier shall authorize Dr. Hess and Dr. Pastore to perform the evaluations as requested by Dr. Stadlan.

I find that Dr. Stadlan's recommendations for evaluations by a podiatrist and a behavioral psychologist/psychiatrist evaluation are reasonable, logical, and medically necessary to determine whether related to the industrial accident of November 13, 1997, and the Claimant's ongoing chronic pain.

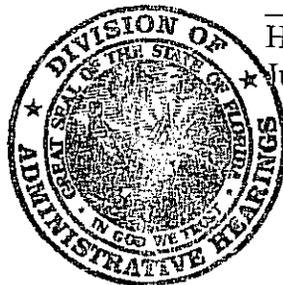
The Claimant has prevailed on this medical issue and the Employer/Carrier is responsible for paying the fees and costs of counsel for the Claimant. I therefore award taxable costs and attorneys' fees, with jurisdiction reserved as determine the amount of fees and taxable court costs to be paid by the Employer/Carrier.

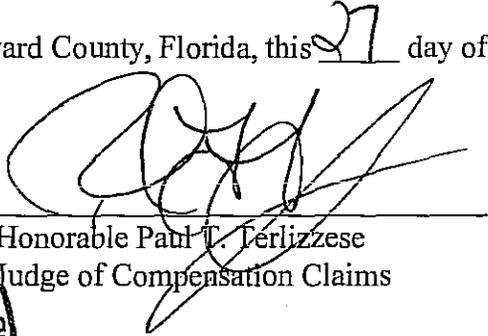
WHEREFORE, it is hereby ORDERED and ADJUDGED that:

1. The Employer/Carrier shall authorize Dr. Robin Pastore to perform a podiatric evaluation of the Claimant's foot, as requested by Dr. Stadlan, the authorized treating physician.
2. The Employer/Carrier shall authorize Dr. Melvin Hess to perform a psychiatric evaluation of the Claimant, as requested by Dr. Stadlan, the authorized treating physician.
3. The Employer/Carrier is responsible to pay Claimant's attorney's fee as well as the taxable court costs associated with the successful prosecution of this claim. Jurisdiction is reserved to determine the amount of the fee and costs, should the parties not be able to resolve those issues.

DONE AND ORDERED in Melbourne, Brevard County, Florida, this 27 day of

January 2010.




Honorable Paul T. Terlizese
Judge of Compensation Claims

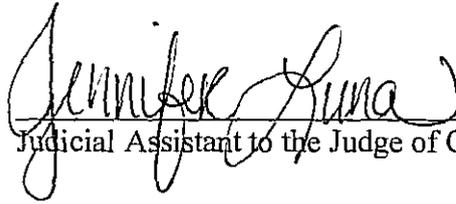
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 27 day of January, 2010 to:

ATTORNEY FOR EMPLOYER/CARRIER:

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ATTORNEY FOR EMPLOYEE:

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Judicial Assistant to the Judge of Compensation Claims