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

JOHANNA BARRAGAN,	)	
	)	
Employee/Claimant	)	
	)	
vs.	)	OJCC Case No. 18-007915-TWS
	)	
SOUTHEAST PERSONNEL LEASING, INC.	)	Accident date: 07/11/2017
	)	
Employer	)	
	)	
and	)	
	)	
PACKARD CLAIMS ADMINISTRATION	)	
	)	
Carrier/Servicing Agent	)	**Judge: Thomas W. Sculco**

_____

ORDER ON MOTION TO DISMISS PETITION FOR BENEFITS PURSUANT TO SECTION 440.192(2), FLA.STAT.

After proper notice to all parties, an evidentiary hearing was held and concluded on this claim in Orlando, Orange County, Florida on July 9, 2018. Present at the hearing was Attorney Paul N. White-Davis for the employee and Attorney William H. Rogner for the employer/carrier, hereinafter referred to as the E/C. *This Order addresses the Motion to Dismiss filed with the OJCC on 6/4/2018.*

DOCUMENTARY EVIDENCE:

Exhibit#1 - ID#12: Motion to Dismiss

Exhibit#2 – ID#9: Petition for Benefits

Exhibit#3 – ID#10: Medical Exempt Record attachments to PFB

After hearing all of the testimony and evidence presented, and after having resolved any and all conflicts therein, the undersigned Judge of Compensation Claims makes the following findings of fact and conclusions of law:

BACKGROUND

On 5/23/18 claimant filed a petition for benefits (PFB) requesting authorization of a physician to "evaluate and treat her neck and back industrial injuries." Attached to the PFB were medical records from Florida Hospital.

On 6/7/18, the E/C filed a motion to dismiss claimant's PFB based on Section 440.192(2)(i), Fla. Stat. (2017), which provides: "…If the employee is under the care of a physician for an injury identified under paragraph (c), a copy of the physician's request, authorization, or recommendation for treatment, care, or attendance must accompany the petition."

Section 440.192(2)(c), referenced above, provides that each

PFB must "identify or itemize" "A detailed description of the injury and cause of the injury, including the location of the occurrence and the date or dates of the accident." Claimant's PFB states the following with regard to "Detailed Description of the Accident": "Claimant fell off of ladder while painting, injuring her left ankle and foot, neck, and low back".

At the hearing, counsel for the E/C conceded that the medical records attached to the PFB did contain a referral for treatment for claimant's neck, and that the motion to dismiss was only directed to the claim for authorization of care for claimant's back. The parties agreed that claimant was under the care of a physician for her lower extremity injuries, but not for her back.

DISMISSAL PURSUANT TO SECTION 440.192(2)(i)

Section 440.192(2)(i), Fla. Stat. (2017) provides: "…If the employee is under the care of a physician for an injury identified under paragraph (c), a copy of the physician's request, authorization, or recommendation for treatment, care, or attendance must accompany the petition." Section (c) of the statute, referenced above, provides that each PFB must "identify or itemize" "A detailed description of the injury and cause of

the injury, including the location of the occurrence and the date or dates of the accident." Claimant argues that the statute should be interpreted to require a written referral for treatment of an injury listed in her PFB only when the E/C has authorized a physician to treat the specific injury that treatment is claimed for. The E/C, in contrast, argues that under the plain reading of the statute that a written referral is required if it has authorized a physician to treat any of the injuries identified in claimant's petition. For the reasons discussed below, I agree with the E/C's construction of the statute and find that claimant was "under the care of a physician for an injury identified under paragraph (c)." As no recommendation for treatment for claimant's back accompanied her 5/23/18 PFB, I therefore find that her claim for authorization for evaluation and treatment of her back injury must be dismissed pursuant to Section 440.192(2)(i), Florida Statutes.

> *The phrase "…an injury identified under paragraph (c)" is most reasonably interpreted as a reference by the legislature to any one of any injuries identified in a petition for benefits.*

Under the "ordinary meaning" canon of statutory construction, "[w]ords are to be understood in their ordinary, everyday meanings – unless the context indicates that they bear a

technical sense." "Reading Law – The Interpretation of Legal Texts", Antonin Scalia & Bryan A. Garner, Thomson/West (2012), at 69. Moreover, "[w]ords are to be given the meaning that proper grammar and usage would assign them." *Id*, at 140.

Here, applying ordinary meaning and proper grammar and usage to Section 440.192(2)(i), it is clear that the most reasonable construction of the phrase "…an injury identified under paragraph (c)" is "any one of any injuries" identified under paragraph(c). According to the online Merriam-Webster Dictionary, "a" and "an" are "indefinite articles" used to refer to a person or thing that is not identified or specified. "A" is generally used before nouns beginning with consonants, while "an" is generally used before nouns beginning with vowels. *Id*. Grammarly.com indicates that the "indefinite articles *a* and *an* are used to modify *singular* nouns. (emphasis added).

