

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

BRYON BISHOP,)
)
Employee/Claimant)
)
vs.) OJCC Case No. 13-18668-TWS
) (consolidated)
ORLANDO PREDATORS SPORTS)
GROUP, LLC) Accident date: 7/30/2013 &
) 7/31/2013
Employer #1)
)
)
TWIN CITY FIRE INSURANCE/THE)
HARTFORD)
)
Carrier/Servicing Agent #1) **Judge: Thomas W. Sculco**
ARENA FOOTBALL ONE, LLC
Employer #2

FINAL COMPENSATION ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims (JCC) at Orlando, Orange County, Florida on November 19, 2014, for a final merits hearing upon the petition for benefits (PFB) e-filed with the OJCC. Mediation was held on September 22, 2014. The parties' Uniform Pretrial Stipulation was e-filed October 13, 2014. The claimant is represented by Charles Leo, Esquire. Employer/Carrier #1 is represented by Scott Miller,

Esquire. Employer #2 is represented by Gina Jacobs, Esquire.

This order addresses the Petition for Benefits filed with the
OJCC on 8/15/2013; 11/13/2013; 01/07/2014; 4/4/2014; 7/2/2014 (2)
9/9/2014 (2)

LIVE TESTIMONY: Bryon Bishop; Davis Mallen, Esquire

DOCUMENTARY EVIDENCE:

- #1 Claimant's: Deposition/attachments of Paulette Mattia
September 16, 2014
- #2 Claimant's: Deposition/attachments of James K. Shea, M.D.
September 8, 2014
- #3 Claimant's: Deposition/attachments of Gerald Mattia, D.C.
June 16, 2014
- #4 E/C's #1: Deposition/attachments of Rory Evans, M.D.
September 16, 2014
- #5 E/C's #1: Deposition/attachments of Douglas Plank
June 19, 2014
- #6 E/C's #1: Deposition/attachments of Seana Coughlin
November 7, 2014
- #7 Joint: Deposition/attachments of Joseph Kleinsmith
July 1, 2014

- #8 Joint: Deposition of Joseph Torres, M.D.
June 19, 2014
- #9 Claimant's: Deposition/attachments of Eric Anderson
July 9, 2014
- #10 Claimant's: Attachments of Eric Anderson
July 9, 2014
- #11 Claimant's: Trial Memorandum
- #12 Joint: Standard Player Contract
- #13 Claimant's: Text string-composite
- #14 Claimant's: Email string-November 6, 2013
- #15 Claimant's: Pre-participation Medical Evaluation
- #16 Claimant's: Jewett Orthopaedic Clinic- Request/Release
- #17 E/C's #1: Trial Memorandum/attachments
- #18 E/C's #2: Trial Memorandum/attachments
- #19 Joint: Pretrial Stipulation
- #20 Claimant's: DVD
- #21 Claimant's: Orlando Predators Team Roster
8/8/2013

After hearing all of the testimony and evidence presented, and after having resolved any and all conflicts therein, the undersigned Judge of Compensation Claims makes the following findings of fact and conclusions of law: The issues for determination, as narrowed by the parties at the time of the

final hearing, are claimant's claims for: 1-compensability of 7/30/13 injuries to right knee, left foot, and back; 2-compensability of 7/31/13 injuries to right knee, left foot, back, and neck; 3-temporary partial disability ("TPD") benefits from date of injury to present; 4-determination of average weekly wage ("AWW") of \$1,475.00; 5-authorization of medical care, including: authorization of Dr. Thomas Winters to treat claimant's right knee injury, authorization of an orthopedic physician to treat claimant's back, neck, left foot, and right knee injuries, a cervical spine MRI, EMG and nerve conduction studies, and MRI's of the right knee and left foot; 6-payment of outstanding medical bills of Dr. Mattia; 7-reimbursement to claimant of out of pocket expenses paid to Dr. Mattia in the amount of \$1,100.00; 8-penalties, interest, costs, and attorney's fees; 9-determination of "fraud" by alleged employers; and 10-the unilateral application of Sections 440.105(3)(c) and (4)(e) is unconstitutional.

E/C#1 (ORLANDO PREDATORS SPORTS GROUP, LLC and TWIN CITY FIRE INSURANCE/THE HARTFORD) raised the following defenses/issues: 1-Claimant is barred from benefits pursuant to the "fraud" provisions contained in Section 440.09(4), Fla. Stat. (2013); 2-claimant was not an employee of the Orlando Predators; 3-claimant's claim is barred by the "professional athlete" exception to coverage contained in section 440.02(17)(c)(3), Fla.

