

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

Maritza Cruz,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 09-022281TMB
)	
HCA Health Services of Florida,)	Accident date: 10/7/2008
)	
Employer,)	
)	
and)	
)	
Broadspire - Tampa Office,)	
)	
Carrier/Service Agent.)	
)	

Final Compensation Order

After proper notice to the parties this cause came before the undersigned Judge of Compensation Claims for a merits hearing on March 4, 2010. The Claimant, Maritza Cruz, was represented by Lissa Jolivet-Dorsey, Esquire. The Employer/Carrier, HCA Health Services of Florida and Broadspire, were represented by Robert S. Gluckman, Esquire.

The parties stipulated to the following:

1. The undersigned has jurisdiction over the subject matter and the parties;
2. Venue is proper in Palm Beach County, Florida;
3. There was an employee/employer relationship on the date of the accident;
4. Workers' compensation insurance coverage was in effect on the date of the accident;
5. There was timely notice to the parties regarding the pretrial and final hearing, and
6. The accident was accepted as compensable.

The claims for determination at the hearing were:

1. Authorization and payment for a primary care physician;
2. Compensability of the claim;
3. Authorization and payment for an evaluation and/or treatment with a neurosurgeon;
4. Authorization and payment for bilateral L5/S1 microdiscectomy, and
5. Penalties, interest, costs and attorney's fees.

The Employer/Carrier defended as follows:

1. The major contributing cause and need for care is not the alleged accident of October 7, 2008;
2. All medically necessary causally related medical care has been timely provided;
3. Penalties, interest, costs and attorney's fees are not due or owing, and
4. The Employer/Carrier is entitled to costs per F.S.440.34(3).

The following documentary matters were admitted into evidence by the undersigned:

1. Pretrial stipulation and order, dated January 26, 2010, and
2. Copy of Dr. Milan DiGiulio office note from April 21, 2009, with prescription for physical therapy attached.

The following documentary matters, offered jointly, were admitted into evidence:

1. Composite of Response to Petition for Benefits dated September 2, 2009 and November 9, 2009, respectively.

The following documentary matters, offered by the Claimant, were admitted into evidence:

1. Deposition of Dr. Merrill Reuter, dated February 8, 2010, with attachments;
2. Composite of Petition for Benefits, filed on August 27, 2009, and October 20, 2009, respectively, and
3. DWC-25, dated April 21, 2009.

The following documentary matters, offered by the Employer/Carrier, were admitted into evidence:

1. Deposition of the Claimant, dated November 19, 2009;
2. Deposition of Dr. Joseph Chalal, dated March 1, 2010, with attachments, and
3. Deposition of Troy Pickens, dated March 1, 2010, with attachments.

Live testimony was provided at the merits hearing by the following:

1. Maritza Cruz, Claimant;
2. Eva Maggio;
3. Nick Barber, and
4. Beth Ruiz.

In making my findings of fact and conclusions of law in this claim, I have carefully reviewed all of the evidence presented including live testimony and documentary evidence. I have observed the candor and demeanor of the live witnesses. I have resolved all conflicts in the evidence. I have considered the argument and memoranda of counsel. I have not attempted to painstakingly summarize the substance of the live testimony or the testimony of the deposition

witnesses, nor have I attempted to state non-essential facts, because I have not done does not mean that I failed to consider all of the evidence presented. Based on the foregoing and the applicable law, I make the following determinations:

1. The foregoing stipulations of the parties are consistent with the evidence presented and hereby adopted as findings of fact.

2. The Claimant is a 40 year old female. A translator was used at the time of the merits hearing, however, it is clear from the testimony that the Claimant graduated from high school in the United States and has a significant grasp of English, both written and verbal. Claimant testified that she was working at Palms West Hospital in the housekeeping department. Her duties were cleaning rooms and generally keeping the hospital clean. The Claimant started working with the Employer on March 22, 2008. On, or about, October 7, 2008, the Claimant testified that she was working with a large cart with linens when she felt pain in her back. The Claimant finished working that day, but the pain continued. The Claimant testified the next morning she could not walk. It is not clear whether or not the injury occurred on October 7, 2008 or October 17, 2008, however, the parties have agreed and stipulated that the Claimant suffered a compensable injury on October 7, 2008.

