

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

Reinel D. Arango,
Employee/Claimant,

OJCC Case No. 17-014474MES

vs.

Accident date: 5/11/2017

F & E Trucking Corporation/Protective
Insurance Company,
Employer/Carrier/Service Agent.

Judge: Margaret E. Sojourner

FINAL COMPENSATION ORDER

This matter was heard at a Final Hearing before the undersigned in Altamonte Springs, Seminole County, Florida on February 19, 2019. Present at the hearing were Claimant, Reinel D. Arango, Pro Se and attorney Scott B. Miller on behalf of the Employer/Carrier (EC). The claimant had previously been represented but the prior attorneys withdrew from representation. This matter was set for final hearing on January 18, 2019 at which time claimant asked for and was granted a continuance so that he could attempt to find representation. However, he was unable to find an attorney who wished to undertake representation and this matter proceeded with claimant pro se.

Issues:

1. Temporary total or temporary partial disability from May 11, 2017 through July 13, 2018.
2. Authorization of a primary care physician.
3. Continued authorization of Dr. Winters.
4. Authorization of a Spanish speaking translator for medical appointments.
5. Transportation to medical appointments.
6. Compensability of the accident.
7. Penalties and interest.

Defenses:

1. All benefits have been denied pursuant to §440.105 and §440.09(4), Florida Statutes as the claimant made misrepresentations in order to obtain Workers' Compensation benefits.
2. There is no medical evidence that the work accident remains the major contributing cause of

the claimant's disability or need for medical treatment.

3. There is no evidence that treatment is reasonable or medically necessary.
4. No penalties, interest are due.

Findings of Fact and Conclusions of Law

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the testimony and evidence presented. I have resolved all of the conflicts in the testimony and documentary evidence. Based upon the foregoing, the evidence, and the applicable law, I make the following determinations. I have jurisdiction over the parties and the subject matter of this claim. Venue lies in Volusia County, Florida. The stipulations of the parties are accepted and adopted by me as findings of fact.

Arango was injured when the truck in which he was riding was involved in an accident. He was asleep in the bunk area at the time of the accident and was thrown forward into the dash. The claimant sustained injuries to his neck, low back, shoulders and knees. The EC provided authorized care with Dr. Michael Broom and Dr. Thomas Winters. Dr. Winters performed surgery on claimant's right shoulder on October 17, 2017. Dr. Broom placed claimant at MMI on October 16, 2017. While he did believe claimant could require surgical intervention for his cervical and lumbar injuries he did not think claimant was a good surgical candidate. Dr. Winters last saw claimant on February 12, 2018. The EC subsequently denied the entire claim based upon misrepresentation.

The claimant has the initial burden to establish entitlement to benefits upon the happening of a compensable injury. *Publix Supermarket, Inc. v. Hart*, 609 So.2d 1342 (Fla. 1st DCA 1992). The medical records offered by the claimant establish the course of treatment which he underwent following his injury. However, claimant did not offer any evidence, either by way of medical records or testimony of a physician, that future care and treatment was reasonable, medically necessary or causally related. He did not offer any testimony or evidence that established time periods for which he was disabled and for which indemnity benefits were not paid. As claimant has not met his burden of proof no benefits are due.

The EC has raised a defense of misrepresentation which must be considered. *Lalonde v. Checker's Drive-In Restaurants, Inc.*, 943 So.2d 993 (Fla. 1st DCA 2006). The claimant did not advise either Dr. Broom or Dr. Winters of prior shoulder injuries with the exception of a left

shoulder injury which occurred in 2005. Dr. Winters testified that the claimant did not give any history of prior problems with his right shoulder¹. The medical records of the Jewett Orthopedic Clinic filed by the EC establish that claimant was treating with Dr. Torres for shoulder pain in October and November of 2016. These medical records indicate that the pain had been present for about six months. The history portion of the October 19, 2016 visit states that claimant did a lot of lifting and over the shoulder work activities, but more recently had fallen in the shower and caught himself with his right arm. The right shoulder, according to this history, was the most painful and that pain was described as a 10/10. Claimant underwent x-rays of both shoulders on that initial visit. He was seen again on November 16, 2016 and according to the history was still experiencing severe pain in the right shoulder, difficulty elevating the arm and numbness and tingling radiating down the arm. At that visit the doctor recommended an MRI of the right shoulder.

Claimant testified at the final hearing that he was taking medications on the date of his deposition and that he was having trouble with his memory as a result which was why he didn't advise EC of the prior right shoulder injury. A review of the claimant's deposition does not support this assertion. Claimant remembered and disclosed a prior left shoulder injury which occurred in 2005. He was able to answer questions about his work history and his health history. He was able to answer questions about his treatment with Dr. Winters and Dr. Broom. He did not indicate at any time that he did not understand the questions or was having difficulty with his memory. He was specifically asked whether the medications he was taking affected his ability to answer the questions asked in the deposition and he responded, "No sir."² The treatment claimant received for his right shoulder occurred seven months prior to the accident. The claimant described the pain in the right shoulder at that time as 10/10. Yet he failed to tell Dr. Winters about this right shoulder injury and pain. I find that claimant did intentionally misrepresent his medical history in order to obtain workers' compensation benefits.

Wherefore it is ordered and adjudged as follows:

¹ Deposition Dr. Winters, page 8, line 16.

² Deposition Arango, page 33, l. 6-8.

1. All claims are denied as Arango made misrepresentations for the purposes of obtaining workers' compensation benefits.

DONE AND SERVED this 6th day of March, 2019, in Altamonte Springs, Seminole County, Florida.

Margaret E. Sojourner

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EXHIBITS

Judge's Exhibits:

1. PFB filed at DN 65-66.
2. Response to PFB filed at DN 71.
3. Mediation Conference report filed at DN 76.
4. EC Pretrial Stipulation filed at DN 86.
5. Claimant Pretrial Stipulation filed at DN 87.
6. EC Trial Memorandum filed at DN 102 for argument only.

Claimant's Exhibits:

1. Photographs filed at DN 110.
2. Medical records of Dr. Winters filed at DN 112.
3. Medical records of Dr. Broom filed at DN 113.

Claimant's Proffered Exhibits:

1. Florida Highway Patrol accident report filed at DN 109.
2. Arthroscopy brochure filed at DN 111.

EC Exhibits:

1. Deposition of claimant filed at DN 97.
2. Deposition of Dr. Winters filed at DN 100.
3. Medical records of Jewett Orthopedic Clinic filed at DN 99.
4. Payout ledger filed at DN 101.
5. Joint Stipulation filed at DN 38.