

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

Stacey Henry,
Employee/Claimant,

OJCC Case No.: 11-006173IF

vs.

Accident date: 12/21/2010

Frank Crum/Anthony's Coal Fire Pizza and
Frank Winston Crum Insurance,
Employer/Carrier.

Judge: Iliana Forte

_____/

Grethel San Miguel, Esquire, on behalf of Martha D. Fornaris, Esq. Attorneys for the Employee
Kate E. Albin, Esquire, Attorney for the Employer/Carrier

FINAL COMPENSATION ORDER

This matter came before me, the undersigned Judge of Compensation Claims, for a Merits Hearing held on December 15, 2015. The adjudicated Petitions for Benefits were filed with the Division of Administrative Hearings on 10/15/2014 and 11/18/2014.

DOCUMENTS RECEIVED

Claimant:

1. Petition for Benefits filed 10/15/2014 – Docket ID #62.
2. Response to the Petition for Benefits filed 10/21/2014 – Docket ID # 63.
3. Petition for Benefits filed 11/18/2014 – Docket ID #64.

Employer/Carrier:

1. Medical Report of Dr. Dr. Jon Donschik.
2. Medical Report of Dr. Neil Schechter.

Composite Exhibit:

1. Deposition of Dr. Domingo A. Delgado-Garcia.

JCC:

1. Pre-trial Stipulation.
2. Claimant's Trial Outline.
3. E/C's Trial Memorandum.

Live witness testimony:

1. None.

CLAIMS AND DEFENSES

The claims presented before me were:

1. Authorization for continued treatment with authorized provider.
2. Authorization for evaluation and treatment with an orthopedic surgeon in the Hermitage, Tennessee area.
3. Attorney's fees and costs

The Employer/Carrier ("E/C") defenses were:

1. Further treatment is not medically necessary
2. If further treatment is medically necessary, the industrial accident and injuries and not the major contributing cause of the claimant's need for treatment.
3. The claimant's work related condition has resolved.
5. No attorney's fees or costs due or owing.

PRELIMINARY MATTERS

On 12/14/2015, claimant filed an emergency motion to continue this Merits Hearing alleging that inclement weather (40 mph winds) in the Hermitage area of Tennessee prevented her from driving to Broward County, Florida. The Motion was denied, however, the undersigned allowed the claimant to testify by phone, without objection from the E/C.

On 12/15/2015, claimant's counsel advised the undersigned that the claimant could not testify telephonically because she did not have a land line and her cell phone was not working. Given the undersigned's order, claimant's counsel agreed to proceed with the final hearing without the claimant's testimony.

FINDINGS OF FACTS

1. The claimant sustained a compensable accident that the parties stipulate, involve only the lower back. The evidence presented through the medical records reveals that the claimant was initially seen by Dr. Jon Donshik, orthopedic surgeon; Dr. Neil Schechter, orthopedic surgeon, as her one-time change of physician; and, Dr. Domingo Delgado-Garcia, orthopedic surgeon, as a second opinion.

2. The consistent history by the claimant to the authorized providers relate severe lower back pain originating after lifting cases of wine and beer required as part of her job as a bartender. The claimant did not relate a particular incident, but a gradual onset of pain over the years.

3. Prior to seeing Dr. Donshik, the claimant received some preliminary treatment consisting of physical therapy and underwent an MRI that took place on 4/21/2011. Dr. Donshik examined the claimant on only one occasion, 7/26/2011; he took a history, took x-rays, reviewed

the MRI report and conducted a physical examination. He found no pathology in the x-rays, normal MRI and a normal physical examination. Dr. Donshik did not find any relation with her industrial accident and need for treatment and placed the claimant at maximum medical improvement with a 0% impairment rating. He felt she was employable without restrictions.

4. On 8/19/2011, the claimant was evaluated by Dr. Neil Schechter, her one-time change of physician. Dr. Schechter took a history, reviewed her medical records including the MRI report and performed a physical examination. Dr. Schechter concurred with Dr. Donshik that her current medical condition was not related to a work incident from 12/21/2010. He discussed with her that he could not determine the etiology of her persistent pain. Dr. Schechter opined that the claimant did not need further active treatment; she had reached maximum medical improvement with no permanent impairment and no limitations or restrictions.

