

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

Rosemary Furek,	)	
	)	
Employee/Claimant,	)	
	)	
vs.	)	OJCC Case No. 06-013111DSR
	)	
Bayonet Point Health and Rehabilitation	)	Accident date: 4/3/2006
Center,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
Premier Group Insurance,	)	
	)	
Carrier/Servicing Agent.	)	
_____	)	

**FINAL COMPENSATION ORDER**

**THIS CAUSE** was heard before the undersigned at St. Petersburg, Pinellas County, Florida on May 24, 2007, upon the Claimant's claims for temporary partial disability benefits from April 3, 2006 to present; authorization for an appointment, treatment, evaluation and care with a PCP, preferably Dr. Wallace; authorization for lumbar MRI as recommended by Dr. Ibarra and Dr. Eichberg; authorization for appointment, treatment, evaluation and care with a spine specialist or physiatrist after lumbar MRI; compensability of the industrial accident and resulting injury to the lumbar spine; compensability of the treatment received at Morton Plant Immediate Care with Dr. Richard Wallace and Dr. Sherman Ibarra and compensability of the continuing medical need for treatment; payment of \$63.38 for prescriptions; penalties, interest, costs and

attorney's fees.

The defenses were no temporary partial disability due; claim not compensable; Claimant's disability or need for treatment due to pre-existing condition; Employer/Carrier claims credit for wages paid from subsequent earnings; Employer/Carrier requests Judge of Compensation Claims determine whether Claimant violated Florida Statutes Sections 440.09 (4) and 440.105, based upon review of Employer/Carrier's surveillance of the Claimant and Claimant's representations to IME physician and representations in sworn deposition testimony of February 6, 2007; no medical authorized, except Dr. Ibarra prior to denial; that no penalties, interest, costs or attorney's fees were due and owing.

The Petition for Benefits was filed November 3, 2006. Mediation occurred on February 19, 2007 and was reconvened on March 9, 2007, and the parties' pretrial compliance questionnaire was filed March 12, 2007. Josh Stewart, Esq. was present on behalf of the Claimant. W. Rogers Turner, Jr., Esq. was present on behalf of the Employer/Carrier.

The following documentary items were received into evidence:

1. The pretrial stipulation sheet dated March 12, 2007, together with the documentary items required by Rule 9.180 (Court's Exhibit #1).
2. Deposition of Richard P. Wallace, M.D., taken January 12, 2007 (Claimant's Exhibit #1).
3. Deposition of Dr. Ibarra, taken November 30, 2006 (Claimant's Exhibit #2).
4. Deposition of George Giannakopoulos, M.D., taken January 18, 2007 (Claimant's Exhibit #3).
5. Deposition of Rosemary Furek, taken July 10, 2006 (Employer/Carrier's Exhibit # 1).

6. Personnel File (Employer/Carrier's Exhibit # 2).

7. Deposition of Rodolfo Eichberg, M.D., taken October 9, 2006 (Employer/Carrier's Exhibit # 3).

8. Deposition of Rodolfo Eichberg, M.D., taken May 15, 2007 (Employer/Carrier's Exhibit # 4).

9. Deposition of Rosemary Furek, taken February 6, 2007 (Employer/Carrier's Exhibit # 5).

10. Surveillance Report and DVD (Employer/Carrier's Exhibit # 6).

11. Deposition of Shaun Hackelberg, taken September 26, 2006 (Joint Exhibit #1).

12. Deposition of Ellie Lataxes, taken September 26, 2006 (Joint Exhibit #2).

At the hearing, the Claimant, Rosemary Furek, Janet Wahrman, and Eleanore Lataxes 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 observed the candor and demeanor of the witnesses, and 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. Those items to which the parties were in agreement on the pretrial stipulation sheet are accepted and adopted as findings as facts.

2. The Claimant asserted an industrial accident arising out of and in the course and scope of her employment on April 3, 2006. The Employer/Carrier has not accepted the accident nor injuries as compensable.

3. It was the Claimant's position that her average weekly wage was \$415.00 with a corresponding compensation rate of \$276.68. It was the Employer/Carrier's position that the average weekly wage was \$360.00 with a corresponding compensation rate of \$240.12.

4. It was the Claimant's position that she had not yet reached maximum medical improvement. It was the Employer/Carrier's position that maximum medical improvement was reached on September 25, 2006, as found by Dr. Eichberg, with a 0% permanent impairment rating.

5. The parties stipulated that if the claim was found to be compensable they would administratively determine the amount of temporary partial disability benefits owed to the Claimant.

