

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

Evan M. Maza,
Employee/Claimant,

Judge: Neal P. Pitts

vs.

OJCC Case No. 13-012071NPP

Central Florida Behavioral Hospital/Sedgwick
CMS,
Employer/ Carrier/ Servicing Agent.

Accident date: 2/23/2013

FINAL COMPENSATION ORDER

This Cause came on for a merits' hearing before the undersigned Judge of Compensation Claims on **February 3, 2014** in Orlando, Orange County, Florida. This subject matter of this hearing was petition for benefits filed on May 28, 2013. A mediation conference on the petition was held on October 1, 2013. The claimant, **Evan Maza**, was present and represented by Michael MacDonald, Esq. The employer/carrier, **Central Florida Behavioral Hospital/Sedgwick CMS**, hereinafter referred to as the "Employer" was represented by Scott Miller, Esq. Live testimony was received from the claimant and from the Employer Representative, Ann Spariosu.

The following stipulations have been reached between the parties:

1. The date of accident is 2/23/2013;
2. Venue properly lies in Orange County, Florida;

3. Mediation was held 9/13/2013;
4. There was an employer/employee relationship at the time of the accident;
5. Workers' compensation insurance coverage was in effect on the date of accident;
6. The accident or occupational disease was initially accepted as compensable;
7. Timely notice of accident, injury or occupational disease was given to supervisor;
8. Timely notice of the final hearing has been given;
9. The court has jurisdiction of the parties;
10. Medical treatment authorized: Centra Care, Jewett Orthopaedic;
11. Classification and periods of time for which benefits were paid: Per E/C's payledger;
12. Payout ledger stipulated into evidence;
13. Date petition or benefit(s) 5/28/2013; and
14. Dates Notices of Controvert/Denial/Responses to Petition for Benefits filed: 4/3/2013.

The substantive claims for determination at the current merits' hearing are the following:

1. Compensability of the 2/23/13 accident to knee and hip;
2. Payment of TTD/TPD from 2/24/13 and continuing;

3. Authorization of orthopedic treatment with Dr. Morris for ongoing hip and knee;
4. Authorization of primary care physician for treatment of knee and hip; and
5. Penalties, interest, costs and fees.

The defenses raised by the E/C were the following:

1. Accident initially accepted as compensable;
2. Claimant misrepresented medical history for purpose of obtaining benefits;
3. All benefits forfeited pursuant to Section 440.105 and 440.09 (4);
4. Accident is not the major contributing cause of disability or need for treatment;
5. Martin V. Carpenter;
6. No benefits due pursuant to Section 440.15(5)(a); and
7. No PICA due.

The following documents were admitted into evidence at the current hearing:

Judge's Exhibits:

1. Uniform Statewide Pretrial Stipulation for Date of Accident of 11/01/12 filed with DOAH on October 11, 2013;
2. Order Approving Uniform Pre-Trial Stipulation for Date of Accident of 11/01/12 filed with DOAH on October 14, 2013;

3. Uniform Statewide Pretrial Stipulation for Date of Accident of 2/23/13 filed with DOAH on October 11, 2013;
4. Order Approving Uniform Pre-Trial Stipulation for Date of Accident of 2/23/13 filed with DOAH on October 14, 2013;
5. Petition for Worker's Compensation Benefits filed with DOAH on May 28, 2013 at 12:07pm;
6. Petition for Worker's Compensation Benefits filed with DOAH on May 28, 2013 at 12:27pm;
7. Mediation Conference Report filed with DOAH on October 2, 2013;
8. Order on Amended Claimant's Motion For Admission Of Medical Records Into Evidence filed with DOAH on November 25, 2013;
9. Order On Employer/Carrier's Motion To Admit Medical Records filed with DOAH on January 29, 2014; and
10. Employer/Carrier's Amendment To Pretrial Stipulation filed with DOAH on November 12, 2013.

Joint Exhibits:

1. Deposition of Hugh Morris, M.D. taken on January 29, 2014 filed with DOAH on January 30, 2014; and
2. Employer/Carrier's Notice Of Filing Payout Ledgers For Both Dates Of Accident filed with DOAH on January 29, 2014.

