

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT

ANTONIO BECERRA,

OJCC#: 09-014459 KSP

Employee/Claimant,

D/A: 3/28/07

v.

JUDGE: KATHRYN S. PECKO

FRANKCRUM, FRANK WINSTON
CRUM INS. INC. serviced by
BROADSPIRE,

Employer/Carrier/Servicing Agent.

Lourdes T. Cambo, Esquire, Counsel for Employee/Claimant

Geoffrey C. Curreri, Esquire, Counsel for Employer/Carrier/Servicing Agent

COMPENSATION ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims on February 4, 2010 in Broward County, Florida for a duly noticed final hearing. The hearing record closed on February 4, 2010. The instant Compensation Order adjudicates Petitions for Benefits filed on June 3, 2009. The Employee/Claimant will be referred to by name or as "Claimant." The Employer and the Carrier/Servicing Agent will be referred to in their respective individual capacities or collectively as "E/C."

By way of background, Claimant injured his left knee on March 28, 2007, which was accepted as compensable by E/C. E/C authorized medical care and paid indemnity benefits. E/C now asserts the statute of limitations defense, thus contesting its obligation to provide any further benefits. The instant litigation ensued.

Claimant seeks various indemnity and medical benefits in the Petitions for Benefits filed on June 3, 2009. However, at final hearing, all requested benefits were withdrawn/previously resolved except for the request for authorization of an alternate orthopedic physician. Counsel for E/C concurred at final hearing that should Claimant prevail on the statute of limitations issue, it would provide Claimant with the alternate orthopedic physician. Accordingly, the sole issue that requires adjudication in the instant proceeding is the statute of limitations defense.

In regard to the statute of limitations, Claimant contends that he did not receive the statutorily required informational brochure and was otherwise unaware of his rights and obligations in regard to the statute of limitations. E/C contends that it provided the informational brochure in accordance with its statutory obligation and Claimant was otherwise informed of his rights and obligations in regard to same.

Claimant testified in person before the undersigned at final hearing. The adjuster, Ruby Arias, located in Tampa, Florida, testified via telephone. The following documentary and testimonial exhibits were admitted into evidence:

Judge's Ex. 1	Pretrial Stipulation e-served on 12/12/09
Joint Ex. 1-A	Depo. of Ruby Arias
Joint Comp. Ex. 2-D	Comp. of PFBs and Responses
Clmt. Ex. 3	Documents allegedly sent by E/C to Claimant with letter dated 3/29/07 (E/C authenticity obj. overruled)
E/C Ex. B	Depo. of Med. Records Cust. - Coastal Orthopedics plus exhibits
E/C Ex. C	Depo. Claimant
E/C Ex. E	Affidavit of Ruby Arias plus attachments

The undersigned considered all of the documentary and testimonial evidence, notwithstanding that there may not be an express recitation of same within the four

corners of the instant compensation order, as well as resolved all material conflicts in the evidence, before rendering the following findings and conclusions:

1. The undersigned has jurisdiction over the parties and the subject matter.
2. Claimant testified both at final hearing and in deposition that he resides at 205 S. 22nd Street, Fort Pierce, FL 34950. E/C Ex. C at 10. Claimant has lived at that same address for 16 years. E/C Ex. C at 11. Claimant testified both at final hearing and his earlier deposition that during the time he has lived at that address, there were two instances when he did not receive mail sent to him. E/C Ex. C at 28. Neither of those two instances involved mail sent by E/C.

Claimant testified that he can read, write and understand Spanish. E/C Ex. C at 11. Claimant testified that although he cannot read or write English, he does understand English "very little."¹ E/C Ex. C at 12. Although his children read, write, and understand English, they do not know how to translate English very well, except for his son Antonio. E/C Ex. C at 13. However, Claimant testified that a family friend, Maggie, assists Claimant in interpreting documents for him when necessary. E/C Ex. C at 15. Another gentleman, Jose, who works at a store in Ft. Pierce known as La Placita, also assists Claimant with interpreting documents from English to Spanish.

At both final hearing and in deposition, Claimant denied receiving any documentation from the insurance company in the mail after the accident. E/C Ex. C at 29. Claimant specifically denied receiving a letter from the Carrier dated March 29, 2007. E/C Ex. C at 30,31. However, Claimant acknowledged that he received all of the

¹ At final hearing, Claimant testified through an interpreter. However, a number of times the Claimant responded before the interpreter was finished and the undersigned ultimately instructed Claimant to wait until the interpreter completed the translation before answering the question.

checks sent by the Carrier. E/C Ex. C at 26, 29. Claimant testified that he received the last check from the Carrier in 2007. E/C Ex. C at 27.

Claimant testified that the last time he received treatment from Dr. Hruska was in 2007, but he could not recall the month but believed it was in the second part of the year. E/C Ex. C at 23. Claimant also believed that the last time he got prescription(s) filled was also in the second part of 2007. E/C Ex. C at 23-24. Inquiry was made of Claimant as to why he waited until January, 2009 to return to Dr. Hruska. Claimant responded that he was told that he was going to recover and the knee pain would go away. E/C Ex. C at 32. However, the knee pain never went away. E/C Ex. C at 32.

3. Although the adjuster's deposition is admitted into evidence as Joint Exhibit 1-A, the testimony therein really does not have any bearing on the issue herein. The witness' telephone testimony provided under oath at final hearing is relevant to the issue at hand.

