

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

Richard Higgs,
Employee/Claimant,

OJCC Case No. 14-011760WWA

vs.

Accident date: 3/4/2014

WFF Facility Services - Bethune Cookman
University/Gallagher Bassett Services, Inc.,
Employer/Carrier/Service Agent.

Judge: Wilbur W. Anderson

COMPENSATION ORDER

Claimant's petitions for benefits are barred because he failed to give the Employer timely notice of the injury. Claimant also failed to present any admissible medical evidence proving he sustained injuries arising out of and in the course of his employment. Consequently, I deny all pending claims.

PROCEDURAL BACKGROUND

Claimant, who was then represented by an attorney, filed petitions for benefits (PFBs) on May 23, 2014, and July 31, 2014. The case was mediated on August 1, 2014, and the pretrial stipulation was filed on August 8, 2014. The final hearing was scheduled for October 30, 2014, but on October 1, 2014, Claimant's counsel moved to withdraw, stating Claimant no longer desired his services. On October 9, 2014, the Employer/Carrier (E/C) filed a motion to enforce settlement. At a hearing on the motion to withdraw and on the motion to enforce settlement on October 14, 2014, the E/C withdrew the motion to enforce settlement and I granted the motion to withdraw.

When Claimant failed to appear for the final hearing on October 30, 2014, I entered an order directing Claimant to show cause why the pending PFBs should not be dismissed.

After Claimant filed a response to the order to show cause, the final hearing was rescheduled for December 18, 2014. Although Claimant stated at a status conference on November 7, 2014, that he was in the process of retaining an attorney to represent him, he appeared at the final hearing without an attorney. When asked if he wished to proceed without an attorney, he said yes. Attorney Rex Hurley appeared for the E/C. Monica Robinson was also present at the final hearing as the Employer representative.

CLAIMS

PFB filed: 5/23/2014

1. Authorization of an optometrist in the Daytona Beach Volusia County area
2. Authorization of a CT scan of the brain w/o contrast
3. Continued authorization of a primary care physician
4. Compensability
5. Attorney fees pursuant to F.S. 440.34
6. Costs

PBF filed: 7/31/2014

1. Authorization of a neurologist in the Daytona Beach Volusia County area
2. Payment of Halifax Pathology Assoc. P.O. Box 935088, Atlanta, GA 31193-5088 (866) 759-4528. DOS: 6/20-6/23/14 \$614.32
3. Reimbursement for payment of a prescription for Hydrocodone in the amount of \$7.00
4. Payment of Radiology Associates Imaging Ctr. P.O. Box 48, Daytona Beach, FL 32115-0048 (386) 255-5496. DOS: 6/20-6/23/14 in the amount of \$748.00
5. Payment of Halifax Health - 303 N. Clyde Morris Blvd. Daytona Beach, FL 32114 (386) 254-4000. DOS: 6/20-6/23/14 in the amount of \$15,181.02

6. Payment of Halifax Health Physicians - 100 S. Owasso Blvd. St. Paul, MN 5117

DOS: 6/21-6/23/14, in the amount of \$1,719.00

7. Attorney Fees pursuant to F.S. 440.34(1) & (b)

8. Costs

DEFENSES

1. No accident

2. Untimely notice

3. Further medical care is not necessary or casually related

4. All medical bills are not compensable, unauthorized or untimely submitted. If claimant claims emergency, E/C denies the bills based on 440.13 untimely notification

5. No PICA due

EXHIBITS

JCC Exhibits

1. Pretrial Stipulation filed 8/ 8/14 (28)*

Claimant Exhibits

Proffer "A" – DWC-25 form, offered into evidence by Claimant on 12/18/14 (64)

E/C Exhibits

1. Deposition of Claimant taken on 7/23/14, filed 10/24/14 (50)

2. Notice of Denial dated 8/23/14, filed 10/24/14 (50)

3. Employee Injury Procedures form, filed 10/24/14 (51)

4. Memorandum of Law filed 12/15/14 (argument only) (63)

*Numbers in parentheses refer to the OJCC docket number.

