

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT OFFICE**

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OJCC No: 08-033424DAL

D/A: 10/20/2008

JUDGE: Daniel A. Lewis

FINAL COMPENSATION ORDER

AFTER DUE NOTICE to the parties, a Final Merits Hearing was conducted before the undersigned Judge of Compensation Claims (JCC) on September 29, 2009 In Lauderdale Lakes, Broward County, Florida. The petitions for benefits which came on for adjudication were filed on December 9, 2008, January 13, 2009, February 26, 2009, March 16, 2009, March 31, 2009 and April 21, 2009. The parties stipulated as follows:

- A. The undersigned has jurisdiction of the parties and of the subject matter.
- B. Notice of hearing was timely given to the proper parties.
- C. Venue lies in Broward County, Florida.
- D. The claimant's accident of October 20, 2008 was initially accepted by the employer/carrier as a compensable occurrence, and claimant's left shoulder and neck injuries

were also initially accepted. However, the employer/carrier contends it did not accept claimant's right shoulder injuries as compensable, and has now denied the left shoulder and neck injuries on the basis that the major contributing cause of the need for treatment for these conditions is not the work accident.

E. At this Final Hearing, the parties agreed to handle the payment of the medical bill for the claimant's right shoulder MRI scan administratively in the event I find the bill to be the responsibility of the employer/carrier to pay.

F. Claim was made for:

1. A determination of the compensability of claimant's right shoulder injury/condition.
2. Payment of the MRI scan taken of the claimant's right shoulder.
3. Authorization of a psychiatric evaluation.
4. Authorization of an evaluation by a neurologist.
5. Also claimed were attorney's fees and costs.

G. The employer/carrier asserted as defenses to the claims, respectively, that:

1. The industrial accident is not the major contributing cause of claimant's right shoulder condition. Any medical treatment for this condition is not medically necessary.
2. Same defense as number 1.
3. A psychiatric evaluation was previously provided by the employer/carrier.
4. An evaluation by a neurologist is not causally related to the industrial accident and is not medically necessary.
5. No attorney's fees or costs are due or owing.

After careful consideration and review of the testimony, documentary evidence and argument presented, the following are my findings of ultimate facts and conclusions of law:

1. This claimant is a 59 year old man, date of birth January 25, 1950, who sustained his compensable workers' compensation accident with the employer herein on October 20, 2008. At that time, claimant was working as a security guard. At this Final Hearing, claimant testified through the assistance of a Spanish speaking interpreter.

2. Claimant testified that the accident occurred as he was lifting an electric generator. According to the claimant, as he did so, he felt a sharp pain in his left arm, a strong pain in his back, and a lesser pain in his neck and right shoulder.

3. Claimant testified that after the accident, he returned to work for the employer herein as a security guard and is currently working for this employer in that capacity. The claims herein are for compensability of the right shoulder and medical benefits only.

4. Claimant first seeks a determination of the compensability of his right shoulder injury/condition. As stated, the employer/carrier initially accepted the compensability of claimant's left shoulder and neck injuries but contends it did not accept the right shoulder injury. Dr. Worth, claimant's authorized treating orthopedic surgeon, testified claimant complained to him of bilateral shoulder pain as the result of lifting some electrical equipment at work. Claimant first saw Dr. Worth on November 10, 2008. Dr. Worth is an orthopedic surgeon, and he testified he also performs shoulder surgery. Dr. Worth noted the claimant had prior surgery to his left shoulder, consisting of a superior labral and anterior labral repair, as well as a prior cervical discectomy and fusion surgery to his neck. Due to claimant's complaints of pain, Dr. Worth ordered MRI scans of claimant's right shoulder and cervical spine.

