

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

Tressa Rose,)	
Employee/Claimant,)	OJCC Case No. 10-004343MES
)	
vs.)	Accident date: 1/27/2010
)	
Alpha Staff/Naimisha Management, Inc./Tower)	
Group Insurance Company,)	
Employer/ Carrier/ Servicing Agent.)	

FINAL COMPENSATION ORDER

This matter was heard at a Final Hearing before the undersigned at Lakeland, Polk County, Florida on April 19, 2012. The issues arose from a Petition for Benefits (PFB) filed November 3, 2011. Mediation was held on March 9, 2012. A Pretrial Stipulation was completed by the parties and filed on March 15, 2012. Present at the hearing was attorney Bradley G. Smith for the claimant. Also present at the hearing was attorney Timothy Stanton on behalf of the Employer/Carrier (EC).

Issues:

1. Compensability of claim.
2. Authorization of an appointment with a qualified physician to treat claimant's low back pain.
3. Penalties, interest, costs and attorney's fees.

Defenses:

1. Claim was accepted as compensable.
2. Current condition and need for treatment is not due to the accident or injury.
3. Accident is not the major contributing cause of the need for treatment or of the current condition.
4. No penalties, interest, cost or attorney's fees are due.

At the hearing the following items were marked as exhibits:

Judge's Exhibits:

1. PFB filed November 3, 2011.
2. Response to PFB December 6, 2011.
3. Pretrial Stipulation with attachments filed March 15, 2012.
4. Claimant's Trial Memorandum filed April 17, 2012, for purposes of argument only.
5. EC's Trial Memorandum filed April 16, 2011, for purposes of argument only.

Claimant's Exhibits:

1. Medical Records of Dr. Jonathon Greenberg filed April 18, 2012.

Employer/Carrier Exhibits:

1. Medical Records Dr. Delgado filed April 16, 2012.
2. Deposition of Dr. Larry Fishman taken April 9, 2012 and filed April 16, 2012.
3. Petition for Benefits filed August 26, 2010.
4. Response to Petition for Benefits filed August 30, 2010.

Findings of Fact and Conclusions of Law

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the testimony and evidence presented. I have resolved all of the conflicts in the testimony and documentary evidence. Based upon the foregoing, the evidence, and the applicable law, I make the following determinations:

1. I have jurisdiction over the parties and the subject matter of this claim.
2. Venue is in Polk County, Florida.
3. The stipulations of the parties are accepted and adopted by me as findings of fact.
4. At the hearing the claimant made an ore tenus motion to continue the Final Hearing. The claimant had moved for a continuance prior to the hearing and that request was denied in an order dated April 17th, 2012. Both continuances were sought so that the claimant could depose her IME physician. Both were denied as the claimant failed to establish good cause for the continuance. The PFB in this matter was filed on November 3, 2011. Notice was sent out on November 8, 2011 that the Final Hearing would take place on April 19, 2012. The claimant did not notify the EC of her selection of IME physician until March 9, 2012 and underwent the IME on March 30, 2012. Due to the late selection of the IME claimant could not obtain a date for the expert deposition prior to the Final Hearing. The claimant argues that the delay occurred because the claimant was attempting to avoid the cost of an IME in the event that the matter resolved at mediation. However as pointed out by the EC, who did obtain an IME and the deposition of the IME physician prior to the Final Hearing, the claimant could have made the arrangements for the IME and deposition prior to mediation and canceled the IME and deposition if the matter resolved. Section 440.25, Florida Statutes (2010) requires that the final hearing take place within 90 days of the mediation conference and states that a continuance will only be granted where the need for a continuance is due to circumstances beyond the party's control. There is no evidence that the EC would not cooperate in the scheduling of the deposition or any circumstances other than the claimant's desire to wait to set the deposition to avoid incurring costs. As claimant did not establish circumstances beyond her control the request for continuance was denied.
5. I find that the claimant has not met her burden of proving that the current condition and need for treatment is due to the compensable injury. Dr. Fishman does not offer an opinion in his medical report regarding causation. It is the claimant's burden to establish that the requisite causal relationship exists between the accident and the current condition and need for treatment.
6. As claimant has not obtained any benefits no penalties or interest are due.
7. As claimant has not obtained any benefits, no attorney's fees or costs are due.

Wherefore it is ordered and adjudged as follows:

1. The claim for compensability of the claimant's current condition and need for treatment is denied.
2. The claim for authorization of a qualified physician to treat claimant's low back pain is denied.
3. The claim for penalties and interest is denied.
4. The claim for attorney's fees and costs is denied.

DONE AND MAILED this 1st day of May, 2012, in Lakeland, Polk County, Florida.

Margaret E. Sojourner

Margaret E. Sojourner
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Lakeland District Office
5015 South Florida Avenue, Suite 401
Lakeland, Florida 33813-3150
(863)648-3150
www.jcc.state.fl.us

Jason S. Robbins
Goldberg & Dohan L.L.P.
Jrobbins@goldbergdohan.com,Cfernandez@goldbergdohan.com

Bradley G. Smith, Esquire
Smith, Feddeler, Smith & Miles, P.A.
bsmith@sfsmlaw.com,jccmail@sfsmlaw.com

Andrew R. Borah, Esquire
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.
sfournier@hrmcw.com,ayablow@hrmcw.com