

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

| | | |
|--|---|----------------------------|
| Amy M. Paulding, |) | |
| Employee/Claimant, |) | |
| |) | |
| vs. |) | |
| |) | OJCC Case No. 07-011734JEM |
| Brooksville Healthcare, |) | |
| Employer, and |) | Accident date: 3/27/2007 |
| |) | |
| Premier Group Insurance, |) | |
| Carrier/Servicing Agent. |) | |
| |) | |
| <hr/> |) | |
| Thomas Clifford, Esq., Attorney for the |) | |
| Claimant |) | |
| W. Rogers Turner, Esq., Attorney for the |) | |
| Employer/Carrier |) | |

ORDER ADDRESSING THE MERITS OF A PETITION FOR BENEFITS FILED
4/27/07

After due notice to the parties, a hearing on this claim was held in Tampa, Hillsborough County, Florida. The Parties were represented by Counsel as indicated hereinabove.

Claim was made for the following:

1. Compensation for temporary total (TTD) or temporary partial disability (TPD) from March 27, 2007 to the present and continuing for the time and in the manner provided by law.
2. Determine the compensability of the claimant's injuries.

3. A reasonable attorney fee for the attorney for the Claimant.
4. Interest on all past due payments of compensation.
5. The cost of these proceedings.

The claim was defended on the following grounds:

1. No injury by accident arising out of and in the course and scope of claimant's employment.
2. Claimant's employment is not the major contributing cause of her condition or need for treatment.
3. Claimant has voluntarily limited her income.
4. Claimant's loss of income is not causally related to her injuries.
5. Apportionment.
6. The employer seeks reimbursement, from the claimant, of the costs of these proceedings.
7. Claimant is not entitled to benefits per sec. 440.09(4) F.S for violation of sec. 440.105
(The employer/carrier aver that the claimant denied prior injuries to the lumbar or neck and only admitted a prior right shoulder injury while they state that the evidence will show she had prior injury to the shoulder and neck, and down into the back and legs with a lengthy history of low back pain.)
8. The employer/carrier denies any liability to the claimant for the payment of interest, costs, or attorney's fees.

The parties entered into the following stipulations:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.
2. Venue properly lies in Hillsborough County, Florida.
3. Notice of hearing and notice of injury were properly given as required by the Workers' Compensation Law.
4. On 3/27/07, the Claimant was employed by the Employer herein at an average weekly wage of \$425.43 per week, resulting in a compensation rate of \$283.63 (TTD rate)/\$272.28 (TPD rate) per week.
5. No disability compensation or medical benefits have been furnished to the Employee by the Employer/Carrier.

At the trial of this cause, the following documents were admitted into evidence:

Judge's Exhibits:

1. Petition for Benefits filed 4/27/07.
2. Pretrial Stipulations, pretrial Compliance Questionnaire and Order entered 7/23/07.
3. Claimant's Trial Statement.
4. Employer/Carrier's Hearing Information Sheet.

Claimant's Exhibits:

1. Transcript of the deposition testimony of Kim B. Powers taken 1/9/08.
2. Transcript of the deposition testimony of Adam Greenfield, D.O. taken 10/30/07.
3. Transcript of the deposition testimony of Katy Goethe-Pugh taken 1/7/08.

Employer/Carrier Exhibits:

1. Employer/Carrier's Supplemental Stipulations and Final Witness List.
2. Transcript of the deposition testimony of Richard Goldberger, M.D. taken 12/11/07.
3. Surveillance DVD taken on 9/24, 25, & 27/07.
4. Surveillance DVD taken on 6/30/07 and 7/4/07.
5. Petition for benefits filed against Dog Lovers of Tarpon on 8/2/04.
6. Medical report of Robert D. Gruber, D.O. dated 5/24/04.
7. Transcript of the deposition testimony of Amy M. Paulding taken 6/19/07.

After due consideration of this matter and after having the opportunity to review the documentary matters and having had the opportunity to observe the candor and demeanor of the witnesses who did appear and give live testimony before me, and having endeavored to resolve all conflicts of fact in the evidence presented herein, I do make the following findings of fact:

1. I have jurisdiction of the facts and the subject matter of this claim.
2. The stipulations as entered into by and between the parties are hereby adopted as

findings of fact and incorporated herein by reference.

