

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

Mark Spofford,
Employee/Claimant,

vs.

OJCC Case No. 15-015853MRH

Accident date: 6/2/2014

Dixie Metal Products, Inc./Amerisure Ins.,
Employer/Carrier/Servicing Agent.

Judge: Marjorie Renee Hill

FINAL COMPENSATION ORDER

THIS CAUSE came on for a final hearing on March 2, 2016.¹ Claimant was represented by Mark Tipton and the E/C was represented by William Rogner. The hearing and this Final Compensation Order resolve the Petition for Benefits filed September 3, 2015.

FINDINGS OF FACT

Claimant seeks compensability of his lumbar spine injury. The E/C argues the work accident is not the major contributing cause of the lumbar spine injury. Jurisdiction was reserved to address these claims and defenses following a final hearing on December 9, 2015, after which I ordered the E/C to provide a diagnostic lumbar spine MRI, and x-rays of the lumbar spine with flexion and extension, as recommended by Dr. Oliver and Dr. Sharma. The findings of fact from the December 9, 2015 Final Order are incorporated below.

On December 2, 2014, Claimant sustained a compensable accident when he was hit in the neck by a 60 to 70 pound steel beam that fell from approximately five to six feet overhead. The force of the beam drove Claimant to the ground face first. He attempted to catch himself by putting out his hands. As a result of the accident, he sustained compensable injuries to his cervical spine and both shoulders. Subsequent to the accident, Claimant also had frequent low back pain. However, it is uncontested that the first recorded complaint of low back pain was on September 11, 2014.

Prior to the instant accident, Claimant had periodic low back pain from 1986 forward. In 1998 he had a motor vehicle accident where he “tore the muscle off” of his low back. In 2000 he had a motorcycle accident in which he injured his low back and underwent surgery to “scrap the disc away from the nerve.” In 2012 he had another motor vehicle accident wherein he injured his low back. He was able to return to work full time, full duty after each of these events. Following the work accident, he has had periodic back pain of a different quality, and on both the right and left sides of his low back.

¹ The parties’ stipulations, claims, defenses, witnesses and exhibits, all of which were considered in rendering this Order, are listed in Appendix A attached to this Order.

On December 17, 2014, Dr. Oliver requested an MRI and x-rays of the lumbar spine. Claimant reported he injured his back in the work accident, but Dr. Oliver “didn’t really get into the details about it.” He opined that, to determine causation of Claimant’s back pain, he needed the requested diagnostic tests.

Similarly, Dr. Sharma opined that, to determine whether Claimant had an aggravation of a previous lumbar spine condition or a new lumbar spine injury, he needed an MRI of the lumbar spine and lumbar spine x-rays with flexion and extension.

The MRI and x-rays were performed on December 15, 2015. Both Dr. Sharma and Dr. Oliver reviewed these films and compared them to films from 2012. (Sharma depo2. p. 4; Oliver depo2. pp. 6-8). Dr. Sharma noted disc herniations at L5 and S1 were present in 2012, and the films appeared very similar or “essentially identical.” (Sharma depo2. pp. 4, 6-7). He opined that even if Claimant reported prior to the work accident that he occasionally experienced low back pain at a level 2 after a hard day’s work, the work accident was the major contributing cause of Claimant’s reported current pain, which has a radicular component down the leg. He based his opinion on Claimant’s reported history. If the history was incorrect, Dr. Sharma’s opinion as to major contributing cause would change. (Sharma depo2., pp. 6-7).

Dr. Oliver noted Claimant appeared to have undergone surgery at L5-S1 in 2012, and the two sets of films looked “very similar,” and were “essentially the same.” (Oliver depo2. pp. 8-9). Claimant’s subjective complaints were consistent with the objective findings that have been present since 2012. (Oliver depo2. p. 15). If Claimant injured his back in the work accident, Dr. Oliver would expect him to complain of back pain shortly after the accident. Because Claimant did not have reported pain until three months after the accident, Dr. Oliver questioned whether the complaints were caused by the work accident. Dr. Oliver did not believe the work accident was the major contributing cause of Claimant’s complaints. (Oliver depo2. pp. 16-17).

The medical records from Dr. Shah, an authorized provider, indicate Claimant treated three times following the accident, and either did not mention back pain or expressly denied back pain. (Graham depo. attachments, dated 11/19/15, 5/26/15, 7/23/14).

