

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

<b>Claimant:</b>	)	<b>OJCC Case No.</b> 08-033924LAR
Ricky Robinson	)	Accident date: 2/5/2008
	)	Judge: Laura Roesch
vs.	)	
	)	<b>Attorney for Claimant:</b>
<b>Employer:</b>	)	Paul M. Anderson, Esquire
Economy Air Condition Heating	)	
	)	<b>Attorney for Employer/Carrier:</b>
<b>Carrier:</b>	)	William H. Rogner, Esquire
Amerisure Mutual Insurance Company	)	

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FINAL COMPENSATION ORDER  
DENYING BENEFITS, PENALTIES, INTEREST,  
FEES AND COSTS

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Upon proper notice, a trial was held on October 5, 2011 in Panama City, Bay County, Florida before the undersigned Judge of Compensation Claims. Attorney Paul Anderson represented the Claimant. Attorney William Rogner represented the Employer/Carrier. At issue were claims flowing from *Petitions for Benefits* filed herein on March 21 and September 20, 2011, all of which were mediated prior to trial. The parties noted that the issue of average weekly wage was resolved at mediation. That is, the parties agreed that the average weekly wage pertinent herein is \$838.46. The parties also announced their agreement that the Claimant reached physical maximum medical improvement on April 27, 2009 and psychiatric maximum medical improvement on June 14, 2011. It is noted that the claims set forth in the *Petition for Benefits* filed on July 22, 2011 are not at issue in this particular proceeding and will proceed separately and apart herein.

**I. Claims and Defenses.**

**The benefits sought by the Claimant were narrowed at the time of trial to:**

1. Temporary total disability benefits from March 9, 2010 to the date of psychiatric maximum medical improvement on June 14, 2011.
2. Impairment benefits based on a 7% impairment rating as assigned by Dr. Chokhawala at his deposition held on September 13, 2011.

3. Penalties, interest, costs and fees.

**The Employer/Carrier defended on the following grounds:**

1. The Claimant reached overall maximum medical improvement on June 14, 2011.
2. The Claimant is entitled to temporary benefits for a psychiatric condition for no more than six months after the date of physical maximum medical improvement which is April 27, 2009. Therefore, the Claimant's entitlement to temporary benefits for the psychiatric condition expired on October 26, 2009. Temporary benefits paid after that date, were done so in error and represent an overpayment.
3. In the event the Claimant is awarded temporary benefits, such benefits are capped at a 104-week maximum and the Claimant has already been paid 27 weeks plus 5 days of temporary partial and 38 weeks plus 5 days of temporary total disability benefits.
4. Pursuant to Section 440.15(3)(c), impairment benefits for a psychiatric condition is capped at 1%.

**II. Documentary Evidence.**

**Joint:**

1. Depositions of Dr. Pankaj Chokhawala, Psychiatrist (5/10/11 and 9/13/11).
2. Carrier's payout ledger.
3. Composite of medical records of Southern Bone & Joint and Dr. Pankaj Chokhawala, Psychiatrist.

**Court Exhibits:**

1. Petitions for Benefits (March 21, 2011 and September 20, 2011).
2. Trial Memos of counsel for the parties for argument purposes only.
3. Pretrial and Supplemental Pretrials.

**III. Witnesses at trial:**

1. Ricky Robinson, Claimant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In making my findings of fact and conclusions of law, I have considered and weighed all the evidence presented to me. I have observed and assessed the candor and demeanor of the witnesses that testified in person before me, and I have resolved all of the conflicts in the testimony, whether the

testimony was offered in person or by deposition. Although I may not reference or detail each item of evidence presented by the parties, I have carefully considered all the evidence and exhibits in the context of the arguments of counsel and appropriate statutory authority and case law in making 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 as noted herein or in the pretrial stipulation(s) filed herein or announced on the record are hereby approved and adopted as findings of fact and are incorporated herein by reference.

