

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

Coy A. Sams,
Claimant,

OJCC Case No. 11-006359LAR

vs.

Accident date: 11/11/2010

Decision HR, USA, Inc./Chartis Insurance,
Employer/Carrier.

Judge: Laura Roesch

FINAL COMPENSATION ORDER

Upon proper notice, a final merits hearing was held before the undersigned Judge of Compensation Claims in Panama City, Bay County, Florida, on April 21, 2015. Attorney Maureen Proctor represented the Claimant. Attorney Matthew Bennett represented the Employer/Carrier. At issue were claims flowing from a Petition for Benefits filed herein on October 16, 2014. Mediation was held on April 2, 2015 and resulted in an impasse.¹

Claims and Defenses:

The issues for adjudication were:

1. Reimbursement of mileage to/from medical provider as reflected in reimbursement request sent on July 15, 2014.
2. Penalties, interest, costs and attorney's fees.

The Employer/Carrier defended on the following grounds:

1. Requested mileage denied as unnecessary/unreasonable.
2. No penalties, interest, costs or attorney's fees due.
3. The Employer/Carrier seeks costs.

Documentary Evidence.² At trial, the following documentary evidence was admitted:

Court Exhibits:

1. Composite containing trial summaries of the parties (*98 and *99).

¹The Petition for Benefits filed herein was originally scheduled to be mediated on February 16, 2015; however, the Claimant did not appear. Following a response to the show cause order, the mediation was rescheduled and held on April 2, 2015 (168 days from the filing of the Petition for Benefits). The final hearing was held on April 21, 2015 (187 days from the filing of the Petition for Benefits).

² Exhibits are identified by an asterisk (*) followed by a number, representing the docket number.

Claimant Exhibits:

1. Medical records of Dr. James Felch, filed March 17, 2015 (*88 & *89).

Employer/Carrier Exhibits:

1. Deposition of Claimant filed April 20, 2015 (100*).

Joint Exhibits:

1. Petitions for Benefits and Response filed May 16, 2013 and May 28, 2013, respectively (*43 & *47).
2. Petition for Benefits dated October 16, 2014 (*65).
3. Petition for Benefits dated September 5, 2013 and Response thereto, filed on October 3, 2013, respectively (*50 & *56).

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 witness who testified in person before me, and I have resolved all of the conflicts in the testimony. I have not written a detailed summary of all the facts and evidence presented. See, Section 440.25(4) (e), Fla. Stat.; Garcia v. Fence Masters, Inc., 16 So. 3d 200 (Fla. 1st DCA 2009) (compensation order need only contain findings of ultimate material fact necessary to support mandate, rather than a recitation of all evidence presented). 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 and noted herein are hereby approved and adopted as findings of fact and are incorporated herein by reference.
3. Claimant, a construction worker, sustained a compensable work-related injury to his left eye on November 11, 2010. At the time of his injury he lived in Panama City. Following the injury he came under the care of a local physician and surgery was performed on his eye in Panama City. Shortly thereafter, Claimant moved to Tennessee where he was provided another physician (Dr. Schenk) to take over his medical care. Once Claimant moved to Tennessee, the Carrier was advised on three different

occasions, whenever Claimant changed his personal address. This occurred on February 22, 2011; March 19, 2011 and April 9, 2012. Another surgery was performed by Dr. Schenk. At some point thereafter, Claimant testified he became dissatisfied with Dr. Schenk and requested a change in physician. He then came under the care of Dr. Felch with whom the Claimant continues to treat.

In November 2012 Claimant moved to Wyoming to take a job as a laborer, earning \$32 per hour, where he worked and lived for approximately 18 months as he testified at trial, or 24 months as he testified in deposition. At no time during his stay in Wyoming did the Claimant advise the Carrier that he had a new address. At no time during his stay in Wyoming did Claimant ask for a change in physician. He did, however, on two occasions during this time drive 2400 miles round-trip from Cheyenne, Wyoming to Dr. Felch's office in Nashville, Tennessee. From Cheyenne, Wyoming Claimant moved to New Jersey, where he helped his girlfriend's grandmother. At no time did he provide the Carrier with an address in New Jersey.

He testified that the reason he did not let the Carrier know how long he was going to be in Cheyenne, is because he "couldn't talk to them" because he is represented by an attorney. However, he asserts the nurse case manager, Julie Prentiss, knew he was in Wyoming because she helped him get eyeglasses. Claimant acknowledged that during the more than a year and a half he lived in Cheyenne, Wyoming, he did not ask for a doctor there because he "liked Dr. Felch," and indeed he continues to treat with him. He testified the trip from Cheyenne to Tennessee is 19 hours one-way and his girlfriend drove the entire way non-stop because he does not have a driver's license.

