

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

Employee:	)	OJCC Case No: 09-019197LAR
Randy Hayes	)	D/A: 10/15/2008
	)	Judge: Laura Roesch
Employer:)	
Graham Brothers Construction	)	Attorney for the Employee:
	)	John Carr, Esquire
Carrier:	)	<i>ktjw_wcdept@yahoo.com</i>
Gallagher Bassett Services – Clearwater.	)	<i>john@johnbcarrlaw.com</i>
)	
	)	Attorney for the Employer/Carrier:
	)	Matthew Bennett, Esquire
	)	<i>mbennett@hrmcw.com</i>
	)	<i>aboulineau@hrmcw.com</i>

FINAL COMPENSATION ORDER
DENYING BENEFITS, FEES AND COSTS

Upon proper notice, a trial was held on March 3, 2011, in Panama City, Bay County, Florida before the undersigned Judge of Compensation Claims. Attorney John Carr represented the Claimant. Attorney Matthew Bennett represented the Employer/Carrier. At issue were certain claims flowing from *Petitions for Benefits* filed herein on April 28, 2010. Private Mediation was held on August 5, 2010 and resulted in an impasse. The parties stipulated that the average weekly wage pertinent herein is \$440.96. The Petition for Benefits dated November 17, 2010 was dismissed on February 15, 2011. However, another Petition was filed on February 16, 2011 that is not at issue in this proceeding as it is proceeding separately at a later date.

I. Claims and Defenses.

The Claimant sought the following benefits:

1. Temporary partial disability from February 17, 2010 to the present and continuing based on Dr. Rohan placing the Claimant in the temporary work status and rescinding previous MMI date.
2. Penalties, interest, costs and attorney's fees.

The Employer/Carrier defended on the following grounds:

1. Claimant is at maximum medical improvement.

2. Industrial accident not the major contributing cause of alleged loss of earnings.
3. Claimant has failed/refused to return DWC-19s.
4. No PICA due.
5. Employer/Carrier seeks costs.

II. Documentary Evidence.

Joint:

1. Depositions of Dr. Michael Rohan (10/5/10 and 1/18/11).
2. Composite of Dr. McArthur's Records.

Claimant:

1. Petition for Benefits filed April 28, 2010.

Court (for argument purposes only):

1. Hearing Sheet.
2. Pretrial.

III. Witnesses at trial:

1. Claimant.

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 Claimant who 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

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

¹ See, Garcia v. Fence Masters, Inc., 34 Fla.L.Weekly D1598 (Fla. 1st DCA August 6, 2009), citing § 440.25(4)(e), F.S. and Chavarria v. Selugal Clothing, Inc., 840 So.2d 1071 (Fla. 1st DCA 2003).

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. I have carefully reviewed both depositions of Dr. Rohan as well as the medical records of Dr. McArthur. I find the testimony of Dr. Rohan provides no credible evidence that there was any reasonable expectation of further recovery or lasting improvement to the Claimant's condition during the course of his treatment. The totality of Dr. Rohan's testimony, particularly his repeated acknowledgements that his treatment has been palliative rather than remedial, leads me to conclude, at least at the present time, that there has been no change in the date of maximum medical improvement as established by Dr. McArthur. I therefore reject Claimant's argument that Dr. Rohan has rescinded that date. Of course, when and if the Claimant undergoes surgery, the date of maximum medical improvement may be adjusted accordingly.² I therefore find Claimant reached maximum medical improvement on March 24, 2009. His claim for temporary partial disability benefits must be and is therefore denied.

WHEREFORE, it is ORDERED and ADJUDGED that the claims for:

1. Temporary partial disability from February 17, 2010 to the present and continuing is denied and dismissed.
2. Penalties, interest, costs and attorney's fees is denied and dismissed.

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



Laura Roesch
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
2401 State Avenue, Suite 100
Panama City, Florida 32405
(850) 872-7774

² This issue is the subject of a *Petition for Benefits* filed on February 16, 2011 and is proceeding separately.

www.jcc.state.fl.us

THIS IS TO CERTIFY that the foregoing order was entered and that a copy was electronically served to counsel this 11th day of March 2011.

/s/ L. Hickman
District Deputy Clerk

John B. Carr, Esquire
ktjw_wcdept@yahoo.com
john@johnbcarrlaw.com

Matthew W. Bennett, Esquire
mbennett@hrmcw.com
aboulineau@hrmcw.com