

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

Samuel Haidy,
Employee/Claimant,

OJCC Case No. 16-004753RJH

vs.

Accident date: 6/11/2014

Martin County Sheriff's Office/North
American Risk Services, Inc.,
Employer/ Carrier/ Servicing Agent.

Judge: Ralph J. Humphries

/

FINAL COMPENSATION ORDER

This Cause came on for a merits' hearing before the undersigned Judge of Compensation Claims on **September 20, 2016** by way of DOAH's video teleconference system with the undersigned presiding from Jacksonville, Duval County, Florida and the parties appearing in Port St. Lucie, Florida. The subject matter of this hearing was a petition for benefits filed on February 26, 2016. A mediation conference on the petition was held on August 16, 2016. The claimant, **Samuel Haidy**, was present and represented by Kristine Callagy, Esquire. The employer/carrier, **Marion County Sheriff's Office/North American Risk Services**, hereinafter referred to as the "Employer" or as the "E/C" was represented by Rex Hurley, Esquire. Live testimony was received from the claimant.

The following stipulations have been reached between the parties:

1. The court has jurisdiction of the parties;
2. The date of accident is alleged to be June 11, 2014;
3. There was an employer/employee relationship at the time of the alleged date of accident;
4. Workers' compensation insurance coverage was in effect on the alleged date of accident;
5. Timely notice of the final hearing has been given.

The substantive claims for determination at the current merits' hearing are the

following:

1. Temporary partial disability benefits from June 11, 2014 and continuing;
2. Temporary total disability benefits from June 11, 2014 and continuing;
3. Authorization of a cardiologist;
4. Compensability of the claim;
5. Payment of income impairment benefits to the claimant based on the impairment rating by Dr. Borzak for the MMI date of 10/28/14 to present and continuing at the correct rate (although not included in the uniform pretrial stipulation, this issue has been mediated and the parties stipulated this issue could be tried);
6. Penalties, interest, costs, and attorney's fees.

The defenses raised by the E/C were the following:

1. Claim is not compensable;
2. Untimely notice of claimed accident;
3. Claimant did not lose time from work on June 11, 2014, waiting period applies;
4. No disability;
5. Claimant does not meet the requirements for compensability under §112.18;
6. If compensable, the appropriate impairment rating is 0% per the opinions of Dr. Nocero;
7. Penalties, interest, costs, and attorney's fees are not due or owing.

The following documents were admitted into evidence at the current hearing:

Judge's Exhibits:

1. Petition for Benefits filed with DOAH on February 16, 2016;
2. Response to Petition for Benefits, filed with DOAH on March 14, 2016;
3. Petition for Benefits filed with DOAH on July 14, 2016;
4. Response to Petition for Benefits, filed with DOAH on July 21, 2016;
5. Pretrial Questionnaire completed by the parties and filed with DOAH June 30, 2016;
6. Claimant's Prehearing Statement admitted for purposes of argument only and not as evidence, filed with DOAH on September 16, 2016;
7. Employer/Carrier's Trial Memorandum admitted for purposes of argument only and not as evidence, filed with DOAH on September 16, 2016.

Claimant's Exhibit:

1. Dr. Borzak's IME report;
2. Deposition of Dr. Borzak with attachments;
3. Human resource and payroll records with deposition of Debra Carter;
4. Deposition of Sergeant Trimble.

Employer's Exhibits:

1. Deposition of Dr. Nocero with attachments;
2. Deposition of Aimie Pieper with attachments;
3. Deposition of Sylvia Dupree with attachments.

In my determination herein I have attempted to distill all the testimony and salient facts together with the findings and conclusions necessary to the resolution of this matter. I have not necessarily attempted to summarize the substance of the claimant's testimony or the testimony of any live or deposition witness, nor have I attempted to state nonessential facts.

Because I have not done so should not be construed that I have failed to consider all of the evidence.

