

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

Bruce Beyer,  
Employee/Claimant,

OJCC Case No. 12-028244TSS

vs.

Accident date: 4/16/2012

YRC Worldwide/Sedgwick CMS,  
Employer/Carrier/Service Agent.

Judge: Timothy S. Stanton

**FINAL COMPENSATION ORDER**

**THIS CAUSE** came on for a final hearing before the undersigned Judge of Compensation Claims on January 22, 2019. Claimant, Bruce Beyer, was represented by Andrew Serano, Esquire. The Employer/Carrier (E/C) was represented by Scott Miller, Esquire. Mediation was conducted on September 11, 2019. The petitions for benefits (PFBs) e-filed on February 20, 2018 and June 8, 2018 were the subject of this final hearing. All live witnesses, exhibits, depositions, and documents are listed in the appendix.

**Claims (for this final hearing):**

1. Authorization/Payment of prescription for Ranitidine pursuant to recommendation by Claimant's authorized doctor.
2. Authorization/Payment of prescription for Temazepam pursuant to recommendation by Claimant's authorized doctor.
3. Authorization/Payment of prescription for Tramadol pursuant to recommendation by Claimant's authorized doctor.
4. Authorization/Payment of prescription for oxycodone pursuant to recommendation by Claimant's authorized doctor.
5. Authorization/Payment of prescription for Zofran pursuant to recommendation by Claimant's authorized doctor.

6. Authorization/Payment of prescription for omeprazole pursuant to recommendation by Claimant's authorized doctor.
7. Authorization/Payment of prescription for Opana pursuant to recommendation by Claimant's authorized doctor.
8. Attorney fees and costs.

**Defenses:**

1. Ranitidine is not medically necessary.
2. Tamazapram is not medically necessary.
3. Tramadol is not medically necessary.
4. Oxycodone is not medically necessary.
5. Zofran is not medically necessary.
6. Omeprazole is not medically necessary.
7. Opana is not medically necessary.
8. All benefits have been denied pursuant to Claimant materially misrepresenting his medical history to his treating physician with the intent to further his claims for medical and indemnity benefits.
9. No attorney fees due or owing.

**Findings of Fact and Conclusions of Law:**

In making my findings of fact and conclusions of law I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the testimony, and I may not refer to each piece of documentary evidence, I have considered all of the testimony and evidence and I have attempted to resolve all the conflicts in the testimony and evidence. Based upon the foregoing and the applicable law, I make the following findings:

1. The undersigned has jurisdiction over the parties and the subject matter.

2. The stipulations agreed to by the parties in the Uniform Pretrial Stipulation filed on September 12, 2018 are accepted and adopted.

3. On April 16, 2012, Claimant injured his right wrist and left elbow in a work accident. He underwent one surgery for his right wrist and four surgeries for his left elbow. He was assigned a twenty percent impairment rating for his work injuries, and the E/C voluntarily accepted him as permanently and totally disabled. He subsequently settled the indemnity portion of his claim.

4. In 2014, he came under the care of Dr. Reddy for pain management treatment. Over the years, Dr. Reddy has prescribed injections and significant medication for Claimant.

#### **E/C's Misrepresentation Defense**

5. The E/C has denied all medical care based upon its misrepresentation defense. It argues that Claimant intentionally misrepresented his physical complaints of pain and activities to physicians to obtain medical treatment. To support its defense, it argues that surveillance demonstrates that Claimant can perform greater activities with his left arm than he reported to his doctors, and he is in much less pain.

6. Section 440.105(4)(b)(1), Fla. Stat., states, "It shall be unlawful for any person to knowingly make, or cause to be made, and false, fraudulent, or misleading oral or written statement for the purpose of obtaining or denying any benefit or payment under this chapter."

7. Section 440.09(4)(a), Fla. Stat., states, "An employee shall not be entitled to compensation or benefits under this chapter if any judge of compensation claims, administrative law judge, court, or jury convened in this state determines that the employee has knowingly or

intentionally engaged in any of the acts described in s. 440.105 or any criminal act for the purpose of securing workers' compensation benefits.”

8. The E/C has the burden of proving a violation of Section 440.105 by a preponderance of the evidence. Singletary v. Yoder, 871 So.2d 289 (Fla. 1st DCA 2004).

