

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

Bridget Rousseau  
Employee/Claimant,

OJCC Case No.: 16-018794IF

vs.

Accident date: 10/24/2014

Randstad North America, Inc. and  
ESIS/Ace American Insurance Company,  
Employer/Servicing Agent,

Judge: Iliana Forte

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Kevin R. Gallagher, Esq., Attorney for the Claimant  
Kate Albin, Esq. on behalf of Andrew R. Borah, Attorneys for the Employer/Carrier

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**FINAL COMPENSATION ORDER**

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This matter came before me, the undersigned Judge of Compensation Claims, for a Merits Hearing held on March 15, 2018. The adjudicated petitions for benefits were filed on August 4, 2016, December 7, 2016 and December 16, 2016. Any and all issues raised by way of Petition for Benefits filed by the Claimant, which were not tried at the hearing, are presumed resolved or in the alternative, deemed to have been abandoned by the Employee/Claimant, and are therefore denied. Jurisdiction is reserved on the petition for benefits filed on March 14, 2018 not yet ripe for adjudication.

## CLAIMS AND DEFENSES

### Claims:

1. Compensability of injuries to the Claimant's right knee.
2. Authorization of a PCP.
3. Authorization of transportation to and from medical appointments – Withdrawn.
4. Authorization of follow-up appointment at Hollywood Medical Clinic.
5. Reimbursement of \$400.00 in out of pocket expenses – Withdrawn.
6. Authorization of follow-up appointment with an orthopedic surgeon.
7. Authorization of PCP in Daytona Beach for evaluation and treatment.
8. Attorney's fees and costs.

### Defenses:

1. While claimant sustained a compensable accident to her right knee, her condition did not require medical treatment and has since resolved.
2. Industrial accident is no longer the major contributing cause of the claimant's need for treatment and disability.
3. Employer/Carrier is not responsible for reimbursement claimant \$400.00 for out of pocket expenses – Withdrawn by Claimant.
4. Attorney's fees and costs are not due or owing.

## DOCUMENTS RECEIVED

### Claimant:

1. Petition for Benefits filed on 8/4/2016 – Docket ID #1
2. Petition for Benefits filed on 12/7/2016 – Docket ID #9.
3. Petition for Benefits filed on 12/16/2016 – Docket ID #20.
4. Medical Records from Hollywood Medical Clinic – Docket ID #33.
5. Medical Report from Claimant's IME Dr. Propper – Docket ID #85
6. MRC Memorial Hospital Miramar (fact witness only) – Docket ID #86.

### Employer/Carrier:

1. Email from Claimant to Employer – Docket ID #83.
2. May 10, 2017 letter from JCC Forte to Robert Murrah, M.D. – Docket ID #58.
3. October 17, 2017 letter from JCC Forte to Robert Murrah, M.D. – Docket ID #71.

Joint:

1. Report and addendum from EMA physician Dr. Murrah – Docket ID #69 and #81.

Judges Exhibits and proffers, or for Identification only:

1. Pre-trial stipulations filed December 16, 2016 with attached amendments.
2. Claimant's Trial Summary (Identification Only).
3. E/C's Trial Summary (Identification Only).

Employer/Carrier's proffers:

1. Employer/Carrier's Notice of Filing Cross Notice of Taking Deposition Duces Tecum – Docket ID #88.
2. Employer/Carrier's Notice of Filing Opposing Counsel's Email Canceling Deposition of Dr. Murrah – Docket ID #89.

Live witness testimony:

None.

### BACKGROUND

A final hearing was originally scheduled to take place in this matter on February 27, 2017. However, on February 7, 2017 the Employer/Carrier (E/C) filed a motion for appointment of an EMA which prompted the cancellation of this hearing. There was some difficulty locating an EMA physician in the Orlando area, and ultimately, Dr. Robert L. Murrah, of Orlando Health Orthopedic Institute was designated as the EMA by the undersigned. On May 10, 2017 the undersigned wrote to Dr. Murrah advising him of his appointment and advising him of the issue he should address. Getting the initial EMA report from Dr. Murrah took longer than usual and, once received, the doctor requested additional reports and diagnostic studies that also caused further delays and the continuance of the June 28, 2017 and January 25, 2018 final hearings.