WITNESSES

Claimant

1. Richard Higgs

Employer/Carrier

1. Monica Robinson
2. Richard Earl Davis

FINDINGS OF FACT

1. The stipulations of the parties are accepted and adopted.
2. Claimant worked as a custodian for the Employer. He alleges that on March 4, 2014, he was injured at work when he struck his head on an electrical utility box. By PFBs filed on May 23, 2014, and July 31, 2014, he seeks a determination that his injuries are compensable, payment of various medical bills, and continuing medical care and treatment. The E/C denies an accident occurred and asserts a number of other defenses, including untimely notice, lack of medical necessity, and lack of causal relationship.

CONCLUSIONS OF LAW

1. Claimants who seek workers' compensation benefits before a Judge of Compensation Claims are required by law to prove every element of their case. This legal requirement applies to Mr. Higgs even though he is not represented by an attorney.
2. The law requires a claimant to give notice of the injury to the employer within 30 days after the date of, or initial manifestation of, the injury. § 440.185(1), Fla. Stat. (2013). I have carefully considered Mr. Higgs' testimony concerning how and when he notified the Employer that he had been injured. He testified that he did not notify his supervisor, Monica Robinson, of the injury until April 7, 2014, more than 30 days after the alleged accident on March 4, 2014.

Ms. Robinson corroborated this testimony. Claimant testified that he notified a co-worker, Mr. Williams, on March 4, 2014, but he also testified further that Mr. Williams was not a supervisor. Ms. Robinson's supervisor, Richard Davis, testified that he first heard about the alleged accident when Ms. Robinson called him on April 7, 2014. I accept this testimony and find Mr. Higgs failed to advise the Employer of the injury within 30 days after the date of, or initial manifestation of, the injury.

3. Unless an exception applies, failure to give the Employer timely notice of the injury bars the pending PFBs. § 440.185(1), Fla. Stat (2013). I have carefully considered whether any of the exceptions listed in section 440.185(1)(a)-(c), Florida Statutes (2013), apply to this case. I find no evidence the Employer or the Employer's agent had actual knowledge of the injury. I also find no evidence suggesting the cause of the injury could not be identified without a medical opinion and that Claimant advised the Employer within 30 days after obtaining a medical opinion indicating the injury arose out of and in the course of employment. In addition, there is no evidence the Employer failed to put its employees on notice of the notice requirement by posting notice pursuant to section 440.055, Florida Statutes. Finally, I have considered whether there are exceptional circumstances under section 440.185(1)(d), Florida Statutes (2013), which justify Claimant's failure to give timely notice. I find none.

4. Even if Mr. Higgs had given the Employer timely notice of the injury, he failed to present any admissible medical evidence proving he sustained injuries arising out of and in the course of his employment. For injuries or conditions not readily observable, this kind of medical evidence is required. § 440.09(1), Fla. Stat. (2013).

It is therefore,

ORDERED AND ADJUDGED:

All benefits claimed in the petitions for benefits filed on May 23, 2014, and July 31, 2014, are denied.

DONE AND ELECTRONICALLY TRANSMITTED VIA EMAIL TO THE ATTORNEYS AND CARRIER LISTED BELOW this 31st day of December, 2014, in Daytona Beach, Volusia County, Florida.



Wilbur W. Anderson
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Daytona Beach District Office
444 Seabreeze Boulevard, Suite 450
Daytona Beach, Florida 32118
(386)254-3734
www.fljcc.org

COPIES FURNISHED:

Richard Higgs
352 N. Dr. Martin Luther King Blvd.
Daytona Beach, FL 32114
VIA U.S. MAIL

Rex A. Hurley
rhurley@hrmcw.com, swilliston@hrmcw.com

Keith C. Warnock (Claimant's former Attorney)
keithwarnock@att.net

Gallagher Bassett Services, Inc.
GB-FloridaZone-Mail@gbtpa.com