

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

Patrick Juliano,)	
)	
Employee/Claimant,)	OJCC Case No. 10-021904TGP
)	
vs.)	Accident date: December 9, 2009
)	
Phiris Corporation/Protective Insurance)	Judge: Thomas G. Portuallo
Company,)	
)	
Employer/ Carrier/Servicing Agent.)	

ORDER DENYING MEDICAL AND DISABILITY BENEFITS

After proper notice to all the parties, a final hearing was held before the undersigned Judge of Compensation Claims on October 17, 2011, in Daytona Beach, Volusia County, Florida. The Petitions for Benefits at issue were filed on September 20, 2010, and March 25, 2011. The Claimant, Patrick Juliano, was represented by Attorney Jon Benezette. The Employer/Carrier, Phiris Corporation/Protective Insurance Company, was represented by Attorney Scott Miller.

Statement of the Case

The Claimant, Patrick Juliano, a 52 year old male, injured his neck and back on December 9, 2009, while in the course of his employment with Phiris Corporation. On the day of accident, the Claimant was making deliveries to a residence when he slipped and fell, landing on his neck and back.

The Claimant had long standing neck and back injuries sustained years prior to his employment with Phiris Corporation. The Claimant sustained a work-related low back injury in approximately 1980 and treated with various physicians. The Claimant was also involved in a motor vehicle accident in 2003 resulting in a cervical fusion and lumbar fusion performed in November 2005. Following the cervical and lumbar fusion surgeries, the Claimant treated with a pain management physician, Dr. Evans Amune, who administrated various injections to the Claimant in 2007. Additionally, the Claimant treated with Dr. Ajay Parikh, internist, from 2006 through November 2009. Dr. Parikh treated the Claimant on an almost monthly basis for neck and back pain up to the December 9, 2009, industrial accident.

The Claimant's neck and back injuries sustained in the December 9, 2009, industrial accident were accepted as compensable and the Claimant was provided with authorized orthopedic treatment with Dr. Stephane Lavoie. Dr. Lavoie diagnosed the Claimant with cervical and lumbar pain, status post previous cervical and lumbar surgery. Dr. Lavoie placed the Claimant at maximum medical improvement on August 13, 2010, with a 1% permanent impairment rating and permanent restrictions of no prolonged activities and no repetitive bending.

The Claimant also received authorized medical treatment with pain management physician, Dr. Evans Amune. It was noted that Dr. Amune previously treated the Claimant for prior neck and back problems and previously administrated various injections to the Claimant. As a result of the December 9, 2009, injuries, Dr. Amune recommended that the Claimant undergo a diagnostic medial branch block, a Novocain injection performed in order to determine whether a rhizotomy would be appropriate. Dr. Amune felt the Claimant had not reached maximum medical improvement.

The Claimant continued to work for Phiris Corporation following the December 9, 2009, industrial accident until separation from employment in April 2010 immediately following a subsequent on the job accident involving the Claimant's knee which is not the subject of the pending case.

The Claimant relies on the opinion of pain management specialist, Dr. Amune, with regard to authorization of a medial branch block and the claim for temporary total and temporary partial disability benefits.

The Employer/Carrier secured the opinion of a physical medicine, rehabilitation, and pain medicine specialist, Dr. Marc Gerber, as an independent medical examination.

Issues and Defenses

At the initial Pretrial Questionnaire, the Claimant identified the outstanding issues in this case to be:

1. Payment of temporary total disability benefits from December 9, 2009, and continuing;
2. Payment of temporary partial disability benefits from December 9, 2009, and continuing;
3. Penalties, interest, attorney's fees and costs.

These issues were defended at the initial Pretrial by the Employer/Carrier on the grounds that:

1. No medical evidence of additional temporary total/temporary partial disability;
2. Claimant at MMI per Dr. Lavoie on August 13, 2010;
3. Accident is not the major contributing cause of alleged temporary disability;
4. Voluntary limitation of income;

5. Refusal of available employment;
6. No penalties, interest, costs or attorney's fees due.

On August 19, 2011, the Claimant amended the issues appearing on the Pretrial to include:

1. Authorization and payment of diagnostic medial branch block per Dr. Amune;
2. Attorney's fees and costs.

The Employer/Carrier defended these amended issues on the grounds that:

1. The industrial accident no longer remains the major contributing cause of the need for any additional treatment by Amune;
2. The alleged recommended medial branch block with Dr. Amune is not diagnostic in nature and is not medically necessary;
3. No attorney's fees and costs are due.