Claimant's Exhibit:

1. Claimant's Hearing Information Sheet.

Employer/Carrier's Exhibits:

1. Employer/Carrier's Trial Memorandum filed with DOAH on January 30, 2014;
2. Transcript of recorded interview of Evan Maza, taken on March 5, 2013 filed with DOAH on November 7, 2013;
3. Claimant's employment application and employment history form filed with DOAH on January 29, 2014;
4. State of New York Notice of Decision filed with DOAH on January 29, 2014;
5. Deposition of Evan Matthew Maza taken on August 15, 2013 filed with DOAH on January 29, 2014; and
6. Telephonic Deposition of Denise Clark taken on December 4, 2013 filed with DOAH on January 29, 2014.

SUMMARY OF THE UNDISPUTED AND DISPUTED EVIDENCE:

1. The claimant is a 58 year old registered nurse holding a Bachelor Of Science in Nursing degree from Molloy College which he received in 2001. He is licensed in both New York and Florida. He began his nursing career in New York and then moved to Florida in August, 2011.
2. He was working for this employer in October 2011 as a charge nurse in a behavioral facility. This involved working with very troubled youths aged 16-18 who were voluntarily admitted. These youths came from very

traumatic backgrounds including foster care homes and juvenile facilities; many had multiple prior admissions.

3. Before commencing employment with Universal Health Services, Inc., the claimant completed a "Confidential Employee Health History" form, which he signed and dated on November 1, 2011. In this form, the claimant denied prior back problems and head injury, high blood pressure, and further indicated that he was not taking any medications other than multi vitamins and minerals.
4. On November 1, 2012, the claimant fell to the floor while restraining a patient who then fell to the floor with him landing on the claimant's right hip. The accident was accepted as compensable and authorized treatment was provided.
5. A second accident occurred on February 23, 2013 when the claimant was kicked in the right knee and hip by a patient. This accident was accepted as compensable and authorized treatment was provided along with indemnity benefits until April 3, 2013 when all benefits were denied.
6. Prior to beginning employment with this employer, the claimant had suffered several motor vehicle accidents and on the job accidents. The most recent accident to this

employment occurred on July 2, 2011 in New York when the claimant slipped and fell on a wet floor while on the job. Medical records document that he injured his lower back, right hip and right leg. He complained of lower back pain and stiffness, with pain radiating into his right hip and leg. The claimant was treated by a Dr. Stuart B. Cherney, who based upon an MRI diagnostic study, diagnosed a large disc herniation at L4-5 and Grade 1 spondylolisthesis at L4-5. Dr. Cherney recommended steroid injections and temporarily totally disabled the claimant from working. The last appointment with Dr. Cherney occurred on August 15, 2011.

7. There are a number of additional medical records outlining the complaints, diagnosis, and treatment of the claimant's low back injuring arising out of the July 2, 2011 accident; which includes the records from Adirondack Medical Center. The initial evaluation with Adirondack Medical Center occurred on July 5, 2011. In the July 8, 2011 medical record for Adirondack Medical Center, it is noted that the claimant "Denies: Tingling/numbness. Previous surgery. **Previous imaging.** Bowel and bladder incontinence. **Previous back problems.** Urinary Difficulties." (Emphasis added).

8. However, there is documented treatment of the low back condition and prior imaging of the low back following a motor vehicle accident that occurred on September 19, 2007. The record reflects that an initial neurological consultation following this accident was on September 22, 2007 with a Dr. Arvind Chopra. Additionally, there is documented lower back treatment associated with the MVA through July 22, 2010.
9. In Dr. Chopra's initial report, the claimant reported injuring his neck and low back pain radiating down his legs, with the left leg worse than the right. The claimant received medical treatment including trigger point injections, facet joint injections, medication, and physical and chiropractic therapy. Several MRI studies of the low back were performed as well which revealed Grade 1 anterior spondylolisthesis and a broad based herniated disc at the L5-S1 level with encroachment on the L5 nerve roots bilaterally.
10. The last documented office appointment was on June 24, 2010 with Dr. Muhammad M. Khan, a Physical Medicine specialist in New York. The last documented pain management procedure performed was on July 22, 2010, when the claimant received trigger point injections by Dr.