CONCLUSIONS OF LAW

Even where an accident is accepted as compensable, claimant bears the burden to prove continued entitlement to workers’ compensation benefits. *See e.g., Fitzgerald v. Osceola County Sch. Bd.*, 974 So.2d 1161, 1164 (Fla. 1st DCA 2008). Thus, here, although the E/C accepted compensability of the injuries to Claimant’s neck and both shoulders, Claimant is still required to prove the work accident is the major contributing cause of his lumbar back injury and need for treatment. *See N. River Ins. Co. v. Wuelling*, 683 So. 2d 1090, 1092 (Fla. 1st DCA 1996) (en banc); *Checkers Rest. & Specialty Risk Servs., Inc. v. Wiethoff*, 925 So. 2d 348, 349, 351 (Fla. 1st DCA 2006) (en banc); *City of Ocoee v. Trimble*, 929 So. 2d 687, 690 (Fla. 1st DCA 2006); *Engler v. Am. Friends of the Hebrew Univ.*, 18 So. 3d 613, 614 (Fla. 1st DCA 2009).

“Major contributing cause means the cause which is more than 50% responsible for the injury as compared to all other causes combined for which treatment or benefits are sought.” § 440.09(1), Fla. Stat. Establishment of the causal relationship between a compensable accident and injuries for conditions that are not readily observable must be within a reasonable degree of medical certainty, based on medical evidence only, as demonstrated by physical examination findings or diagnostic testing. *See id.*

Here, neither party requested an EMA. *See e.g., Arvida River Hills Country Club & Zurich-Am. Ins. Grp. v. Van*, 728 So. 2d 1213 (Fla. 1st DCA 1999). Consequently, I must resolve the conflicts between the opinions of Dr. Oliver and Dr. Sharma. *See Landmark Towers, LLC v. Ibarguen*, 954 So. 2d 43, 45 (Fla. 1st DCA 2007); *Chavarria v. Selugal Clothing, Inc.*, 840 So. 2d 1071 (Fla. 1st DCA 2003); *Palm Springs Gen. Hosp. v. Cabrera*, 698 So.2d 1352, 1355 n. 3 (Fla. 1st DCA 1997).

Both Dr. Sharma and Dr. Oliver opined the 2012 and 2015 lumbar spine MRIs establish Claimant’s lumbar spine condition was essentially the same before and after the work accident. To the extent Dr. Sharma’s opinion as to major contributing cause differs from Dr. Oliver’s, I accept Dr. Oliver’s opinion, because it is more consistent with Claimant’s pre-existing history of numerous injuries to his lumbar spine, the objective MRI results pre and post accident indicating Claimant’s lumbar spine condition is essentially the same pre and post accident, and Claimant either not mentioning or expressly denying back pain post-accident, and not reporting back pain for three months post-accident. Based on the foregoing, it is hereby,

ORDERED AND ADJUDGED that the injury to Claimant’s lumbar spine is **DENIED**. The claim for costs and attorney fees is **DENIED**.

DONE and ELECTRONICALLY SERVED this 7th day of March, 2016, in Chambers, in Alachua County, Florida.



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APPENDIX A

Stipulations

1. An employer/employee relationship existed on the date of the accident.
2. Workers' compensation insurance coverage was in effect on the date of the accident.
3. The accident was accepted as compensable as it pertains to neck and both shoulders only.

Claimant Issues

1. Compensability of Claimant's lumbar spine injury.
2. Costs and attorney's fees

Employer/Carrier Defenses

1. The work accident is not the major contributing cause of Claimant's alleged low back injury.
2. No costs or attorney's fees are due or owing.

Judicial Notice

1. Final Compensation Order rendered December 9, 2015, in the instant case.

Claimant Exhibits

1. Deposition of Dr. Sharma, with attachments, taken November 9, 2015
2. Deposition of Dr. Sharma, with attachments, taken February 22, 2016

Employer/Carrier Exhibits

1. Deposition of Dr. Oliver, with attachments, taken October 12, 2015
2. Deposition of Dr. Oliver, with attachments, taken February 1, 2016
3. Deposition of Amoz Leeb, with attachments, taken September 14, 2015
4. Deposition of Sharon Ross Graham (records custodian to Dr. Shah), with attachments, taken November 20, 2015

Judge Exhibits

1. Claimant trial memorandum (argument only)
2. E/C trial memorandum (argument only)

Live Testimony: Mark Spofford