

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
MIAMI-DADE COUNTY DISTRICT**

EMPLOYEE:

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ATTORNEY FOR EMPLOYEE:

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EMPLOYER:

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**ATTORNEY FOR
EMPLOYER/CARRIER/SERVICING
AGENT:**

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CARRIER/SERVICING AGENT:

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Company (Imperial Casualty)
PO Box 2009
Frisco, TX 75034

OJCC NO.: 09-003775SMS
D/A: 12/5/2008

FINAL COMPENSATION ORDER

THIS CAUSE came before the undersigned for a final hearing on 8/25/09 regarding Petition for Benefits (PFB) filed 2/10/09.

Claims:

1. Payment of TTD benefits from 1/31/09 to 2/8/09 with penalties and interest;
2. Attorney's Fees and Costs paid by E/C.
3. Claimant indicated that all other claims within the 2/10/09 PFB were resolved and therefore, were not sought to be adjudicated at the 8/25/09 final hearing.

Defenses:

1. All indemnity benefits due or owing have been paid;
2. No penalties, interest, attorney's fees and costs (P.I.C.A) are due or owing.

Documentary Exhibits:

JCC-

1. 5/20/09 Pre-trial Stipulation.

Joint Exhibits-

- A. Payout Sheet.
- B. Pay Register of claimant's subsequent earnings with employer herein.

Claimant-

None

E/C-

1. 2/13/09 Response to PFB.
2. Order Admitting Medical Records of Dr. Ballweg with attached medical records.
3. Claimant's deposition taken 4/2/09.
4. Deposition of Dr. Gerald Goldberg.
5. Deposition of Dr. Bruce Weissman.

Findings of Fact and Conclusions of Law:

1. The claimant testified in person at the 8/25/09 final hearing. He was hired by the underlying employer for O2HR, Bulk Express Transport, as a truck driver on October 10, 2006. The Claimant sustained a compensable accident on December 5, 2008 whereby he was climbing down a ladder on a trailer when he lost his balance and fell to the ground, striking the right side

of his head and right ear. As a result of this accident, the Claimant has alleged injuries to his head and right ear.

2. Shortly after his accident, the Claimant presented to Palmetto General Hospital, whereby he was diagnosed with a head contusion, right ear drum perforation, and right middle ear infection. He was given several medications and referred to an ENT for further evaluation. The following day, the Claimant presented to Healthcare Center of Miami as his primary care physician, whereby the Claimant was diagnosed with an acute traumatic rupture of the right eardrum as well as head contusion. He was also referred to an ENT for further evaluation, and placed on a no work status pending his appointment with the ENT. The Employer/Carrier immediately commenced paying indemnity benefits following his accident.

3. Based upon the referral to an ENT, the Employer/Carrier authorized Dr. Bruce Weissman. Dr. Weissman initially evaluated the Claimant on December 22, 2008, at which time he diagnosed the Claimant with vertigo and right ear deafness. As such, he recommended a CT scan of the brain as well as a referral to a neurologist based upon the vertigo complaints. In the interim, Dr. Weissman maintained the Claimant on a no work status. However, when the Claimant presented to Dr. Weissman on January 19, 2009 for a follow-up appointment, he released the Claimant to full duty work status and recommended he return in three months for a repeat audiogram.

4. Pursuant to the referral to a neurologist, the Employer/Carrier authorized Dr. Gerald Goldberg, who evaluated the Claimant on January 9, 2009. At that time, Dr. Goldberg diagnosed the Claimant with a mild concussion with some significant trauma to the ear area with a ruptured drum. As such, Dr. Goldberg felt that Claimant may suffer from vestibular dysfunction, which probably accounts for his dizziness, although claimant's symptoms are relatively mild. Claimant

did not have any positive findings upon neurological examination. Dr. Goldberg recommended a course of medications and requested the Claimant return for a follow-up appointment in three weeks. Upon returning to Dr. Goldberg on January 30, 2009, he placed the claimant at MMI from a neurologic standpoint, and assigned a 0% rating. Moreover, Dr. Goldberg confirmed that the claimant may return to full-duty work as of that date without any restrictions.