Stat. (2013); 4-AWW is \$663.85; 5-The alleged injuries are not the major contributing cause of claimant's need for the requested medical and disability benefits; 6-No injury arising out of claimant's employment on 7/30/13 and 7/31/13; 7-recommendations of Dr. Shea and Dr. Winters claimant's responsibility as part of IME's; 8-no TPD owed; 9-reimbursement/contribution from Arena Football One, LLC; and 10-no PICA owed.

Arena Football One, LLC ("AFL") (employer #2) raised the following defenses/issues: 1- claimant was not an employee of the AFL; 2-No injury arising out of claimant's employment on 7/30/13 and 7/31/13; 3-The alleged injuries are not the major contributing cause of claimant's need for the requested medical and disability benefits; 4-claimant was a volunteer on 7/30/13 and 7/31/13; 5-claimant's injuries are preexisting; 6-claimant's claim is barred by the "professional athlete" exception to coverage contained in section 440.02(17)(c)(3), Fla. Stat. (2013); 6-AWW is \$0; 7-recommendations of Dr. Shea and Dr. Winters claimant's responsibility as part of IME's; 8-no PICA owed.

Prior to the final hearing, both E/C #1 and employer #2 filed motions to strike claimant's claims of fraud against both employers. I orally granted both motions to strike based on lack of subject matter jurisdiction. See *McArthur v. Mental Healthcare*, 35 So. 3d 105 (Fla. 1st DCA 2010). In addition,

while a JCC lacks the power to find a state statute unconstitutional, I have permitted claimant to build a record to have his constitutional claim addressed by the First District Court of Appeal.

BACKGROUND

A. Work History

Claimant is a 28 year old male who played college football at the University of North Carolina. After graduating from UNC, he wanted to play in the NFL, and went to training camp with the Carolina Panthers. He was released by the Panthers, and then played briefly for the Florida team in the short-lived UFL. Claimant then played for the Orlando Predators of the Arena Football League ("AFL") in 2010. (11/1/13 deposition of claimant, at 11). After playing 10 games in 2010 for the Predators, claimant was called for a try-out with the Miami Dolphins. He was not signed by the Dolphins, and returned to the Predators to finish the AFL season. He testified he injured his low back at the end of the 2010 season.

Following the season, claimant did security/bodyguard work. He testified he did this work "on and off" for about a year, and estimated he earned between \$700 and \$1,000 per month. (11/1/13

deposition of claimant, at 14-15).

Claimant returned to the Predators for the 2011 season, but was traded to the Jacksonville AFL team before the season started. Claimant testified he practiced and signed a contract with Jacksonville, but never played in a game, and was released by the team mid-season. (11/1/13 deposition of claimant, at 19-20).

After that, claimant continued to rehab his back injury and went back to security work. In September of 2012, he worked as a case-manager for mentally-disabled Medicaid recipients through June of 2013. He testified that he was unemployed for 3 weeks, and then was offered a job with the Orlando Methadone Treatment Center. (11/1/13 deposition of claimant, at 25).

Before he started with the Methadone Clinic, claimant testified he was contacted by Sean Coen, the offensive coordinator for the Predators, about an offensive line position for the upcoming AFL playoffs. Mr. Cohen testified he was an employee of the AFL and not the Predators. (Deposition of Sean Coen, at 6). Claimant testified he told Mr. Cohen that he had already secured a job, and then he spoke to his boss at the Methadone Clinic about the situation:

...I let my current job know my situation with football. Hey, I may be getting back into football. I want to pursue this opportunity. Is there any way I can work it out. ...He said, Sure, no thing. We'll just hold the date off, your start date, from actually starting the

job at the methadone center. (11/1/13 deposition of claimant, at 26).

B. Claimant's Alleged Employment and Injury with the AFL/Predators

Claimant testified that his start date was on 8/5/13 with the Methadone Clinic. Prior to 8/5/13, he exchanged a series of text messages with Sean Coen regarding his status with the Predators. On 7/28/13, Mr. Coen texted claimant that:

Sean Coen:

Need you this week! Had another o-lineman went down. Please try and get a couple hours off of work Tuesday and Wednesday to come to practice!

Claimant:

Okay. Great win last night!

Sean Coen:

Thanks! Do you think you will be able to make it work out this week with your work?