5. Dr. Worth testified that the MRI scan of claimant's right shoulder revealed a partial tear of the rotator cuff tendon as well as "considerable" muscle atrophy and some edema. According to Dr. Worth, some of the claimant's right shoulder pathology was chronic in nature. Dr. Worth testified the large amount of muscle atrophy in the claimant's right shoulder was reflective of a longstanding, chronic problem in the right shoulder. It was Dr. Worth's opinion that due to the industrial accident, the claimant suffered an acute insult to his longstanding, chronic shoulder condition. Doctor Worth testified that the major contributing cause of claimant's right shoulder condition was his preexisting conditions, in particular the preexisting cervical spine issues, which Dr. Worth testified can affect the shoulders. Dr. Worth also testified the tears in the tendon were longstanding. It was the opinion of Dr. Worth that the majority of claimant's right shoulder pain and complaints were secondary to his preexisting conditions.

6. Orthopedic surgeon Dr. Donshik, the employer/carrier's independent medical examiner (IME), testified that although claimant could have sustained an acute injury to his right shoulder as the result of the industrial accident, he was unable to state whether the major contributing cause of claimant's right shoulder complaints were due to the industrial accident. Dr. Donshik reviewed the claimant's medical records and MRI scans and noted some rotator cuff pathology on the right shoulder MRI. However, he testified he could not state within a reasonable degree of medical certainty that the major contributing cause of claimant's right shoulder complaints were due to the industrial accident.

7. Even Dr. Linn, the claimant's orthopedic IME, testified that although there was evidence of a partial or recurrent tear in the claimant's right shoulder, he did not think the work accident or event caused the tear. According to Dr. Linn, there was no evidence of a specific

direct injury to the claimant's right shoulder, and his examination revealed the right shoulder condition was not "too bad" or serious.

8. Section 440.09(1), Fla. Stat., provides, in pertinent part, that:

[T]he accidental compensable injury must be the major contributing cause of any resulting injuries. For purposes of this section, "major contributing cause" means the cause which is more than 50 percent responsible for the injury as compared to all other causes combined for which treatment or benefits are sought... Major contributing cause must be demonstrated by medical evidence only.

See also section 440.09(1)(b), Fla. Stat. Case law instructs us that it is the claimant's burden to establish major contributing cause. Thomas vs. Yoder Brothers, Inc., 882 So.2d 442 (Fla. 1st DCA 2004) (holding that claimant failed to present the requisite medical evidence that his work accident was the major contributing cause of his need for treatment and current disability and that lay testimony alone is insufficient to establish a causal connection as to conditions and symptoms not readily observable).

9. Here, no medical evidence was presented by the claimant from either Dr. Worth, Dr. Donschik or Dr. Linn that the industrial accident was the major contributing cause of claimant's right shoulder injury or condition or need for treatment. As stated, the claimant has the burden of proof in this regard. Having failed to present the requisite medical evidence as to major contributing cause in accordance with the statutory and case law, claimant's claim for a determination of the compensability of his right shoulder injury/condition shall be, and the same is hereby, denied and dismissed.

10. Claimant next seeks payment of the MRI scan taken of his right shoulder. This MRI was ordered by Dr. Worth and was performed on February 23, 2009. The evidence reveals that the carrier's adjuster initially authorized this MRI but then deauthorized it. However, by that time, the MRI had been performed.

11. I agree with the claimant that, since the employer/carrier authorized the MRI, it should properly be the responsibility of the employer/carrier to pay. In addition, Dr. Worth testified that he ordered the MRI scan in order to determine the condition in the claimant's right shoulder as well as to see what was related to the industrial accident. Case law instructs us that, when the purpose of a diagnostic test is to determine the cause of a claimant's symptoms, which symptoms may be related to a compensable accident, the cost of the diagnostic test is compensable. Chance vs. Polk County School Board, 4 So. 3d 71 (Fla. 1st DCA 2009). As stated, I find this MRI scan to properly be the responsibility of the employer/carrier to pay, and claimant's claim for same shall be, and the same is hereby, granted.

