

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
TAMPA DISTRICT**

**AMABLE MOYA,
Claimant,**

OJCC Case # 06-022730DEJ

v.

**TRUCKS & PARTS OF TAMPA, INC. and
AMERITRUST INSURANCE CORP.,
Employer/Carrier.**

Date of Accident: 09/16/05

**Bradley G. Smith, Esq., for Claimant
Gregory White, Esq., for Employer/Carrier**

COMPENSATION ORDER

This cause came on for final hearing before the undersigned judge of compensation claims on March 19, 2009. Pursuant to petitions for benefits filed on June 23, 2008, January 7, 2009 and February 6, 2009, Claimant seeks: (1) authorization for psychiatric care and treatment pursuant to the recommendation of Dr. Charles Walker; and, (2) costs and an attorney's fee.

Employer/Carrier assert the following defenses: (1) the claim for authorization for psychiatric care and treatment pursuant to the recommendation of Dr. Charles Walker has been waived as it was ripe, due and owing when the parties went to trial on September 25, 2007; (2) the industrial accident is not the major contributing cause of any need for psychiatric care; and, (3) no fees or costs are due or owing. Employer/Carrier also seek costs pursuant to §440.34, Fla. Stat. (2005).

WITNESSES

Neither party offered any live testimony at the final hearing.

DOCUMENTARY EVIDENCE

Uniform Pre-Trial Stipulation

Joint Exhibit #1

Deposition of Conrad P. Weller, M.D.
taken on 3/12/09

Claimant's Exhibit #1.

Deposition of Chowallur Chacko, M.D.
taken on 3/5/09

Employer/Carrier's Exhibit #1

The undersigned took judicial notice of her Order on Motion for Clarification/Compensation Order entered on January 30, 2009. For identification purposes, it is labeled as "Judge's Exhibit #1".

FINDINGS OF FACT

1. The undersigned judge of compensation claims has jurisdiction over the parties and the subject matter of this proceeding.

2. All matters upon which the parties have reached agreement as set forth in the pre-trial stipulation are approved and incorporated herein by reference as findings of fact.

3. Claimant, a native of the Dominican Republic, was employed by Trucks & Parts of Tampa as a diesel engine mechanic when he was injured on September 16, 2005.

Claimant's complaints involved primarily his neck, shoulders and upper arms. In the compensation order entered on January 30, 2009, Claimant was found to have suffered

a temporary aggravation of his pre-existing carpal tunnel syndrome, due to his work activities. The undersigned further found that Claimant had suffered temporary

aggravations of his pre-existing shoulder and cervical conditions.

Summary of Medical Opinions

4. On December 30, 2008, Claimant underwent a psychiatric IME with Dr. Conrad P. Weller. Based upon the psychiatric tests that were administered as well as the examination, Dr. Weller formed the following Axis I psychiatric diagnoses: pain disorder associated with both physical and psychological factors; and, generalized anxiety disorder; depressive disorder, not otherwise specified. Weller testified in his deposition that Claimant's depressive disorder was "partially in remission" due to the treatment rendered by Dr. Walker. *Claimant's Exhibit #1, p. 17, line 6.* Weller went on to address his Axis II diagnosis:

...Now, on Axis II, there is a question of a possible personality disorder with paranoid and histrionic features. And it is unclear whether this is a personality disorder or a dysfunctional personality that has been exacerbated by the situation and factors. That's basically what the psychiatric diagnosis is in my opinion according to the results of the review of records, the direct examination, and the analysis of testing. *Id., p. 17, lines 8-16.*

Dr. Weller is of the opinion that Claimant's industrial injuries are the major contributing cause of his psychiatric condition.

5. It is clear that Dr. Weller was aware that Claimant had been receiving psychiatric care from Dr. Charles Walker, albeit unauthorized. When asked whether he had a chance to assess the nature and course of treatment provided by Walker, Weller answered in the following manner:

A: I don't recall, but we are going to review that. I'm not sure if I had Dr. Walker's records. Yes. Oh, no, no. Here we have quite a bit of records from Dr. Walker. I mean, you know, it's not -- now, I did review the records. Dr. Walker is clearly providing some supportive psychotherapy. And he's also doing psychotropic medication management. So that the treatment is adequate and is clearly indicated from a medical

psychiatric standpoint. *Id.*, p. 20, lines 6-14.

Given the fact that he was apparently confused about whether he'd actually reviewed Dr. Walker's treatment records, it is difficult to have confidence in Dr. Weller's assertion that Walker's treatment was adequate and clearly indicated from a medical psychiatric standpoint.

6. Weller is of the opinion that Claimant has not reached MMI and requires further psychiatric treatment. Claimant's counsel asked if Dr. Weller was "comfortable deferring to Dr. Walker as the physician with the most experience treating Mr. Moya as to the specific nature of his needs for future care and treatment". *Id.*, p. 24, lines 3-6.

Unfortunately, Dr. Weller responded that he would definitely defer to Dr. Walker's assessment. Nowhere in his written report or his deposition does Weller offer his own opinion as to the specific nature of the "further psychiatric treatment" he is recommending.