6. It was the Claimant's position that Dr. Wallace and Dr. Ibarra were authorized physicians, as Ms. Lataxes had sent the Claimant back to see the physicians at BayCare and to have a drug screen conducted after the Claimant reported the industrial accident. It was the Employer/Carrier's position that the Claimant initially went to BayCare on her own, and she was, in fact, authorized to go there to have the drug screen conducted, but there was no report of any work incident. On April 18, 2006, a Notice of Denial was issued. No payments were made, and there was no authorization of the physicians. As such, the Employer/Carrier asserted that the medical opinions of Dr. Wallace and Dr. Ibarra should not be received into evidence.

7. The Claimant began employment as a Certified Nursing Assistant with this Employer on February 9, 2006.

8. The Claimant asserts an industrial accident arising out of and in the course and scope of her employment on April 3, 2006. Unfortunately, the Claimant's history as to the onset of her

pain is extremely conflicting. I do not find the Claimant to be a credible witness or an accurate historian on her own behalf. The Claimant has stated at various times that she began feeling pain in her back after lifting a patient in Room 44A. The pain was not debilitating, and she completed her shift and clocked out. She testified that she sat in her car and felt a “pop” in her back. The following day she went to the Immediate Care Unit and was seen by Dr. Wallace. The records of the Immediate Care Clinic on April 4, 2006 do not substantiate the Claimant’s history of the onset of her pain. The records of that date indicate that she had an onset of back pain which occurred “last night”. The box stating “recent injury” was checked “no”. Dr. Wallace, the physician that saw her on April 4, 2006, indicated “patient worked without problem. Went to store. When came back, felt sudden pain”.

9. In the early morning on April 4, 2006, the Claimant did contact her Employer to let them know that she was going to the Immediate Care Clinic. Janet Wahrman spoke to the Claimant who said she was experiencing pain in her low back, but did not relate it to any activities at work. She told Ms. Wahrman she was going to seek medical attention. Ms. Wahrman testified that the Claimant told her she did not injure her back at work.

10. After the Claimant’s visit at the Immediate Care facility on April 4, 2006, she again called her Employer and spoke with Ellie Lataxes and told her that her back hurt, but she did not know what had happened. Ms. Lataxes testified that when the Claimant called back on April 6, indicating that she thought it may be work related, she told the Claimant to come in and fill out paperwork and to go to the Immediate Care Clinic for a drug screen, etc. Ms. Lataxes testified that there never was a description of a specific accident or incident or event occurring at the work facility.

11. The Claimant was seen at the Immediate Care facility again on April 6, 2006 and was seen by Dr. Wallace on that occasion as well. During the April 6, 2006 appointment, the Claimant gave a history of having severe back pain since working a few days ago. She states that she spent her day doing her usual activities, lifting and helping patients. Since that time, she has had a mild ache in her back, which was progressively getting worse. She states that upon walking to her car and getting into her car, she felt a pop and a bursting sensation in her back. Since that time, she has had severe pain in her back.

12. The Claimant was released to return to work, light duty, and she did return to work with the Employer. The Claimant asserts that on April 11, 2006 she was instructed to transport a patient to and from a doctor visit. The Claimant testified that she had to physically push the patient into the physician's office and then back into their facility after the appointment. The Claimant testified that the April 11, 2006 work activity aggravated her back injury, and she experienced an increase in her symptoms. As such, she was directed by her Employer to return to the Immediate Care facility. The Claimant was seen by Dr. Sherman Ibarra and not Dr. Wallace on April 12, 2006. The report of the Claimant to Dr. Ibarra is "This is a 37-year old white female with low back pain. The patient felt that the pain had been improving until she woke up this morning and felt spasms in her low back....Patient states she cannot pinpoint an exact injury that occurred to cause this new back pain". Based on that examination, Dr. Ibarra recommended an MRI scan, but the Employer/ Carrier denied this claim and the MRI scan has not been completed.

13. The Claimant's deposition was taken for the first time on July 10, 2006. In that deposition, the Claimant testified that she told Janet Wahrman "that somewhere along the line

before I checked out I did something to my back, but when I got in the car, it popped". As indicated earlier, Janet Wahrman testified that the Claimant specifically told her that there was no incident which occurred at work. I accept the testimony of Janet Wahrman over the testimony of the Claimant in any areas where they contradict. Additionally, the Claimant failed to specifically indicate that she had injured herself at work or delineate a specific incident as to the onset of her pain when she previously spoke with Ellie Lataxes.

14. I have had the opportunity to review the surveillance which the Employer/Carrier had conducted on the Claimant. On January 15, 2007, the Employer/Carrier obtained over three hours of surveillance video of the Claimant washing, vacuuming, and detailing her automobile. She is observed opening and closing the doors and the trunk; sitting and climbing in and out of the vehicle on numerous occasions; reaching onto the floor; leaning over the seats and vacuuming the interior of the vehicle extensively with a portable vacuum cleaner. She also washes the outside of her vehicle and dries it and cleans the glass of the vehicle which again requires her to bend fully at the waist, rotating her body in all directions, squatting, kneeling and sitting without any apparent discomfort.