Claimant:

Possibly will I be signed

Sean Coen:

Yes if you can be at the Citrus Bowl Tuesday and Wednesday from 7:30 AM - 11:00 AM

Let me know. If I don't hear from you tomorrow and get a confirmation I will have to bring in my next guy. Hope you can work it out.

On 7/15/13 Mr. Cohen emailed a blank AFL standard

player contract to claimant. Claimant testified that on the morning of 7/30/13 he arrived at the Orlando Predators' facilities. At that time, the AFL contract had not been signed by anyone. However, claimant and Doug Plank, the head coach of the Predators, both signed a "One-Day Tryout Form", to allow claimant to participate in practice that morning. The "One-Day Tryout Form" provides, among other things, that it:

"in no way constitutes a contract or an offer of employment between him and the AFL; it is only an opportunity to tryout for a rostered position as a professional football player on a designated AFL member team."

Claimant testified that he then participated in the Predators morning practice on 7/30/13. He testified he did one-on-one running drills, and that it was a very physical padded practice. He testified he "tweaked" his right knee at the practice, and told Kevin Mercuri, the team trainer, who had him ice his knee.

Claimant testified that sometime after practice on 7/30/13 he was sent for a physical examination at the Predators facilities with Dr. Joseph Torres. Claimant testified that trainer Kevin Mercuri was present at the physical examination, and that Dr. Torres gave him a "head to toe" examination. Claimant testified that Dr. Torres told him he passed his physical, and that Dr. Torres filled out a form indicating that

he passed in front of him.

Claimant testified that later that day he was called in to sign the standard player contract with the AFL. The contract was initialed by claimant on every page and was signed by both claimant and Coach Doug Plank on 7/30/13. Claimant testified that coach Plank welcomed him to the team on 7/30/13.

The contract provides, among other things, that: 1-The start of the contract is contingent upon claimant passing an AFL Entrance Physical Examination (p1); 2-the agreement was between the AFL and claimant (p1); 3-the contract supersedes any and all prior contracts between the player and the league; 4-the league will pay claimant a per-game veteran salary of \$830.00 (p1); 5-if claimant is placed on "inactive reserve" he will still receive his weekly salary (p2); 6-"No change, termination or attempted waiver of any portion of this contract is binding unless in writing and signed by the Arena Football League Player and the Arena Football League." (p10); 7-"The Contract is valid and binding upon the Player and the League immediately upon execution....Approval will be automatic unless, within (7) days after receipt of this Contract in the League office, the Arena Football League Director of Football Operations notifies the parties either of disapproval or of extension of this 7-day period..." (p10-11); 8-Both the player and league agree that the contract is only between the player and the league, and not

between the player and his assigned team. (p11); and 9-any workers' compensation claim shall be subject to the workers' compensation laws of the state of claimant's assigned team.

The next morning, 7/31/13, claimant practiced again with the Predators. When asked how claimant could have been permitted to practice on 7/31/13, head Coach Doug Plank testified that:

A player on the field would have to either have the one day form signed and applicable for that day or have passed a physical as it related to the standard player contract, yes. (Deposition of Doug Plank, at 35).

He explained, however, that if the one-day tryout form was signed late in the afternoon that it could be applicable to the next day's practice. (Deposition of Doug Plank, at 43).

Claimant testified that the 7/31/13 practice was "very physical", and that he injured his knee and "jammed" his neck. He testified that following practice on 7/31/13 he had neck pain and that his right knee was swollen and painful, and that he iced his knee and neck after practice.

Claimant did not practice on 8/1/13. He testified that he asked trainer Kevin Mercuri for treatment on 8/1/13 for his neck and knee, and that Mr. Mercuri then asked him to sign a medical release form for prior treatment claimant had received from Jewett Orthopedic Clinic. Claimant testified that about one hour later, Kevin Mercuri told him that his contract had been voided. Claimant testified he then called Sean Coen, who said didn't know

anything about the contract issue.