Based upon the evidence, I make the following findings of fact and conclusions of law:

1. I have jurisdiction of the parties and the subject matter.
2. The stipulations of the parties are accepted and adopted by me as findings of fact.
3. The evidence closed in this matter on September 20, 2016 after which closing arguments were made by the parties.
4. Dr. Borzak served as the claimant's IME physician. He is a board-certified cardiologist. Having reviewed various medical records provided to him, he testified that on June 13, 2014, he observed record showing a blood pressure reading of 154/108. He described that as a high blood pressure reading. On deposition, he testified that the records demonstrated Dr. Haskett gave the claimant an out of work note beginning June 13,

2014 which remained in place until June 18, 2014. While Dr. Borzak testified he disagreed with the opinions of Dr. Nocero that the claimant was never disabled as a result of his blood pressure, Dr. Borzak expressed no opinion regarding the claimant's disability status during the course of his deposition. A review of the report prepared by Dr. Borzak also shows no opinion regarding the claimant's disability status on any particular date.

5. According to the claimant, he worked on June 11, 2014 and June 12, 2014 without restriction.
6. Dr. Michael Nocero was retained as the employer/carrier's IME physician. Dr. Nocero is also a Board certified cardiologist. According to Dr. Nocero, both on deposition and in his report, the claimant was not disabled on June 11, 2014, the alleged date of accident. It was Dr. Nocero's opinion as expressed in his report that the claimant was not disabled from his employment as a result of his hypertension at any time.
7. Based upon the evidence before me, I find the claimant has failed to satisfy his burden that he was disabled on June 11, 2014 as a result of hypertension. I further find the claimant has failed to present competent evidence that he was disabled from his employment as a result of hypertension at any time relevant hereto. No testimony has been presented from an authorized treating physician or IME physician establishing the claimant was disabled on June 11, 2014. The burden of proof is on the claimant to establish every element of the presumption as set forth in Florida Stat. §112.18. While claimant has established he is a member of the protected class, has essential hypertension and has passed a pre-employment physical which did not reveal evidence of hypertension, he has failed to establish he was disabled as a result of that hypertension on June 11, 2014 or any other date relevant hereto. Accordingly, he is not entitled to a presumption his claim is compensable. *Bivens v. City of Lakeland*, 993 So.2d 1100 (Fla. 1st DCA 2008)
8. I also find the claimant failed to timely give notice of any alleged accident or condition resulting from his employment. According to the deposition testimony of Aimee Pieper, the human resource manager for the employer, the first notice the employer received of the claimant's claim was on February 3, 2016. According to the testimony of Sylvia Dupree, the claimant admitted he did not report his claim to the employer until February 2016. While the claimant apparently gave his employer an off work slip on or about June 18, 2014, he did not inform his employer he was making any claim for a work related

condition until notice to Pieper as described above. The claimant knew, or should have known, of the potential of a work-related claim long before that time. He first became aware of the heart-lung statute no later than mid-2015 according to his testimony. He became aware of that statute as a result of his participation in union activities beginning one and a half or 2 years prior to this hearing. During his first union meeting thereafter, he became aware that he might have a claim. Giving the claimant the benefit of the doubt, the latest time frame for becoming aware of a potential claim was the 3rd quarter of 2015. Notice to the employer was not made until 5 months later in February 2016. Thus I find claimant has failed to comply with Florida Stat. §440.151(6) requiring notice of injury within 90 days because I find he has failed to establish through competent evidence he timely notified his employer of his claim. Accordingly, this claim must be barred as a matter of law.

9. .Any and all issues raised by way of the petition for benefits, but which issues were not dismissed or tried at the hearing, or which were ripe, due and owing but not raised at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the claimant, and therefore, are denied and dismissed with prejudice.

Wherefore, It Is CONSIDERED, ORDERED, and ADJUDGED as follows:

1. The claim for compensability of claimant's hypertension is hereby denied.
2. The claim for authorization of a cardiologist is hereby denied.
3. The claim for temporary total disability benefits or temporary partial disability benefits is hereby denied.
4. The claim for income impairment benefits is hereby denied.
5. All claims or petitions filed herein are hereby dismissed with prejudice.

DONE AND SERVED this 3rd day of October, 2016, in Jacksonville, Duval County, Florida.



Ralph J. Humphries
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