Documentary Evidence

At the October 17, 2011, final hearing, the following documentary exhibits were admitted into evidence:

JCC's Exhibit # 1	Pretrial Questionnaire and Order of this Court dated February 21, 2011.
JCC's Exhibit # 2	Claimant's Amended Pretrial Stipulation, filed August 19, 2011.
JCC's Exhibit # 3	Employer/Carrier's Amendments to the Pretrial filed March 29, 2011, April 14, 2011, July 7, 2011, and August 30, 2011.
JCC's Exhibit # 4	Claimant's Memorandum of Law, admitted for argument purposes only.
JCC's Exhibit # 5	Employer/Carrier's Trial Summary and Memorandum of Law, admitted for argument purposes only.

Claimant's Exhibit # 1	Deposition of Dr. Evans Amune, taken August 17, 2011, with attachments, subject to objections.
Employer/Carrier's Exhibit # 1	Deposition of Dr. Ajay Parikh, taken August 17, 2011, with attachments, admitted for factual purposes only.
Employer/Carrier's Exhibit # 2	Deposition of Dr. Jeffrey Rosen, taken July 26, 2011, with attachments.
Employer/Carrier's Exhibit # 3	Deposition of Dr. Stephane Lavoie, taken July 6, 2011, with attachments.
Employer/Carrier's Exhibit # 4	Deposition of Dr. Marc Gerber, taken May 18, 2011, with attachments.
Employer/Carrier's Exhibit # 5	Deposition of Dr. Joan Masson, taken July 6, 2011, with attachments, admitted for factual purposes only.
Employer/Carrier's Exhibit # 6	Deposition of Lisa Gibbens, taken May 4, 2011, with attached records of Orlando Pain and Medical Rehabilitation Center.
Employer/Carrier's Exhibit # 7	Deposition of Winifred Williams, taken August 1, 2011, with attached Unemployment Compensation records from the Agency of Workforce Innovation.
Employer/Carrier's Exhibit # 8	Wage Statement, dated December 27, 2011.
Employer/Carrier's Exhibit # 9	Payout ledger.
Employer/Carrier's Exhibit # 10	Composite exhibit of records and information obtained from Social Security Administration.

Findings of Fact and Conclusions of Law

In making my findings of fact and conclusions of law in this matter, I have carefully considered and weighed all the testimony and evidence presented to me including all the live testimony as well as the documentary exhibits and I have resolved any and all conflicts therein.

After having carefully considered the arguments of the parties and all evidence presented in this case, I make the following findings of fact and conclusions of law:

1. The stipulations of the parties as listed above and as identified in the Pretrial Questionnaire are approved and adopted by me.
2. This Court has jurisdiction over the subject matter and over the parties.
3. In making the determinations set forth below, I have attempted to distill the testimony and salient facts together with the findings and conclusions necessary for the resolution of this claim. I have not attempted to painstakingly summarize the substance of all the documentary evidence or the testimony of the witnesses nor have I attempted to state nonessential facts. Because I have not done so does not mean I have failed to consider all the evidence.

Burden of Proof

4. I note that Florida Statutes §440.09(1), as applicable to the date of accident in this case, sets forth the appropriate burden of proof in this case and requires:

...The injury, its occupational cause and any resulting manifestations or disability must be established to a reasonable degree of medical certainty, based on objective relevant medical findings, and the accidental compensable injury must be the major contributing cause of any resulting injuries...

5. After reviewing the totality of evidence in this case, I find the Claimant failed to sustain his burden of proof to establish, by a presenting a preponderance of evidence, that the medical benefits and disability benefits at issue are causally related to the compensable injuries sustained in the December 9, 2009, industrial accident by way of major contributing cause. Further, I find the Claimant failed to establish that the medical benefits and disability benefits at issue are causally related to the compensable injuries sustained in the December 9, 2009,

industrial accident by way of direct and proximate cause or any degree of causation.

6. In making these findings, I accept the Employer/Carrier's arguments as presented in their Trial Memorandum and during closing arguments. I find these arguments are logical, reasonable, and consistent with the totality of evidence in this case.