5. Pursuant to the claimant's request for a one-time change, the Employer/Carrier authorized Dr. Gail Ballweg as the Claimant's alternate neurologist. Dr. Ballweg initially evaluated the claimant on March 3, 2009 when she diagnosed the Claimant with a mild cerebral concussion. Dr. Ballweg referred the Claimant for a MRI of the brain. In the interim, she placed the Claimant on full-duty work status. When the claimant returned to Dr. Ballweg on April 21, 2009, she confirmed that the MRI of the brain was negative. She opined that the Claimant is to return to his ENT for further evaluation of the right ear hearing. She placed the Claimant at MMI from a neurologic standpoint, assigned a 0% rating, and maintained him on full-duty work status.

6. Since that date, the claimant has continued to treat periodically with Dr. Weissman, who has not formally placed him at MMI, but as indicated above, continues to maintain the claimant on full duty work status. Claimant has worked for the employer since the beginning of 2/09.

7. While the claimant filed a claim for TTD/TPD benefits, he changed the claim to TTD benefits from 1/31/09 to 2/8/09 with penalties and interest at the final hearing. Pursuant to the paysheet, the claimant was paid TTD benefits from the date of accident up through January 30, 2009, the date he was placed at MMI by Dr. Goldberg.

8. During direct examination at the final hearing, claimant testified that he was unaware that Dr. Weissman had placed him off of the no-work status to a full-duty release on 1/19/09. Claimant's understanding was that Dr. Weissman would revisit his no-work status upon claimant

being evaluated by a neurologist. However, on cross-examination, claimant admitted to remembering that Dr. Weissman released him to full-duty work on 1/19/09. Claimant's testimony at the final hearing and at his deposition were contradictory at times. However, it is very apparent that claimant's primary objection as voiced in his deposition and at final hearing was his disagreement with his full-duty release from Dr. Weissman and Dr. Goldberg as claimant explained he was still experiencing problems.

9. While claimant disagrees with Dr. Weissman's full-duty release on 1/19/09, an injured worker's functional capacities (work restrictions) must be based on medical testimony and not solely, lay testimony. Dr. Weissman testified that claimant was at full-duty work status as of 1/19/09 as there were no complaints of dizziness or balance problems. Claimant has one good ear and therefore, claimant can function without restrictions.

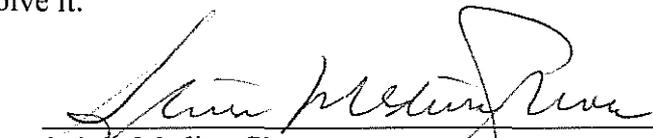
10. Further, I find claimant's final hearing testimony on cross-examination to be truthful. I find that on 1/19/09, claimant had knowledge that Dr. Weissman had released him to full-duty work with a referral to the neurologist. I find claimant's cross-examination testimony to be consistent with the totality of the evidence, including Dr. Weissman's medical records.

11. The medical evidence reflects that claimant was examined by Dr. Goldberg, neurologist on 1/9/09 and 1/30/09. At both visits, claimant's neurological examinations were normal. Dr. Goldberg found claimant reached MMI on 1/30/09 with a 0% PIR and no work restrictions. By 1/30/09, claimant did not complain of dizziness. Dr. Goldberg deferred to Dr. Weissman regarding claimant's right ear condition. At the final hearing, claimant did not recall Dr. Goldberg releasing him to full-duty work. However, in claimant's deposition, he testified that Dr. Goldberg released him to full-duty work as of the second visit (Pg. 21 of claimant's deposition). Accordingly, there is no medical documentation from an authorized physician indicating

anything other than the fact that the Claimant has been on a full-duty work status from all specialties since 1/30/09. Moreover, I find that claimant had knowledge of his full-duty work status from Dr. Weissman on 1/19/09 and Dr. Goldberg on 1/30/09.

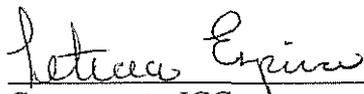
WHEREFORE, IT IS ORDERED:

1. Claim for payment of TTD benefits from 1/31/09 to 2/8/09 with penalties and interest is denied.
2. Jurisdiction is reserved on determination on entitlement to and amount of attorney's fees and costs paid by E/C for a future hearing, in the event the parties are unable to amicably resolve it.


Sylvia Medina-Shore
Judge of Compensation Claims

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 21st day of September, 2009, the instant Final Compensation Order was e-mailed to the attorneys of record and mailed, via U.S. Mail, to the above listed parties.


Secretary to JCC