

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

Sheba T. Davis,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 04-003234JJL
Staffing Concepts, Inc./North)	
American Risk Services,)	Accident Date: 11/4/2003
Employer/Carrier/)	
Servicing Agent.)	Judge John J. Lazzara

FINAL ORDER

AFTER DUE NOTICE to the parties, a Final Hearing on this matter was held in Gainesville, Alachua County, Florida, on November 8, 2010. The claimant, Sheba T. Davis, appeared pro se. The employer/carrier was represented by their counsel of record, Terri A. Bussey, Esquire. The undersigned Judge of Compensation Claims has jurisdiction of the parties and the subject matter.

The litigation history of this matter is rather convoluted and voluminous. At one time the claimant was represented by attorney Frank M. Eidson, Esquire, who was allowed to withdraw as the claimant's attorney per order of 5/10/2004. The claimant was subsequently represented by attorney Brian C. Hogan, Esquire, who also was allowed to withdraw as counsel per order entered on 11/15/2005. The claimant has been unrepresented since then and has filed numerous Petitions for Benefits (PFBS). In addition, the claimant has initiated several appeals to the First District Court of Appeal and the Supreme Court of Florida asking for a review of various orders that have been entered in this cause, thereby delaying ultimate

resolution of the claims. Claimant's appeals and/or requests for review have either been denied or dismissed. Currently there is pending before the Florida Supreme Court the matter of what the court treated as a Petition for Writ of Mandamus, Case Number SC10-1687. No order staying the lower tribunal proceedings has been entered by the Court.

This matter was reassigned to the undersigned Judge of Compensation Claims following the Amended Order of Recusal entered on 8/31/2009 by Judge Marjorie Renee Hill which resulted in the Order Reassigning Case of 9/1/2009 entered by Deputy Chief Judge David W. Langham.

The claimant seeks the following benefits:

1. Compensation for temporary total disability benefits, temporary partial disability benefits, permanent impairment benefits and permanent total disability benefits from 11/4/2003 to the present and continuing;

2. Determination of the claimant's correct average weekly wage (AWW) and compensation rate;

3. Such further medical treatment as the nature of the injury and the process of recovery requires; to wit: physiatrist rehabilitation, physical therapy, functional capacity evaluation (FCE), professional attendant care, psychiatry/psychological care, neuropsychological evaluation and testing, chiropractic care, and authorization of a back specialist and radiculopathy specialist;

4. Payment of past and future medical expense;

5. Interest and penalties on all past due payments of compensation; and

6. The cost of these proceedings.

The claim was defended on the following grounds:

1. Work-related accident and injury consisting of a cervical and low back strain was accepted as compensable and all benefits due and owing were timely provided;

2. The claimant is not entitled to any temporary indemnity benefits as the claimant is at maximum medical improvement (MMI). All temporary indemnity benefits that were due and owing have been paid at the correct rate. There is no evidence of any need or correction of the AWW due or owed. The employer/carrier has made an overpayment of temporary indemnity benefits;

3. All benefits should be denied under section 440.09(4), Fla. Stat., as the claimant has violated section 440.105(4), Fla. Stat., by providing intentionally misleading or false statements regarding past relevant medical history, and by giving an intentionally false misrepresentation to authorized treating physicians and the expert medical advisor (EMA) in an effort to obtain workers' compensation benefits;

4. The requested medical care is not medically necessary and the work accident and injury is not the major contributing cause of any need for further medical care;

5. The carrier is insolvent and the claim has been transferred to the Florida Insurance Guaranteed Association (FIGA), and as such no

penalties and interest can be awarded for any past due benefits awarded, if any;

6. The claimant is not permanently and totally disabled and has not suffered a catastrophic injury. The claimant has no permanent work restriction due to the compensable work accident and is capable of significant work in the national economy;

7. The employer/carrier is entitled to costs pursuant to section 440.34(3), Fla. Stat., in the event they prevail in this matter;

8. The Statute of Limitations has run on the claims prior to the filing of the first outstanding PFB.

9. The claims are barred by *res judicata*;

10. The claimant has a 0% permanent impairment rating (PIR) so that no permanent impairment benefits (PIBs) are due or owing;

11. The employer/carrier is entitled to an offset in the overpayment of temporary partial disability (TPD) benefits as well as an offset for any unemployment benefits or social security disability (SSD) or SSI benefits received by the claimant; and

12. Employer/Carrier denies claimant's entitlement to costs and interest at their expense.

The parties have entered into the following stipulations:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.