7. Additionally, in making these findings, I note it was not disputed in this case that the Claimant's neck and back condition at issue is not readily observable.

Pre-existing Cervical and Back Injuries

8. I find the Claimant has long standing neck and back injuries sustained years prior to his employment with Phiris Corporation.

9. I find it is not disputed in this case that the Claimant sustained a work-related low back injury in approximately 1980 and treated with orthopedic physicians, including Dr. Urrichio for this injury. The Claimant received diagnostic studies, injections, and chiropractic treatment.

10. Additionally, I find it is not disputed in this case that the Claimant was involved in a motor vehicle accident in 2003, which was not a work-related accident, but where the Claimant sustained further injury to his back and neck. As a result of the motor vehicle accident in 2003, the Claimant treated with Dr. Pedro Oliviero and Dr. Robert Masson and ultimately had cervical fusion and lumbar fusion performed in November 2005. The Claimant continued to treat with Dr. Masson through the year 2007. The Claimant's treatment as a result of the motor vehicle accident in 2003 is set forth throughout the medical records attached to the deposition of Lisa Gibbens, in evidence as Employer/Carrier's Exhibit # 6. Additionally, medical reports reflecting the Claimant's treatment and diagnostic studies following the 2003 motor vehicle accident and subsequent lumbar and cervical fusion, are attached to the deposition of Joan Masson, in evidence, as Employer/Carrier's Exhibit # 5. I note there are additional medical

composite exhibits in evidence which document the Claimant's prior medical history in this case (Employer/Carrier Exhibits # 1 and #10).

11. As a result of the auto accident in 2003, the Claimant also treated with a pain management physician, Dr. Evans Amune, who administered various injections for the Claimant's pre-existing back and neck problems in 2007. I find that, at deposition, Dr Amune agreed that he received history of a motor vehicle accident in 2003 where the Claimant was rear-ended at 65 miles per hour (Deposition Dr. Amune, page 18). Dr. Amune described the nature of the fusion surgeries that were performed on the Claimant in the year 2005, in both the Claimant's neck and lumbar spine, resulting in a permanent condition with permanent restrictions (Deposition Dr. Amune, page 20).

12. Additionally, As a result of the auto accident in 2003, the Claimant treated with Dr. Ajay Parikh, internist, from 2006 through November 2009. The Deposition of Dr. Parikh is in evidence as Employer/Carrier's Exhibit # 1 and reflects the multiple office visits the Claimant had with Dr. Parikh as a result of chronic low back pain and neck pain immediately prior to the December 9, 2009, industrial accident. Dr. Parikh stated that the Claimant showed up almost every month for a period of a couple of years immediately prior to the December 9, 2009 date of accident (Deposition Dr. Parikh, page 9). Dr. Parikh prescribed mostly Hydrocodone or Lortab and muscle relaxers (Deposition Dr. Parikh, page 9). Also, Dr. Parikh prescribed Neurontin from May 2009 until December 2009 (Deposition Dr. Parikh, page 9).

13. The Social Security records in evidence reflect that the Claimant was awarded Social Security disability benefits from November 30, 2005, through July 27, 2007, years prior to the industrial accident of December 2009, based upon the Claimant's prior cervical and lumbar condition. I note the Social Security Administration's Notice of Decision letter dated October

21, 2009, in evidence, set forth the Claimant's pre-existing lumbar and cervical condition leading up to his award of Social Security disability benefits at that time (Employer/Carrier's Exhibit # 10).

Authorized Physician, Dr. Lavoie

14. It is not disputed in this case that, following the December 9, 2009, industrial accident, the Claimant was authorized to treat with orthopedic physician Dr. Lavoie. After reviewing Dr. Lavoie's deposition testimony with attached records, I find that Dr. Lavoie is a well qualified physician, sufficient to form medical opinions on the issues presented in this case, particularly from an orthopedic perspective. I find Dr. Lavoie was provided with an accurate and complete history of the Claimant's prior problems, including the Claimant's treatment with Dr. Parikh on a monthly basis for neck and back pain right up to the time of the December 9, 2009, industrial accident (Deposition Dr. Lavoie, page 5).