15. The Claimant was again deposed on February 6, 2007 and asked numerous questions about her current activities and capabilities. The Claimant's testimony as to her limited ability to bend, etc. is in direct conflict with the activities observed on the surveillance video.

16. On January 15, 2007, the Claimant also underwent her independent medical examination with Dr. George Giannakopoulos. He stated that the Claimant was "exquisitely tender to palpation throughout the lumbar spine. Range of motion was limited in all spheres. Particularly in flexion, she could only go about 15 degrees." Once again, the restrictions the

Claimant delineated to Dr. Giannakopoulos are in direct conflict with the activities she is observed engaging in on the surveillance video. As such, any opinions of Dr. Giannakopoulos as to the major contributing cause of the Claimant's current condition are rejected, based on the inaccurate history given to him by the Claimant.

17. On September 25, 2006, the Claimant underwent an independent medical examination by Dr. Rodolfo Eichberg on behalf of the Employer/Carrier. Dr. Eichberg indicated that based on the Claimant's prior history of work, prior low back injury with six months of temporary restrictions, and the Claimant's conflicting reports about the onset of her problems, he could not state that the major contributing cause of her problems was her employment. Dr. Eichberg also recommended an MRI, but admitted that the MRI would not help him determine whether or not the employment was the major contributing cause of any problems she was having. Dr. Eichberg felt the Claimant had symptom magnification and chronic low back pain.

18. The surveillance tape was presented to Dr. Eichberg, and he had a supplemental deposition taken on May 15, 2007. Dr. Eichberg felt that after reviewing the tape the Claimant would not have any work restrictions. He noted also that the videotape conflicted with the Claimant's reports to Dr. Giannakopoulos on the same day, as well as those complaints made to him. He specifically noted that Dr. Giannakopoulos' report was that the Claimant could only flex 15% and that was incompatible with the surveillance video.

19. Based on the totality of the evidence before me, I find that the Claimant has not sustained an industrial accident arising out of and in the course and scope of her employment. Based on the inconsistencies in the Claimant's histories and assertions as to the onset of pain, together with the activities viewed on the surveillance video, I find that the Claimant has violated



Florida Statutes Sections 440.09 (4) and 440.105. As such, I find the Claimant is not entitled to compensation benefits, as she has knowingly and intentionally engaged in acts in violation of Section 440.105. I find that pursuant to Section 440.105 the Claimant made false, fraudulent and misleading oral statements for the purpose of obtaining Workers' Compensation benefits. As such, I find she is not entitled to any Workers' Compensation benefits as a result of this alleged industrial accident, and all claims are hereby denied and dismissed.

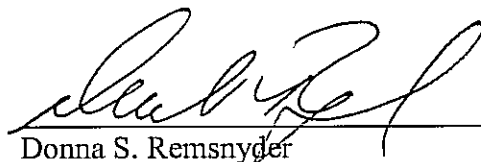
20. Since the Claimant has not prevailed, she is not entitled to reimbursement of taxable costs nor is her attorney entitled to be paid a fee at the expense of the Employer/Carrier.

**WHEREFORE**, it is hereby **ORDERED** and **ADJUDGED** that:

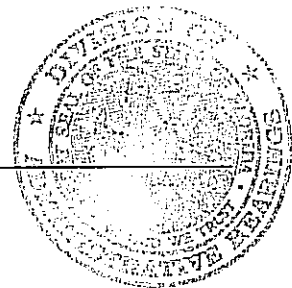
All claims are hereby **denied** and **dismissed**.

DONE AND MAILED this 1st day of June 2007, in St. Petersburg, Pinellas

County, Florida.



Donna S. Remsnyder  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
St. Petersburg District Office  
501 1st Avenue, North, Suite 300  
St. Petersburg, Florida 33701  
(727)893-2321  
[www.jcc.state.fl.us](http://www.jcc.state.fl.us)




Rosemary Furek  
10461 Captain Drive  
Spring Hill, Florida 34608

Bayonet Point Health and Rehabilitation Center  
7210 Beacon Woods Drive  
Hudson, Florida 34667

Premier Group Insurance  
Post Office Box 2028  
Pace, Florida 32571

Joshua Stewart, Esquire  
Carlson & Meissner  
7614 Massachusetts Avenue  
New Port Richey, Florida 34653

W. Rogers Turner, Jr., Esquire  
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.  
1560 Orange Avenue, Suite 500  
Winter Park, Florida 32789

  
Secretary