

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

Glen Ellis Little,
Employee/Claimant,

OJCC Case No. 16-021907MAM

vs.

Accident date: 8/7/2016

Brentwood Health & Rehab/Gallagher
Bassett Services, Inc.,
Employer/Carrier/Servicing Agent.

Judge: Mark A. Massey

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FINAL COMPENSATION ORDER

This cause came for hearing before the undersigned Judge of Compensation Claims on 06/02/17. Claimant was present and was represented by Erika L. Brenneman, Esquire. E/C was represented by Paul T. Terlizzese, Esquire. The hearing was held for adjudication of the petition for benefits filed 09/08/16. Jurisdiction was reserved on the petition filed 03/14/17 as it has not yet been mediated and is therefore not procedurally ripe for adjudication.

CLAIMS

1. Compensability.
2. Temporary total disability benefits from 08/07/16 to 09/02/16.
3. Adjustment of average weekly wage.
4. Authorization of a PCP or other appropriate physician.
5. Penalties, interest, costs and attorney's fees.

DEFENSES

1. Entire claim denied. No causal relationship between claimant's employment and injury.
2. Claimant's fall occurred due to an idiopathic and/or pre-existing condition.
3. No accident or injury arising out of employment.
4. Claimant's employment is not the major contributing cause of need for treatment.
5. Average weekly wage is correct per 13 week wage statement. No indemnity due or owing.
6. No indemnity due based on lack of causal relationship.
7. Penalties, interest, costs and attorney's fees not due or owing.

JUDGE'S EXHIBITS

1. Petition for benefits filed 09/08/16 (D-1)
2. Response to petition filed 09/22/16 (D-3)
3. Pre-Trial Stipulation filed 01/20/17 (D-21)
4. Claimant's trial summary, for argument only (D-60)
5. E/C's Hearing Information Sheet, for argument only (D-64)

JOINT EXHIBITS

1. Deposition of Alana Kelehar taken 03/10/17 with attachments (D-59)
2. Deposition of Kathy Daniels taken 03/10/17 with attachments (D-57)
3. Deposition of Bambi Penta ARNP taken 05/01/17 with attachments (D-58)
4. Written statement of Chris Caouette (D-62)

CLAIMANT'S EXHIBITS

None other than the joint exhibits listed above

EMPLOYER/CARRIER'S EXHIBITS

1. Notice of Denial (D-63)
2. Deposition of claimant taken 11/17/16 (D-41) (initially marked for identification and later admitted by agreement of the parties)

WITNESSES

Claimant testified live on his own behalf. Chris Caouette testified live on behalf of E/C.

FINDINGS OF FACT

Claimant worked as a CNA for the employer beginning in February 2015. In February 2016 claimant sustained non-work related fractures to the tibia and fibula in his right leg. There was no precipitating trauma, just a spontaneous "snap" while walking in a normal manner. The fractures required surgery and claimant was out of work from about the end of February 2016 to the end of May 2016. He returned to his normal job duties, but admits that he was never symptom-free, that he walked with a limp, and that his right leg would "give out" on occasion.

On 08/07/16, claimant was walking down a hallway in the course and scope of his employment, when he fell. He yelled for help and his supervisor, Chris Caouette, whose office was just around the corner, came to the scene immediately and found claimant on the floor. Within the next few minutes, claimant completed a written report in which he stated, "I was walking down 100 hall attempting to stop a resident from going outside in the rain. I felt my left leg slip on water on floor. That is when my right leg gave out and went to the floor." At or

around the same time, Mr. Caouette completed a report in which he stated, “CNA Glen Little was walking down the 100 hallway. He felt his right leg ‘give way’ and fell. He called for help, and I found him on his back outside of room 114. I did not observe any water on the floor.” Mr. Caouette testified that the information in his report was based on claimant’s statements to him and the internal quotation marks are claimant’s own words.

Claimant insists it was raining on the day of the accident, and that there was water on the floor, and that the water caused him to slip. Mr. Caouette does not believe it was raining that day, and is equally insistent that there was no water on the floor. He states he would have seen it if there was. Further, claimant insists that Mr. Caouette called another employee to sop up the water with a towel, while Mr. Caouette insists that never happened. To the extent they differ, I accept the testimony of Mr. Caouette over that of the claimant. I find claimant’s testimony to be inconsistent and unreliable. Over time, and even through the course of the hearing, parts of the claimant’s story changed (for instance, how much water got on his pants, and where on his pants, as well as the exact mechanics and location of the accident). I found the testimony of Mr. Caouette (who is a disinterested witness who no longer works for the employer) to be logical, consistent and credible. I find that claimant did not “slip” due to water or any other hazard associated with the employment.

The foregoing is not dispositive, however. Even “unexplained falls” which occur in the course and scope of a claimant’s employment, but for which a specific occupational cause is not proven, are generally considered compensable. *Lopez v All Star Investigations*, 128 So. 3d 265 (Fla. 1st DCA 2013); *Ross v Charlotte County Public Schools*, 100 So. 3d 781 (Fla. 1st DCA 2012) (where an unexplained fall happens while claimant is actively engaged in the duties of his

employment, and where there is no other established basis for the fall, the causal relationship between the employment and the accident is met). Nevertheless, I find that claimant here suffered from a pre-existing condition (multiple fractures of the right leg requiring surgery and hardware), which claimant does not deny. I further find, based on claimant's own admission, that the right leg continued to be symptomatic between May 2016 and August 2016, causing him to walk with a noticeable limp (as also testified to by Mr. Caouette), and that the right leg periodically *gave way* even prior to 08/07/16. Claimant's written account of the incident, and his statement to Mr. Caouette, both specifically include the fact that his right leg "gave way" in the fall. Claimant attempted to claim that his left leg slipped in water first, then the right leg gave way, but I reject this assertion as lacking in credibility and in logic. Based on the totality of the evidence, I find that the fall was caused by the pre-existing condition, which caused the claimant's right leg to give way, causing him to fall. As a result, the fall did not arise out of claimant's employment and is not compensable.

Even if the fall which occurred on 08/07/16 is deemed to have "arisen out of" claimant's employment, I find that claimant has not carried his burden of proving that he suffered an "injury" as a result of the fall. Claimant offered the testimony and records of Bambi Penta, ARNP. I find this is not competent substantial evidence to support a finding of compensability. Ms. Penta was never properly qualified as a "physician" for purposes of providing expert medical testimony. Even if she had been properly qualified, the only diagnosis she offered was "pain," and she specifically testified that she had **no opinion** on whether the fall caused a temporary exacerbation, permanent aggravation, or no additional problems or damage. (p.23) Without competent medical evidence or testimony claimant cannot carry his burden of proving

the existence of a compensable injury. Brasington Cadillac-Oldmobile v Martin, 641 So. 2d 442 (Fla. 1st DCA 1994).

WHEREFORE it is hereby ORDERED AND ADJUDGED:

1. All claims raised in the 09/08/16 petition for benefits are hereby denied and dismissed.

DONE AND SERVED this 19th day of June, 2017, in Tampa, Hillsborough County, Florida.



Mark A. Massey
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