15. On page 7 of his deposition, Dr. Lavoie described his initial impression in this case as:

1. Status post cervical fusion;
2. Status post lumbar fusion;
3. Chronic neck pain, pre-existing condition;
4. Chronic back pain, pre-existing condition;
5. Exacerbation of neck and back pain after a fall at work; and
6. Right lumbar radiculopathy after a work accident.

16. On pages 15 and 16 of his deposition, Dr. Lavoie testified as follows:

Q. Do you have an opinion as to whether or not the accident of December 2009 was a temporary exacerbation of his pre-existing neck and back condition?

A. It is probably an aggravation of his baseline condition, yes.

Q. And do you feel the aggravation had resolved by the last visit of August 13, 2010?

A. Yes, minus a little bit of extra discomfort which I rated at one percent.

Q. Okay. Do you have an opinion as to whether his pre-existing neck and back conditions were the major contributing cause, and what I mean by that is according to statute, greater than 50 percent of the cause of his need for further treatment for his neck or back, if any, as of the last time you saw him on August 13th, 2010?

A. As of August, yes.

Q. And what's your opinion in that regard?

A. That the soft tissue injuries had mostly resolved and that any recurrence of symptoms would have to occur from either a new accident or aggravation of pre-existing condition.

17. Based upon my review of the testimony and reports of Dr. Lavoie in their entirety, I find that Dr. Lavoie placed the Claimant at maximum medical improvement on August 13, 2010, with impairment rating of 1% and permanent restrictions of no prolonged overhead activities and no repetitive bending (Deposition Dr. Lavoie, page 14). I find that Dr. Lavoie testified that the Claimant's accident in December 2009 was a temporary exacerbation of his pre-existing neck and back condition and, except for extra discomfort which was rated at 1%, the Claimant's aggravation had resolved by the last office visit of August 13, 2010 (Deposition Dr. Lavoie, pages 15 and 16).

IME Physician, Dr. Gerber

18. After reviewing Dr. Gerber's deposition and attached records in their entirety, I find that the Employer/Carrier's IME physician, Dr. Marc Gerber, a pain management physician, is a well qualified physician, sufficiently qualified to form acceptable medical opinions on the issues presented in this case, particularly from a pain management and physical medicine perspective. I find that Dr. Gerber was thoroughly familiar with the Claimant's prior medical history in this case, including the Claimant's treatment with Dr. Ajay Parikh, internist, leading up

to the December 9, 2009, industrial accident. I find Dr. Gerber testified in a logical, reasonable manner, consistent with the totality of evidence in this case and, as such, I accept Dr. Gerber's opinion over any contrary medical opinion in the Record.

19. I note, on page 25 of his deposition, Dr. Gerber unequivocally testified that:

The major contributing cause for any further interventional treatment for his neck or back at this point and time would be the pre-existing conditions of post fusion, cervical and lumbar pain, as well as a long history predating 2009 of interventional treatment and chronic neck and low back symptoms.

20. Additionally, I note Dr. Gerber clearly and unambiguously testified on page 42 of his deposition as follows:

I mean, all you have to do is pick up any record predating 2009 and read the pain complaints. I mean, here's a record from Dr. Amune in 2007. The pain is a 7 on a scale of 1 to 10. The pain is aggravated by putting the head down for flexing activities. The pain is accompanied by a burning sensation. He has axial pain with pain down the right side.

I mean, this is not somebody that was pain-free and then, all of a sudden, had a slip and fall. I mean, this patient's been complaining of neck and back pain, you know, since day one, I mean, you know, since going back to '03. I mean, there is nothing new in his complaints at this point in time to change major contributing cause. And we can look at any specific record that you want and discuss it.

Authorized Physician, Dr. Amune

21. When examining the deposition testimony of Dr. Amune, I have considered the objections raised by counsel for the Employer/Carrier during the course of the Dr. Amune's deposition and then re-asserted at the final hearing. I hereby overrule all objections raised by the Employer/Carrier to the testimony of Dr. Amune.