On 8/1/13, Sean Coen sent an email to Joseph Kleinsmith, senior director of football operations for the AFL, stating that claimant had not passed his entrance physical. Mr. Kleinsmith then contacted Kevin Mercuri and asked for a copy of the failed physical. According to Mr. Kleinsmith, Kevin Mercuri responded that Dr. Torres did not actually see claimant, and that claimant failed the exam based on past history. On 8/6/13, Mr. Kleinsmith sent an email to team employees, league employees, and Kevin Mercuri indicating that he had received conflicting reports as to whether claimant had passed his physical, and asked for clarification. (Deposition of Joseph Kleinsmith, at 42-45). Mr. Kleinsmith testified that he received claimant's contract that was signed on 7/30/13, but never sent claimant or the team written notice that the contract had been terminated because he did not believe termination was needed. (Deposition of Joseph Kleinsmith, at 18, 68-69). Mr. Kleinsmith also testified that workers' compensation coverage for injured AFL players was part of the collective bargaining agreement between the players union and the league. (Deposition of Joseph Kleinsmith, at 34-35).

C. Claimant's Medical Care

Claimant saw Dr. Thomas Winters for an IME on 11/4/13, and

then saw Dr. James Shea for an alternate IME on the ground that Dr. Winters was not qualified to render an opinion on claimant's alleged back and neck injuries. Dr. Winters Diagnosed claimant with right knee pain and left foot pain. He noted claimant has had persistent symptoms since the alleged dates of injury, and noted discomfort at the medial joint and laterally. Dr. Winters testified that claimant reported "catching" in his right knee. X-rays revealed moderate arthritis at his left knee, and mild or moderate arthritis at his right knee. Claimant also reported discomfort at the top of his left foot. (deposition Dr. Winters, at 6).

Dr. Winters recommended MRI's of both the left foot and right knee because claimant has had persistent symptoms that did not get better with conservative care, and because claimant's symptoms were consistent with a torn meniscus to his right knee. *Id.* Dr. Winters testified that he believes claimant suffered injuries to his left foot and right knee on the alleged dates of injury while playing football. (deposition Dr. Winters, at 7). Dr. Winters testified that claimant was restricted from playing football until the MRI's have been completed. (deposition Dr. Winters, at 13).

With regard to treatment provided by Chiropractor Dr. Gerald Mattia after the alleged injuries, Dr. Winters testified that he did not think chiropractic care was appropriate for an acute

injury, and that claimant should first be seen from an orthopedic medical standpoint before undergoing chiropractic care.

(deposition Dr. Winters, at 12).

Dr. Shea saw claimant on 7/23/14. His physical examination revealed:

He had a normal posture and gait, mild to moderate tenderness over the left cervical paraspinals and left trapezius. Every other area of his neck and shoulder blade was nontender to palpation. Cervical range of motion was restricted, as noted in the report. Extension 35°, normal, 45 lateral. Flexions, 30 right, 25 left; expected 45 for both; 55 right rotation and 60 to the left side; 80 being expected. Showed full strength in his arms.

He had no tenderness to palpation throughout the lumbar region. Shoulders and hips were at the same height. His range of motion was just very slightly restricted in his low back; 70° over 90 flexion, extension and lateral flexions were full at 30, and rotation was slightly decreased at 20° right and left.

Motor exam showed full strength in his legs. He had just some mild tenderness to palpation over the medial joint line of his right knee. He had a mild joint effusion, which was palpable both medially and laterally.

... In the left foot he had some tenderness over the dorsal, which means the top aspect of the metatarsal heads. I have a mild to moderate tenderness with transmetatarsal compression. If you think of the metatarsal heads as being at the base of the fingers, if you squeeze the hand here that's the kind of maneuver we did with his foot. And he had some tenderness in that area with squeezing those joints across the line of the 5 joints. That's what that means in my note. (Deposition Dr. Shea, at 11-12).

Dr. Shea's assessment of claimant was neck pain, back pain,

status post L4 - 5 discectomy (2004), right knee pain, and left foot pain. Dr. Shea recommended MRIs of the cervical spine and right knee, EMG's and nerve conduction studies of both upper extremities, and an MRI of the left foot. Dr. Shea testified that the cause of the need for claimant's recommendations is the ongoing pain which has reportedly developed as a result of claimant's brief stint playing football on the alleged dates of injury. (Deposition Dr. Shea, at 13). When asked whether the treatment received by claimant from Dr. Mattia was medically necessary and related to the injuries, Dr. Shea stated "I believe that they were related to the areas of pain complaint, which is related by him to the accident." When asked about massage therapy performed by Dr. Fulmer, Dr. Shea testified "I mean, I think massage therapy is appropriate for the areas of complaints that he has..."