7. According to Dr. Weller's testimony on cross-examination, Claimant's treatment with Dr. Walker began on September 7, 2007. When asked by defense counsel whether Claimant's psychiatric condition as diagnosed by Walker and Weller is essentially the same, Dr. Weller responded:

Well, I am not completely certain about that. But it appears that whatever he presented to Dr. Walker is not very different from what he presented to me. That is apparently so. *Id.*, lines 17-

123.

The doctor went on to state that there was some change in the degree or relative weight of Claimant's symptoms, since he first presented to Dr. Walker.

8. Employer/Carrier engaged Dr. Chowallur Chacko to perform a psychiatric IME on their behalf. As a result, Dr. Chacko evaluated Claimant on February 12, 2009. Unlike Dr. Weller, Dr. Chacko concluded that Claimant did not suffer from any psychiatric

disorders. Chacko actually rejected the earlier diagnoses rendered by Walker -- and, by

implication, those espoused by Dr. Weller:

And the two psychiatric disorders which he allegedly suffered from was[sic] the depression and the delusional disorder. So, I specifically looked for signs of depression, he did not present himself as somebody that was depressed. He smiled. He did not look sad. His demeanor and facial expression and psychomotor activity, none of them pointed towards a person that was depressed.

In addition, he told me that he is able to drive. He drove to the appointment with me, 120-mile-long trip. He goes shopping. He is taking English classes. He attends church twice a week. He takes his children for baseball practice and basketball games. He actually enjoys watching them play. He enjoys watching both English and Spanish programs on TV. His favorite is National Geographic and new programs.

He showers and changes clothes daily. He takes care of his two dogs. He enjoys playing with them. He even grooms them. He has several friends. He enjoys watching movies with his friends. He also enjoys fishing, and does cookouts with his friends.

So all of this together indicates that this man is not depressed. He is -- based on his history and the findings from my examination, he showed no signs of depression.

The other thing was an allegation that he had a delusional disorder and that was based on a report that workers' compensation was making him have chest pains and palpitations. When I inquired this in detail, it became quite unclear that this was not a delusion, but he experienced some anxiety when he believes or when he perceives that he is under surveillance. And especially during [sic] his social cultural background, for somebody to get anxious or upset when he is under surveillance, which could even lead to some criminal charges, is perfectly normal.

So I didn't pick up anything of a delusional nature. So basically my conclusion was that this person was not suffering from depression, delusional disorder, or any other psychiatric disorder or conditions. *Employer/Carrier's Exhibit #1, p. 11, line 9 through p. 13, line 7.*

Having concluded that Claimant had not suffered any psychiatric injury as a result of this September 15, 2005 industrial accident, Chacko declined to address MMI and impairment.

Analysis

9. Employer/Carrier defend the instant claim on two grounds: the claim for authorization for psychiatric care and treatment pursuant to the recommendation of Dr. Charles Walker has been waived as it was ripe, due and owing when the parties went to trial on September 25, 2007; and, the industrial accident is not the major contributing cause of any need for psychiatric care. The undersigned disagrees with the first defense asserted but finds merit in the second.

10. A final hearing in connection with this workers' compensation claim was initially convened on September 25, 2007 and, again, on June 19, 2008. That hearing was occasioned by petitions which were filed on August 3, 2006, October 10, 2006, November 15, 2006 and December 19, 2006. None of these petitions included a claim for psychiatric care. As previously stated, the instant proceeding was held pursuant to petitions for benefits which were filed on June 23, 2008, January 7, 2009 and February 6, 2009.¹ All claims were dismissed with the exception of the one for authorization for psychiatric care and treatment pursuant to the recommendations of Dr. Charles Walker.

11. Dr. Weller makes no specific recommendations of his own. Rather, he concludes that although in partial remission due to the treatment by Dr. Walker, Claimant still needs further psychiatric care. Weller then simply defers to Dr. Walker. The undersigned rejects any deferral to the opinions of Dr. Walker as the record establishes that he was not an authorized treating physician, IME or EMA in this case. See, §440.13(5)(e), Fla. Stat. (2005). Further, Walker's records have not been made a part of the record. Had they been, it would have at least been possible to determine the nature of the treatment

The first of these seeks authorization for steroid injections, authorization of surgery, authorization of a return appointment with Dr. Imfeld and authorization of past and future treatment with Dr. Walker (a psychiatrist). The second petition seeks a determination of the compensability of Claimant's bilateral upper extremities and psychiatric care pursuant to the recommendation of Dr. Walker. Claimant's third petition seeks temporary indemnity benefits.

Walker provided -- including the reason that the treatment was provided. It would also have been possible to determine when he first made any recommendations for treatment.

12 From the instant record, it is not possible to determine the precise nature of the Dr. Walker's recommendations or when he made them. Second, as Walker was never authorized, there is no reliable evidence relating to major contributing cause of the unspecified recommendations. Certainly, Dr. Chacko does not believe that Claimant suffers from any psychiatric condition attributable to the industrial accident.

CONCLUSIONS OF LAW

In light of the foregoing, it is the ruling of the undersigned that the claim is denied in its entirety. Done and ordered in Tampa, Hillsborough County, Florida.

Tavia E. Jenkins

Judge of Compensation Claims

I HEREBY CERTIFY that a true and correct copy has been sent via us-mail to the counsel of record on April 15, 2009.

Candy M. Conchie

Candy McConchie
Executive Secretary to Judge Jenkins