22. Although Dr. Amune is the Claimant's authorized pain management physician, and although Dr. Amune saw the Claimant even prior to the December 9, 2009, industrial

accident, I reject Dr. Amune's opinions in so far as it contradicts the opinion of the Claimant's orthopedist Dr. Lavoie and the Employer/Carrier's IME physician, Dr. Gerber. In making this determination, I find that Dr. Amune was provided with an incomplete history of the Claimant's complaints of pain leading up to the December 9, 2009, date of accident. Beginning on page 24 of his deposition, I note Dr. Amune testified as follows:

Q. You were asked on direct examination that when you address causation - -

A. Uh-huh.

Q. - - that you place a significant importance upon the fact that you saw him in December 2007, and then there was a period of time where you did not see him at all - -

A. Uh-huh.

Q. - - until December 9, 2009; is that correct?

A. Yes.

Q. So, am I to assume that the - - that your impression was that he was doing well and - - was not having any problems with his neck and back during that period of time?

A. That's my impression.

Q. Okay, and is that the impression that he gave you when he came back to see you on December 9, 2009?

A. Correct, sir.

Q. All right. Did you happen to re -- get or review any records from an internist by the name of Dr. Parikh or Parikh?

A. Parikh, no, sir.

Q. Did Mr. Juliano tell you that he had been seeing Dr. Parikh?

A. No, not that I am aware.

Q. Did Mr. Juliano tell you he had been seeing Dr. Parikh on a monthly basis all through 2009 leading up to this fall in December 2009?

A. No, sir.

Dr. Gerber Accepted Over Dr. Amune

23. When comparing Dr. Gerber's knowledge of the Claimant's past medical history to that of Dr. Evans Amune, I find that Dr. Gerber was more familiar and had a more thorough knowledge of the Claimant's prior injuries and associated medical treatment than Dr. Amune. I find Dr. Amune's opinions in this case were based on incomplete history and inaccurate information regarding the Claimant's lumbar pain and cervical pain immediately prior to the industrial accident of December 9, 2009. As a result, I consider Dr. Amune's opinions to be speculation and conjecture. I make this finding despite the fact that Dr. Amune treated the Claimant both prior to and subsequent to the December 9, 2009, industrial accident.

24. I find that Dr. Gerber, the Employer/Carrier's IME physician, is far more familiar with the Claimant's true prior history and the Claimant's complaints of pain immediately prior to the industrial accident in this case. As such, I find Dr. Gerber's medical opinion from a pain management and physical medicine perspective is more accurate and more consistent with the actual facts in evidence in this case. I also find that Dr. Gerber's opinion is more consistent with the opinion of the treating orthopedist, Dr. Lavoie. As such, I accept Dr. Gerber's opinion over the contrary opinion of Dr. Amune and over any contrary medical opinion in the Record.

25. When accepting the testimony of the IME physician, Dr. Gerber, over that of Dr. Amune, I also find that Dr. Gerber's testimony is more consistent with the testimony of the Claimant's prior physician, Dr. Parikh. Dr. Parikh provided factual information regarding the Claimant's history of pre-existing back and neck problems. Dr. Parikh testified that the

Claimant's complaints of back and neck pain would sometimes become worse, so that the Dr. Parikh would increase medicines or change medicines that were not controlling the Claimant's symptoms at times (Deposition Dr. Parikh, pages 11 and 12). Again, I note that Dr Parikh treated the Claimant almost every month for a period of a couple of years prior to the industrial accident (Deposition Dr. Parikh, pages 8 and 9).

26. I note that at the time of the Final Merit Hearing in this case neither party requested or moved for an expert medical advisor. As such, I find that any claim or request for an expert medical advisor at this point in time is considered waived and abandoned by the parties. Accordingly, I hereby resolve any conflict in medical opinions in the Record by accepting the opinion of Dr. Gerber over that of Dr. Amune for reasons described herein.

Major Contributing Cause

27. Based upon the totality of evidence in this case, I find that the majority of the Claimant's pre-existing problems were the result of the non-work related 2003 motor vehicle accident, resulting in both a cervical and lumbar surgery as shown in the medical records (Employer/Carrier's Exhibit # 5 and 6). As such, I find that the Claimant is required to meet the "major contributing cause" standard of causation with regard to both the medical and indemnity benefits presently at issue.

28. In finding that the major contributing cause standard applies to the case at bar, I have considered that the Claimant, in the present case, sustained a work-related low back injury in approximately 1980 and treated with various physicians following that injury. I have also considered the standard of causation as set forth in the First DCA Opinion of Byszczynski v. United Parcel Service, Inc. and Liberty Mutual Insurance Company, 53 So. 3rd 328 (Fla. 1st DCA 2010). In Byszczynski, the Claimant was not required to meet the major contributing cause

standard due to the fact that his pre-existing condition was the result of work-related injuries.