Neither party deposed the EMA physician regarding his opinion. The E/C did not introduce the testimony of their IME physician in these proceedings that created the conflict that

prompted the appointment of Dr. Murrah. The Claimant was present during these proceedings, but did not provide testimony, and the E/C did not call her as a witness. A lengthy closing argument instead was provided by the parties regarding their respective positions.

#### FINDINGS OF FACTS

1. Since the Claimant did not provide testimony during these proceedings, the history of the accident is taken from the medical records in evidence. The Claimant reported to her IME physician, Dr. Propper that she slipped and fell banging the front of her right knee. She reported to the EMA physician, Dr. Murrah that she slipped in a stairwell on wet flooring and fell down multiple stairs, falling onto her knees and shoulder.

2. The Claimant's accident occurred on 10/24/2014, but she initially declined medical care. On 10/27/2014 the Claimant sent an email to the Employer advising them that she did not feel she needed to go to see a doctor.

3. The Claimant did not receive any authorized medical treatment until approximately eighteen months later, on 5/3/2016, when she was seen at Hollywood Medical Clinic by Dr. Sandro Bacchelli. The Claimant gave a history to Dr. Bacchelli of right knee pain since October 24, 2014. She reported that she fell from a 6-steps-stair and hit her right knee. The knee was swollen and bruised for one week and since that time her right knee is in pain. The pain is achy when she walks 8/10. She complained that it is difficult for her to stand up from the sitting position. Dr. Bacchelli recommended right knee x-rays, a drug screen test and referred the Claimant to follow up with an orthopedic and neurologist.

Dr. Bacchelli completed a DWC-25 where he diagnosed the Claimant with post-traumatic right knee injury. However, Dr. Bacchelli indicated in Section 1 of the form that it was undetermined if the Claimant's injury/illness was work related or not. Dr. Bacchelli placed the

Claimant on restrictions and opined that she was not at maximum medical improvement. No follow up appointment was scheduled as he referred her to an orthopedist and neurologist.

4. The E/C did not refer the Claimant to an orthopedist or a neurologist for further evaluation as recommended by Dr. Bacchelli and evidently, denied further treatment.

5. The Claimant introduced the records of Memorial Hospital Miramar into evidence as a fact witness only. The only relevant record of this facility appears to be an x-ray of the right knee taken on 4/7/2016, which is the only study of the right knee that was available for review by the IME and EMA physicians.

6. On August 4, 2016, the Claimant filed a petition for benefits seeking treatment to the right knee.

7. On January 20, 2017, the Claimant was evaluated by her designated IME physician, Dr. Michael Propper, a general orthopedic surgeon. The Claimant was complaining of knee pain, stiffness and discomfort mostly on the inside portion of her right knee. Dr. Propper performed a physical examination and opined that the Claimant could have a tear of the medial meniscus on the inside of her knee. Dr. Propper explained that he did not take x-rays, but he reviewed the x-rays taken at Memorial Hospital on 4/7/2016 that showed an eggshell-like calcification of the medial knee measuring four-by-three centimeters which to him, confirmed that she tore the medial collateral ligament to her knee. Dr. Propper further explained that a calcification takes six months to three or four years to happen and it is commonly associated with tears in the medial meniscus.

Dr. Propper opined that he needed to get standing x-rays of her knee to look at the alignment and an MRI of the knee to determine the status of the medial collateral ligament and

the status of the medial meniscus. He would not recommend any surgical procedure until these studies were performed. He recommended different treatment options.

8. On 7/14/2017 Dr. Robert L. Murrah performed the JCC ordered EMA evaluation. Dr. Murrah noted that the Claimant did not pursue treatment for many months. She reported that her symptoms were fairly minimal initially for six months following the incident; however she reported a significant right anterior knee abrasion and subsequent development of persistent right knee pain, which was worsened with activity.

In his initial report, Dr. Murrah reviewed the opinions and recommendations of both IME physicians, but opined that in order to address the essential question and complete the evaluation he needed additional materials and diagnostic studies that included a right knee MRI with and without contrast; follow-up x-rays of the right knee, standing and non-weight-bearing; medical records from the emergency room/urgent care center in Ft. Lauderdale contemporaneous with the 10/24/2014 industrial injury; and, records of any interval trauma, such as motor vehicle accidents, since the 10/24/2014 industrial accident.