2. Venue properly lies in Alachua County, Florida.

3. Notice of Hearing and Notice of Injury were properly

furnished and received as required by the Workers' Compensation Law.

4. On November 4, 2003, the employer/carrier agrees that the claimant was employed by the captioned employer and on that date sustained an injury consisting of a cervical and low back strain by accident arising out of and within the course and scope of said

At the trial of this cause, the following Exhibits were admitted into evidence.

Claimant's Exhibits

1. Petitions for Benefits were filed pro se on 11/30/2005; 1/23/2006; 4/6/2006; 9/29/2006; 8/21/2007; 12/6/2007; 12/11/2007; 12/11/2007; 12/11/2007; 12/13/2007; 1/24/2008; and 2/5/2008.

2. (Proffered only) Documents filed by claimant on 10/25/2010 consisting of Social Security Administration (SSA) documents (employer/carrier's hearsay objection was sustained).

3. (Proffered only) Workers' Compensation Authorization dated 11/4/2003 (employer/carrier's hearsay objection was sustained).

4. CSC Claims Company letters dated 11/10/2003 and 1/27/2004.

5. Composite of prescriptions from First Care of Gainesville dated 12/15/2003 and 3/22/2004.

6. Dr. Howell DWC-25 dated 2/18/2004, together with restriction chart.

7. First Report of Injury dated 11/6/2007.

8. Avante Healthcare Services and Southeast Physical Therapy dated 3/24/2004.

9. (Proffered only) Southeast Physical Therapy fax dated

11/14/2003 (employer/carrier's hearsay objection was sustained).

10. Memo to the claimant from Southeast Physical Therapy dated 11/19/2003.

11. Composite of medical records of Dr. Patel.

Employer/Carrier's Exhibits

1. Deposition of Dr. Marc Sharfman, M.D., taken on 2/12/2008.

2. Deposition of Dr. Scott A. Wilson, M.D., taken 3/30/2006.

3. Carrier's payout ledger.

4. Composite of the Depositions of Sheba Davis taken on 3/31/2004, 7/21/2004 and 10/4/2006.

5. Composite of medical records previously agreed to by the parties at the request of Judge John Thurman.

The following individual testified live before me:

1. Sheba Davis, the claimant.

After due consideration of this matter and after having the opportunity to review and consider the aforesaid exhibits which were admitted into evidence, and having observed and considered the candor and demeanor of the witnesses who appeared and testified before me, and having endeavored to resolve all conflicts of facts in the evidence presented herein, I hereby make the following findings of fact and conclusions of law:

1. The undersigned Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim;

2. The stipulations entered into by and between the parties herein are hereby approved and adopted as findings of fact and are

incorporated herein by reference;

3. 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.

4. Any and all issues raised in the petition or petitions for benefits described above which was the subject matter of the final hearing, but which issues were not tried at the hearing are presumed resolved or, in the alternative, deemed abandoned by the employee/claimant and therefore **denied**. See Betancourt v. Sears Roebuck & Co., 693 So.2d 253 (Fla. 1st DCA 1997).

5. On November 4, 2003, the claimant was employed by the captioned employer and on that date sustained and suffered a compensable injury by accident arising out of and within the course and scope of the claimant's employment with said employer. The medical evidence indicates and the employer/carrier has agreed that the claimant suffered a compensable cervical and low back strain. At the time of the accident the claimant was working as a P.R.N. Certified Nursing Assistant when she slipped and fell while giving a patient a bath. She was initially treated by Dr. Gary Newcomer, M.D., and Dr. Scott A. Wilson, M.D., at First Care of Gainesville, an

Occupational Medicine and Urgent Care Facility. She was diagnosed with cervical and lumbar strains. An MRI was performed on 12/23/2003 of the neck and back which were both normal. Because of the claimant's continued persistent complaints of back pain, Dr. Newcomer made a physiatry referral which referral Dr. Wilson later found, along with a FCE, was neither medically necessary nor causally related to the claimant's work accident and injuries based on a lack of objective medical findings to support the claimant's subjective complaints. Dr. Wilson further opined that no further medical treatment was medically necessary or causally related to the claimant's work accident and/or injury, and found that the claimant had reached MMI on 1/22/2004 with a 0% PIR with no permanent work restrictions.

6. A neurological referral by Dr. Scott was authorized by the carrier. Dr. Howell was the neurologist selected. Dr. Howell interpreted the EMG performed on 2/18/2004 as normal, and that an MRI of the brain performed on 2/20/2004 was also normal. Dr. Howell placed the claimant at MMI as of 1/22/2004 with a 0% PIR.