29. However, unlike the facts in the Byszynski decision, and notwithstanding the Claimant's 1980 work-related injury, I find the totality of evidence the instant Record, including the objective medical evidence, established that the Claimant's pre-existing problems are primarily the result of a non-work related injury, specifically the automobile accident in 2003 resulting in both a cervical and lumbar fusion and the need for continued treatment for pain in the neck and back. Again, I note that following the 2003 motor vehicle accident and resulting surgeries, the Claimant treated on a monthly basis for pain in the neck and back with Dr. Parikh, leading up to the December 9, 2009, industrial accident. Accordingly, under the particular circumstances of the present case, and consistent with the Byszynski decision, I find that the major contributing cause standard is the appropriate standard to apply to the facts and issues in the present case.

30. Based upon the totality of evidence in this case, I deny the claims for authorization of a medial branch block and for temporary total and temporary partial disability benefits on the grounds that the Claimant failed to present a preponderance of evidence to show that the medical and disability benefits at issue are causally related to the compensable injuries sustained in the December 9, 2009, industrial accident by way of major contributing cause.

31. Nevertheless, as stated above, even if it is determined that the major contributing cause standard does not apply to the facts in this case, a position I reject, I also find that the Claimant failed to establish a causal relationship between the medical and disability benefits at issue and the compensable injuries by direct and proximate cause or by any degree of causation.

32. I base these findings on Dr. Gerber's testimony which I find to be most consistent with the totality of evidence in this case and which clearly reflects that the Claimant's current

condition is not related to the industrial injury, but is solely the result of the Claimant's pre-existing problems, particularly the 2003 motor vehicle accident resulting in lumbar and cervical fusion surgeries performed in 2005. Consistent with this determination, I also accept Dr. Gerber's opinion that there are no new objective findings with regard to the December 9, 2009, industrial accident.

Purpose of Medial Branch Block

33. I accept the argument of the Employer/Carrier that the medial branch block as recommended by Dr. Amune is not a diagnostic procedure recommended in order to determine whether or not the Claimant's condition is causally related to the compensable injuries and the industrial accident. Instead, based upon Dr. Amune's testimony, I find that the purpose of the medial branch block is to determine whether or not a subsequent rhizotomy procedure is appropriate (Deposition Dr. Amune, page 13). As such, I cannot find that the medial branch block should be authorized in order to "rule out" whether or not the Claimant's compensable injuries are the cause for the need for future medical treatment in this case. Accordingly, I cannot find that the medial branch block is causally related to the compensable injuries in this case.

Claim for TTD / TPD

34. After reviewing the totality of circumstances of this case, I find it is not disputed that the Employer/Carrier did pay the appropriate temporary indemnity benefits in this case up to the date of Dr. Lavoie's maximum medical improvement date, August 13, 2010. As such, I deny the claim for temporary indemnity benefits for the period of time from December 9, 2009, the date of accident, to August 13, 2010.

35. Consistent with this determination, I also find that the Claimant failed to identify any specific period of time prior to August 13, 2010, where the Claimant would be entitled to an award of temporary total of temporary partial disability benefits. At the Hearing, the Claimant solely relied on the opinion of Dr. Evans Amune that the Claimant had not attained maximum medical improvement and, therefore, was entitled to temporary total disability or temporary partial disability benefits from the date of maximum medical improvement pursuant to Dr. Lavoie's opinion, August 13, 2010, to the date of Hearing.

36. Under these circumstances, I deny any claim for temporary total disability or temporary partial disability benefits for the period of time from the date of accident to August 13, 2010, on the grounds that such claim was not pursued at the time of the final hearing and was waived or abandoned. Nevertheless, if it is determined that the claims for temporary total disability or temporary partial disability benefits for the period of time from the date of accident to August 13, 2010, was not waived, a position I reject, I deny such claims for reasons expressed below.