Claimant has also seen chiropractor Gerald Mattia beginning in April 2012. At that time he was complaining of low back pain. (Deposition of Dr. Mattia, at 5). On 9/17/13, claimant came in complaining of low back pain again, knee pain, leg pain, and neck pain. Dr. Mattia testified that claimant's major complaints were his neck and low back. Claimant reported to Dr. Mattia that he had recently had a tryout with the Orlando Predators.

Claimant also saw Dr. Rory Evans for an independent medical examination. Dr. Evans' physical examination of claimant revealed

full range of motion of the neck, with complaints of pain at the extremes of movement. Vertex compression test was negative for any radiculopathy, and claimant had full range of motion of his shoulders, elbows, wrists, and fingers of his hands. Dr. Evans noted no muscle atrophy in any of the muscle groups, Tinel sign was negative over the ulnar nerve at the elbow and the median nerve at the wrist. Dr. Evans noted excellent grip strength with no numbness or weakness.

Dr. Evans noted no swelling of the right knee, but did note significant crepitance in the patellofemoral joint without pain on patellofemoral compression. Claimant had mild tenderness in the medial compartment of the knee but not specifically over the medial joint line. With regard to the left foot, Dr. Evans noted tenderness over the tarsometatarsal joints, with no swelling noted. X-rays of the cervical spine revealed mild degenerative changes at C5-6 and C6-7. X-rays of the knees revealed moderate degenerative changes in both knees, actually worse on the left than the right.

Dr. Evans' impression was 1-mild cervical spondylosis (pre-existing), degenerative osteoarthritis of both knees, left greater than right (pre-existing), no evidence of internal derangement of the right knee, except for arthritis, and mild degenerative osteoarthritis of mid-foot, left foot (pre-existing). In his opinion, none of claimant's diagnoses or

complaints are due to the alleged injuries on the claimed dates of accident. Dr. Evans testified that claimant does not require any medical treatment as a result of the claimed dates of injury.

In addition, Dr. Evans testified that chiropractic treatment that claimant received after the alleged dates of injury was not medically necessary and causally related to those claimed injuries. However, he testified later in the deposition that he agreed that the chiropractic treatment was medically necessary, but that it was not causally related to the claimed injuries.

EMPLOYER/EMPLOYEE RELATIONSHIP FOR 7/30/13 AND 7/31/13 D/A'S

Claimant alleges that he had a valid oral contract for employment with the Predators and/or the AFL on both 7/30/13 and 7/31/13. He also alleges he had a valid written contract with the AFL on 7/31/13, specifically the standard player contract that was signed by claimant and Head Coach Doug Plank. Consequently, I will address each of these issues below.

A. Oral Contract with the Predators and/or the AFL on 7/30/13.

It is well settled that there must be a meeting of the minds on all essential terms for there to be a valid and enforceable

contract. 11 Fla. Jur 2d Contracts § 19. For the reasons discussed below, I find that there was no meeting of the minds on all the essential terms of any alleged employment agreement between claimant and either the Predators or the AFL on 7/30/13. Consequently, I find that neither the Predators nor the AFL are responsible for any injury sustained by claimant on 7/30/13. The issue of claimant's alleged written contract with the AFL on 7/31/13 will be addressed separately below.

Specifically, claimant alleges that he and Sean Coen reached an oral agreement, confirmed by text messages, that he would be "signed" if he presented himself at the Citrus Bowl on the morning of 7/30/13 and 7/31/13. Considering the totality of evidence presented, I find the exchange of text messages between Sean Coen and claimant on 7/28/13, as well as claimant's testimony on the alleged agreement, to be insufficiently specific and definite to establish a contract for employment. Claimant acknowledged that he was aware that he had to pass a physical before he would be able to sign a contract. Significantly, on the morning of 7/30/13, claimant signed a "One-Day Tryout Form", to allow him to participate in practice that morning. The "One-Day Tryout Form" provides, among other things, that it:

"in no way constitutes a contract or an offer of employment between him and the AFL; it is only an

opportunity to tryout for a rostered position as a professional football player on a designated AFL member team."

Moreover, neither the text exchange with Sean Coen nor claimant's testimony even addresses claimant's pay. If claimant interpreted the "agreement" as referring to the standard player contract weekly pay amount for veterans, than claimant also should have been aware that the written contract was not valid, by its terms, until he passed an entrance physical.

Even if claimant subjectively believed that he had a valid employment agreement with either the Predators or the AFL on the morning of 7/30/13, it is clear that Sean Coen and Doug Plank had a different understanding - or else why would they have had claimant sign the "one day waiver" before allowing him to practice that morning. Considering all the evidence presented, I find that claimant was not an employee of either the Predators or the AFL on the morning of 7/30/13 when he claims he injured himself at practice.

