

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

Terrell P. Snowden,  
Employee/Claimant,

OJCC Case No. 10-029468GCC

vs.

Accident date: 6/15/1994

Yellow Freight Systems, Inc./Sedgwick  
CMS,  
Employer/Carrier/Service Agent.

Judge: Gerardo Castiello

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**FINAL COMPENSATION ORDER**

**(I) PROCEDURAL HISTORY**

This matter came before the undersigned Judge of Compensation Claims on November 20, 2015 for Final Hearing. James Payer, Esquire of Payer & Associates appeared on behalf of claimant Terrell Snowden, who also appeared live. Scott Miller, Esquire of Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A. appeared on behalf of employer Yellow Freight Systems, Inc. and servicing agent Sedgwick CMS. This Order follows.

At issue are Petitions for Benefits filed February 16, 2015 and March 23, 2015, respectively. (Exhibit 7, p. 11, 19) (Exhibit 1 at I, 22)

**(II) EVIDENCE:**

(a) *Documentary:*

Except where otherwise indicated, the following documents were admitted into evidence:

Exhibit 1 - June 1, 2015 Pretrial Stipulation with June 2, 2015 Order approving same.

Exhibit 2 - Claimant's November 18, 2015 Supplemental Final Hearing Memorandum of Law. (For notice and identification only)

Exhibit 3 - Employer/Service Agent's November 17, 2015 Supplemental Memorandum of Law. (For notice and identification only)

Exhibit 4 - October 16, 2015 Independent Expert Medical Advisor Evaluation report from Dr. Bryce E. Epstein.

Exhibit 5 - November 12, 2015 deposition of Bryce Elliot Epstein, M.D.

Exhibit 6 - June 22, 2015 deposition of Seth Wachsman, M.D.

Exhibit 7 - May 28, 2015 telephonic deposition of Teresa Follett

Exhibit 8 - June 17, 2015 deposition of Eddie Sassoon, M.D.

Exhibit 9 - July 1, 2015 Order on Employer/Carrier's Motion for Leave To Amend Pretrial Stipulation.

Exhibit 10 - June 29, 2015 Final Hearing Memorandum by attorney James D. Payer.

Exhibit 11 - September 6, 2015 deposition of Terrell Snowden.

*(b) Live Testimony:*

1. Claimant Terrell Snowden.

*(c) Objections:*

(1) Exhibit 5

p.12, l. 8: sustained.

p. 27, l. 14 -16: over-ruled.

p. 28, l. 8-9: over-ruled.

p. 29, l. 22-23: over-ruled.

p. 31, l. 19-20: over-ruled.

p. 49, l. 11: over-ruled.

p. 50, l. 13: over-ruled.

(2) Exhibit 6,

p. 10, l. 14: over-ruled.

p. 12, l. 9-10: over-ruled.

p.12, l. 19-23: over-ruled.  
p. 15, l. 11-12: over-ruled.  
p.16, l. 17-18: over-ruled.  
p. 21, l. 7: over-ruled.  
p. 23, l. 20: over-ruled.  
p. 24, l. 13-14: sustained.  
p. 25, l. 8: over-ruled.  
p. 31, l. 23-24: sustained.  
p. 33, l. 14: over-ruled.  
p. 38, l. 21-25: over-ruled.  
p. 39, l. 13-14: over-ruled.  
p. 42, l. 15-16: over-ruled.  
p. 43, l. 13: over-ruled.  
p. 44, l. 10: over-ruled.

(3) Exhibit 7

p. 18, l. 9:  
p. 20, l. 5-8  
p. 20, l. 25

In the case of each of the three objections noted above the objection was waived. The answer was allowed. Additionally, privileged materials lose their protection from discovery once was relied upon as the basis for a claim or a defense. See, **Northup v. Acken**, 865 So. 2d 1267 (Fla. 2004)

(4) Exhibit 8

p. 11, l. 8-9: moot. See lines 11-17).

p. 34, l.2: over-ruled.

p. 34, l.10: over-ruled.

p. 37, l. 24: over-ruled.

p. 40, l. 5-6: over-ruled.

p. 45, l.13-15: over-ruled.

### **(III) CLAIMS AND DEFENSES**

#### *Claims:*

1. Claimant seeks continued authorization of trigger point injections with Dr. Eddie Sassoon.
2. Employer/carrier paid attorneys fees and costs.