Insufficient Evidence of TTD / TPD

37. I find there is insufficient evidence in the Record to reflect that the Claimant is temporarily totally disabled for any period of time at issue, including from the date of accident to the date of the final hearing. Instead, I note this Claimant remained at work following the December 9, 2009, industrial accident until separation from employment in April 2010, immediately following a subsequent accident occurring at work involving the Claimant's knee. Further, I note this is not a case where the any claim regarding the Claimant's subsequent knee injury was consolidated with the instant workers' compensation claim and included in the issues presently before this Court.

38. Likewise, I find that there is a lack of medical evidence in the Record to substantiate the Claimant's claim for temporary partial disability benefits as related to the compensable injuries sustained in the December 9, 2009, industrial accident. In making this finding, I note that Dr. Amune clearly testified that he never addressed work restrictions (Deposition Dr. Amune, page 10). Additionally, I note Amune deferred his opinion to Dr. Lavoie with regard to any work restrictions applicable to the Claimant (Deposition Dr. Amune, page 16).

39. As such, I cannot find that Dr. Amune's testimony supports an award of temporary total or temporary partial disability benefits as the doctor did not address any work restrictions or the Claimant's ability to work. Additionally, as indicated above, I reject Dr. Amune's opinion to the extent that Dr. Amune's opinion contradicts or is in conflict with the opinion of Dr. Gerber or Dr. Lavoie's opinion on maximum medical improvement.

Lost Wages Not Causally Related

40. I find that the Claimant failed to present a preponderance of evidence to show that any lost wages experienced by the Claimant during a period of time presently at issue were related to the compensable injuries sustained in the December 9, 2009, industrial accident by way of major contributing cause, direct and proximate cause, or any degree of causation. In making this finding, I have not considered the claim for temporary total disability or temporary partial disability benefits as one claim to be either awarded or denied in a lump-sum. Instead, I have considered each period of time of temporary disability benefits as a separate and distinct claim to be determined on its own merits.

41. Also, in making this finding, again, I note the Claimant worked full time following the industrial accident until a subsequent injury involving his knee occurred at work

which is not the subject of the pending workers' compensation claim. Under the totality of evidence in this case, I cannot find that the Claimant, for any time at issue, re-established a causal relationship between his lost wages and his low back and neck injuries sustained on December 9, 2009. Instead, the totality of evidence in this case reflects that the Claimant had multiple health problems and other factors which were responsible for his lost wages, including his pre-existing neck and low back problems.

Overall Maximum Medical Improvement

42. I accept the opinion of Dr. Lavoie as consistent with the totality of evidence, and as the Claimant's authorized orthopedic physician in this case, and find that the Claimant attained overall maximum medical improvement on August 13, 2010. I find Dr. Lavoie's opinion on MMI is logical, reasonable, and consistent with the totality of evidence, including the objective medical evidence in the Record. Again, I find Dr. Lavoie diagnosed the Claimant with soft tissue neck pain as a result of the industrial accident, but opined that the pre-existing injuries were the major contributing cause of the Claimant's post-MMI complaints and not the industrial accident (Deposition Dr. Lavoie, page 16). Dr. Lavoie placed the Claimant at MMI on August 13, 2010 (Deposition Dr. Lavoie, page 14).

43. Accordingly, I deny the claim for temporary partial disability or temporary total disability benefits for any time following the date of maximum medical improvement, August 13, 2010.

WHEREFORE IT IS ORDERED AND ADJUDGED as follows:

1. The claim for authorization for a medial branch block per Dr. Amune is **DENIED**.

2. The claim for temporary total disability benefits from the date of accident to October 17, 2011, is **DENIED**.

3. The claim for temporary partial disability benefits from the date of accident to October 17, 2011, is **DENIED**.

4. The claims for penalties and interest are **DENIED**.

5. This Court reserves jurisdiction to determine any claim for attorney fees, including both entitlement and amount of such fees, if necessary.

6. This Court reserves jurisdiction to determine any claim for taxable costs, including both entitlement and amount of such costs, if necessary.

DONE AND ORDERED this 27th day of October, 2011, in Daytona Beach, Volusia County, Florida.



Thomas G. Portuallo
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Division of Administrative Hearings
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order has been electronically transmitted via email to the attorneys of Record and sent by U.S. mail to the parties as listed below on this 27th day of October, 2011:

Debra Smith

Executive Secretary to the Judge of
Compensation Claims

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