

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
Miami District**

OJCC NO.: 12-005404MGK  
DATE OF ACCIDENT: 12/6/2011

JUDGE: Margret G. Kerr

EMPLOYEE:  
Ela Gonzalez  
4130 West 21st Court, Apt. 501  
Hialeah, FL 33016

ATTORNEY FOR EMPLOYEE:  
Monica De Feria Cooper, Esquire  
Law Office of Richard Zaldivar  
2600 SW 3rd Avenue  
Suite 300  
Miami, FL 33129

EMPLOYER:  
Maewood Food, Inc. DBA McDonald's  
10750 SW 67th Avenue  
Miami, FL 33156

ATTORNEY FOR  
EMPLOYER/CARRIER:  
Bill Rogner, Esquire  
Flurley, Rogner, Miller, Cox,  
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1280 SW 36th Avenue, Suite 100  
Pompano Beach, FL 33069

CARRIER:  
Amerisure Mutual Ins. Co.  
P.O. Box 33478  
Detroit, MI 48232

**FINAL MERITS ORDER**

**THIS CAUSE** came before the undersigned Judge of Compensation Claims for a Merits Hearing on November 24, 2015 regarding the Petition for Benefits (PFB) filed April 3, 2015. The Claimant was represented by Monica De Feria Cooper Esq., and the Employer/Carrier was represented by Bill Rogner, Esq.

The Following evidence was received by the undersigned from the respective parties:

**JUDGES EXHIBITS:**

1. Claimant's trial memorandum for ID only (ID#162).
2. E/C's trial memorandum for ID only (ID#187).
3. Pre Trial Stipulation (ID#156).
4. Expert Medical Advisor (EMA) Report of Dr. Hodor (ID#186).

**CLAIMANT'S EXHIBITS:**

1. Deposition of Dr. Kenneth Osborn (ID#164, 165).

**E/C'S EXHIBITS:**

1. Deposition of Dr. Jay Stein (ID#193).
2. Deposition of Dr. Christopher Brown (ID#191).
3. Final Merits Order (ID#75).
4. Deposition of Dr. Hodor (EMA)(ID#189).

**CLAIMS:**

1. Provision and authorization of follow up appointment with authorized treating physician for back and shoulder pain.
2. Attorney's fees and costs.
3. E/C is estopped from raising MCC defense based on F.S. 90.702 and the holding in Cespedes case; res judicata; waiver.

**DEFENSES:**

1. Claimant suffered a compensable injury that resolved completely and her current complaints and unrelated to the compensable injury.
2. Claimant reached overall MMI with a 0% rating and no work restrictions on 4/12/15 per court order.
3. Only compensable body parts were head, low back and neck per court order.
4. No costs, fees due.

In making the determinations set forth below, I have attempted to detail the salient facts together with the findings and conclusions necessary to resolve the issues. I have not attempted to painstakingly summarize the substance of the parties' arguments, not the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state non essential facts. Because I have not done so, does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The claimant testified in person at the November 24, 2015 final hearing. She recalled testifying at the May 13, 2013 final hearing regarding the instant December 6, 2011 industrial accident and injuries. Since the May 13, 2013 final hearing, she has not suffered any

new accidents. Her physical condition has changed. She experiences neck, left arm, and back pain. She takes medication however it does not alleviate the pain. Her life as she knew it before the industrial accident is over.

2. Claimant's attorney referred her to a chiropractor. She also saw Drs. Jarolem and Hodor. Claimant desires further medical treatment. She takes a lot of pills but they do not alleviate her pain. After viewing claimant's demeanor and taking into consideration all the evidence, I find claimant not credible.

3. A TPD claim was previously adjudicated at a May 13, 2013 final hearing where claimant testified to injuring her head, neck and back on the date of the instant accident. The medical records of Palmetto General Hospital, Physician Health Center, Dr. Brown, Dr. Ramirez and Dr. Stein memorialize claimant's complaints and treatment were primarily to her cervical spine although some initial treatment was afforded for claimant's back and head complaints. The medical records also support claimant complained of her neck pain radiating to her left shoulder and arm at times. Claimant received authorized medical care for her neck injury and radiating pain into the left upper extremity. A final compensation order was entered on May 23, 2013 finding claimant reached MMI as to her head and low back injuries on January 27, 2012 with a 0% PIR and overall MMI, including her cervical complaints on April 10, 2012. Dr. Brown opined there was no further orthopedic treatment to offer the claimant for her industrial injuries. Dr. Stein (claimant's one-time change) also agreed with Dr. Brown's MMI date and 0% PPI rating and the fact that the Claimant could work with no restrictions. He felt the Claimant should be evaluated for her complaints of dizziness and blurred vision by a neurologist, but that this was unrelated to her industrial injury. During his examination, the Claimant was also tearful and seemed depressed.

