

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
LAKELAND DISTRICT OFFICE

John A. Gordon,
Employee/Claimant,

OJCC Case No. 07-034183MES

vs.

Accident date: 5/23/2007

Vehicare/Montgomery Insurance, and First
National Insurance,
Employer/ Carrier/ Servicing Agent.

Judge: Margaret E. Sojourner

AMENDED FINAL COMPENSATION ORDER

This matter was heard at a Final Hearing before the undersigned at Lakeland, Polk County, Florida on August 30, 2013. The issues arose from a Petition for Benefits (PFB) filed January 28, 2013. A PFB was also filed on August 13, 2013, but had not been mediated at the time of the Final Hearing. Jurisdiction is reserved to determine the issues raised in that PFB. Mediation was held on May 2, 2013. A Pretrial Stipulation was completed by the parties and filed on June 19, 2013. Present at the hearing were John Gordon, Claimant, and his attorney, Bradley G. Smith. Also present at the hearing was attorney Gina Jacobs¹ on behalf of the Employer/Carrier (EC).

Issues:

1. Payment of prescription medical expenses to IWP pharmacy.
2. Costs and attorney's fees.

Defenses:

1. IWP pharmacy is not authorized.
2. Prescriptions were not written by an authorized physician.
3. Treatment was not medically necessary or causally related to the compensable accident or injury.
4. No cost or attorney's fees are due.

At the hearing the following items were marked as exhibits:

Judge's Exhibits:

¹ Amended to correct name of EC Attorney

1. PFB filed January 28, 2013.
2. Mediation report filed May 2, 2013.
3. Pretrial Stipulation filed June 19, 2013.
4. Claimant's Trial Memorandum filed August 28, 2013, for purposes of argument only.
5. EC's Trial Memorandum filed August 28, 2013, for purposes of argument only.

Claimant's Exhibits:

1. Deposition of Dr. Curtis Cassidy taken August 16, 2013 and filed August 29, 2013.
2. Deposition of Dr. Curtis Cassidy taken December 10, 2009 and filed August 29, 2013.
3. Deposition of Dr. Curtis Cassidy taken May 6, 2010 and filed August 29, 2013.
4. Deposition of Dr. Charles Walker taken November 20, 2009 and filed August 29, 2013.
5. Deposition of Dr. Charles Walker taken May 7, 2010 and filed August 29, 2013.
6. Request for psychiatric care exhibit filed August 28, 2013.

Employer/Carrier Exhibits:

1. Deposition of Wanda Howard taken May 5, 2008 and filed August 28, 2013.
2. Deposition of Dr. Joy Abraham taken August 12, 2013 and filed August 28, 2013.

Findings of Fact and Conclusions of Law

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the testimony and evidence presented. I have resolved all of the conflicts in the testimony and documentary evidence. Based upon the foregoing, the evidence, and the applicable law, I make the following determinations:

1. I have jurisdiction over the parties and the subject matter of this claim.
2. Venue is in Polk County, Florida.
3. The stipulations of the parties are accepted and adopted by me as findings of fact.
4. The claimant suffered a serious knee injury in the course and scope of employment. He has undergone four arthroscopic knee surgeries and testified that he lives in chronic pain with good and bad days. He also testified that he will require a total knee replacement at some point in the future. According to his testimony the constant pain has caused him to be less social, more irritable and more confrontational. This, according to his testimony, has led to disruptions in his relationships, a domestic violence charge and occasions at work where he has confronted co-workers. He is currently employed as an auto technician for Vector which was formerly known as Vehicare.

5. On December 10, 2007 the claimant sent a letter to the EC seeking psychiatric care and treatment with Dr. Charles Walker. The deposition of the adjuster, Wanda Howard, was taken on May 5, 2008. She testified that in response to the request for care a letter was sent to claimant's counsel on December 12, 2007 advising that a psychiatric evaluation had been scheduled with Dr. Joy Abraham for January 2, 2008. Claimant's counsel sent a letter advising that they objected to Dr. Abraham and advising the EC to cancel the appointment as the claimant would not be attending. This letter also requested a copy of the EC's managed care list, however as established by Ms. Howard there was no managed care arrangement. Ms. Howard testified that Dr. Abraham remained authorized should the claimant wish to pursue that care.
6. The claimant did see Dr. Abraham on June 3, 2008 and June 9, 2010. On the initial visit Dr. Abraham did render a diagnosis but opined that the injury was not the major contributing cause of the diagnosis and did not recommend any psychiatric treatment. When he saw claimant a second time he felt that the claimant's condition had improved and that he was still at MMI with no treatment required.
7. The claimant began treating with Dr. Charles Walker on February 8, 2008 prior to seeing Dr. Abraham for the first time. Dr. Walker was not authorized by the carrier nor was he acting as an IME or EMA. Dr. Walker prescribed medications for the claimant and the claimant testified that he paid for the medications initially but then began, at Dr. Walker's suggestion, to receive these medications from the IWP pharmacy. He continued to treat with Dr. Walker, according to Dr. Walker's deposition, through April 8, 2010.
8. The claimant argues that Dr. Walker is authorized pursuant to Section 440.13(2) (c) the "self help" provision. This section states that a claimant may obtain medical care at the expense of the EC when a specific request is made for initial treatment or care and the EC does not authorize the care within a reasonable time. The claimant did request care on December 10, 2007. Within two days the EC responded authorizing Dr. Abraham and advising the claimant of the appointment date. The EC did not fail, refuse or neglect to provide the requested care. The claimant argues that because Dr. Abraham concluded that no treatment was necessary that the EC failed to provide care and he was entitled to seek care with Dr. Walker. I find that the EC did comply with Section 440.13 (2) (c) when it authorized Dr. Abraham. If the claimant disagreed with Dr. Abraham's opinion his remedy would have been to request his

one-time change in physician if he hadn't already done so previously or to seek an IME. As explained by the court in *Parodi v. Florida Contracting Co., Inc.*, 16 So.3d 958 (Fla. 1st DCA 2009) *Section 440.13(2)(c)* operates only in the limited circumstances where the EC wrongfully denies medical care. As such the medical care rendered by Dr. Walker, including medications prescribed by Dr. Walker, are not the responsibility of the EC.

9. Even if the EC were responsible for payment of the prescriptions the same could not be awarded as the claimant failed to authenticate the bills and as such the bills cannot be admitted into evidence as they are hearsay. It is not sufficient to simply attach the medical bills to the petition for benefits. Absent an agreement with the EC, the bills must be authenticated and properly offered into evidence. The EC did not agree to the administrative handling of the bills and thus the claimant had to properly place these bills into evidence. The EC objected to the admission of these bills and I sustain this objection.
10. As no benefits were obtained the claim for attorney's fees and costs is denied.

Wherefore it is ordered and adjudged as follows:

1. The claim for payment of the prescription medical expenses to IWP pharmacy is denied.
2. The claim for attorney's fees and costs is denied.

DONE AND MAILED this 3rd day of September, 2013, in Lakeland, Polk County, Florida.



Margaret E. Sojourner
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Lakeland District Office
5015 South Florida Avenue, Suite 401
Lakeland, Florida 33813-3150
(863)648-3150
www.jcc.state.fl.us

Bradley G. Smith, Esquire
bsmith@sfsmlaw.com, jccmail@sfsmlaw.com

Scott B. Miller, Esquire
smiller@hrmcw.com, smclaughlin@hrmcw.com