

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF JUDGE OF COMPENSATION CLAIMS
PORT SAINT LUCIE DISTRICT

EMPLOYEE:

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Fort Pierce, Florida 34987

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OJCC#: 07-036066RDM

VENUE: Saint Lucie County

D/A: 10/27/2007

ORDER ON THE MERITS

A MERITS HEARING was conducted in this matter.

The parties enter into stipulations and frame the issues as follows:

- A. The Judge of Compensation Claims (JCC) has jurisdiction over the parties and subject matter.
- B. The parties were properly notified of the merits hearing.
- C. As to the particulars of this case the parties agree:

1. Claimant sustained injury by accident on the date indicated while working in Saint Lucie County, Florida.
2. There was an employer/employee relationship.
3. Workers' compensation insurance coverage applies.
4. The accident is accepted as compensable.
5. The employer was timely notified of the accident.
6. No indemnity benefits are at issue.
7. Medical bills payable under this order, if any, will be handled administratively with the JCC retaining jurisdiction to determine specific amounts due, to the extent jurisdiction otherwise vests with the JCC.
8. All issues pertaining to attorney's fees and costs are reserved for subsequent hearing.

D. Claimant seeks the following:

1. A determination that he sustained a compensable injury to his left foot as a result of the industrial accident.
2. Medical care with Douglas L. DeMar, D.P.M., or another suitable podiatrist.
3. Payment to Dr. DeMar for medical services rendered December 11, 2007.
4. Attorney's fees and costs.

E. The employer/carrier (E/C) responds stating:

1. Injuries to the right wrist, right elbow and right leg are accepted as compensable.
2. Claimant's left foot injury, if any, is personal in nature, preexisting, or not otherwise causally related to the industrial accident.

3. The industrial accident is not the major contributing cause of any need for medical treatment or disability connected with claimant's alleged left foot complaint.

4. Medical treatment of claimant's left foot is not medically necessary nor causally related to the industrial accident.

5. All expenses that are causally related to the industrial accident have been timely provided.

6. General denial of all remaining claims.

7. Costs pursuant to section 440.34.

F. E/C authorized a change of physicians from Jeffrey Lazarus, M.D., to Edward Rossario, M.D., both physicians being orthopedic surgeons. Claimant seeks care with both an orthopedic surgeon and a podiatrist for his left foot condition. Accordingly, the claim for a change of physicians is withdrawn.

G. All outstanding Petitions for Benefits are resolved by this order except to the extent jurisdiction is reserved herein.

HAVING CONSIDERED the evidence presented, together with argument of counsel, I make the following determinations:

1. The JCC has jurisdiction over the parties and subject matter.

2. The parties were properly notified of the merits

hearing.

3. The stipulations of the parties are accepted and incorporated by reference.

4. Claimant is 52 years old. He was graduated from the University of South Florida with a degree in finance and economics. Subsequently, he worked mostly in the banking industry. He then moved into real estate and was employed as a mortgage broker.

Claimant moved to Saint Lucie County to assist his father. He came to work for the employer as a golf cart attendant, employed part time. This was his only job.

Claimant denies any preexisting health problems whatsoever including preexisting orthopedic injuries. He makes a pleasant appearance.

On the date of accident claimant was putting golf carts away, the course having closed for the day. This required driving the carts to a storage shed.

In the process, claimant was struck by a passenger car and knocked to the ground. Claimant testifies he thought his left wrist was broken. He states it was "dangling" and lacerated. He was in much pain. Claimant testifies he must have driven himself to the hospital although he does not remember doing it. Hospital personnel, according to claimant, believed he had a concussion and provided

immediate attention.

Claimant states, "It seems like they took a thousand x-rays." He goes on to state that he was "pretty much hurting everywhere." He drove himself home early the following morning. The emergency room doctor recommended follow-up with an orthopedic surgeon. Claimant was closely checked over an extended time period regarding the possibility of a concussion and it was determined this was not an issue. No concussion sequella instructions were given.

5. E/C authorized follow-up care with Jeffrey J. Lazarus, M.D., a board certified orthopedic surgeon. Claimant first presents to this physician on October 4, 2007, with bilateral wrist pain and elbow pain. The right wrist appears to Dr. Lazarus as being the most significant injury, it having been placed in a splint. Claimant complained of pain in the left wrist as well. No lower extremity pain is reported.