3. The Claimant, a 52-year-old male, sustained a compensable injury during the course and scope of this employment as a plumber supervisor on February 5, 2008. On that day, he walked into a low-hanging wooden beam and hit his head. He fell backwards onto the floor, injuring his left shoulder and arm. The Carrier accepted compensability and the Claimant has since received medical and psychiatric care. He has undergone two surgeries involving his left rotator cuff and bicep. He acknowledged that he reached maximum medical improvement “*at some point.*” He underwent a psychiatric independent medical evaluation with Dr. Pankaj Chokhawala in March 2010 and Dr. Chokhawala was ultimately authorized to treat him psychiatrically. The Claimant denies that he has been released to return to work and acknowledged he is not receiving any disability benefits at this time.

4. It is undisputed that the Claimant reached physical maximum medical improvement as of April 27, 2009, according to the Claimant’s authorized treating physician, Dr. Hall. It is also undisputed that following this date of maximum medical improvement, the Claimant immediately began receiving payment of impairment benefits, according to the Carrier’s pay ledger. At issue is whether the Claimant is entitled to additional temporary benefits, based on the psychiatric opinion of Dr. Chokhawala. Specifically, the Claimant seeks temporary total disability benefits from March 9, 2010, the date he was first seen by Dr. Chokhawala for a psychiatric independent medical evaluation, to the date he reached psychiatric maximum medical opinion on June 14, 2011. Based on the analysis that follows, I find the Claimant is not entitled to any additional temporary benefits.

5. The question to be resolved is, at what point does the six-month limitation on entitlement to temporary benefits begin to run. Section 440.093(3) provides as follows:

*“Subject to the payment of permanent benefits under s. 440.15, in no event shall temporary benefits for a compensable mental or nervous injury be paid for more than 6 months after the date of maximum medical improvement for the injured employee’s physical injury or injuries, which shall be included in the period of 104 weeks as provided in s. 440.15(2) and (4). Mental or nervous injuries are compensable only in accordance with the terms of this section.”*

A careful reading of Section 440.093(3) leads me to conclude that its language is clear and unambiguous. I therefore find that under the facts of this case, the period begins on April 27, 2009 (the date of physical maximum medical improvement) and concludes on October 25, 2009 (the point at which six months expires). Therefore, any entitlement the Claimant might have had to temporary benefits based on a mental injury was no longer viable after October 25, 2009. The Claimant offers the case of Roe v. Razo-Guevara, 999 So.2d 708 (Fla. 1<sup>st</sup> DCA 2009), in support of his argument. However, I find the Roe decision distinguishable from the case at bar. Unlike the Claimant herein, who has already been paid permanent impairment benefits, the Claimant in Roe was never paid any impairment benefits. Had permanent impairment benefits not been paid to the Claimant herein, Claimant's argument would be compelling. Since such benefits were indeed paid, I reject Claimant's argument.

It is noted that the Claimant further argues that Section 440.093 is inconsistent with Section 440.15(2). With respect, I must also reject this argument as I can discern no inconsistency. To the contrary, I find that Section 440.093 clearly articulates that 104 weeks, inclusive of those flowing from a mental or nervous injury, constitutes the total number of weeks temporary benefits may be payable. Stated another way, the amount of temporary benefits payable to a Claimant are capped at 104 weeks, including those payable as a result of a mental or nervous injury. I also find, yet again based on the plain language of the statute as set forth in Section 440.15(3)(c), that the Claimant is limited to a permanent impairment rating of 1%, rather than 7%.

5. It is noted that the Claimant presented certain constitutional arguments in support of his positions. However, as a Judge of Compensation Claims has no power or authority to rule on the constitutionality of any portion of Chapter 440, I decline to rule upon such arguments. Wherefore, it is

ORDERED and ADJUDGED that:

- a. The claim for temporary total disability benefits from March 9, 2010 to the date of psychiatric maximum medical improvement on June 14, 2011 is denied and dismissed.
- b. The claim for payment of impairment benefits based on a 7% impairment rating as assigned by Dr. Chokhawala is denied and dismissed.
- c. The claim for payment of penalties, interest, costs and fees is denied and dismissed.

DONE AND ORDERED in Panama City, Bay County, Florida.

  
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Laura Roesch  
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THIS IS TO CERTIFY that the foregoing order was entered and that a copy was electronically served to counsel this 25th day of October 2011.

/s/ L. Hickman  
District Deputy Clerk

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