#### *Defenses:*

1. The employer/carrier assert that the need for the claimant's trigger point injections is no longer the injuries sustained as a result of the compensable accident, but instead the claimant's pre-existing degenerative disk disease in combination with his idiopathic skeletal hyperostosis.
2. No attorneys fees or costs are due.

### **(IV) FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

(1) Claimant Terrell Snowden (date of birth: December 29, 1950) testified live at the final hearing. Mr. Snowden was hired by employer Yellow Freight in October of 1986 as a tractor/trailer driver. He was terminated in 2012. (Exhibit 11, 7) He continued carrying out his regular job duties until he was terminated. He considers himself now to be retired. However, during the course of his employment with Yellow Freight, he always held the same position.

(2) Mr. Snowden suffered a compensable accident while in the course and scope of his employment on June 15, 1994. At that time, he attempted to move a pallet which the manifest indicated weighed 200 pounds. In fact, the pallet weighed 2000 pounds. As he pulled it, he felt a pop.

(3) He noticed numbness and radiating pain from his legs up to neck. His hands and arms were numb. He suffered from muscle spasms in his neck and lower back. The symptoms started immediately after

accident. He reports that they are still there. In summary, Mr. Snowden injured the lumbar region of his back and also his neck.

(4) Mr. Snowden acknowledges that compensable medical care was provided as early as the very day of the accident. However, it was stopped two (2) months ago - twenty-one (21) years after the date of accident.

(5) Dr. Eddie Sassoon is a Board Certified physiatrist who has been licensed to practice medicine in the state of Florida since 1988. (Exhibit 8, p. 7, 9, 15, 26) Mr. Snowden began authorized treatment with Dr. Eddie Sassoon in 1994 or 1995. (Exhibit 8, p. 11, 26-27) (Exhibit 5, p. 11) Dr. Sassoon remained authorized at least through May 28, 2015, the date on which adjuster Teresa Follett was deposed. (Exhibit 7, p. 11) However, authorization for the trigger point injections (TPIs) Dr. Sassoon was providing was withdrawn approximately two (2) months prior to the final hearing.

(6) There is some confusion as to when the TPIs began. Mr. Snowden indicated that the TPIs started in 1995. Later, he indicated that they started in 2001. Dr. Sassoon suggested that the treatment window with TPIs may encompass approximately the last three (3) to five (5) years. (Exhibit 8, p.12, 27) Regardless of the start date for the TPIs, it is not in dispute that authorization for the TPIs stopped approximately two (2) months prior to the final hearing.

(7) Dr. Bryce Epstein is a Board Certified physiatrist who has been licensed to practice medicine in the State of Florida since 1990. (Exhibit 5, p. 5, 7) Dr. Epstein served the parties and this court in this matter as an Expert Medical Advisor (EMA). (Exhibit 5, p. 5, 7, 9) Dr. Epstein saw Mr. Snowden on October 16, 2015. (Exhibit 5, p. 9) Mr. Snowden was 64 years old at the time of the examination. (Exhibit 5, p. 30)

(8) Dr. Seth Wachsman is a pain management physician Board Certified in anesthesiology since 1995. (Exhibit 6, p. 5-6) He evaluated the claimant for employer/carrier IME conducted August 4, 2014. (Exhibit 6, p. 6, 30) He only saw Mr. Snowden that one time. (Exhibit 6, p. 26)

(9) Dr. Sassoon treated Mr. Snowden for neck and low back pain, radiation into the arms and legs and parascapular pain, which had reportedly afflicted the claimant since 1994. (Exhibit 8, p.14) He related all of the claimant's symptoms to the June 15, 1994 date of accident. (Exhibit 8, p. 15)

(10) Dr. Sassoon prescribed a series of medications for Mr. Snowden including 10 milligrams of Hydrocodone twice a day, 150 milligram Tramadol once a day and 15 milligrams of Meloxicam once a day. (Exhibit 8, p.16-17) By 2012 - certainly no later than January 2013 - Dr. Sassoon was providing Mr. Snowden with trigger point injections (TPIs) to the sacroiliac joints, the scapulae, the trapezius and the paraspinals on a monthly basis to quarterly basis with reportedly good results - though the claimant's own testimony, as addressed herein below, raises some doubts . (Exhibit 5, p. 16, 17)(Exhibit 8, p.20, 21, 23)

(11) An extensive debate took place over whether the trigger point injections were successful in providing Mr. Snowden relief. Dr. Sassoon's notes reported that they resulted in a 70% to 80% increase in Mr. Snowden's mobility in the cervical spine. (Exhibit 5, p.18, 23) It was suggested that Mr. Snowden

was realizing three to four months relief from each injection. (Exhibit 6, p. 28) Dr. Sassoon's notes also indicate consistent good results for Mr. Snowden from the injections. (Exhibit 5, p. 18) Subjectively, Mr. Snowden attempted to corroborate this with his trial testimony, wherein he indicated that the trigger point injections helped; that they ease his pain and help him sleep; and that they provide him relief that lasts about a month - sometimes more and sometimes less. He also explained that the TPIs allow him more lateral movement in the neck; to better turn his head; to drive; to more easily get dressed; to better attend to personal hygiene; and even to sleep.