3. The claimant is a 32-year-old female. The claimant was hired by Brooksville Health Care Center, the employer, to work as a certified nursing assistant. Her first day of work was March 19, 2007. Claimant was assigned to work the 3:00 p.m. to 11:00 p.m. shift and testified that there were generally 3 to 4 people working on the floor she to which she'd been assigned. Claimant testified that on 3/27/07 she and a co-worker were assisting a bedridden patient she identified as Ron to get out of bed and into a shower. She said that Kim helped her get the claimant, whom she said was over six-feet tall and weighed more than 200 pounds (claimant testified that she's 5 foot tall and weighs 140 pounds), out of bed. She testified that as she was moving Ron into the shower she slipped and fell and Ron fell on top of her. She says that she managed to get the patient off of her and went and got Kim to help get the claimant into the shower chair. She said that she then gave the patient his shower and got him back into bed. She testified that she reported the accident to Wendy who completed an incident report and inquired as to whether the claimant was injured. Apparently the claimant was unaware of any injuries at that time as none were reported.

4. The claimant completed her shift on 3/27/07. She returned and worked her normal shift the following day. She testified that 3/29/07 was an orientation day for new employees and she was required to be at work at 8:30 a.m. The claimant said that she'd had a bad headache and her low back hurt that morning. She testified that she was having difficulty concentrating and was apparently very drowsy. According to the director of nursing, Cheryl Faungdo, Jackie Hall was the orientation presenter. Ms. Faungdo testified that Ms. Hall was concerned that the claimant may have been under

the influence of an illegal or controlled substance and requested that the claimant submit to a drug screen. Claimant confirms this testimony, though in a shaded light. Claimant states that Ms. Hall approached and asked what she “on”. The claimant took issue with what she perceived as an accusation that she was on drugs and refused to submit to the drug test. It was at this point that Ms. Faundgo came upon the claimant, Ms. Wakefield, and another employee in the hall. She testified that the claimant was complaining very loudly about having to take a drug test. She said that she entered the conversation and at that point the claimant told her that she’d had a migraine that morning and had taken pain medication. Ms. Faundgo testified that she and the claimant then discussed the problems the claimant had had since she’d begun working there and that the claimant was putting her job in jeopardy. With that, Ms. Faundgo testified, the claimant resigned. The resignation was accepted.

5. Later that afternoon the claimant came to the office and reported having injured herself in the incident of 3/27/07. The claimant was again asked to submit to a drug screen because one is required when an accident is reported. The claimant did submit to the drug screen and the results came back negative. Ms. Faundgo was asked about the incident report and stated that one had been entered in the records but that there had been no mention of the claimant having been injured in the incident. Ms. Faundgo testified that according to the incident report the patient involved was Bill Bradford. She confirmed that Mr. Bradford was unable to walk but stated he was actually five foot seven inches tall and weighed between 130 and 140 pounds.

6. Wanda Moak is the employer’s administrator. She testified that she was aware of the

events of 3/29/07. She confirmed that the claimant resigned that day. She also confirmed that the claimant took a drug test but only after she had resigned and then later reported a work accident. She said that the claimant sought no medical care related to the March 27, 2007 incident until after she had resigned.

7. The claimant testified that she sought medical care on her own at the Brooksville Regional Hospital. She said that they told her not to work and to see a workers' compensation doctor. The claimant then sought follow-up care with her regular doctor, Doctor Greenfield, who, she said, had been treating her for tendonosis in her shoulder.

8. The claimant has not looked for any work since March 29, 2007. She states that she doesn't know what her limitations are and she believes her doctors don't want her to return to work. She said that she didn't believe she'd ever be able to return to work as a CNA. Surprisingly, the claimant testified that she wasn't sure if she needed medical treatment or not. She also testified that she didn't know if she had been getting better or worse.

9. The claimant is alleged to have sustained injuries to her cervical and lumbar spine and that she has symptoms into her legs and arms. The claimant denied having had back pain or neck problems prior to this accident. The claimant had independent medical evaluations by Kim Powers, D.O. and Richard Goldberger, M.D. To each she denied any history of prior lumbar or low back injuries or low back problems. Dr. Powers, a family practitioner, concluded that the claimant had suffered both cervical and lumbar injuries in the industrial accident. Dr. Goldberger was of the opinion that the claimant may have had soft tissue injuries to the cervical and lumbar spine but was

of the opinion that she had fully recovered and had no residual impairment. He was unable to state whether the injuries were related to any specific incident.

