

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

Claimant:)	OJCC Case No. 02-025574LAR
Marvin C. Caswell,)	Accident date: 6/3/1992
)	Judge: Laura Roesch
vs.)	
)	Attorney for Claimant:
Employer:)	Arthur C. Beal, Esquire
Gulf Coast Electric)	
)	Attorney for Employer/Carrier:
Carrier:)	Matthew Bennett, Esquire
United Self Insured Services,)	

FINAL COMPENSATION ORDER

Upon proper notice, a trial was held on November 2, 2011 in Panama City, Bay County, Florida before the undersigned Judge of Compensation Claims. Attorney Arthur C. Beal represented the Claimant. Attorney Matthew Bennett represented the Employer/Carrier. At issue were claims flowing from a *Petition for Benefits* filed herein on April 29, 2011. Mediation occurred on July 11, 2011, wherein some issues were resolved. Specifically, the Employer/Carrier agreed to pay certain Sacred Heart bills, all as more particularly attached to the *Petition*, said payment to be made consistent with the fee scheduled. Jurisdiction is reserved on the issue of attorney's fees and costs regarding payment of such bills.

I. Claims and Defenses.

The benefits sought by the Claimant were narrowed at the time of trial to:

1. Authorization and payment of IWP for prescriptions it filled per Dr. Delgado, Claimant's authorized psychiatrist.
2. Authorization of Osteo Bi-Flex as prescribed by Dr. Joseph.
3. Attorney's fees and costs.

The Employer/Carrier defended on the following grounds:

1. Osteo Bi-Flex not related, per Dr. Joseph.
2. Injured Worker Pharmacy not authorized; E/C authorized

equivalent provider.

3. No fees or costs due.
4. Employer/Carrier seeks costs as prevailing party.

II. Documentary Evidence.

Court Exhibits:

1. Pretrial (August 30, 2011).
2. Petition for Benefits with Attachments (April 29, 2011).
3. Memorandums of Law for Argument Purposes Only.

Claimant Exhibits:

1. Deposition of Dr. Robert Joseph (September 16, 2011).
2. Deposition of Darren Thomas, IWP Representative (9/21/11).

III. Witnesses at trial:

1. Marvin Caswell, Claimant.
2. Terrie Groenendaal, Adjuster (by telephone).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In making my findings of fact and conclusions of law, I have considered and weighed all the evidence presented to me. I have observed and assessed the candor and demeanor of the witnesses that testified in person before me, and I have resolved all of the conflicts in the testimony, whether the testimony was offered in person or by deposition. Although I may not reference or detail each item of evidence presented by the parties, I have carefully considered all the evidence and exhibits in the context of the arguments of counsel and appropriate statutory authority and case law in making the following findings of fact and conclusions of law:

1. The undersigned Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.

2. The stipulations entered into by and between the parties as noted herein or in the pretrial stipulation(s) filed herein or announced on the record are hereby approved and adopted as findings of fact and are incorporated herein by reference.

3. The Claimant, now 62-years old, was accepted as permanently and totally disabled by this Carrier in 2000. The Claimant testified that he was employed for a total of 25 years for this Employer and at the time of his injuries on June 2, 1989 and June 3, 1992, was employed as a Journeyman Lineman. He sustained compensable work-related injuries to his low back, neck and shoulder and has since

undergone two surgeries to his back and one surgery to his neck. His authorized treating providers at the present time are Dr. Delgado (psychiatrist), Dr. Smith (psychologist), Dr. Joseph (pain specialist) and Dr. Wolff. The Claimant has treated with Dr. Joseph since February 2001. Dr. Joseph has regularly prescribed Osteo Bi-Flex and the Carrier has regularly paid for it. The Claimant described Osteo Bi-Flex as a joint supplement, testifying that it helps him and he can tell when he doesn't take it. He has explained this to Dr. Joseph and finds it particularly helpful with his back and he wants to continue.

3. The Claimant has been using the mail-order pharmacy, Injured Worker Pharmacy, for several years. During such time, Dr. Delgado and Dr. Joseph have issued prescriptions to him which he has regularly submitted to IWP. The Claimant started using IWP because he was having trouble with a particular pharmacy delivering his medications on time or not at all. The Claimant acknowledged that he had a telephone conversation with the adjuster, Terrie Gronendaal, in January 2011 wherein she advised him that the Carrier was having certain difficulties with IWP and she asked if he would change to another pharmacy. He responded that he had no reason to change, but if it was important to her, he would do so. He acknowledged that he gave his consent at that time. It is also noted that the Claimant, at that time, and for many years prior, was represented by Mr. Beal. At no time did Mr. Beal receive a phone call Ms. Gronendaal, nor did the Claimant or Mr. Beal receive any written confirmation following this phone contact regarding this change to another pharmacy other than IWP. The Claimant does not receive any bills from IWP. The Claimant testified that he wishes to continue with IWP as the substituted pharmacy has not been as prompt or as satisfactory for him.