On 1/25/2018 Dr. Murrah completed his evaluation and issued an addendum to his report. Dr. Murrah noted that the radiologist interpreted the x-ray taken on 11/22/2017 as an “intraarticular loose body, most likely chronic in age.” He noted that the MRI report refers to “intrasubstance injury involving the posterior horn of the medial meniscus. Joint effusion. Findings consistent with an intraarticular loose body seen along them medical aspect of the right knee”

Dr. Murrah commented that he has never seen a loose body with the appearance visualized on the patient’s x-ray or MRI films. He did not discard the fact that it could be a loose body, but he felt other possibilities were more likely as a synovial-based tumor or an osseous-

based tumor – benign or possibly malignant. He opined that the findings were not likely posttraumatic and recommended follow-up treatment as soon as possible under the Claimant's commercial health insurance. He concluded that absent any findings to the contrary it is his strong opinion that the Claimant's right knee condition, specifically related to the radiographic findings at the posteromedial aspect of her knee, represents a non-traumatic process and is not causally related to the 10/24/014 industrial injury.

#### ANALYSIS

9. Once compensability of a work related accident is established, an E/C may no longer contest the accident is the MCC of the injuries. However, an E/C may thereafter challenge the connection between a claimant's need for specific treatment or benefits and the industrial accident. *Engler v. Am. Friends of Hebrew Univ.*, 18 So.3d 613, 614 (Fla. 1<sup>st</sup> DCA 2009).

10. The undersigned appointed Dr. Murrah as the EMA due to the apparent conflict between the opinions of Claimant's IME and the E/C's IME. With the input and agreement of both parties, the EMA was posed the following question to address: Is the 10/24/2014 industrial accident the major contributing cause of the claimant's current right knee condition and need for treatment?

11. The opinion of an EMA is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the JCC. The Claimant argues that the undersigned should reject the EMA's opinion because the opinion is equivocal. I do not find the EMA's opinion to be ambiguous or fails to answer the question posed. The EMA physician reviewed and noted the opinions of the two IME physicians and requested additional diagnostic studies in order to assess the findings of the 2016 x-ray and formulate a diagnosis. Dr. Murrah is

the only physician who had the benefit of current x-rays and of an MRI study. He formulated a different diagnosis than the parties IME physicians and opined that the Claimant's right knee condition represented a non-traumatic process. It is of some import that the Claimant waited 18 months to request medical treatment for this injury.

12. It is up to the parties to decide how to strategically try their case. However, this tribunal afforded the parties plenty of time to prepare their case and to conduct all necessary discovery. Any concerns the Claimant had after reviewing the EMA's report could have been remedied and addressed by deposing Dr. Murrah regarding his opinions.

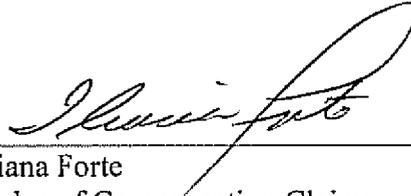
13. While I am mindful that the opinions expressed by Dr. Murrah are more in line with addressing the issue of compensability rather than causation; waiver and estoppel was not raised by the Claimant and therefore, I am not at liberty to address. *Teco Energy, Inc. v. Williams*, 234 So.3d 816 (Fla. 1<sup>st</sup> DCA 2017). Consequently, I find that Claimant's argument that the wrong question was posed to the EMA to be without merit.

14. Thus, based on the opinions of the EMA that the current need for treatment is the result of a non-traumatic process not causally related to the Claimant's 10/24/2014 accident - I find that the Claimant's industrial accident is not the major contributing cause of her current need for treatment.

**WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:**

1. All claims are DENIED.
2. Attorney's fees and costs are DENIED.

**DONE AND ORDERED** in Chambers, on March 22, 2018, at Ft. Lauderdale, Broward County, Florida.

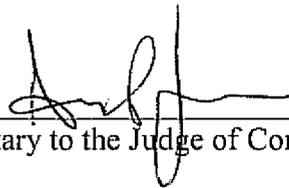


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Iliana Forte  
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**CERTIFICATE OF SERVICE**

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 22nd day of March 2018 to the parties counsel or by mail if parties are unrepresented.



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Secretary to the Judge of Compensation Claims

**COPIES FURNISHED**

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