10. The facts of the claimant's past legal and medical history are quite clear. In 2004 the claimant was working for a retail store called Dog Lovers of Tarpon. She was stocking dog food on shelves in February 2004 and hurt her right arm and shoulder when one of the bags came down and struck her on the shoulder. The claimant was out of work for approximately two years following that accident. She was under the care of a number of physicians for her complaints. The record is clear that the claimant's complaints went far beyond the shoulder. In fact, the claimant was evaluated for complaints of cervical symptoms, headaches, and low back complaints which she alleged were accompanied by pain and numbness into the legs. The claimant has been under active treatment from Dr. Greenfield since 2005. While Doctor Greenfield's testimony was objected to as he was not an authorized physician, independent medical evaluator, or expert medical advisor, his deposition testimony was admitted for historical purposes. According to the doctor's testimony he'd treated the claimant off and on since 2005. He had addressed her shoulder complaints for a three or four month period in 2005. He had also been treating the claimant for complaints related to the cervical spine. He testified that the claimant had had lower back pain consistently for the last few years and that he'd been prescribing Lortab, a pain medication, for the claimant low back and neck pain. In fact, he had provided the claimant with a prescription for these medications as recently February 8, 2007.

11. The claimant pursued workers' compensation benefits for back injuries she alleged were the result of the 2004 industrial accident. While the petitions filed did not list the back as one of the

body parts injured, the petition filed 8/2/04 sought authorization for a MRI of the lumbar spine. The claim also sought payment for past care provided to her by physicians at the Florida Spine Institute. Their records establish that in 2004 the claimant was diagnosed with cervicothoracic and lumbar myofascial pain syndrome as well as both cervical and lumbosacral radiculitis. The claimant did have, at that time, a diagnosis of right shoulder rotator cuff syndrome. The records of the Office of the Judges of Compensation Claims reflect that the claims against Dog Lovers of Tarpon were settled in November 2004.

12. It is found, in view of the forgoing, as well as considering the surveillance video (which was incomplete though certainly revealing) and testimony of Dr. Goldberger, and having had the opportunity to observe the claimant during the course of the final hearing, that the claimant's testimony is simply not credible. Her testimony that she was unaware or had forgotten the prior back problems is rejected outright. It is found that the claimant knowingly made statements, or concealed material information, solely for the purpose of obtaining workers' compensation benefits. This conduct is a direct violation of sec 440.105(b)1. F.S. Therefore, it is found, the claimant is not entitled to benefits under the workers' compensation laws pursuant to operation of sec. 440.09(4)(a) F.S.

IT IS, THEREFORE, ORDERED that the Employee's claims for benefits under the workers' compensation laws of the State of Florida, as raised by petition, should be, and are hereby, denied and dismissed.

The parties are herewith notified that the court file relating to the instant claim will be destroyed six (6) months from the date this order becomes final, if not appealed, or six (6) months after the date of mandate or other order of final disposition if appeal is taken

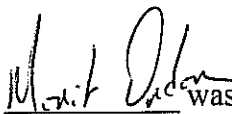
A party desirous of retaining any portion of the closed file must so notify this office not less than 30 days prior to the destruction date.

DONE AND ORDERED in chambers in Tampa, Hillsborough County, Florida.





Joseph Murphy
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Tampa District Office
1000 North Ashley Drive, Suite 309
Tampa, Florida 33602-3330
(813)272-2380
www.jcc.state.fl.us

THIS IS TO CERTIFY that the foregoing  was entered and that a copy was sent by U.S. Mail this 14th day of February 2008 to each of the following:

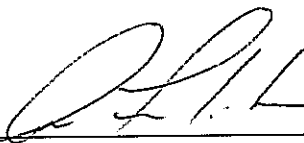
Amy M. Paulding
632 Erin Way
Brooksville, Florida 34601

Brooksville Healthcare
114 Chatman Boulevard
Brooksville, Florida 34601

Premier Group Insurance
Post Office Box 2028
Pace, Florida 32571

Thomas T. Clifford, Esquire
The Law Office of Thomas T. Clifford
1718 East 7th Ave., Suite 201
Tampa, Florida 33605

W. Rogers Turner, Jr., Esquire
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.
1560 Orange Avenue, Suite 500
Winter Park, Florida 32789



Secretary to Judge Murphy