

Juan Carlos Martinez,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 07-032397GCC
)	
Southeast Personnel Leasing, Inc.,)	Accident date: 8/14/2007
)	
Employer,)	
)	
and)	
)	
Packard Claims Administration, Inc.,)	
)	
Carrier/Servicing Agent.)	
_____)	

FINAL COMPENSATION ORDER

(I) PROCEDURAL HISTORY:

After due notice to the parties, this cause came before the undersigned Judge of Compensation Claims in Miami, Miami-Dade County, Florida for final hearing. Claimant Juan Carlos Martinez was represented by Rene Hidalgo, Esquire of the Law Offices of Richard Zaldivar. Employer Southeast Personnel Leasing and carrier Packard Claims Administration were represented by Robert Gluckman, Esquire of Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A. This Order ensues.

(II) EVIDENCE PRESENTED:

(a) Live Witnesses:

1. Claimant Juan Carlos Martinez testified live at final hearing.

(b) Documentary Evidence:

Unless otherwise indicated, the following exhibits were introduced into evidence (by corresponding number) at Final Hearing:

1. Medical Records from Physician's Health Center.
2. Concentra Medical Centers (FL) Physician Activity Status Report.
- 2a. Concentra Medical Centers (FL) Transcription.
3. Uniform Pretrial Stipulation & Pretrial Compliance Questionnaire.
4. Claimant's Trial Memorandum. (For I.D. only)
5. Employer/Carrier's Trial Summary and Memorandum of Law. (For I.D. only)
6. Deposition of claimant Juan Martinez.
7. Deposition of Chuck Szopinski.

(III) CLAIMS AND DEFENSES:

(a) Claims:

1. TT/TD from DOA forward.
2. Adjust AWW/CR.
3. Alternate MCC/PCP
4. IME with Dr. Moya.
5. Authorization and provision of orthopedic evaluation and treatment.
6. Authorization of transportation.
7. IME with Plastic Surgeon.
8. Provision and authorization of plastic surgeon for evaluation and treatment.
9. IME with Dr. Freshwater.
10. Provision and authorization of hand specialist for evaluation and treatment.
11. PICA on all benefits listed herein.

(b) Defenses:

In response to the claims listed above by the Claimant, the Employer/Carrier asserted the following defenses:

1. None due or owing, as claimant continues to earn at least 80% of this AWW following his accident through time of his termination for theft.
2. AWW is correct per actual wages.
3. E/C previously authorized Concentra Medical Center as alternate PCP.
4. Claimant may obtain IME at his own expense.
5. No referral has been issued by an authorized Provider.
6. Transportation will be provided if deemed medically necessary.
7. Claimant is only entitled to one IME for his date of accident.
8. See Response to #5
9. See Response to #7
10. See Response to #5
11. No PICA due or owing.

(IV) FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The undersigned has considered both the live and documentary evidence presented, as well as the arguments presented. All conflicts of fact and law have been resolved. The factual findings contained herein are limited to those deemed necessary in adjudication of the issues presented for adjudication.

(1) Claimant Juan Carlos Martinez Jarquin is a hispanic male born May 24, 1982 in Nicaragua. His testimony at final hearing was taken in his native language of Spanish with the use of an interpreter.

(2) The claimant was employed at Metropolitan Transportation on August 14, 2007, when he suffered a compensable accident while in the course and scope of his employment.

(3) The claimant was originally hired by to sort letters. His duties changed over time. At the time of his accident, his duties were that of a delivery driver. He would drive a van and make pickups and deliveries. Typically, he would dedicate the mornings to filling up the van with merchandise to be delivered to houses and businesses. He would spend the afternoons making deliveries of what he had loaded in the morning and making pick ups.

(4) The items he handled varied daily. They were of different weight and size. Some large boxes weighed from ninety (90) to one-hundred (100) pounds. Letters were the lightest.

(5) On August 14, 2007, the date of accident, the claimant was out making deliveries of merchandise. From 11:50A.M. to 12:15, he went to deliver a cell phone at a house. He delivered the cell phone to the homeowner. It was raining. He ran back to the van to try to avoid the rain. He slipped and fell on the way back to van. Ironically, by April 10, 2008, the claimant could not recall the details of how his accident took place. (See, Exhibit 2A, Concentra 4-10-2008 Patient Information Sheet)

(6) Metropolitan Transportation obtained employees through Southeast Personnel Leasing.

(7) The claimant has resided at 651 SW 3rd St., # 5 in Miami, Florida for the last eight (8) years and four (4) mos at that address.