4. Michelle Sands is a Senior Claims Adjuster and handles this case. She confirmed the Carrier was provided Claimant's personal address when he moved to Tennessee on three occasions, February 22, and May 19, 2011 and April 9, 2012. She also confirmed the Carrier authorized a physician for Claimant in Tennessee. Ms. Sands was unaware that Claimant had relocated to Wyoming until the Petition for Benefits was filed in October 2014, seeking mileage reimbursement for dates of service in January 2013 and November 2013. There had been two prior Petitions for Benefits filed, one in May 2013 for eye glasses. This request was accepted and a bill paid to "Cheyenne Vision Clinic." The adjuster testified this could have been in Tennessee or somewhere Claimant was vacationing. She was simply aware Claimant had a request for eye glasses and that request was granted. A nurse case manager was put on the case because the Claimant lost his prescription so a prescription was obtained from the Claimant's Tennessee doctor. Ms. Sands noted that in Dr. Felch's records for date of service of January 2013 and November 2013, the address on the billing forms for the Claimant was listed in Tennessee. Since the Claimant was injured on November 11, 2010 he has filed six petitions for benefits. The petitions all reflect Tennessee addresses, including Lebanon (filed on March 17, 2011); then West Moreland (filed on

June 28 and August 23, 2012); then Portland (filed May 16 and September 5, 2013; and back to Lebanon (filed October 16, 2014). At no time did Claimant ever provide the Carrier herein with an address while he lived in Wyoming.

5. Florida law instructs that an employer/carrier is responsible for transportation to medical appointments or the reasonable cost thereof, with the employer/carrier first having the opportunity to determine the means of transportation. Williams v. Onyx Waste Services of Florida, 65 So.3d 141 (Fla. 1st DCA 2011); Polk Co. v. Varnado, 576 So2d 833 (Fla. 1st DCA 1991)(explaining policy of allowing E/C first opportunity to determine means and methods of providing medical benefits). The record herein is devoid of the Employer/Carrier first having the opportunity to determine the means of transportation, much less of even being aware that Claimant lived anywhere but in Tennessee, in close regional proximity to his authorized treating physician, a physician with whom he has treated for years and continues to treat to the present.

The Claimant herein seeks medical mileage reimbursement for two 2400-mile round-trip visits from Cheyenne, Wyoming to his authorized treating physician in Nashville, TN. On July 9, 2014 Claimant completed a mileage reimbursement form reflecting the trips as taking place on January 4, 2013 and November 25, 2013. The address reflected on that form is located in Wyoming, not Tennessee. The Claimant did not request reimbursement for such mileage until he attached the form to a Petition for Benefits filed on October 16, 2014. The Claimant suggests that because his nurse case manager allegedly knew he was in Wyoming, that was sufficient to put the Carrier on notice. Such assertion is not persuasive, particularly given the fact that the eye glass issue occurred in May 2013, five months after the first round-trip of January 2013. As set forth in the Petition for Benefits Claimant filed at that time, or any time, the address listed thereon is in Tennessee. According to the Claimant, he moved to Wyoming in approximately November 2012 where he lived for 18-24 months. At all time pertinent to this case, each and every Petition for Benefits filed by the Claimant reflected a Tennessee address as did the HCFA 1500 forms attached to visits to his authorized medical provider.

I conclude that Claimant has failed to meet his burden of proving entitlement to the mileage reimbursement he seeks. I find under these particular circumstances it would be patently unreasonable to award such reimbursement as Claimant at no time advised the Employer/Carrier during the time period in question the he had relocated from Tennessee to Wyoming. Nor did he provide the Employer/Carrier with an opportunity to determine the means of transportation. While I am mindful that Claimant suggested he was in Wyoming temporarily, I find that a suggestion that 18-24 months is “temporary” is illogical. It is therefore

ORDERED and **ADJUDGED** that the claim for reimbursement of medical mileage, costs and fees is denied and dismissed.

DONE AND ORDERED in Chambers at 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
www.jcc.state.fl.us

THIS IS TO CERTIFY that the foregoing order was entered herein and electronically served to counsel for the parties and the Carrier, this 28th day of April 2015.

/s/ L. Hickman
Commission Deputy Clerk II

COPIES FURNISHED:

Chartis Insurance
FL_OJCCmail@aig.com

Maureen C. Proctor, Esquire
laura@proctorkolefirm.com

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