9. The determination of whether there has been a violation of Section 440.105(4)(b) requires a two-part inquiry. First, whether a false, fraudulent or misleading statement was made by the person, and second, whether the statement was made with the required knowledge or intent. Cal -Maine Foods v. Howard, 225 So.3d 898, 902 (Fla. 1<sup>st</sup> DCA 2017).

10. Dr. Reddy's deposition was taken on two separate occasions: May 30, 2018 and October 31, 2018. In the May 30, 2018 deposition, *prior to the surveillance being obtained*, Dr. Reddy testified that she treated Claimant from January 21, 2014 through April 4, 2018. She testified that “he's really pretty much unable to use that arm because of the pain issues”, he kept it in a sling most of the time, and that he had severe pain flexing and extending his elbow. Claimant's trial testimony confirmed her opinion.

11. In Dr. Reddy's October 31, 2018 deposition, *after the surveillance was obtained*, she could not recall reviewing the surveillance. However, she testified that Claimant now told her that he boated and he did daily living activities. She testified that she has encouraged Claimant to stay active with his left arm so that he does not have atrophy. She testified that he needs to use the arm to strengthen it as part of his rehabilitation. However, he has consistently complained of chronic left elbow pain.

12. Dr. Reddy's medical records show that Claimant has consistently reported pain levels from 7 of 10 to 10 of 10 throughout the years, despite the significant medication she has

prescribed.

13. On June 6, 2018, Dr. Chaumont, E/C's IME, examined Claimant. *This examination was performed prior to the surveillance being obtained.* Dr. Chaumont testified that Claimant described continuous pain in his left elbow which became worse with repetitive reaching or use. Claimant described to Dr. Chaumont that he had pain relief by placing his arm on top of a refrigerator multiple times a day, which Claimant confirmed in his deposition. Dr. Chaumont testified that Claimant informed him that he used a sling and he was unable to use his arm at all. There was no atrophy in Claimant's left arm. Dr. Chaumont, the only doctor to review the surveillance, did not observe Claimant grimacing or displaying any pain behavior during Claimant's use of his left arm and elbow in the surveillance. Dr. Chaumont testified that during his review of the surveillance, there was no indication Claimant was limited in any way with his left arm. In fact, Claimant used his left arm freely. Dr. Chaumont testified that Claimant's complaints during his examination versus his surveillance activities were completely inconsistent. He further testified that the weight of what Claimant lifted was not concerning so much as it was the free and natural use of his left arm. He testified that Claimant did not require any additional treatment. I accept Dr. Chaumont's testimony of Claimant's reporting of pain and activity level. I also accept his testimony that Claimant's activities during surveillance were completely inconsistent with his reporting of pain and activities.

14. Claimant filled out a patient intake form during Dr. Chaumont's examination. Claimant listed his pain level for the prior week as 10 of 10 for the worst pain and 9 of 10 for his average pain. He also listed his lowest pain level as an 8 of 10 for the prior week. He listed his pain as "continuously" occurring, instead of selecting from a category of several times a day or

intermittently. In the intake form, Claimant stated his pain had increased since it started. He also listed his pain as the worst “all the time” instead of selecting morning, afternoon, evening, or night.

15. Dr. Herson, the EMA, examined Claimant on December 14, 2018, *after the surveillance was obtained*. Claimant presented with left elbow pain of 9 of 10. Claimant reported his pain level had been as low as 5 of 10 the past month, but it had averaged 9 of 10. Dr. Herson testified Claimant said his pain got worse with activity in general, and it interfered with his normal daily living activities. According to Dr. Herson’s report, Claimant reported that his “pain has interfered with his general activity, mood, walking ability, normal work routine, relation with other people, sleep, enjoyment of life, ability to concentrate, hobbies, sports, chores and duties around the house, errands, ability to take care of himself, sex life, ability to work and social activities”. Claimant also reported to Dr. Herson that he suffered from intractable pain on a daily basis in the left elbow.

16. Dr. Herson did not review the surveillance as he didn’t know it was included in the records. When it was brought to his attention, he refused to review it. He testified that he didn’t need to review it as he depended on his examination. He testified that Claimant was restricted on what he could lift based upon his left elbow pain. Claimant told him his pain was continuous and it was worse with repetitive reaching. Claimant did not tell him he could not use his arm at all. During the examination, Claimant was able to use his arm. The range of motion in his left elbow wasn’t normal. Dr. Herson testified that Claimant did not need the following medications that Dr. Reddy prescribed: Tramadol, Zofran, Ranitidine, and Omeprazole (unless he has reflux from Oxycodone). He testified that Claimant only needed a low dosage of

Oxycodone.

