

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

Employee:)	OJCC No: 08-003030LAR
William Stewart)	D/A: 4/5/2006
)	Judge: Laura Roesch
Employer:)	
Service Construction Supply, Inc.)	Attorney for the Employee:
)	John Moneyham, Esquire
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_____)	
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FINAL COMPENSATION ORDER
DENYING CLAIMS FOR BENEFITS,
PENALTIES, INTEREST, COSTS AND FEES

Upon proper notice, a trial was held on March 14, 2011 in Panama City, Bay County, Florida before the undersigned Judge of Compensation Claims. Attorney John Moneyham represented the Claimant. Attorneys Matthew Bennett and Julie Bixler represented the Employer/Carrier. At issue were certain claims flowing from *Petitions for Benefits* filed herein on September 23, 2010(x2), November 9, 2010 and January 14, 2011. At mediation on January 14, 2011 the parties acknowledged the Employer/Carrier had previously paid medical bills to the Brain and Spine Center and as a result, no attorney's fees were due in connection with that claim. At the conclusion of trial, and upon request of counsel, leave was granted to file written closing arguments. These were received on March 25, 2011. At that point, the record was considered closed.

I. Claims and Defenses.

The Claimant seeks the following benefits:

1. Authorization of a pain management doctor for evaluation and treatment in the Union, South Carolina area where the Employee lives. The Employee is requesting authorization of a pain management doctor at the Carolina Center for Advanced Management of Pain in Spartanburg at (864)583-0053.
2. Payment of Permanent Total Disability Benefits from August 20, 2007 to the present and continuing.

3. Payment of Permanent Total Supplemental Disability Benefits from August 20, 2007 to the present and continuing.
4. Payment of Impairment Benefits from August 20, 2007 to the present and continuing.
5. Penalties from August 20, 2007 to the present and continuing based upon late payment of permanent total disability, permanent total supplemental disability benefits and impairment benefits.
6. Attorney's fees and costs.

The Employer/Carrier defended on the following grounds:

1. All medically necessary and causally related medical treatment has been timely provided.
2. Industrial accident no longer the major contributing cause of any further need for treatment.
3. No catastrophic injury.
4. The Claimant will be unable to establish that he is not able to engage in at least sedentary employment within a 50-mile radius of the employee's residence.
5. The claimant retains a substantial earning capacity.
6. Industrial accident not the major contributing cause of alleged permanent disability.
7. Employer/Carrier seeks apportionment.
8. Employer/Carrier seeks adjudication of Social Security offset.
9. No PICA due.
10. The Employer/Carrier seeks costs.

II. Documentary Evidence.

Court Exhibits Marked for the Record:

1. Trial Summaries (argument purposes only).
2. Pretrials and Supplemental Pretrials.

Claimant:

1. Deposition of Dr. Karen Maddox (2/11/11).
2. Deposition of Adjuster Lara Michelle Britt (2/16/11).
3. Petitions for Benefits.
4. Job Searches.
5. One-page Payout Ledger.

Employer/Carrier:¹

1. Deposition of Dr. Dale Johns, IME (3/8/11) with records.
2. Deposition of Records Custodian at Southern Orthopedic Specialists (Nobles, Williams and Dietrick).
3. Deposition of Dr. Michael Rohan and Medical Records (2/8/11).
4. Medical Records Composite as filed on March 3, 2011.

III. Witnesses at trial:

1. William Stewart, Claimant.
2. Sheila Justice, Claimant's Vocational Expert.

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:²

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

¹Based on Claimant's objections to the documents marked as Employer/Carrier Exhibits 2-4, these exhibits were admitted for fact purposes only, consistent with [Office Depot, Inc. v. Sweikata, 737 So. 2d 1189, 1191 \(Fla. 1st DCA 1999\)](#).

² 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).

and are incorporated herein by reference.