Khan. Dr. Khan's records document that the claimant had complaints of lower back pain radiating into the right lower extremity ongoing for three years.

11. The claimant also had a motor vehicle accident on or around January 18, 2000. This resulted in a diagnosis of **post-concussive syndrome**, lumbar sacral hyper-flexion extension injury, right sciatic neuritis, and femoral radiculopathy in the left leg.
12. On November 18, 2012, the claimant completed and signed a "Questionnaire-Medical Information" form regarding his November 1, 2012 work accident. In this form he denied ever having been injured before.
13. On March 7, 2013, after the second accident, the claimant completed and signed a second "Questionnaire-Medical Information" form regarding March 23, 2013 work accident. In this form he indicated that he was injured on November 1, 2012. No other prior injuries were reported.
14. On March 5, 2013, the claimant gave a recorded statement to the adjuster. In this statement, the claimant admitted to a 2007 motor vehicle accident but denied being hurt in this accident. He specifically denied prior back and neck problems or any injuries.

15. In his recorded statement, he admitted to prior treatment with a chiropractor for "lower back strain related to working out." He did not mention the 2011 work accident. When asked about whether he had filed any prior workers' compensation claims he disclosed the 2003 accident involving a chair.
16. In evidence is a Notice Of Decision from the State Of New York- Workers' Compensation Board in regards to Evan Maza, WCB Case #G039 8963, which decision was entered on September 22, 2011. This decision indicated that the claimant had a work related injury to right hip and leg. The employer was Nightingale Nurses.
17. The claimant's deposition was taken on August 15, 2013. In this deposition, he was asked about the 2007 motor vehicle accident. He responded "I might have been bumped around, but I don't remember any major injury, because I remember I walked - you know, I remember it was right in front of the North Shore Hospital." See deposition page 20. "I was shaken up." "I was kind of, you know, spooked by the whole thing, but I don't think I was really seriously hurt." See deposition page 21. When asked whether he had been evaluated by medical personnel for that accident, he responded "I must have." "I would have

to say yeah, but I don't remember real well." "I might have gone - you know, I might have gone to my chiropractor back then." See deposition page 21.

ANALYSIS OF THE RELEVANT LAW:

1. The E/C contends that the claimant violated the provisions of §440.105(4)(b) and §440.09(4), frequently referred to as the "fraud defense," see *Arreola v. Admin. Concepts*, 17 So.3d 792,793 (Fla. 1st DCA 2009) because of statements which he made to authorized health care providers, during his recorded statement to the adjuster, and during his deposition, and the forms which he completed and signed following both compensable accidents. To establish a violation of §440.105(4)(b), so as to justify the ultimate sanction of denial of any further benefits under Chapter 440, the Employer has the burden to prove by the preponderance of the evidence that a claimant knowingly or intentionally engaged in one of the acts prohibited by the statute for the purpose of securing workers' compensation benefits. See *Matrix Employee Leasing v. Hernandez*, 975 So.2d 1217 (Fla. 1st DCA 2008); *Village of N. Palm Beach v. McKale*, 911 So.2d 1282 (Fla. 1st DCA 2005); *Pavilion Apts. v. Wetherington*, 943 So.2d 226 (Fla. 1st DCA 2006).

2. Workers' compensation benefits must be denied if statements of medical history, prior accidents, or the extent of current injuries are knowingly false, fraudulent, incomplete, or misleading. *Village Apts. v. Hernandez*, 856 So. 2d 1140 (Fla. 1st DCA 2003); *Lee v. Volusia County Sch. Bd.*, 890 So. 2d 397, (Fla. 1st DCA 2004); *Citrus Pest Control v. Brown*, 913 So. 2d 754 (Fla. 1st DCA 2005).
3. It is not necessary that the false, fraudulent or misleading statement be material to the claim; only that the claimant thought the statement would have a material impact on his case and was made with the intent to secure workers' compensation benefits. See *Village Apts. and McKale*. In workers' compensation claims, a claimant's responses to inquiries regarding his or her medical history, prior accident, and current condition are in support of the claim for benefits. *Village Apts. v. Hernandez*, 856 So. 2d 1140 (Fla. 1st DCA 2003).
4. Regardless of whether the claimant is under oath, if the claimant makes any statements which the claimant knew are false, incomplete, or misleading, the statements fall within the scope of section 440.105(4)(b), Fla. Stat., and result in the loss of workers' compensation benefits.