4. At the November 24, 2015 final hearing, claimant testified to sustaining injuries to her neck, back, and left arm. She underwent a follow-up IME with chiropractor Osborn on September 4, 2015. Dr. Osborn testified claimant continued with neck pain radiating to her left shoulder and arm, back pain, headaches, depression, anxiety, and weakness in her legs. After conducting a physical examination, Dr. Osborn diagnosed chronic cervical sprain/strain; cervical radiculitis; chronic thoracic sprain/strain; chronic lumbar sprain/strain; cephalgia; depression; and anxiety, all as a result of the instant industrial accident. He recommended a psychological evaluation; orthopedic and/or neurological evaluation; updated cervical and lumbar MRIs and

chiropractic treatment.

5. Based on the conflicting medical opinions of Drs. Brown, Stein, and Dr. Jarolem versus Dr. Osborn, Dr. Hodor was appointed as an Expert Medical Advisor. Dr. Hodor conducted the EMA examination on October 27, 2015 when claimant provided a history of falling and striking her neck, head and upper back. Dr. Hodor conducted a very thorough review of claimant's medical treatment, including but not limited to, cervical MRI on 3/6/13 (a year after the accident) revealing a mild disk bulge with compression of the thecal sac at C5-6 but not evidence of narrowing of the neural foramen. Dr. Hodor opined,

"there is no further treatment based on the history and discussion with the patient and based on the physical exam, is required as a result of the industrial accident of 12/6/2011. There are as noted multiple inconsistencies, both in the history as well as in the physical exam, which was clearly documented by Dr. Jarolem as well as by Dr. Stein. Dr. Osborn was certainly very generous in his evaluation of the patient noting that certainly there were multiple emotional problems which had been demonstrated almost throughout other than the time she was seen by Dr. Brown. Although these certainly appear to be part and parcel of the picture, in view of all the inconsistencies found and in view of what she stated during today's interview, I would once again opine that the claimant does not require any further medical treatment as a result of her industrial accident of 12/6/2011."

6. I accept the opinions of Drs. Hodor, Brown, Stein, and Jarolem over those of Dr. Osborn as they are supported by the totality of the evidence. I especially find Dr. Hodor's opinions very persuasive as he conducted a very thorough interview, medical review, and physical examination of the claimant. In examining the claimant, Dr. Hodor found similar findings as Dr. Jarolem and Dr. Stein. Specifically, Dr. Hodor found claimant had non-organic findings in the absence of significant objective abnormality noted on MRI, CT of the cervical spine and physical examinations. He opined the March 2013 MRI of the cervical spine revealed normal spinal cord and bony elements as far as any obvious pathology. There was nothing in the MRI from a neurological point of view either substantiating claimant's complaints, need for a walker, take medications from people, and refuse pain management treatment. Clearly, Dr. Hodor agreed with Drs. Stein and Jarolem that claimant's complaints have a large emotional component to them.

7. As the appointed EMA, Dr. Hodor's opinions are presumed to be correct and I accept them all. I find Chiropractor Osborn's opinions are not competent or substantially supported by the evidence, let alone rise to the level of clear and convincing evidence to rebut Dr. Hodor's EMA opinion. I find claimant is quite histrionic said fact noticed by most of the physicians. Given that Dr. Osborn's opinions are partly based on claimant's credibility which credibility I find lacking, I reject Dr. Osborn's opinions.

8. Claimant asserts E/C are estopped from raising the MCC defense as claimant's injuries were accepted as compensable and E/C has failed to demonstrate a break in the causation chain, such as the occurrence of a new accident or that the requested treatment was due to a condition unrelated to the injury which the E/C had accepted as compensable. While claimant has established causal connection between the accident and her injuries, I find claimant still has the burden of proof of establishing medical necessity for the claimed medical benefits.

9. Case law clarified that the mere occurrence of a compensable injury does not guarantee a claimant the right to receive medical care for life. The claimant remains so entitled only for as long as the compensable injury continues to cause the need for additional treatment. Even where a claimant suffers a permanent impairment (the instant claimant did not), a compensable injury does not automatically entitle the claimant to continued ongoing palliative treatment. See, Echevarria v. Luxor Investments, LLC, 159 So.3d 991 (Fla. 1st DCA 2015).

10. In the present case, I find the overwhelming medical evidence substantiates that no further palliative treatment appropriate for claimant's compensable injuries is medically necessary. Claimant received medical treatment for her industrial injuries, and her current complaints are not substantiated by objective and physical examination findings. As such, I accept the opinions of Drs. Brown, Stein, Jarolem, and Hodor over those of Chiropractor Osborn and find claimant has not satisfied her burden of proof that the requested medical treatment is medically necessary as a result from her industrial injuries.

**WHEREFORE IT IS ORDERED AND ADJUDGED THAT:**

1. Claimant claim for provision and authorization of follow up appointment with authorized treating physician for back and shoulder pain is denied.
2. The 4/3/2015 PFB, except claim for attorney's fees and costs, is dismissed with prejudice.
3. Jurisdiction is reserved on entitlement to and amount of attorney fees and costs.

DONE and ORDERED this 9th day of December, 2015, in Miami, Miami-Dade County, Florida.



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