

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

James Lakatos,
Employee/Claimant,

vs.

OJCC Case No. 12-026030DSR

Coastal Steel, Inc./Summit,
Employer/ Carrier/Servicing Agent.

Accident date: 8/26/2011

FINAL COMPENSATION ORDER

This cause was scheduled to be heard before the undersigned at Sebastian, Indian River County, Florida on September 11, 2013, upon the Claimant's claims for authorization of surgery as recommended by Dr. Harrison; costs and attorneys' fees. The Petition for Benefits was filed on November 13, 2012. Mediation occurred on February 11, 2013, and the parties' pretrial compliance questionnaire was filed on February 15, 2013. Dennis D. Smejkal, Esq., represents the Claimant. Paul L. Westcott, Esq., represents the Employer/Carrier.

The defenses were the industrial accident is not the major contributing cause for the need for surgery; need for surgery subject to apportionment; that no costs or attorneys' fees were due and owing.

The following documentary items were received into evidence:

1. Pretrial Stipulation Sheet and Order dated February 18, 2013, together with the documentary items required by Rule 9.180 (Judge's Exhibit #1).

In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the testimony and may not refer to each piece of documentary evidence, I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. The items to which the parties were in agreement on the pretrial stipulation sheet are accepted and adopted as findings of fact.

2. The parties stipulated that the Claimant suffered an industrial accident arising out of and in the course and scope of his employment on August 26, 2011, and suffered injuries to his right arm.

3. Dr. Richard Harrison recommended surgery to include a right ulnar nerve decompression and an interior transposition, right elbow arthrotomy, removal of loose bodies, manipulation under anesthesia of the right elbow, and a right elbow medial collateral ligament reconstruction and autograft versus allograft.

4. On April 8, 2013, the undersigned appointed Dr. Robert Murrah as the Expert Medical Advisor in this matter. Dr. Murrah issued his EMA report on July 19, 2013.

5. On September 10, 2013, the parties contacted the undersigned by letter indicating that they agreed that no additional testimony or evidence was necessary to rule on the pending claims. The parties agreed that there was no clear and convincing evidence to suggest that Dr. Murrah's opinions should not be accepted and that the Order should be entered based on the opinions of Dr. Murrah.

6. The findings of Dr. Murrah are as follows:

- a. The patient suffered an industrial injury to his right elbow on August 26, 2011.
- b. Appropriate conservative care has been rendered and is felt to be compensable.
- c. Diagnostic studies identified significant pre-existing arthritis right elbow plus loose bodies within the joint.
- d. The mechanism of injury, history and physical findings suggest intermittent locking and loss of motion related to loose fragments created by the August 26, 2011, industrial injury.
- e. Exam and MRI do not show any ulnar collateral ligament tear or medial instability.
- f. Nerve conduction studies and EMG's reportedly do not confirm ulnar neuritis
- g. A limited surgical procedure to arthroscopically retrieve loose bodies and remove easily accessible osteophytes is felt to be reasonable, recommended, and causally related to the August 26, 2011 industrial accident.
- h. No manipulation under anesthesia is appropriate or recommended to avoid further elbow damage or predispose to heterotopic ossification.
- i. No ulnar collateral ligament repair is needed or indicated.
- j. The patient does not have ulnar neuritis, and ulnar nerve transposition is not indicated.
- k. Immediate postop range of motion with active physical therapy and possible intraoperative corticosteroid injection is recommended.
- l. MMI is anticipated three to six months postoperatively.
- m. PPI is estimated 1-2% but to be determined by the treating physician upon MMI.
- n. Barring complication, any further treatment of the patient's right elbow would be primarily related to his pre-existing degenerative joint disease

- and should be pursued under his commercial health insurance.
- o. No permanent work restrictions are associated with the August 26, 2011, industrial injury.

7. Based on the opinions of Dr. Murrah I find that the Claimant does not have an ulnar collateral ligament tear or medial instability and does not have an ulnar neuritis. As such, the surgery should be limited to an arthroscopic retrieval of the loose bodies and the removal of osteophytes. There is no need for manipulation under anesthesia, no ulnar collateral ligament repair is needed and the ulnar transposition is not necessary.

8. There is no evidence that the surgery costs should be apportioned as asserted by the Employer/Carrier in their defenses.

9. Since the Claimant has prevailed after hiring an attorney, his attorney is entitled to be paid a fee. Jurisdiction is reserved as to the amount and the party responsible.

10. Jurisdiction is reserved as to the prevailing party for the consideration of reimbursement of the taxable costs of these proceedings.

WHEREFORE, it is hereby ORDERED and ADJUDGED that:

1. The Employer/Carrier shall authorize an arthroscopic retrieval of the loose bodies and the removal of osteophytes as found by Dr. Murrah.

2. The Employer/Carrier shall pay the total cost of the surgery without apportioning out any amount.

3. The Claimant's attorney is entitled to be paid a fee. Jurisdiction is reserved as to the amount and the party responsible.

4. Jurisdiction is reserved as to the prevailing party for the consideration of reimbursement of the taxable costs of these proceedings.

DONE AND ELECTRONICALLY SERVED ON COUNSEL AND THE CARRIER

this 12th day of September, 2013, in Sebastian, Indian River County, Florida.



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