3. The Claimant sustained a compensable work-related injury to his back on April 5, 2006. He was employed as a delivery driver delivering products to construction sites. On the date of the accident, he injured himself while picking up pails and placing them on the tailgate of his truck. While doing so, he felt something pull in his lower back. Within a couple of hours, he developed low back pain. He was off work for several weeks after the injury, during which time benefits were paid to him. He returned to work once his doctor released him to light duty, which he did for about a week and then returned to his regular duty. He performed these duties until his last day on the job on February 13, 2007 when he was terminated for cause.

The Employer/Carrier has authorized treatment with Bay Medical Center, Dr. Michael Rohan (orthopedic surgeon) and Dr. Karen Maddox (neurologist). He also had an independent medical evaluation with Dr. Dale Johns (neurosurgeon) at the request of the Employer/Carrier. Counsel for the parties stipulated that certain medical providers were not authorized for evaluation and treatment in connection with the work-related injury to Claimant's low back. These providers included Southern Orthopedic Specialists, Dr. Noble, Dr. Dietrick, Dr. Williams, Carolina Orthopedic Center, Pain Care Center, Dr. Jeffrey Seymore, Dr. Thomas G. Fletcher, Spartanburg Regional Medical Center, Wallace Thompson Hospital, Advanced Medical Associates, Advanced Orthopedic Physical Therapy, Cardiology Consultants, Bay Medical Center, Dr. Anthony Evans, Dr. John England, Dr. Raymond Mockler, Therapy One, Dr. Thomas Derbes, Dr. Jack Shumate, Dr. Khalil Warner, Dr. Charles Mayes and Panama City MRI.

4. I have carefully considered the Claimant's testimony. I have also carefully reviewed the record evidence in this case. Having done so, I accept the testimony of Dr. Rohan and Dr. Johns over that of Dr. Maddox. In reliance upon their testimony, I find that although the Claimant suffered a lumbar strain on April 5, 2006 as a result of a work accident, that lumbar strain resolved as of November 6, 2006 at which time he reached maximum medical improvement with a 2% impairment rating. I therefore find

that all medically necessary and causally related treatment to which the Claimant is entitled has been provided. Furthermore, I accept the Employer/Carrier's argument, based on the medical opinions of Dr. Rohan and Dr. Johns, that Claimant's need for ongoing treatment is due to arachnoiditis and peripheral neuropathy, conditions which I find are unrelated to the work accident at issue herein. In so finding, I note that even Dr. Maddox, upon whom the Claimant relies, acknowledged that Claimant's arachnoiditis existed prior to the date of the work accident and that there was no way to prove what was causing the Claimant's peripheral neuropathy. Although I am mindful of Claimant's argument that the arachnoiditis became symptomatic after April 5, 2006 and thus it should be considered attributable to the work accident, I must reject this assertion as no objective medical evidence has been presented to support this assertion. Indeed, Dr. Maddox eventually conceded that there was no objective medical evidence to indicate the work accident caused the Claimant to be symptomatic.

I have carefully reviewed the voluminous medical records admitted as Employer/Carrier's Exhibit #4.³ As Dr. Johns' noted, the Claimant clearly suffers from multiple medical conditions negatively contributing to his overall general health. Having reviewed these records, as well as having considered the Claimant's overall testimony, and that of Dr. Johns, I am simply not persuaded that the lumbar strain of April 2006 has had any significant affect on the Claimant, particularly in view of the plethora of other serious conditions which Claimant acknowledged on cross examination. That the Claimant was able to return to work within a few weeks of the work injury and then continue working for this Employer for nine to ten months without any problems (at least as it concerns the work injury), until his termination in February 2007 is consistent with the opinion of Dr. Johns and Dr. Rohan that his lumbar strain had resolved a few months' earlier. Granted, record evidence clearly shows an assortment of other medical issues and treatment the Claimant was undergoing in that time period post-work injury; however, there is no evidence the work injury resulted in a physical inability to perform his work. It should be noted that I find Dr. Johns' opinion particularly persuasive as he is the only physician who had

³ Review and consideration of these records was done in the context of Florida law, as noted in f.n. #1.

an opportunity to review the most comprehensive and extensive assortment of medical records relating to Claimant's work-related condition as well as his non-work related conditions. Therefore, I accept his testimony over that of Dr. Maddox as more thorough and consistent with logic and reason in view of the entire circumstances surrounding the Claimant's conditions.

