

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

Thomas Ramirez,
Employee/Claimant,

OJCC Case No. 16-014676MES

Accident date: 5/16/2014

vs.

Judge: Margaret E. Sojourner

Deem, LLC/Amerisure Insurance,
Employer/Carrier/Service Agent.

FINAL COMPENSATION ORDER

A hearing was held in this matter in Lakeland, Polk County, Florida on December 16, 2016. Present at the hearing were Claimant, Thomas Ramirez and his attorney, Bradley G. Smith. Also present at the hearing was attorney William H. Rogner on behalf of the Employer/Carrier (EC). Jurisdiction is reserved as to the petitions filed October 26, 2016 and November 1, 2016 as these petitions are not procedurally ripe.

Issues:

1. Authorization of a second opinion with an orthopedic physician or neurologist per Dr. Gerber.
2. Costs and attorney's fees.

Defenses:

1. Dr. Gerber changed his mind and requested a radiology assessment which was authorized.
2. No costs or attorney's fees are due.

At the hearing the following items were marked as exhibits:

Judge's Exhibits:

1. PFB filed at docket number (DN) 14-15.
2. Response to PFB filed at DN 16.
3. Mediation Conference Report filed at DN 21.
4. Pretrial Stipulation filed at DN 22.
5. Claimant's Trial Memorandum filed at DN 44, for purposes of argument only.
6. EC's Trial Memorandum filed at DN 41, for purposes of argument only.

Joint Exhibits:

1. Deposition of Dr. Gerber taken on December 7, 2016 filed at DN 45.
2. Deposition of Amoz Leeb taken October 18, 2016 filed December 14, 2016.

Claimant's Proffered Exhibits:¹

1. Email requesting second opinion and EMG/NCS filed at DN 17.
2. Second request from Dr. Gerber for second opinion filed at DN 20.
3. Correspondence requesting second opinion filed at DN 47.

Employer/Carrier Exhibits:

1. Composite regarding one-time change filed at DN 43.

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. The claimant sustained an on the job injury which resulted in surgery to his low back. He was later referred by his surgeon, Dr. McBride, to Dr. Gerber for pain management. He testified that Dr. Gerber wanted him to get a second opinion given the ongoing symptoms and increase in pain claimant was experiencing. He testified that the second opinion was not provided and his pain was overwhelming. The claimant seeks to have the EC authorize the second opinion evaluation requested by Dr. Gerber.
5. Dr. Gerber was concerned as he felt there was an issue regarding whether claimant had suffered a recurrent disc herniation and required additional surgery. Claimant had undergone an MRI which the radiologist reported as showing a recurrent disc herniation and which Dr. McBride felt did not show a recurrent disc herniation. He recommended that claimant undergo a second MRI with contrast as the first MRI was done without contrast. He recommended that the MRI's be compared side by side and recommended a second opinion with a radiologist, orthopedic or neurosurgeon to provide this comparison. When the adjuster

¹ EC objected to these exhibits based upon hearsay and the objections were sustained.

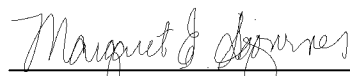
received Dr. Gerber's recommendation he faxed a letter to the doctor asking for clarification on what was being recommended. Dr. Gerber responded, agreed that his dictation was confusing, and stated that a repeat MRI was needed with review by a radiologist, followed by a second opinion by an orthopedic or a spine specialist as to whether surgery was needed. When the adjuster attempted to schedule the comparison of the two MRI's he learned that the actual discs containing the MRI's would have to be sent to the radiologist and that the facilities required a release from claimant in order to provide the adjuster with the discs. Once the releases were obtained the adjuster got the discs and set up the appointment with the radiologist. Subsequently the claimant requested his one-time change in doctor and the EC authorized Dr. Beckner.

6. Dr. Gerber testified that Dr. Beckner was capable of rendering an opinion on whether additional surgery was required and that would fulfill the requirements of his recommendation. He testified that either Dr. Beckner or Dr. McBride could provide the recommended opinion. He was not recommending a separate and distinct opinion, he simply wanted an orthopedic physician or neurosurgeon to review the radiologist comparison report and render an opinion on whether surgery was required. Had the claimant not exercised his right to a one time change Dr. McBride could have provided the review requested by Dr. Gerber.
7. I find that the EC has provided the care and treatment recommended by Dr. Gerber and that additional opinions are unnecessary.

Wherefore it is ordered and adjudged as follows:

1. The claim for a second opinion is denied.
2. The claim for attorney's fees and costs is denied.

DONE AND SERVED this 30th day of December, 2016, in Lakeland, Polk County,
Florida.



Margaret E. Sojourner
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