

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

Angela Taylor,  
Employee/Claimant,

OJCC Case No. 12-008120LAR

vs.

Accident date: 11/2/2011

Sodexo, Inc./Gallagher Bassett Services, Inc.,  
Employer/Carrier/Servicing Agent.

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Judge: Laura Roesch

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FINAL COMPENSATION ORDER  
(Record Closed September 16, 2014)

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A final merits hearing was held before the undersigned Judge of Compensation Claims on August 6, 2014. The Claimant was present along with her attorney Arthur Beal. The Employer/Carrier was represented by Attorney Matthew Bennett. At issue were claims flowing from two Petitions for Benefits filed herein on February 6, 2014.<sup>1</sup>

On or about September 4, 2014, the undersigned became aware of a defect in the audio recording of the merits hearing, particularly as it involved counsel's closing argument. A brief telephone conference was had with counsel that day wherein they were offered an opportunity to re-do their closing argument for purposes of a complete and accurate audible record. A mutually-agreeable date of September 16, 2014 was chosen by counsel. In the meantime, before the time scheduled for counsel to re-do their closing arguments on the record, the OJCC's IT department spent several hours on September 12, 2014 troubleshooting and correcting and/or repairing the audio problem in the hearing room. Thereafter, following the closing arguments of counsel on September 17, 2014, the record herein was considered closed.

At commencement of trial, the parties noted the following stipulations:

1. Average weekly wage was \$236.02 with a corresponding compensation rate of \$157.35;
2. The Claimant exhausted 104 weeks of temporary benefits as of January 13, 2014;

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<sup>1</sup> The Petitions for Benefits filed herein were mediated on May 15, 2014 (98 days from the filing of the Petitions for Benefits). The final hearing was held on August 6, 2014 (181 days from the filing of the Petitions for Benefits).

3. The Claimant was on sedentary work restrictions for the period of January 14, 2014 through May 18, 2014;
4. The Claimant was administratively accepted as permanently and totally disabled, effective May 19, 2014;
5. If the Claimant prevails on her claims herein, the Employer/Carrier may take a credit on the impairment benefits paid to Claimant; and
6. The Claim for spinal cord stimulator was resolved; however, jurisdiction is reserved on the issue of attorney's fees.

## **I. Claims and Defenses:**

### **Claimant sought the following benefits:**

1. Temporary total and/or temporary partial disability benefits from January 14, 2014 through May 18, 2014.
2. Permanent total disability and supplemental disability benefits from January 14, 2014 through May 18, 2014.
3. Upward adjustment in payment of permanent total disability benefits to include supplemental disability benefits as of May 19, 2014 to the present and continuing.
4. Penalties, interest, costs and fees.

### **The Employer/Carrier defends on the following grounds:<sup>2</sup>**

1. No further TTD or TPD benefits due as Claimant exhausted 104 weeks.
2. The Employer/Carrier accepts Claimant as PTD from May 19, 2014.
3. No PICA due.
4. The Employer/Carrier seeks costs.

## **II. Documentary Evidence.<sup>3</sup>**

### **Court Exhibits:**

1. Petition for Benefits filed February 6, 2014 (\*35 and \*37).
2. Pretrial filed June 2, 2014 (\*63).
3. Trial Summaries of Counsel, for argument purposes only (\*69 and \*70).

### **Joint Exhibits:**

1. Copy of Payout Ledger filed August 4, 2014 (\*68).

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<sup>2</sup> The Employer/Carrier withdrew its defense that a social security offset was appropriate.

<sup>3</sup> Exhibits are identified by an asterisk (\*) followed by a number, representing the docket number.

**Claimant Exhibits:**

1. Copy of Final Compensation Order Dated October 19, 2012 (\*28).
2. Benefits Calculation prepared by Claimant's counsel (for argument purposes) (\*71).

**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. The Claimant was the only witness presented. She injured her left foot and left knee in a compensable work-related accident on November 2, 2011, all as more particularly set forth in a Final Compensation Order entered on October 19, 2012. Her authorized treating physician, Dr. Fuhrmeister, has diagnosed Reflex Sympathetic Dystrophy. The Claimant spends much of her time in a wheelchair and has been using a wheelchair more frequently, particularly in the last month. She uses either a walker or a wheelchair when she is out in public and always has someone with her.