As to the Claimant's work status, I accept the testimony of Dr. Rohan and Dr. Johns, over that of Dr. Maddox, on this issue also, and find that the Claimant has no permanent work restrictions associated with the work accident. While I am mindful that Claimant's vocational expert, Sheila Justice, testified in great detail and ultimately concluded the Claimant was not re-employable, she did so based upon the medical opinion of Dr. Maddox which I have rejected herein, accepting instead that of Dr. Rohan and Dr. Johns. Ms. Justice candidly acknowledged that if her opinion was to be based on the medical opinions of Dr. Rohan and Dr. Johns, instead of that of Dr. Maddox, her opinion regarding employability would be different.

5. The Claimant argues that the Employer/Carrier has waived its right to contest compensability of Claimant's low back condition under the 120-day rule. I find this argument is not persuasive under the particular facts of this case. I do so because I find there is a distinction between compensability of Claimant's low back injury and his entitlement to compensation or medical benefits. Checkers Restaurant v. Wiethoff, 925 So.2d 348 (Fla. 1st DCA 2006). I find, consistent with Checkers, that the Employer/Carrier here is well within its rights under Florida law to challenge entitlement to ongoing benefits such as the Claimant seeks here. As to the major contributing cause argument, I accept the Employer/Carrier's argument over that of the Claimant. As noted in § 440.09(1), major contributing cause requires proof of objective medical findings that "*correlate to the subjective complaints of the injured employee and are confirmed by the physical examinations findings or diagnostic testing.*" Furthermore, as noted in the statute, "*pain or other subjective complaints alone, in the absence of objective relevant medical findings, are not compensable.*" A review of Dr. Maddox's testimony, as offered by the Claimant to support his position, indicates she ultimately acknowledged that she found no

objective medical evidence indicating that the work accident caused the Claimant to become symptomatic. Therefore, I expressly reject her ultimate conclusion wherein she attempted to relate Claimant's pre-existing arachnoiditis to the work accident. I do so because, when the totality of her testimony is considered, it appears to me to be premised on an incomplete medical history as well as the temporal relationship between the alleged onset of symptoms and the work accident. As such, it is insufficient to support a finding in Claimant's favor. Rather, and in place of and instead of Dr. Maddox's testimony on the issue, I accept the testimony of Dr. Rohan and Dr. Johns that Claimant's need for ongoing treatment is due to the arachnoiditis and peripheral neuropathy, conditions which are unrelated to the work accident. I am mindful that major contributing cause is not an appropriate defense if prior injuries or unrelated conditions are the result of a prior work injury, necessitating treatment under Florida's Workers' Compensation Law. However, I find no persuasive evidence that the Claimant's May 25, 2003 or 1970's motor vehicle accidents were in fact work related as defined under Florida Law.

6. As to Claimant's claim for payment of impairment benefits, and again based on Dr. Rohan's testimony as well as that of the adjuster in this case, I find no entitlement to payment of impairment benefits beyond those based on Dr. Rohan's 2% impairment rating pursuant to the Florida Impairment Guidelines. As the Employer/Carrier has already timely provided such benefits, the claim is denied.

Wherefore, IT IS therefore ORDERED and ADJUDGED that:

- a. The claim for authorization of a pain management doctor for evaluation and treatment in the Union, South Carolina area is denied.
- b. The claims for payment of permanent total disability benefits, supplemental disability benefits, impairment benefits, and penalties from August 20, 2007 to the present and continuing are denied.
- c. The claim for payment of attorney's fees and costs is denied.

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



Laura Roesch
Judge of Compensation Claims
Division of Administrative Hearings

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THIS IS TO CERTIFY that the foregoing order was entered and that a copy was electronically served to counsel this 12th day of April 2011.

/s/ L. Hickman
District Deputy Clerk

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