12. Claimant next seeks authorization of a psychiatric evaluation. Dr. Worth, the claimant's authorized treating orthopedic surgeon, testified the claimant was upset, nervous and depressed, and he recommended a psychiatric consultation or evaluation. Dr. Worth felt there was a psychiatric component to claimant's complaints. In fact, the employer/carrier scheduled an appointment for the claimant to be seen by a psychiatrist, Dr. Satulovsky. The evidence is conflicting as to whether this appointment was scheduled as an evaluation or as an IME. However, claimant testified that when he went to Dr. Satulovsky's office, the doctor did not speak Spanish, so claimant met with another person outside of the doctor's presence, who may not even have been a medical doctor.

13. I found the claimant to be forthright and I accept his testimony. I find that the requested psychiatric evaluation has not yet been performed. Case law instructs us that a claimant must establish a causal relationship or major contributing cause between his injury and the compensable accident in order to secure treatment. However, such a showing is not required for a claimant to be entitled to diagnostic testing or evaluations to determine the cause of his

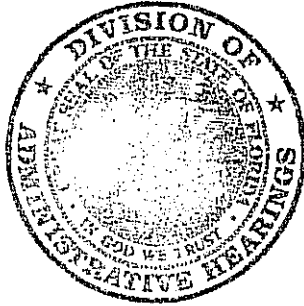
symptoms. See: Grainger vs. Indian River Transport, 869 So.2d 1269 (Fla. 1st DCA 2004) (holding the JCC applied an incorrect standard where he ruled the record did not show the claimant's workplace injury was the major contributing cause of his need for a neurological evaluation), Chance vs. Polk County School Board, 4 So. 3d 71 (Fla. 1st DCA 2009), Ruiz vs. BellSouth Credit and Collections, 994 So.2d 1220 (Fla. 1st DCA 2008). Instead, the test is whether the evaluation is reasonably required by the nature of claimant's injury to evaluate the etiology of his medical condition. Here, I find that it is. Claimant's claim for authorization of a psychiatric evaluation shall be, and the same is hereby, granted.

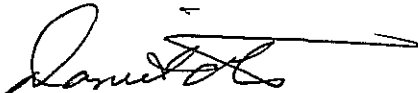
14. Likewise, claimant's claim for authorization of a neurological evaluation shall also be granted. Dr. Worth testified that claimant was complaining of numbness and tremors in his hands as well as constant pain. Dr. Linn also testified that a neurological evaluation was appropriate, especially as concerns claimant's complaints of numbness in his upper extremities. Dr. Linn testified that a neurological evaluation would assist in determining the cause or etiology of claimant's complaints. While Dr. Donshik testified a referral to a neurologist was not medically necessary, case law instructs us that such a showing is required for the award of medical treatment but not for an evaluation. Wal Mart Stores, Inc. vs. Mann, 690 So.2d 649 (Fla. 1st DCA 1997), Copeland Steel Erectors vs. Miles, 483 So.2d 107 (Fla. 1st DCA 1986), Selecta Farms vs. Martinez, 768 So.2d 1272 (Fla. 1st DCA 2000). Since I find claimant has established that the neurological evaluation is reasonably required by the nature of his injury, Grainger vs. Indian River Transport, 869 So.2d at 1271, claimant's claim for authorization of an evaluation by a neurologist shall be, and the same is hereby, granted.

15. In accordance with the parties' pretrial stipulation, jurisdiction shall be reserved to determine claimant's entitlement to recover his reasonable attorney's fees and taxable costs from

the employer/carrier, based on benefits secured. Jurisdiction shall also be reserved to determine the amount of such fees and costs due.

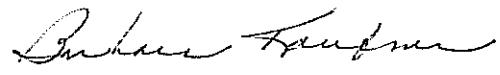
DONE AND ORDERED at Lauderdale Lakes, Broward County, Florida this
30th day of September, 2009.




Honorable Daniel A. Lewis
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Final Compensation Order was furnished this 30th day of September, 2009 by electronic transmission to the parties' counsel of record and by U.S. mail to the parties.


Secretary to Judge of Compensation Claims