5. On 5/1/2012, the claimant was provided a second opinion with orthopedic surgeon Dr. Domingo Delgado-Garcia. Dr. Delgado-Garcia also took a history, reviewed her prior medical records and the April 2011 MRI, performed x-rays of the lumbar spine and conducted a physical examination. His impression was subjective back pain. He discussed with her other medical conditions that could cause back pain, but he found no relationship between her subjective complaints of pain and any objective findings related to her work accident. Dr. Delgado-Garcia stated in his report that he was "going to leave an open appointment for her." Nevertheless, he concurred with the opinions of Dr. Schechter and Dr. Donshik that she was at maximum medical improvement with a 0% impairment and capable of work. He did not find any need for further orthopedic treatment.

CONCLUSIONS OF LAW

6. It is the claimant's position that since the E/C has accepted compensability of the accident and the etiology of her subjective complaints of lower back pain have not been determined, the E/C is precluded from denying her an evaluation with a physician in Hermitage, Tennessee, where she has since relocated. In further support of her position, she maintains that Dr. Delgado-Garcia left an open appointment for her to return to see him and the E/C agreed to the evaluation in response to the petition for benefit filed 10/15/2014.

7. In turn, the E/C argues that the claimant has failed to establish the medical necessity of the need for ongoing treatment. E/C's counsel concedes that the E/C in response to the petition for benefits of 10/15/2014 requesting continued care with the authorized provider scheduled an appointment with Dr. Delgado-Garcia for 11/12/2014, however, the claimant was a no show to this appointment because she had already relocated to Tennessee. Thereafter, the E/C had a conference with Dr. Delgado-Garcia, and denied further treatment in Tennessee claimed in the subsequent petition for benefits filed 11/18/2014.

8. There is no dispute that a claimant does not lose her right to medical treatment simply because she moves outside of the State of Florida. However, the claimant does not have a perpetual right to medical treatment until the source of her complaints are discovered or diagnosed.

9. While the claimant did not testify before me, her medical records speak for themselves and establish a pattern of continued complaints of severe lower back pain. The claimant was evaluated by three physicians in a span of two years post her date of accident, that concur that she reached the point of maximum medical improvement with no residual permanent impairment, restrictions or additional need for treatment.

10. The claimant has not presented any evidence that conflict with the medical opinions in evidence. It is the claimant's burden to establish that further medical evaluation or treatment is reasonably required by the nature of the injury or the process of recovery. Mere subjective complaints of pain are not enough. See Section 440.13(2)(a), Fla. Stat. (2006).

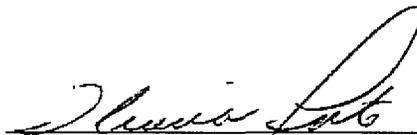
11. I am not persuaded by claimant's argument that the fact that Dr. Delgado-Garcia stated in his report that he left an open appointment for her to return, or that the the E/C scheduled an evaluation in response to the petition for benefits of 10/15/2014, estops or requires the E/C to provide an evaluation in Tennessee. Dr. Delgado-Garcia in his deposition testimony was unequivocal in his opinion that he did not feel additional treatment related to her industrial accident was medically necessary. Additionally, the 10/15/2014 petition for benefits is essentially moot, since the E/C in response to said petition provided the benefit requested, however, the Claimant had already relocated to Tennessee and did not keep the appointment.

12. The case of *Amoco Container Company v. Singh*, 418 So.2d 395 (Fla. 1st DCA 1982), is on point with the facts of this case. "Absent a conflict in the medical evidence, the employer/carrier may not be required to bear the expense of an evaluation by an additional physician based merely on claimant's assertions of continued pain."

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. Authorization for continued treatment with authorized provider is DENIED.
2. Authorization for evaluation and treatment with an orthopedic surgeon in the Hermitage, Tennessee area is DENIED.
3. Attorney's fees and costs are DENIED.

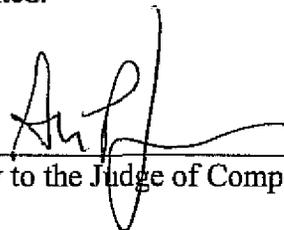
DONE AND ORDERED in Chambers, on December 16, 2015, at Ft. Lauderdale,
Broward County, Florida.



Iliana Forte
Judge of Compensation Claims
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above Order was entered by the Judge of Compensation Claims and a copy was served by electronic transmission on this 16th day of December, 2015 to the parties counsel or by mail if parties are unrepresented.



Secretary to the Judge of Compensation Claims

COPIES FURNISHED:

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