Similarly, Black's Law Dictionary states the following about the use of indefinite articles:

> The word "a" has varying meanings and uses. "A" means "one" or "any", but less emphatically than either. It may mean one where only one is intended, or it may mean any one of a great number. It is placed before nouns of the singular number, denoting an individual object or quality individualized.

Of the possible meanings identified by Black's Law Dictionary, it is doubtful the legislature intended "an" to refer to "only one" in Section 440.192(2)(i), as that would lead to an

absurd result. Specifically, an injured worker under the care of *more* than one physician and/or who identifies *more* than one injury in her petition, would not be required to attach a recommendation for care, while an injured worker with *exactly* one physician and/or injury would be so required. Rather, the most reasonable reading of the statute is that "an" refers to any one of any injuries identified in a PFB.

Contrary to claimant's argument, this construction of the statute neither leads to an absurd result nor is inconsistent with the legislative intent behind Chapter 440 as a whole. Under the "Absurdity Doctrine":

> A provision may be either disregarded or judicially corrected as an error (when the correction is textually simple) if failing to do so would result in a disposition that no reasonable person could approve. *Reading Law, supra,* at 234.

However, something that may seem odd is not absurd. *Id.* In addition, the doctrine "does not include substantive errors arising from a drafter's failure to appreciate the effect of certain provisions." *Id.*, at 237-38.

Here, claimant argues that when an E/C authorizes a physician to treat or evaluate a particular injury, the E/C will often not authorize that physician to evaluate other claimed injuries, which makes it impossible for an injured worker to obtain referrals or recommendations for further evaluations from

that physician. This, however, is precisely the type of alleged substantive error that arises from the legislature's failure to appreciate the effect of the statute as written, and therefore makes the absurdity doctrine inapplicable. Moreover, there is nothing in the text of the statute that requires such a practice by an E/C. A physician authorized only to evaluate or treat a particular "injury" could recommend that claimant be evaluated or treated for other claimed injuries, which would allow an injured worker to file a PFB requesting such evaluation or treatment by attaching the recommendation. That E/C's and/or physicians may not do so may be grounds for the legislature to amend the statute, but does not justify my failing to apply the ordinary meaning and grammatical usage of the words of the statute.

Nor is this construction of the statute inconsistent with the legislative intent behind Chapter 440. Claimant argues that physicians authorized by an E/C to treat or evaluate a particular injury often will not authorize those physicians to evaluate other claimed injuries - which would then require the injured employee to obtain an IME to even be able to file a PFB requesting evaluation or treatment for those other claimed injuries. Such a requirement, claimant argues, is inconsistent with the legislature's stated intent to "ensure the prompt delivery of benefits to the injured worker." *See* Section 440.015,

Fla. Stat. (2017).

First, as noted above, there is nothing in the text of the statute that requires E/C's to behave in this manner. Second, Section 440.015 also indicates the intent that benefits be provided at "…a reasonable cost to the employer", and that "…an efficient and self-executing system must be created which is not an economic or administrative burden." *Id*. The legislature could have concluded that once an E/C has accepted compensability of an injury and has authorized medical care, that allowing claimants to file claims for any medical care they desire, without supporting recommendations or referrals, would be an unfair and unjustified administrative burden on carriers. Specifically, a carrier faced with such a claim would have to provide the requested care within 30 days, without supporting documentation, or face liability for claimant attorney's fees should evidence be developed later that supports the claim. Whether the statute as written results in the best balance between the dual legislative goals of the quick and efficient delivery of benefits to injured workers and the creation of a system that is not an administrative or economic burden, is a policy question best left to the legislature. It is not, however, a basis for ignoring the ordinary meaning and proper grammatical usage of statutory language.

Consequently, as the parties agree that claimant is under the care of a physician for one of the several injuries identified in her PFB, she was required to attach a copy of a physician's recommendation for treatment for the claimed care. As the attachments to claimant's PFB do not contain a recommendation or referral for evaluation and/or treatment of claimant's back, that claim must be dismissed, without prejudice, pursuant to Section 440.192(2)(i), Fla. Stat. (2017).

WHEREFORE it is hereby **ORDERED** and **ADJUDGED** that:

1. Claimant's claim in her 5/23/18 petition for benefits, for authorization of a physician to evaluate and treat her alleged back injury, is DISMISSED WITHOUT PREJUDICE.

2. All other claims in the 5/23/18 PFB remain pending.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 18th day of July, 2018.

Thomas W. Sculco

_____

Thomas W. Sculco
Judge of Compensation Claims
400 West Robinson Street, Suite 608N
Orlando, Florida 32801-1701