Ms. Arias testified that indemnity benefits were last paid on September 25, 2007. The witness further testified that the last remedial authorized care was furnished on October 19, 2007.

Ms. Arias testified that when a file comes into the office, it was the Carrier's policy to have the medical person set up the folder and send out the initial packet containing the informational brochure before the file is sent to the lost time unit. Ms. Arias testified that the initial packet was sent to Claimant on March 29, 2007 at 205 S. 22nd Street, Ft. Pierce, FL 34950. A copy of the letter and packet, along with the notice of injury, was in the file.

Ms. Arias also testified that she spoke to Claimant on July 30, 2007 when Claimant contacted her. The adjuster testified that Claimant was upset because the doctor had placed him at MMI, he was still unable to return to his former occupation, and he received a letter from the nurse case manager stating the case was closed. Ms. Arias testified that she told Claimant that he would continue to get medical care, medical bills and IIBs would be paid, and she referred him to vocational rehabilitation on her own without a referral. Ms. Arias testified that while having that discussion with Claimant, she was confident that she verbally advised Claimant of the statute of limitations, although she has no independent recollection of doing so.

The affidavit of Ms. Arias was admitted into evidence as E/C Exhibit E during the course of her testimony at final hearing. Documents attached to the affidavit included a letter dated March 29, 2007 from the Carrier's Claim Department to Claimant at the correct address. The March 29, 2007 letter addressed to Claimant specifically references various forms attached to the letter that needed to be completed and returned, and states "[e]nclosed for your information are booklets for Florida Workers' Compensation MCA [managed care arrangement] and what employees need to know about workers' compensation in Florida." E/C Ex. E at exhibit 1 attached thereto.

The Florida Department of Financial Services information sheet entitled "Employee Facts Important Workers' Compensation Information for Florida's Workers" was attached as exhibit 4. The Employee Fact sheet explained that an injured worker has two (2) years from the date of injury to file a claim and the "eligibility for benefits may also be eliminated one year from the date you last received a wage replacement check or

an approved medical care/treatment." E/C Ex. E at exhibit 4 attached thereto. Both the letter and Employee Fact sheet were in English.

4. The undersigned accepts the testimony of Ms. Arias that the informational brochure was in fact sent to Claimant over Claimant's testimony that he did not receive the March 29, 2007 letter or the attached documents. Unlike many other carriers, the Carrier herein actually kept a copy of the dated letter addressed to Claimant at the correct address, as well as the attachments thereto in Claimant's file. Claimant has lived at the same address E/C has on file for 16 years. Claimant testified that during the 16 year time period, there were only two other occasions when he did not receive mail alleged to be sent to that address. Further, Claimant acknowledged that he received other mailings from E/C, namely, the indemnity checks. The same correct address was used to send the checks.

The fact that the March 29, 2007 letter and most of the attachments were in English does not require a contrary finding. Claimant testified about two individuals that assist him in interpreting documents from English to Spanish for Claimant.

Ms. Arias' testimony is more believable where a copy of the March 29, 2007 letter and attachments were kept in Claimant's file, the letter was sent to the correct address that Claimant has used for the last 16 years, and Claimant admitted to receiving other mail from the Carrier at that address. Under these circumstances, Ms. Arias' testimony is more consonant with logic and reason to conclude that the statute of

limitations operates as a bar to the benefits requested in the Petitions for Benefits filed on June 3, 2009.²

5. Furthermore, both Ms. Arias and Claimant testified that medical care and indemnity was last provided in 2007. Therefore, more than a year expired before the Petitions for Benefits were filed on June 3, 2009.

6. Claimant is not entitled to attorney's fees or costs for legal services rendered or costs incurred in regard to the final hearing conducted on February 4, 2010. However, the undersigned retains jurisdiction over all issues, if any, relating to attorney's fees and costs for past benefits obtained. Based on the foregoing, it is hereby

ORDERED and ADJUDGED as follows:

1. The statute of limitations operate to bar benefits requested in Petitions for Benefits filed on June , 2009.

2. Claimant is not entitled to attorney's fees or costs for legal services rendered or costs incurred in regard to the final hearing conducted on February 4, 2010. The undersigned retains jurisdiction over all issues, if any, relating to attorney's fees and costs for past benefits obtained.

3. The Petitions for Benefits filed on June 3, 2009 are dismissed with prejudice.

² Unlike having a copy of the March 29, 2007 letter in the file, Ms. Arias was merely "confident" that she also verbally informed Claimant of his rights regarding statute of limitations during a conversation on or about July 30, 2007; she admitted she did not have any independent recollection of doing so.

DONE and ORDERED in Chambers, Lauderdale Lakes, Broward County,

Florida.



Kathryn S. Pecko

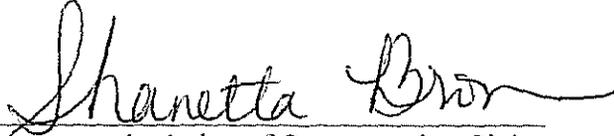
KATHRYN S. PECKO
JUDGE OF COMPENSATION CLAIMS

ADDENDUM TO ORDER

Counsel shall furnish a copy of this Order to their respective clients to ensure timely compliance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished this 9th day of Feb., 2010 by electronic transmission to the parties' counsel of record.


Secretary to the Judge of Compensation Claims