However, only oral or written statements made by the claimant may serve as the predicate for disqualification of benefits. See *Dieujuste v. J. Dodd Plumbing, Inc.*, 3 So.3d 1275 (Fla. 1st DCA 2009).

5. When an objective misrepresentation has been made by the claimant, the JCC must answer the ultimate question of whether the claimant subjectively believed or intended that the statement, when made, to be false, and whether the claimant subjectively believed or intended the statement would assist him in securing benefits. See *Steel Dynamics, Inc.-New Millennium v. Markham*, (Fla. 1st DCA, October 25, 2010,); *Arreola v. Admin. Concepts*, 17 So.3d 792 (Fla. 1st DCA 2009). A claimant's state of mind is an issue of fact to be determined by the JCC in evaluating the evidence, including the credibility and demeanor of the witnesses.
6. It is not axiomatic that providing false information following a compensable accident automatically will disqualify a claimant from receiving benefits. See *Steel Dynamics, Inc.-New Millennium v. Markham*, 46 So.3d 641 (Fla. 1st DCA 2010). Rather, because all testimony is to a certain extent shaded by the personal experience and the subjective perceptions of the providing witness, a

revelation that a witnesses' experience or perception is different than that of the fact finder or another witness is not, in and of itself, evidence of a willful or knowing intent to deceive; rather, it is commonly a demonstration of the varying degrees to which even well intentioned individuals may interpret (or misinterpret) and later relay, objective events. It is only where a sufficient showing of a knowing or intentional misrepresentation for a specific purpose of deceiving and securing compensation benefits is demonstrated to the satisfaction of the JCC that §440.09(a) operates to divest a claimant of entitlement to compensation benefits. *Id.* at 11.

In my determination herein I have attempted to distill all the testimony and salient facts together with the findings and conclusions necessary to the resolution of this matter. I have not necessarily attempted to summarize the substance of the claimant's testimony or the testimony of any live or deposition witness, nor have I attempted to state nonessential facts. Because I have not done so should not be construed that I have failed to consider all of the evidence.

Based upon the evidence, I make the following findings of fact and conclusions of law:

1. I have jurisdiction of the parties and the subject matter.

2. The stipulations of the parties are accepted and adopted by me as findings of fact.
3. The evidence closed in this matter on February 3, 2014 after which closing arguments were made by the parties.
4. Pursuant to the provisions of §440.015, Fla. Stat., I have not interpreted the facts in this case liberally in favor of either the rights of the injured worker or the rights of the employer. I have construed the law in accordance with the basic principles of statutory construction.
5. I carefully observed the claimant's demeanor while testifying and did not find his testimony to be believable in many respects in his attempts to explain the discrepancies in the record. This claimant is an educated man who has a long history of working in the medical field. It is inconceivable to me that some of the inaccuracies and false statements herein after outlined could have been made carelessly and unknowingly made.
6. Based upon the foregoing law and the evidence in the record, I am compelled to find by the greater weight of the evidence that the E/C established that the claimant knowingly made objectively false and/or misleading statements which I find the claimant subjectively believed or intended the statements would assist him in securing

benefits in violation of the provisions of §440.105(4)(b) and §440.09(4).