She was aware, after being advised by the Carrier in January, that she had received 104 weeks of benefits and would be receiving impairment benefits instead. She was under sedentary work restrictions from January 14, 2014 through May 18, 2014. Sometime in late May or early June 2014, she began receiving permanent total disability benefits from the Carrier every two weeks, in the amount of \$314.70. Before Dr. Fuhrmeister placed her at maximum medical improvement, she never looked for work.

4. The parties have stipulated that Claimant exhausted the statutory maximum of 104 weeks of

temporary benefits as of January 13, 2014. The Claimant's testimony that the Carrier paid the Claimant impairment benefits thereafter, until she was accepted as permanently and totally disabled as of May 19, 2014, stands unchallenged. It is also corroborated by Joint Exhibit #1, the Carrier's pay-out ledger. Indeed, the parties have stipulated that if the Claimant prevails, the Carrier may apply a credit for payment of such benefits.

5. It is undisputed that Claimant exhausted 104 weeks of temporary benefits as of January 13, 2014 and began received payment of impairment benefits from that point, until May 19, 2014 when the Employer/Carrier accepted her as permanently and totally disabled. She seeks payment of temporary benefits in excess of the 104-week statutory limited (for the gap period between January 14, 2014 through May 18, 2014) based on Westphal v. City of St. Petersburg, 122 So. 3d 440 (Fla. 1<sup>st</sup> DCA 2013), *review pending*, Case #SC13-1930. Alternatively, Claimant seeks payment of PTD and supplemental disability benefits for the gap period on the grounds that she automatically reached maximum medical improvement by operation of law and was physically unable to perform any type of gainful employment. The Employer/Carrier asserts that because the Westphal case is not yet final, it does not apply in this case. I am mindful that the Florida Supreme Court issued an Amended Order on October 28, 2013 granting the City of St. Petersburg's *Motion to Stay* further proceedings in the First District Court of Appeal. However, I find such stay does not operate as a stay upon the application of the Westphal opinion issued in September 2013 regarding disposition of Claimant's claims herein. The Employer/Carrier's argument in that regard is rejected.

6. I find it appropriate to determine Claimant's eligibility for PTD benefits for the period in question, whether I accept her argument that she is at maximum medical improvement by operation of law, or by virtue of the holding and inferences to be drawn from Westphal. In order to award Claimant the PTD benefits she seeks, it must be determined whether she has (1) a permanent medical incapacity to engage in at least sedentary employment, within a 50-mile radius of her residence; (2) permanent work-related physical restrictions coupled with an exhaustive but unsuccessful job search; or (3) permanent work-related physical restrictions that, while not alone totally disabling, preclude her from engaging in at least sedentary employment when combined with vocational factors. Section 440.15(1)(b), Fla. Stat.; Blake v. Merck & Co., 43 So. 3d 882 (Fla. 1<sup>st</sup> DCA 2010). The Claimant's was the only testimony offered. There are no medical records in evidence, or medical or vocational testimony. I am therefore unable to conclude that Claimant has met any of the elements necessary to prove entitlement to PTD benefits for the time period in question. Her claim is therefore denied.

7. I next consider Claimant's claim for an upward adjustment in the payment of permanent total disability benefits to include supplemental disability benefits as of May 19, 2014 to the present and

continuing. The Claimant argues she is being paid PTD benefits at an incorrect amount because supplemental benefits are not being included. Having carefully reviewed Joint Exhibit #1, a copy of the Carrier's payout ledger, I agree with Claimant's argument on this issue and find that supplemental benefits in the amount of \$14.16 per week should also be included, for a biweekly total of \$343.02. I therefore find in favor of Claimant on this issue.

8. To the extent Claimant has prevailed on a portion of her claims herein, she is entitled to payment of attorney's fees and costs at the expense of the Employer/Carrier herein.

It is therefore **ORDERED** and **ADJUDGED** that:

- a. The claim for temporary total and/or temporary partial disability or permanent total disability benefits from January 14, 2014 through May 18, 2014 is denied.
- b. The claim for an upward adjustment in the payment of permanent total disability benefits to include supplemental disability benefits as of May 19, 2014 to the present and continuing, in the amount of \$14.16 per week, is granted.
- c. Entitlement to payment of attorney's fee and costs at the expense of the Employer/Carrier herein is granted.

**DONE** and **ORDERED** in Chambers at Panama City, Bay County, Florida.



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Laura Roesch  
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THIS IS TO CERTIFY that the foregoing order was entered herein and electronically served to counsel for the parties and the Carrier, this 19th day of September 2014.

/s/ L. Hickman  
Commission Deputy Clerk II

COPIES FURNISHED:

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