(8) The claimant no longer works for the employer herein. He testified to being terminated approximately two week after his accident. Employer records indicate that he was terminated approximately two months after his accident. The latter is deemed more credible. The claimant indicated at final hearing that he would not dispute the latter.

(9) As a result of his fall, the claimant injured what he described as the "eye of the foot" on his right foot (medial malleolus). It is clear that any injury thereto had long since recovered slipped the claimant's mind as he failed to mention it when he was deposed on March 5, 2008. (Exhibit 6, p. 15)

(10) He also reported injury to his back, shoulder, elbow and wrist - all on the right side. He had pain, was scratched up and was bleeding after the accident from the wrist, elbow medial malleolus and his leg.

(11) The Office of the Judges of Compensation Claims (hereinafter: OJCC) has jurisdiction over the subject matter and the parties herein.

(12) Proper venue over this matter lies with the Miami District Office of the OJCC.

(13) The claimant immediately reported the accident to Metropolitan. It was not immediately, but he was sent to Physician's Health Center (PHC) at 6634 NW. 36 Street for authorized care.

(14) The care he received is well documented in the medical records provided. (See Exhibit 1) However, Mr. Martinez indicates that no immediate care was provided to him. He insists that PHC simply cleaned his wounds and did nothing for his shoulder. His assertions are not credible.

(15) The claimant indicates that problems with his back started three (3) to five (5) days post accident. He experienced discomfort when lifting boxes.

(16) The claimant reports no back problems or right wrist problems prior to his August 14, 2007 accident. While credible, these assertions are not relevant to the issues submitted for adjudication.

(17) The claimant alleges that he can not bend his wrist as far backwards as he could post accident. However, PHC records demonstrate a full recovery from any wrist injury. The latter are more credible.

(18) The claimant acknowledges reports neither right leg nor right shoulder problems prior to accident.

(19) He acknowledges that PHC cleaned his wounds, massaged his back and took X-rays of wrist. This is important because it shows that PHC was cognizant of his back complaints and did treat same.

(20) The claimant was given prescription medication. He did not recall the name of the prescription medications, but did recall that they were for pain. They impaired his ability to work. One made him sleepy a short while after he would take it. He reported feeling bad from the medicines prescribed to him, but reported that his employer would not let him miss time from work.

(21) Injuries and medical appointments led him to miss some time from work.

(22) The claimant with PHC for over two months, but he was not satisfied with the care they provided. He requested a change and was authorized to treat at Concentra, a 2nd clinic. They took x-rays of back and wrist. He report that they did not treat his shoulder or his elbow, but only his back and wrist.

(23) The claimant reports never having been discharged by Concentra and not being satisfied with they care they provided.

(24) Subjectively, the claimant reports that he still has low back pain. He can nto pick up his kids. He has difficulty remaining in a squatting position. He does not have a full range of laterally movement.

(25) He subjectively reports that his right elbow still bothers him. He can not lean on same or put any weight on it. He complained that he has limited movement, yet he visibly demonstrated effortless extensions and retractions of same while testifying.

(26) He subjectively reports that he can not his right wrist backwards because he feels pain and that he can not put weight on it. He added that when he turns the steering wheel, he feels pain. It is not that he can not turn the wheel, but that he experiences pain.

(27) He subjectively reports pain with in his right leg - particularly when playing basketball.

(28) He subjectively reports that he can not perform jobs which require use of his shoulder. He can not lift boxes or hold things on his shoulder.

(29) After being terminated, the claimant worked for Specialty Transport starting in late November of 2007. He reports that he could not lift boxes, drive 100% or do his job 100%.

(30) In summation, the claimant reports that his back, shoulder, elbow, wrist and ankle all improved some after his accident, but that neither of these recovered 100%. Yet on October 22, 2007 he told PHC personnel that his wrist and elbow were 100% fine. This inconsistency couple with others detailed herein below compromise the claimant's credibility - particularly with regards to his subjective complaints.

(31) When he returned to work with the employer immediately post-accident, the claimant had a second person helping him temporarily. The claimant would drive and other person would unloading the boxes and deliveries. Claimant reports having helped the other person as much as he could. The claimant reported to his supervisor that he did not feel 100%. The supervisor told him to leave if he did not like it.

(32) The claimant acknowledge his signature on the Nov. 6., 2007 PFB, but indicated that he did not recognize the PFB document. He subsequently indicated that he recalled completing same with his attorney. That PFB indicated that the claimant had injured his left elbow, left wrist, right leg and back. The shoulder is not mentioned. indicated. The claimant explained the inconsistency between his testimony and his PFB claims by indicating that meant right instead of left and that he was rushed on the day he signed the PFB as he had driven back from Tampa. The inconsistency highlighted the diminishing credibility of the claimant's testimony. The explanation was not credible.