7. It should be noted that the E/C must prove that the statements made were both false and were made with the subjective intent to assist the claimant in securing benefits. While I conclude that there are multiple false statements made to prior medical providers and to this employer in the application of employment, those statements were not made with the intent to assist him in securing workers' compensation benefits. Thus, this order will focus on those statements which were false and/or misleading and related to what clearly was the claimant's desire to obtain workers' compensation benefits.
8. The first such statement was made on November 18, 2012 when the claimant completed and signed a "Questionnaire-Medical Information" form regarding his November 1, 2012 work accident. In this form he denied ever having been injured before. I find that this statement is false as there is unrefuted history of prior motor vehicle and work related accidents.
9. The second such statement was made on March 7, 2013, after the second accident, when the claimant completed and signed a second "Questionnaire-Medical Information" form

regarding March 23, 2013 work accident. In this form the only prior injury which he disclosed was the November 1, 2012 work accident. No other prior injuries were reported. This statement is false as there is unrefuted history of prior motor vehicle and work related accidents and injuries.

10. The third such statement was made in the March 5, 2013 recorded statement to the adjuster. In this statement, the claimant disclosed the 2007 motor vehicle accident but then denied being hurt in this accident, and specifically denied prior back and neck problems or any injuries. These statements are inaccurate as the claimant treated for three years for lower back injuries associated with this accident and the multiple diagnostic studies revealed serious lumbar spine injuries.

18. The fourth such statement was made in the March 5, 2013 recorded statement to the adjuster when he was asked about whether he had filed any prior workers' compensation claim. He responded by disclosing the 2003 accident involving a chair, but failed to disclose any other work related accidents. This statement is incomplete because it fails to disclose the 2011 work related accident. Based upon the significant symptoms and

treatment which the claimant received for this 2011 work accident, the fact that he pursued a workers' compensation claim for this accident in New York, and the close proximity in time of this accident to the recorded statement, it is difficult to believe that such omission was anything other than intentional.

19. The fifth such statement was made in the August 15, 2013 deposition when the claimant was asked about the 2007 motor vehicle accident and he responded, "I might have been bumped around, but I don't remember any major injury, because I remember I walked - you know, I remember it was right in front of the North Shore Hospital." "I was shaken up." "I was kind of, you know, spooked by the whole thing, but I don't think I was really seriously hurt." These statements are both incomplete and false in that the claimant received approximately three years of medical treatment including trigger point injections, facet joint injections, medication, and physical and chiropractic therapy. Additionally, several MRI studies of the lower back were performed which revealed Grade 1 anterior spondylolisthesis and a broad based herniated disc at the

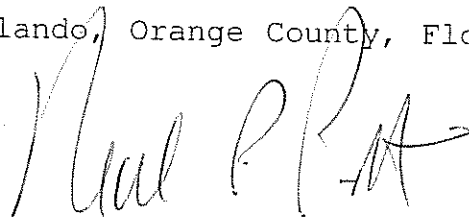
L5-S1 level with encroachment on the L5 nerve roots bilaterally.

20. The unfortunate aspect of this decision is that the claimant clearly has suffered two compensable accidents with clearly compensable injuries for which he would be entitled to medical treatment. Had the claimant been forthright and complete in his statements to the carrier and his employer, none of the prior accidents and injuries and claims discussed in this order should have affected his ability to receive all of the reasonable and medically necessary medical care associated with both dates of accident.

Wherefore, It Is CONSIDERED, ORDERED, and ADJUDGED as follows:

1. All claims for specific benefits are hereby denied;
2. The petition for benefits filed with DOAH on May 28, 2013 is hereby dismissed with prejudice; and
3. Pursuant to sections 440.09(4)(a) and 440.105(4)(b), Fla. Stat., claimant is barred from receiving any further benefits under Chapter 440 for this date of accident.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida on the 19th day of February, 2014.



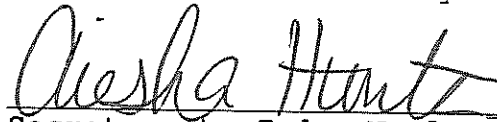
Neal P. Pitts

Judge of Compensation Claims

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered and a true copy was furnished by electronic transmission to counsel and by U.S. mail to the claimant on this 19th day of February, 2014 to the following.



Secretary to Judge Neal P. Pitts
Judge of Compensation Claims

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