4. Terrie Gronendaal is a lost time adjuster and has worked with the Carrier for nine years. She confirmed that she had a phone conversation with the Claimant regarding switching pharmacies. This occurred on January 31, 2011. She acknowledged that she was aware that the Claimant was represented at that time. She also acknowledged that she did not send any written confirmation regarding this change or a follow-up letter regarding this conversation. She testified that she explained to the Claimant that upper management within the Carrier notified her by e-mail that they were no longer able to use IWP due to certain business practices and the adjusters were instructed to contact injured workers to see if they would switch. She explained this to the Claimant.

Ms. Gronendaal testified that she sent IWP a fax on January 31, 2011, the same day she had a conversation with the Claimant, advising them of this. She continued getting bills from IWP which is why she issued a denial. She summarized the difficulties the Carrier was having with IWP in that, in this particular case, they would bill for both dates of accident, providing the same medications and duplicate payments. When she would contact them, they would refuse to talk to her about it and would refuse to reimburse her for these circumstances. She testified that she asked for such reimbursement in 2009 or

early 2010.

She testified that she received the *Petition for Benefits* at issue herein, on May 3, 2011 and that a response was filed on May 16, 2011. Regarding the Claimant's request for Osteo Bi-Flex, she denied the request for this based on a note from Dr. Joseph that it was not related to the work accident and injuries. Ms. Gronendaal testified that she has not denied any prescriptions from Dr. Delgado or Dr. Smith.

5. The Claimant seeks of authorization of payment from IWP for prescriptions issued by Dr. Delgado. The Employer/Carrier defends against these claims on the ground that IWP was not authorized and an equivalent provider has been provided. The Claimant has clearly stated his preference that his prescriptions be filled through IWP and, he argues, this choice is his exclusive right pursuant to Section 440.13(3)(j). I agree. This is not a case where the Carrier is taking the position that the prescriptions are not causally related or medically necessary. Indeed, the Employer/Carrier has stipulated that the prescriptions issued by Dr. Delgado were medically necessary and causally related to the Claimant's on-the-job accidents. That this was so is substantiated by the candid and clear testimony of Ms. Groenendaal. While it appears that the Carrier may indeed have valid issues regarding certain business practices of IWP, this is not the forum nor is there any statutory provision within this forum, at least based on the evidence as presented, that supports the Employer/Carrier's argument. Stated another way, it seems to the undersigned that the Carrier's concerns regarding certain business practices of IWP are better suited for presentation with the Agency for Healthcare Administration. In any event, I find in favor of the Claimant on this issue. Specifically, the Employer/Carrier shall authorize and pay for prescriptions filled by IWP, per Dr. Delgado, Claimant's authorized psychiatrist.

6. Regarding the Claimant's claim for Osteo Bi-Flex, I have carefully reviewed Dr. Joseph's deposition testimony. As such, I find the Claimant has failed to meet his burden of proof that the Claimant's need for such is causally related to the matter at hand. I therefore accept the Employer/Carrier's argument on this accept and deny Claimant's claim on this issue.

7. To the extent the Claimant has prevailed herein, he is entitled to an attorney's fee payable at the expense of the Employer/Carrier. Under the circumstances herein, I find the Claimant to be the prevailing party herein. As such, he is entitled to reimbursement of taxable costs, also at the expense of the Employer/Carrier herein. It is therefore,

ORDERED and ADJUDGED that:

- a. The Employer/Carrier shall authorize and pay IWP for prescriptions it filled per Dr. Delgado, Claimant's authorized psychiatrist.

- b. The claim for authorization of Osteo Bi-Flex as prescribed by Dr. Joseph, is denied and dismissed.
- c. The Employer/Carrier shall pay Claimant's counsel an attorney fee and reimburse taxable costs. Jurisdiction is reserved on that issue, should be the parties be unable to resolve the matter.

DONE AND ORDERED in Panama City, Bay County, Florida.

Laura Roesch

Laura Roesch
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THIS IS TO CERTIFY that the foregoing order was entered and that a copy was electronically served to counsel this 2nd day of November 2011.

/s/ L. Hickman

District Deputy Clerk

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