7. The claimant then requested a one-time change in neurologist at which time the carrier authorized Dr. Klein. On the first visit of 4/13/2004 the claimant had global complaints of pain and voiced numerous symptoms. Nevertheless, Dr. Klein also found there was no objective evidence supporting Ms. Davis' subjective complaints of numbness, tingling and weakness in the lower extremities and that her symptoms were out of proportion to the MRI and clinical findings. Dr. Klein opined that the claimant had reached MMI on

4/26/2004 and was in no need of further medical treatment.

8. Judge John Thurman, the former presiding judge, appointed an expert medical advisor (EMA) on his own motion. Judge Thurman selected Dr. Marc Sharfman, M.D., a neurologist. Dr. Sharfman opined that no further medical care or treatment was required for the claimant due to her work accident and injury. He also observed that the claimant's presentation for the visit was different from what he observed when the claimant left his office, leaving him with the impression that she was exaggerating her symptoms. The opinion of an EMA is statutorily presumed correct, unless there is clear and convincing evidence to the contrary. There is no such contradictory evidence here.

9. At the hearing the claimant testified that currently her physical problems consist of headaches and that her head always hurts and that her right leg twitches. She admitted that she does not recall striking her head but thinks that she lost consciousness. There is no medical evidence to support any head trauma resulting from this accident.

The claimant's testimony was in rambling fashion with little consistency. Ms. Davis tended to lose focus on numerous occasions. She believes she was mistreated by the carrier in this case and that she was not provided with appropriate medical care and attention. During her testimony she frequently became agitated and upset. She is not gainfully employed at the present time, and is receiving SSD benefits. Based on the claimant's demeanor and presentation, it

appears that she suffers from some cognitive problems. The SSA documents, which were received as a proffer only, reflect that SSA Administrative Law Judge found on in his 6/26/2008 Decision that Ms. Davis suffers from some "idiopathic hypersomnia", finding she suffers from some mild restrictions of activity of daily living, and difficulty maintaining social functioning, concentration, persistence or pace. However, there is no medical evidence that any of these conditions are related to the claimant's slip and fall injury of 11/4/2003.

10. The employer/carrier raises the workers' compensation misrepresentation or fraud defense. Although there is evidence that the claimant was less than forthcoming and credible at the hearing, and may have at times mislead some of her medical providers, I find that because of her cognitive problems and her demeanor and presentation, I cannot find that her misleading statements were either willful or intentional as opposed to Ms. Davis' cognitive problems.

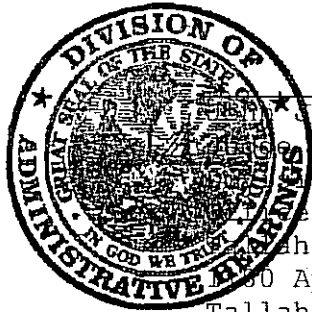
11. The totality of the credible evidence indicates the claimant suffered a relatively minor injury as a result of her slip and fall of 11/4/2003, has had full benefit of medical care, and that her work injury resulted in no permanent impairment or disability. The Claimant's assertion that she has not received full benefit of medical is simply unsupported.

A casual relationship between the employment and the employee's subsequent condition or injury must be established with reasonable certainty and by objective medical findings. Wintz v Goodwill, 898

So. 2d 1089 (Fla. 1st DCA 2005). Ms. Davis has failed to do that. I did not find her testimony credible and was often not related or relevant to the issues. Moreover, I find no evidence which would support awarding any of the numerous claims she made in this case.

WHEREFORE, it is ORDERED that the aforesaid claims of the employee, Sheba T. Davis, based on her claimed injury by accident arising out of and within the course and scope of employment on November 4, 2003, are hereby DENIED.

DONE AND ORDERED at Tallahassee, Leon County, Florida.

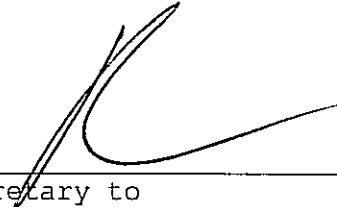


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Certificate of Service

I **HEREBY CERTIFY** that the foregoing Order was entered and a true copy furnished by regular mail on this 23rd day of November, 2010 to the parties and their attorneys, if represented, listed below at the following addresses:



Secretary to
Judge of Compensation Claims

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