17. Surveillance was taken on multiple days, but the relevant days are July 3, 2018 and July 4, 2018. On July 3, 2018, Claimant, not wearing an arm sling, drove his vehicle to a business and stood talking to an attendant while motioning with his left arm freely. Additionally that day, Claimant, again without an arm sling, drove to a convenience store and went inside and came back out carrying food items in his left hand without any apparent difficulty.

18. On July 4, 2018, Claimant performed various activities getting his boat ready to take out. These activities occurred over several hours, and included but were not limited to Claimant reaching both arms high above his head to install a flag; climbing up and raising up an antenna with both hands (also banged on the bracket with his left hand); carrying an electronic boating instrument with his left hand and installing it on the bracket; using both hands/arms to remove an engine cover and folding it with his left hand/arm; carrying a quart of oil with his left hand; holding a coil of extension cord with his left hand while coiling it with his right hand; reaching deep down into the bilge with a vacuum hose with his left arm to vacuum it; screwing a large cap in the bilge with his left hand; carrying a gas can with his left hand on two occasions; and opening a lid on the boat with his left hand/arm. Additionally, on multiple occasions, Claimant moved his left arm and elbow freely about while expressly gesturing and smoking with his left hand. I did not see any expression of pain or grimacing, or anything else that would indicate that Claimant was in pain with his left arm, left elbow or left hand during these activities. It did not appear Claimant was limited in any fashion with his left arm or elbow. While each one of these activities by itself is not terribly concerning, the cumulative effect is shocking. I am struck, as was Dr. Chaumont, the only doctor to review the surveillance, by the

surprisingly free nature of the movement of his left arm (elbow) when he gestured, smoked and did the activities.

19. Additionally, towards the end of the surveillance, another individual approached Claimant by his dock and began a discussion with him. On two separate occasions during this conversation, this individual appeared to look directly back toward the surveillance camera person. From that point forward, Claimant basically discontinued using his left arm and instead seemed to keep it bent to his stomach and in a protective posture. Claimant did not perform any activities as he had been doing, and he no longer freely used the arm or freely gestured with it.

20. Claimant testified in his deposition, *which was taken after the surveillance was obtained*, that he does use his left arm sparingly, but doesn't lift over 5 lbs. He testified that he can drive his boat, and he uses it once or twice a week. He testified that he has an aching pain that *comes and goes. He testified that the pain is worse in the morning and late evening*. This testimony is completely contradicted by Dr. Reddy, Dr. Chaumont, Dr. Herson, and Claimant's own completion of Dr. Chaumont's patient intake form. *He also testified that he wears a sling if he's "out and about"*. This testimony is contradicted by the July 3, 2018 surveillance. He testified that he can't lift anything over five pounds with his left arm. He can lift his arm above his head, but he can't extend it out straight. He can also move his wrist but it hurts. He can pick up branches in his yard and dog waste.

21. During his trial testimony, Claimant testified that he did not tell Dr. Chaumont that his pain was continuous but instead that it came and went. He also testified that he did not tell Dr. Chaumont that he could not use his left arm. However, Claimant's own self-reporting in his patient intake form contradicts that testimony. In the intake form, Claimant selected



“continuous” and worst “all the time” instead of one of the listed categories of intermittent, morning, afternoon or evening for his pain.

22. Finding that a claimant violated Section 440.105(4)(b)(1), Fla. Stat., should never be made lightly. In making my decision, I have reviewed the evidence multiple times.

23. At the end of the day, I simply cannot reconcile Claimant’s reported pain levels and limited activities with his behavior on the surveillance.

24. I find Claimant is not credible after observing his candor and demeanor at the final hearing.

25. Specifically, I find that Claimant knowingly made false or misleading statements to obtain medical benefits (medication) when he:

1. Reported severe and continuous pain to Dr. Reddy (her May deposition and medical records).
2. Reported he basically could not use his left arm to Dr. Reddy (her May deposition and confirmed by Claimant’s trial testimony).
3. Told Dr. Chaumont that he suffered from continuous pain.
4. Told Dr. Chaumont that he could not use his left arm.
5. Denied he told Dr. Chaumont that he suffered from continuous pain.
6. Denied he told Dr. Chaumont that he could not use his left arm.
7. Reported that he suffered from continuous pain in Dr. Chaumont’s patient intake form.
8. Reported that he suffered pain “worst all the time” in Dr. Chaumont’s patient intake form.

