

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

Rebecca R. Rose,)	
Employee/Claimant,)	
)	OJCC Case No. 10-003205MES
vs.)	
)	Accident date: 2/1/2010
GEICO Corporation/Broadspire,)	
Employer/ Carrier/ Servicing Agent.)	Judge: Margaret E. Sojourner
_____)	

FINAL COMPENSATION ORDER

This matter was heard at an Expedited Final Hearing before the undersigned at Lakeland, Polk County, Florida on July 27, 2011. The issues arose from a Petition for Benefits (PFB) filed April 12, 2011. An Expedited Prehearing Outline was completed by the parties and filed on July 27, 2011. Present at the hearing were Rebecca Rose, Claimant, and her attorney, Mark Capron. Also present at the hearing was attorney Michael Waranch on behalf of the Employer/Carrier (EC).

Issues:

1. Authorization and treatment for bilateral upper extremities; corticosteroid injections and open carpal tunnel release bilaterally.
2. Costs and attorney's fees.

Defenses:

1. Accident not compensable.
2. No timely notice of alleged accident.
3. Claimant's injuries are due to a pre-existing condition.
4. The statute of limitations has run on this claim.
5. Action barred by doctrine of res judicata.
6. No costs or attorney fees are due.
7. No penalties, interest, cost or attorney's fees are due.

At the hearing the following items were marked as exhibits:

Judge's Exhibits:

1. PFB filed April 12, 2011.
2. Response to PFB filed April 18, 2011.
3. Prehearing Outline filed July 27, 2011.

4. Claimant's Trial Memorandum filed July 21, 2011, for purposes of argument only.
5. EC's Trial Memorandum filed July 25, 2011, for purposes of argument only.

Claimant's Exhibits:

1. Pleading Composite filed in four parts on July 21, 2011.
2. Medical records of Dr. Melton filed July 21, 2011.
3. Medical records of Dr. Rubin filed in twelve parts on July 21, 2011.
4. Medical records of Dr. Traviesa filed in four parts on July 21, 2011.
5. Deposition of Dr. Fabio Fiore filed on August 9, 2011.¹

Employer/Carrier Exhibits:

1. Deposition of Dr. Scott Goldsmith filed July 21, 2011.

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. I find that the claimant's current symptoms are due to a pre-existing injury and that the claimant has not suffered a new injury in the course and scope of her employment. Rose suffered a compensable repetitive trauma injury with a date of accident of April 1, 1999. She underwent carpal tunnel surgery on the left wrist in August of 1999 and on the right wrist in November of 1999. She continued to experience problems and was seen by several physicians. Ultimately in 2007 it was recommended that Rose undergo bilateral carpal tunnel releases. Rose chose not to undergo the surgery at that time due to other health issues and the statute of limitations expired on that claim.² I find that the testimony of the claimant's IME physician, Dr. Fiore and that of the EC's IME physician, Dr. Goldsmith are substantially similar. They both diagnose Rose as suffering from carpal tunnel syndrome. They both state that they cannot say that Rose's symptoms now are any different from the symptoms she was suffering in 2007. Dr. Fiore noted that Rose had normal EMG studies done in 2002 and 2003

¹ Claimant had a confirmation of e-filing the deposition on July 21, 2011, but as I could not locate the deposition on the docket it was re-filed on August 9, 2011 at my request.

² Broadspire v. Rose, 24 So.3d 694 (Fla. 1st DCA 2009).

and an abnormal study in July of 2007 when the surgery was recommended. He testified that without additional testing showing a worsening of symptoms there would be no objective findings that would support a change in condition since 2007. Rose has failed to offer any evidence of a change in condition. She has not carried her burden to prove a new accident or injury or an aggravation or exacerbation of a pre-existing condition.

5. As no benefits have been obtained no costs or attorney fees are due.

Wherefore it is ordered and adjudged as follows:

1. The claim for authorization and treatment for bilateral upper extremities is denied.
2. The claim for attorney fees and costs is denied.

DONE AND MAILED this 5th day of August, 2011, 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

Mark G. Capron, Esquire
gguzman@markcapronlaw.com; mcapron@markcapronlaw.com

Michael S. Waranch, Esquire
mwaranch@hrcmw.com