(12) But there is cause to question Dr. Sassoon's optimism and the testimony given by the claimant which fuels it. The TPIs do not kill Mr. Snowden's pain 100%, but allow him to perform his normal routines. However, at a deposition given just two days after a TPI, Mr. Snowden was experiencing stabbing pain which gave him a pain level which he rated as 9/10. (Exhibit 11, p.26, 29) He also described that as a typical response to the TPIs. This is wholly inconsistent with the notion that the TPIs are providing any real benefit.

(13) Furthermore, this smaller window of relief - two (2) or (3) days versus thirty (30) days or longer - is consistent with what Mr. Snowden reported to Dr. Seth Wachsman, the employer/carrier's IME doctor. The claimant told him that the TPIs only provided him two (2) to three (3) days of relief. (Exhibit 6, p. 23) These inconsistencies raise significant concerns regarding the reliability of the claimant's testimony and the efficacy of the treatment requested.

(14) What is consistent is that the claimant wants to continue to have the employer/carrier pay for his TPIs under the care of Dr. Sassoon. At the heart of the issue is whether the claimant's current need for trigger point injections is related to his compensable injuries. The question then is whether the need for TPIs is related to the compensable injury. For reasons explained herein below, they are not.

(15) It is well established that the opinions of an EMA physician are presumed correct unless the party opposing same can produce clear and convincing evidence to the contrary. See, **Brandywine Convalescent v. Ragoobir**, 124 So. 3d 344, 345 (Fla. 1st DCA 2013); **Amos v. Gartner**, 17 So. 3d 829, 830 (Fla. 1st DCA 2009); **Walgreens v. Carver**, 770 So. 2d 172 (Fla. 1st DCA 2000) The EMA physician's opinion has a "nearly conclusive effect." See, **Cromartie v. City of St. Petersburg**, 882 So. 2d 439 (Fla. 1st DCA 2004); **Pierre v. Handi Van, Inc.**, 717 So. 2d 1115, 1117 (Fla. 1st DCA 1998)

(16) Dr. Bryce Epstein acknowledged that an April 2008 cervical MRI documents a herniated disk at C3-4. (Exhibit 5, p. 22)

(17) However, having reviewed the claimant's medical records and having examined the claimant in his office, he concluded that the claimant suffers from diffuse idiopathic skeletal hyperostosis, and it is this condition which is causing the claimant's symptoms. (Exhibit 5, p. 25, 29, 31) The manifestation of the condition "is basically the large candle-flame osteophyte that bridges the osteophytes anteriorly, the wedging of the vertebrae. " (Exhibit 5, p. 45) Trauma does not cause this disease process. (Exhibit 5, p. 27)

(18) Claimant does reportedly suffer from trigger points. The disease process diagnosed by Dr. Epstein can cause trigger points. (Exhibit 5, p. 28)

(19) Objective medical evidence supports Dr. Epstein's finding of degenerative disk disease (DDD) . A July 12, 1994 MRI of the cervical spine documents DDD consistent with Dr. Epstein's diagnosis. (Exhibit 5, p. 37) Dr. Seth Wachsman, the employer/carrier's IME doctor also noted spurring, significant degenerative disease and degenerative changes documented in the same July 12,1994 MRI of the cervical spine. (Exhibit 6, p. 9-10) These findings appeared barely one month after the compensable accident. (Exhibit 5, p. 37) The DDD could not have evolved in just the one month period between the claimant's accident and the MRI. (Exhibit 5, p. 38) The noted findings document pre-existing processes that take time to develop. (Exhibit 6, p. 10)

(20) The progression of the DDD in the cervical spine is also documented chronologically by later radiographic studies. A cervical MRI performed in April 2008 at OMI Medical Imaging further documents idiopathic skeletal hyperostosis and expected degenerative changes. (Exhibit 5, p. 42-44) These include a disk osteophyte complex appearing at C6-7 and degenerative stenosis. (Exhibit 5, p. 14) These are unrelated to the June 15, 1994 compensable accident. (Exhibit 6, p. 15)