(33) Similarly, the claimant acknowledged his signature on the August 19, 2008 PFB. The same "error" which appeared on the November 6, 2007 PFB appeared here. The claimant assured that he had not signed both PFBs on the same date. He explained that he was also rushed on this day, as he had a job application pending. He understood the importance of him reading the document he signed, but explained that he did not read much English. Again, the explanation was not credible.

(34) The claimant acknowledged signing the December 9, 2008 PFB. This one repeats the same mistake as the prior two. He acknowledged that he was not rushed on the day that he signed this PFB, but speculated that this PFB could have been a copy of the first one. He again explained that he did not read english. He also conceded that the shoulder is not mentioned at all - suggestion that any injury to the shoulder had fully healed and was of no concern to the claimant as early as of the filing of the November 6, 2007 PFB. This is also consistent with the notion that the claimant had reached MMI by October 22, 2007 with a 0% impairment.

(35) The claimant acknowledged signing the March 5, 2009 PFB. This one again repeats the same mistakes of the prior three PFBS. He acknowledged that he was not rushed on the day that he signed this PFB, and that he signed same at his attorneys office.

AWW:

(36) Claimant testified to actual earnings of \$450.00 a week. (Exhibit 6, p. 12-13) In the manner testified to, it appears that this reflects an AWW consistent with the claimant's contract rate of hire.

(37) At pretrial, the E/C asserted \$556.00 a week. (Exhibit 3) In their pre-hearing statement, the E/C assert an AWW of \$505.45. The latter is inappropriate as the claimant did not work the predicate 91 day period. See, *Gruber v. Budd Serenino Gutters & Siding*, 613 So. 2d 1353 (Fla. 1st DCA 1993) However, the used is rendered moot via the claimant's express acceptance of the \$556.00 issue advocated by the E/C via the pretrial stipulation. (Exhibit 4)

CREDIBILITY:

(38) The claimant's credibility suffered. The details have been discussed somewhat to a limited extent herein above. Additionally, representations as to what body parts were injured varied greatly. His initial representations were credible. They are spelled out in his 8/14/07 handwritten entries which appear in the Physician's Health Center Patient Information/Health History of 8/14/07, where he details: "Hombro (shoulder), codo (elbow), pierna (leg), mano (hand) and ojo del pie (eye of the foot). Ironically, he does not indicate whether the injuries were to the right side of the body or the left. However, the 8/14/07 report by PHC Airport details that: "he slipped and landed on his right side, injuring his right elbow, hand, and leg. Currently, he complains of pain in the back, right hand, elbow and leg."

(39) Subsequent reports document the injuries being treated. The 8/29/07 report indicates: "Diagnosis remains right elbow contusion, right wrist contusion, and lumbosacral sprain." The medical report of 9/14/07 gives a diagnosis of: "1. Contusion lumbar spine. 2. Contusion right wrist. 3. Contusion right elbow." Similarly, the 9/25/07 report notes: "DIAGNOSIS: 1. Right elbow and wrist contusion. 2. Lumbar spine contusion." These indicate injury to the right side of his body. Yet in his various PFBs - all signed by the claimant - the body parts injured were reported to be on the left side. The latter expressly conflicted with both his trial and deposition testimony.

(40) The claimant was released to return to work full duty without restrictions on September 17, 2007. Prior to that date, his medical records document his compensable conditions improving and his acknowledgement of same. See, Exhibit 1, September 25, 2007 report: "The patient states the elbow and wrist are fine. Still with some pain in the back." It is also interesting to note that subsequent to this assessment, the claimant sought care for approximately one week - through September 25th.

(41) After that, the claimant did not return again until October 22, 2007 – almost one month later. It also happens to be the very day he was fired. The September 25, 2007 report indicates that the claimant is to: "Continue therapy. Return in 1 week for follow-up..." The claimant neither participated in further therapy nor did he initially seek follow up. Furthermore, he missed both follow up and physical therapy appointments during the aforementioned gap period. See, September 28, 2007 note: "Your employee Martinez, Juan missed their (sic) appointment on 10/02/2007. Please call (305) 871-3627 to reschedule their appointment." See identical October 1, 2001 note; See identical October 2, 2007 note; See identical October 5, 2007 note.

(42) These examples are consistent with the notion that the claimant had recovered adequately from his compensable injuries, and that he subjectively appreciated same to the point that he was not seeking additional medical care and/or physical therapy – even when it was being recommended.