9. Reported to Dr. Herson that he had continuous pain.

10. Reported that he basically always used an arm sling when he was “out and about”.

26. Each statement, standing alone, is sufficient to find Claimant violated Section 440.105(4)(b)(1), Fla. Stat. Therefore, I find that Claimant violated section 440.105(4)(b)(1), Fla. Stat., and that he is not entitled to any further workers’ compensation benefits. Section 440.09(4)(a), Florida Statutes.

27. In the alternative, even had I found that Claimant did not violate Section 440.105(4)(b)(1), I still would find that Claimant is not entitled to any further workers’ compensation medical benefits.

28. While an EMA opinion is presumed to be correct, it is a rebuttable presumption. Here, Dr. Herson intentionally refused to review the surveillance after it was brought to his attention. Even without the surveillance, Dr. Herson rejected four of Dr. Reddy’s prescription medications. However, since he did not review the surveillance, I reject his opinion as it was not founded upon a full analysis of the relevant evidence. State Dept. of Corrections v. Junod, 217 So.3d 200, 206-207 (Fla. 1<sup>st</sup> DCA 2017). I find that Dr. Herson should have reviewed the surveillance submitted to him and then provided his opinion on its relevance to his opinions.

29. I also reject Dr. Reddy’s opinions as she did not review the surveillance. She based her opinions on her examination and what Claimant told her.

30. I accept Dr. Chaumont’s opinions as he examined Claimant and he did review the surveillance. Based upon Dr. Chaumont’s testimony and opinions, I find Claimant does not require any additional medical treatment for his work injuries.

**WHEREFORE it is ORDERED AND ADJUDGED:**

1. Claimant violated section 440.105(4)(b)(1), Fla. Stat., and he is not entitled to any further workers' compensation benefits. Section 440.09(4)(a), Florida Statutes.

2. The claim for attorney fees and costs is **DENIED**.

**DONE AND SERVED** this 4<sup>th</sup> day of February, 2019, in Gainesville, Alachua County, Florida.



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Judge of Compensation Claims  
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## APPENDIX

### Judge Exhibits:

1. PFB filed 02/20/2018 (DN98).
2. Response to PFB filed 03/22/2018 (DN105).
3. Motion to Admit Medical Records filed 05/21/2018 (DN107).
4. Order Admitting Medical Records filed 05/22/2018 (DN109).
5. PFB filed 06/08/2018 (DN110).
6. Motion to Amend Pretrial filed 07/20/2018 (DN126).
7. Order on Amending pretrial filed 07/24/2018 (DN130).
8. Notice of Conflict filed 08/14/2018 (DN142).
9. Response to Conflict filed 08/31/2018 (DN147).
10. Order on EMA filed 09/07/2018 (DN150).
11. Pretrial filed 09/12/2018 (DN152).
12. EMA report filed 12/20/2018 (DN165).
13. Claimant's Trial Memorandum, argument only, filed 01/18/2019 (DN169).
14. E/C's Trial Memorandum, argument only, filed 01/18/2019 (DN170).

### Joint Exhibits:

1. Bruce Beyer deposition filed 01/18/2019 (DN172).
2. Dr. Reddy deposition filed 01/18/2019 (DN175).
3. Dr. Herson deposition filed 01/08/2019 (DN167).
4. Dr. Reddy's medical records filed 06/12/2018 (DN115).
5. Dr. Reddy's medical records filed 06/12/2018 (DN116).

### Claimant Exhibits:

1. Dr. Reddy's medical records filed 05/21/2018 (DN108).
2. Dr. Reddy's deposition filed 06/12/2018 (DN114).

### E/C Exhibits:

1. Dr. Chaumont deposition filed 01/18/2019 (DN173).
2. Updated payout ledger filed 01/22/2019 (DN178).
3. Surveillance film hand-delivered to Tribunal on 01/22/2019.

### Live witnesses:

Bruce Beyer.