(21) A cervical MRI performed at Beaches MRI in June of 2012 found thick anterior osteophytes from C3-4 through C5-6. X-rays performed by Dr. Epstein at the time of the October 16, 2015 EMA show large bridging osteophytes from C2 through C6. (Exhibit 4 at 5)

(22) Similarly, DDD and the related progression of same over time in the lumbar spine are documented objectively via radiographic studies. A lumbar spine MRI performed on September 7, 1994 also documented DDD of the same type which had already been documented in the July 12, 1994 cervical spine MRI. (Exhibit 5, p. 39) (Exhibit 6, p. 11) The lumbar MRI also documents spondylosis, a degenerative condition at L5. (Exhibit 5, p. 40) The documented condition occurs over time - not as the result of an acute injury. (Exhibit 6, p. 12)

(23) An April 4, 2008 MRI performed at OMI Medical Imaging further documents progressive disk disease in the claimant's lumbar spine. (Exhibit 5, p.45- 46) By that time, the claimant's vertebrae had become auto-fused by the disease process at play. (Exhibit 5, p. 47) Spondylolytic changes, facet changes, degenerative disk changes, arthrosis and moderate stenosis are all present. (Exhibit 6, p. 16)

(24) A September 2012 lumbar spine MRI performed at Beaches MRI a disk osteophyte complex at L4-5 and a large disk osteophyte at L5-S1. (Exhibit 4 at 6)

(25) As a result of his compensable accident, Mr. Snowden suffered from a sprain/strain which superimposed itself upon the claimant's documented degenerative conditions. (Exhibit 5, p. 40) (Exhibit 6, p. 20) The underlying DDD was present at the time of his accident, but had not yet required treatment. (Exhibit 5, p. 51) It was neither accelerated nor aggravated by the sprain/strain. (Exhibit 5, p. 47) Additionally, the compensable strain/sprain did not cause the auto-fusing present in the claimant's spine. (Exhibit 5, p. 47)

(26) The claimant's current need for trigger point injection is his progressive degenerative disease, and not anything related to his 1994 compensable accident. (Exhibit 5, p. 48, 50) (Exhibit 6, p. 21, 22, 25) The injuries suffered in the 1994 accident have long since resolved.

(27) With no further benefit secured, claimant is not entitled to employer/carrier paid attorneys fees and costs.

**(V) DECREE:**

It is hereby Ordered and Adjudged that:

- (1) the claim for authorization of trigger point injections with Dr. Eddie Sassoon is DENIED with prejudice;
- (2) the claims for employer/carrier paid attorneys fees and costs are DENIED with prejudice;
- (3) the February 16, 2015 Petition for Benefits is DISMISSED with prejudice; and
- (4) the March 23, 2015 Petition for Benefits is DISMISSED with prejudice.

DONE AND ORDERED this 9<sup>th</sup>, day of December, 2015, in Miami, Dade County, Florida.



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Gerardo Castiello  
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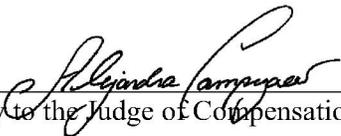
**CERTIFICATE OF SERVICE**

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I hereby certify that each of the above listed parties was served via E-mail this 9<sup>th</sup>, day of December, 2015, with a true and correct copy of this Order.

  
Secretary to the Judge of Compensation Claims

Final Hearing Statistics Worksheet

Please complete this form at the time of Order upload for any of the following:

Final Hearing

OJCC Number(s) 10-029468GCC

Date Order Mailed/Emailed 12/09/15

Trial/Hearing dates opened 11/20/15; concluded 11/20/15

For Final Hearing or Expedited Final Hearing:

Dates of all pending petitions heard 02/16/15; 03/23/15

OR

For Evidentiary Motion Hearing:

Type of Motion \_\_\_\_\_

Filing Date of Motion Heard \_\_\_\_\_

OR

For Fee Amount Hearing or Fee Entitlement Hearing

Date motion or verified petition filed \_\_\_\_\_

OR

For Appellate Fee or Remand Hearing

Date of Mandate \_\_\_\_\_

AND

If abbreviated final/fee order was issued and later vacated:

Date Abbreviated Order Entered: \_\_\_\_\_

Date Abbreviated Order Vacated: \_\_\_\_\_