(43) Mr. Martinez reached MMI with a 0% permanent impairment and no restrictions on October 22, 2007. Exhibit 1, DWC-25 dated October 22, 2007.

TEMPORARY INDEMNITY BENEFITS:

(44) There is no right to temporary indemnity benefits. The claimant missed three to four days post accident. (Exhibit 6, p. 19) He then worked for almost two months before being terminated. (Exhibit 6, p. 13, 19) Any claims for temporary indemnity would be untenable because the claimant's limited disability did not cause him to miss time in excess of the statutorily required waiting period.

PERMANENT IMPAIRMENT BENEFITS:

(45) Mr. Martinez reached MMI for all conditions on October 22, 2007 with 0% P.I.R. and no restrictions. There is no right to permanent impairment benefits of any sort as the claimant suffered no permanent impairment rating or restriction.

ADDITIONAL MEDICAL CARE:

(46) The claimant has not established by objective medical evidence that he needs further medical care with an orthopedic specialist or a plastic surgeon. The objective medical evidence is that he made a full recovery with no permanent impairment.

(47) The claimant was subsequently provided alternative care with Concentra Medical Center. There is no right an additional change of provider.

(48) There is no medical evidence calling for a referral to an orthopedic specialist. Likewise, there is no medical evidence calling for a referral to a plastic surgeon.

(49) The claimant's right hand was placed in splint to treat a fracture of the right hand objectively confirmed via x-ray. (See Exhibit 1, August 14, 2007 Initial Workers Compensation Consultation) It healed. There was no indication of any need for further medical attention to same, and certainly no evidence to support authorization of a hand specialist.

(50) Succinctly, further treatment, evaluation and/or care of any variety are not warranted.

IMEs:

(51) The claims for IMEs are misdirected. The claimant was free to obtain an IME within the specialty of his choosing. He chose not to timely undergo IMEs. There is no relief available to the claimant against the E/C for the claimant's own failure to have exercised his right to an IME.

TRANSPORTATION:

(52) Mr. Martinez has not proven entitlement to reimbursement for any past mileage reimbursement; nor has he the right to future medical care which would trigger such an obligation at a later date. He did not submit mileage reimbursement forms, bills or receipts to support that he incurred any transportation related expenses. This claim is not supported by any evidence and must be denied.

ATTORNEYS FEES AND COSTS:

(53) No benefits have been secured for the claimant. Accordingly, the claimant has no right to have his attorneys fees and costs reimbursed by the employer/carrier.

(V) DECREE:

It is hereby Ordered and Adjudged that:

The claim for temporary partial disability/temporary total disability for the time period from August 14, 2007 through August 19, 2007 is DENIED.

The claims for temporary partial disability/temporary total disability indemnity benefits for the time period from October 15, 2007 through October 21, 2007 and all periods thereafter are DENIED.

The respective claims for IMEs are DENIED.

The claim for authorization of a hand specialist is DENIED.

The claim for authorization of an orthopedic specialist is DENIED.

The claim for authorization of a plastic surgeon is DENIED.

The claim for provision transportation and transportation reimbursement is DENIED.

Done and Ordered in chambers in Miami, Miami-Dade County, Florida this 23rd day of September, 2009.



Gerardo Castiello
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above Order was entered in the office of the Judge of Compensation Claims and a copy was forwarded by U.S. Mail/E-mail on this 23rd day of September, 2009 to the above addressees.

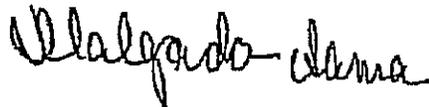
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Assistant to the Judge of Compensation Claims

Final Hearing Statistics Worksheet

Please complete this form at the time of Order upload for any of the following:

Evidentiary Motion Hearing.

Expedited Final Hearing.

Fee Amount Hearing.

Fee Entitlement Hearing.

Final Hearing.

Fund Hearing.

Remand Hearing.

Appellate Fee Hearing.

OJCC Number(s) 07-032397GCC

Date Order Mailed/Emailed 9/23/09

Trial/Hearing dates opened 9/16/09; concluded 9/16/09

For Final Hearing or Expedited Final Hearing:

Dates of all pending petitions heard 3/31/09

OR

For Evidentiary Motion Hearing:

Type of Motion _____

Filing Date of Motion Heard _____

OR

For Fee Amount Hearing or Fee Entitlement Hearing

Date motion or verified petition filed _____

OR

For Appellate Fee or Remand Hearing

Date of Mandate _____

AND

If abbreviated final/fee order was issued and later vacated:

Date Abbreviated Order Entered: _____

Date Abbreviated Order Vacated: _____