Dr. Lazarus was authorized to treat the right wrist, but not the left. On October 5, 2007, the carrier was contacted and the doctor given authorization to treat the left wrist as well.

A follow-up examination occurs October 9, 2007. Claimant's wrist complaints were decreasing. Again there

are no lower extremity complaints recorded in the doctor's notes.

On November 6, 2007, claimant sees Dr. Lazarus for the third and final time. Again Dr. Lazarus reports wrist pain and no lower extremity complaints. Claimant continues with physical therapy. It was anticipated claimant would be placed at maximum medical improvement (MMI) on a follow-up visit anticipated to occur about one month later.

Dr. Lazarus comments he remembers claimant because of the unusual nature of the accident being "a little on the finny side." He rejects the notion that no note was made relative to heel pain because E/C had not authorized treatment of this injury. Pointing to the fact that he called E/C relative to the left wrist, and commenting that he is ordinarily a patient advocate, this physician goes on to state, "If he tells me he's got a problem, I'm not going to brush him off. We don't get paid to brush them off, we get paid to take care of things."

6. Claimant testifies by October 9, 2007, he was having left foot pain. He states he told Dr. Lazarus about the pain and they argued about causation. According to claimant, Dr. Lazarus wrote the words "plantar fasciitis" on a piece of paper and told him to look it up on the internet.

However, claimant's foot continued to worsen so he called the insurance adjuster requesting medical care. No date is given. He describes his foot as getting worse daily. Upon E/C's refusal to provide treatment, he looked up a doctor in the phone book and selected Douglas L. DeMar, D.P.M..

7. Dr. DeMar is a board certified podiatrist practicing in Vero Beach, Florida. Dr. DeMar performs his initial examination on December 11, 2007. Claimant complained of a painful left heel of forty five days duration with increasing pain. He believes claimant advised him that prior doctors treated all his other problems but ignored his foot. Claimant was given a cortisone shot in the heel and prescribed medication. Physical therapy is recommended.

Dr. DeMar diagnosis claimant as having plantar fasciitis. According to this witness, repetitive trauma is the primary cause. A heel spur aggravating the fascia can be another reason. A third cause can be trauma although his testimony on point is reluctant: "Yes, it can be traumatically induced, I have read about it. I couldn't sit here and cite you an article though."

Dr. DeMar concedes he would have expected heel complaints at the emergency room if this injury was

traumatically induced, although it can develop more slowly. However, in answering the question as to causation if claimant did not complain until sometime after November 6, 2007, Dr. DeMar responds, "I honestly can say that without extenuating circumstances it might be hard to attach the two."

8. Edward Rossario, M.D., a board certified orthopedic surgeon, initially examines claimant on June 2, 2008. He opines a disruption of the foot tendon from the accident causing pain to tendon develops slowly is "...possible, but it's not likely." Claimant advised Dr. Rossario that his left foot hurt from the time of the accident.

At the time of the deposition Dr. Rossario had ordered an MRI of the foot which was pending. Although an MRI will confirm this opinion, Dr. Rossario does not believe claimant has a fracture because his complaints responded positively to Dr. DeMar's injections.

Dr. Rossario explains a contusion or acute trauma can make a plantar fasciitis clinical and require treatment.

This physician's causation opinion is summed up in the following testimony:

"If he's coming up with six weeks or two months or however long after then it really doesn't make sense it was

associated with the accident, and I can't see how it can be. If, like you say, he woke up the day after being on pain meds and his left foot was hurting you can assume it was probably related to that injury."

He goes on to qualify that testimony by stating that even if symptoms developed a week after the accident it could be related to an injury.

9. Dr. Roassario testifies an x-ray of claimant's left foot reveals a prominent heel spur. A repetitive stress problem, that is plantar fasciitis, causes a traction spur of the heel. This results from constant stretching and pulling at the point where the plantar fasciia attaches to the base of the heel resulting, over time, in a calcification.

It is unclear if Dr. Rossario had access to all hospital records. The parties do not explore the radiology finding on the date of accident to the effect claimant had a "large plantar calcaneal spur" (large heel spur) on the right foot. Dr. Rossario's take on whether this confirms his opinion of claimant's plantar fasciitis as being a problem that developed over a long term would be of potential value.