Even if claimant had some sort of valid employment agreement with the Predators or the AFL on 7/30/13, any injury he suffered on that day would be excluded from coverage pursuant to the "professional athlete" exception contained in section 440.02(17)(c)(3), Fla. Stat. (2013). It appears that the collective bargaining agreement ("CBA") between the AFL and the AFL player's union voluntarily provides workers' compensation

coverage to injured players who are part of the union that have valid written contracts. (Deposition of Joseph Kleinsmith, at 34-35).

Without a valid written contract for 7/30/13, however, claimant would not be covered by the CBA, and would therefore be subject to the professional athlete exception to coverage. The "one-day waiver" signed by claimant specifically provides that claimant was trying out to be a professional football player. While claimant was never paid, he argues his "contract" was for \$830.00 per week, and seeks benefits based on an AWW that includes that amount. As such, any injury he sustained on 7/30/13 falls outside the coverage of the workers' compensation act.

Finally, the testimony of Doug Plank and Joseph Kleinsmith establishes that Sean Coen and Doug Plank were employees of the AFL and not employees of the Predators. Based on this testimony, which I accept, even if claimant had a valid contract of employment, and even if Section 440.02(17)(c)(3), Fla. Stat. (2013) did not apply, the responsible entity would be the AFL and not the Predators.

B. Written Contract with the AFL on 7/31/13

It is undisputed that claimant and Doug Plank, head coach of

the Predators, signed and executed the AFL standard player contract on the afternoon of 7/30/13. What the parties dispute is whether this contract was valid and in effect on the morning of 7/31/13, when claimant alleges he sustained injuries to his right knee, left foot, back, and neck. At the heart of this dispute is the question of whether claimant "passed" an entrance physical that he alleges took place with Dr. Joseph Torres on the afternoon of 7/30/13 at the Orlando Predators' facilities. It is clear from the testimony of Mr. Kleinsmith, as well as my review of the standard player contract signed by claimant and Doug Plank, that the contract is not valid unless and until claimant passes his entrance physical. It is the AFL's position that claimant never passed his physical, and therefore that the written contract was not valid on 7/31/13. In contrast, claimant testified that Dr. Torres performed a physical on the afternoon of 7/30/13, that he told him he passed, and that he signed the physical form in front of him.

After considering all the evidence presented, including the live testimony of the clamant, I find that claimant did successfully pass his entrance physical on 7/30/13, that the AFL never terminated claimant's contract pursuant to the required provisions of the agreement, and therefore that claimant was an employee of the AFL the morning of 7/31/13 when he allegedly injured himself at practice. Based on language in the standard

player contract and testimony from Mr. Kleinsmith that the collective bargaining agreement ("CBA") between the AFL and the AFL player's union voluntarily provides workers' compensation coverage to injured players, I find that claimant's alleged injuries are not excluded from coverage by operation of section 440.02(17)(c)(3), Fla. Stat. (2013).

I recognize there are conflicts in the evidence regarding whether claimant passed his physical on 7/30/13. Specifically, the testimony of Kevin Mercuri directly conflicts with that of claimant on what happened regarding the physical. While other AFL employees or former employees also disagree that claimant passed his physical, none of them appear to have first-hand knowledge of what happened at the physical. For the following reasons, I accept claimant's testimony as credible, truthful, logical, and consistent with common sense, and reject the contrary testimony of the other witnesses, particularly Kevin Mercuri.

First, I find claimant's version of events to be consistent with other evidence in the case and with common sense. Doug Plank testified that "a player on the field would have to either have the one day form signed and applicable for that day or have passed a physical as it related to the standard player contract, yes." (Deposition of Doug Plank, at 35). It is undisputed that claimant signed a one-day waiver the morning of 7/30/13, but did

not sign one on 7/31/13. Thus, claimant would not have been permitted to practice on 7/31/13 unless he had passed his physical with Dr. Torres on 7/30/13. While Coach Plank explained that if the one-day tryout form was signed late in the afternoon that it could be applicable to the next day's practice, that is not what happened here. Claimant signed his one-day waiver the morning of 7/30/13, and that waiver was clearly applicable to the practice that day.