3. The Claimant was initially treated at the Palms West Hospital emergency room on October 17, 2008, where she was diagnosed with a renal condition and musculoskeletal pain. Naprosyn and percocet were prescribed for the Claimant's pain. After her initial evaluation at the emergency room the Claimant sought treatment through her private health insurance with Dr. Ortega, The Center for Bone and Joint Surgery, and Dr. Goldfarb.

4. There was significant confusion on the part of the Employer, and its Carrier, as to whether or not this was a compensable accident, however, the accident and injury were finally accepted as compensable. The Employer/Carrier authorized treatment with Dr. Milan DiGiulio. The Claimant was seen by Dr. DiGiulio on April 21, 2009, who diagnosed the Claimant with degenerative disc disease at L5/S1; prescribed physical therapy, and suggested the Claimant continue to treat with Dr. Goldfarb for pain management. Dr. Goldfarb was never authorized by the Carrier in this case.

5. During her workup with the private health insurer, the Claimant underwent a lumbar MRI on November 17, 2008, which showed a broad based central shallow disc herniation at L5/S1 with a tear resulting in mild bilateral neural foraminal stenosis at L5/S1. These MRI results were confirmed by both the IME for the Claimant, Dr. Reuter, and the IME for the Employer/Carrier, Dr. Chalal, as well as Dr. DiGuilio in his April 21, 2009 office note. Dr. Reuter was of the opinion that the November 17, 2008 MRI revealed a high intensity zone at the

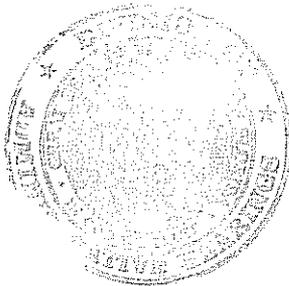
L5/S1 level, indicating an acute disruption of the disk rather than a chronic or degenerative onset. Dr. Chalal's opinion was that, notwithstanding the high intensity presentation, the L5/S1 disc preexisted the industrial accident. Absent a reservation of their rights under F.S.440.20(4), the Employer/Carrier by accepting the compensability of the accident and injury, and providing medical care with Dr. DiGuilio on April 21, 2009, have waived their right to deny compensability. In this case the Employer/Carrier are tempting to circumvent compensability of the L5/S1 defect through the opinion of Dr. Chalal that the October 7, 2008 accident is no longer the major contributing cause of the Claimant's lumbar condition. This is nothing more than a collateral attack on compensability under the guise of major contributing cause and must fail.

6. As it relates to the requested medical care, the Claimant has failed to present a case for, either a primary care physician, or recommended surgery at the L5/S1 level. Dr. Reuter opined that surgery is only one of many options available to the Claimant. Moreover, the Claimant is equivocal, at best, as to whether she wants to proceed with the recommended surgery. It is clear that the Claimant is entitled to evaluation and treatment with a neurosurgeon as it relates to the need for ongoing care of the Claimant's L5/S1 condition, and I award same.

WHEREFORE, it is ORDERED and ADJUDGED as follows:

1. The claim for authorization of a primary care physician is denied.
2. The claim for authorization of bilateral L5/S1 microdiscectomy is denied.
3. The claim for evaluation and treatment with a neurosurgeon is hereby granted.
4. The claim for attorney's fees and taxable costs is hereby granted. Jurisdiction is reserved as to the amounts thereof.

DONE and ORDERED in chambers, in West Palm Beach, Palm Beach County, Florida
this 26 day of March, 2010.

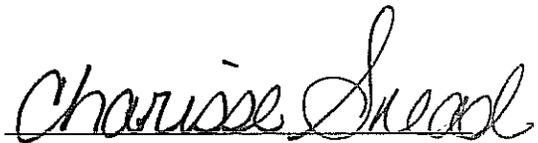



The Honorable Timothy M. Basquill
Judge of Compensation Claims

THIS is to CERTIFY that a copy of the foregoing order was sent by e-mail to counsel
this 20 day of March, 2010.

Lissa Jolivert-Dorsey
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A handwritten signature in cursive script that reads "Charisse Shead". The signature is written in black ink and is positioned above a horizontal line.

Secretary to Timothy M. Basquill