10. If claimant's version of events is accurate, then Dr. DeMar becomes an authorized treating physician by

operation of law and his testimony may be considered. See, *Florida Distillers v. Rudd*, 751 So. 2d 754 (Fla. 1st DCA 2000). Claimant nonetheless retains the burden of proving causation by competent and substantial evidence.

The question of major contributing cause is not an element in reaching a decision in this instance.

11. To a certain extent, determining causation rests on claimant's history vis-a-via that history reported by Dr. Lazarus. In drawing a conclusion, I am mindful medical histories can be recorded inaccurately particularly in a busy medical practice or the hubbub of an emergency room. Nonetheless, claimant's history of events is too inaccurate to be accepted.

Initially claimant testifies the accident happens near dusk, the hospital emergency room is approximately four miles away and he drives himself directly to the hospital. He advises hospital personnel that he went home first and the records show him initially presenting to the emergency room at 8:04PM. The hospital history appears to be the correct version. Although there is some indication claimant had been drinking, alcohol consumption is not otherwise shown to be a factor.

Claimant emphasizes that while he hurt throughout his body, his major complaint was the left wrist which he

believed was broken. Emergency room records show that a triage nurse and another nurse, on separate occasions several hours apart, as well as the emergency room doctor received complaints of right sided injuries only. This included the right toe, right elbow and right wrist. Claimant, however, emphasizes the primary injury was to the left wrist, stating it was bleeding, painful and appeared broken.

Claimant not only testifies that it seemed like the hospital "took a thousand x-rays", he goes on to state these x-rays included the left foot, further reporting he later reviewed the hospital records and confirmed left foot x-rays were taken, notwithstanding the fact hospital records show only a right foot x-ray was performed.

Claimant contends he sustained a concussion, but on two different occasions, two different emergency room nurses analyze claimant's coherence and detect no sign of one.

Because I find claimant's recollection of events to be untrustworthy, and, in fact, puzzling, I accept the testimony of Dr. Lazarus to the effect that during his course of treatment claimant never reported a left foot injury and certainly made no complaints of foot pain by the time of the second visit of October 9, 2007.

12. Taking Dr. Lazarus' history as accurate, particularly given the existence of a bone spur in the right heel on the date of accident, and a delay of complaints of pain in the left foot until a time remote to the accident, probably late November, the most likely scenario, without so finding, is that claimant developed left heel complaints which coincidentally became symptomatic after October 27, 2007, but were not caused by this industrial accident.

This estimation aside, I find claimant fails to meet his burden of proving there is a causal connection.

13. Based on the foregoing findings, the claim for future left foot treatment as well as payment of Dr. DeMar's medical bill is denied.

14. Based on the stipulation of the parties, all issues pertaining to attorney's fees and costs are reserved for subsequent hearing.

WHEREFORE, it is

ORDERED AND ADJUDGED as follows:

a. The claim for a determination that claimant sustained a compensable industrial accident resulting in injury to his left foot is denied.

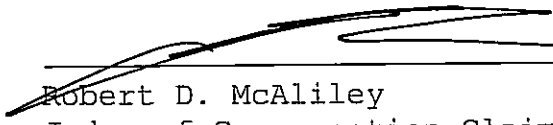
b. The claim for provision of future medical care of the left foot with an orthopedic surgeon and a podiatrist

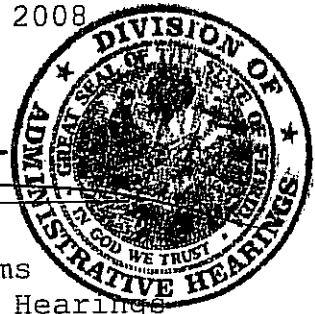
is denied.

c. The claim for payment of a medical bill incurred with Douglas L. DeMar, D.P.M., is denied.

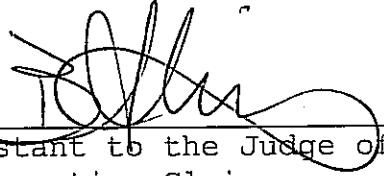
d. All issues pertaining to attorney's fees and costs with survive the foregoing findings are reserved for subsequent hearing.

DONE AND ORDERED in chambers, in Fort Pierce, Saint Lucie County, Florida, this 10 day of October, 2008


Robert D. McAliley
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I HEREBY certify that a true and correct copy of the foregoing has been mailed via U.S. Mail to all of the parties on this 10 day of October, 2008.


Assistant to the Judge of
Compensation Claims