In addition, claimant and Coach Plank apparently signed the standard player contract the afternoon of 7/30/13. If Kevin Mercuri was correct that claimant's physical was "failed" without even seeing the doctor because of past history, than why would Doug Plank sign the contract and permit claimant to practice the next day? Moreover, Kevin Mercuri did not have authority to "fail" claimant's physical; only the team physician could make that determination.

Finally, I have observed the demeanor of claimant while testifying and find him to be a truthful and honest witness. Based on these considerations, I accept claimant's testimony that he passed his physical on 7/30/13. Based on Mr. Kleinsmith's testimony that he received claimant's contract that was signed on 7/30/13, but never sent claimant or the team written notice that the contract had been terminated because he did not believe termination was needed, I find he was an AFL employee the morning

of 7/31/13.

It is not clear whether claimant is alleging an oral employment agreement with the Predators or the AFL on 7/31/13. If so, the standard player contract signed by claimant on 7/30/13 specifically provides that it supercedes all prior agreements. Moreover, my previous analysis and finding that there was no valid oral contract between claimant and the Predators or AFL on 7/30/13 also applies to the 7/31/13 date of injury.

REMAINING CLAIMS, ISSUES, AND DEFENSES

Based on the above findings that claimant was not an employee of the Predators on either 7/30/13 or 7/31/13, it is not necessary to address E/C# 1's additional defenses or its claim for contribution/reimbursement against the AFL. Consequently, all pending petitions against E/C# 1 are denied and dismissed with prejudice.

As to claimant's claims against the AFL, based on the above findings all pending claims against the AFL for date of injury 7/30/13 are denied and dismissed with prejudice. With regard to claimant's remaining claims related to the 7/31/13 date of injury, at the beginning of the final hearing the court asked counsel whether there were any conflicts in the medical evidence that were material to the pending claims. Notwithstanding the

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representations of counsel that no such conflicts existed, based on my review of the medical depositions and records introduced into evidence, I find there are conflicts in the medical opinions of Dr. Winters, Dr. Shea, and Dr. Evans that are material to the pending claims. As such, on my own authority, I am appointing an expert medical advisor or advisors to address the following issues:

1. Did claimant suffer injuries to his right knee, left foot, neck, and/or his back on 7/31/13 while practicing with the Orlando Predators?
2. If so, what are claimant's diagnoses related to those injuries?
3. What medical treatment, if any, does claimant need as a result of those injuries?
4. What restrictions, if any, does claimant have as a result of those injuries?
5. Was chiropractic treatment provided to claimant by Dr. Mattia after 7/31/13 reasonable, medically necessary, and causally related to those injuries?

Following appointment of the EMA or EMA's, all remaining claims, defenses, and issues between claimant and the AFL will be determined at a subsequent hearing. The parties are instructed to schedule a status conference within 30 days of this order to address issues relating to the appointment of the EMA or EMA's.

WHEREFORE it is hereby ORDERED and ADJUDGED that:

1. Claimant was not an employee of the Orlando Predators at the time of his alleged injuries on 7/30/13 and 7/31/13. Consequently, all petitions for benefits against E/C #1 are DENIED and DISMISSED WITH PREJUDICE.
2. Claimant was not an employee of the Arena Football League at the time of his alleged injury on 7/30/13. Consequently, all claims against the AFL for date of injury 7/30/13 are DENIED and DISMISSED WITH PREJUDICE.
3. The Court appoints an expert medical advisor or advisors ("EMA") to address the issues listed above. The parties are instructed to schedule a status conference within 30 days of this order to address issues relating to the appointment of the EMA or EMA's.
4. Jurisdiction is reserved to determine all remaining claims, defenses, and issues between claimant and the AFL for date of injury 7/31/13 following appointment of the EMA physician or physicians.
5. To avoid confusion as to the appealability of this order, it is intended that this order is a final order with respect to all of claimant's claims against E/C #1 because the order adjudicates all pending issues between those parties.

It is intended that this order is a non-final order with respect to all of claimant's claims against the AFL because the order does not adjudicate all pending issues between those parties, and reserves jurisdiction on all remaining

issues.

DONE and ORDERED in Orlando, Orange County, Florida.

This 23rd day of December, 2014

Thomas W. Sculco



Thomas W. Sculco

Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Orlando District Office
www.jcc.state.fl.us

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the Order was entered by the Judge of Compensation Claims and was electronically served on the parties through their respective attorneys.

Marla Miller

12/23/2014

Marla Miller
District Clerk
Orlando District Office