

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

Patrice Gutierrez,
Employee/Claimant,

OJCC Case No. 16-006247WWA

vs.

Accident date: 11/5/2015

The Health Center of Daytona
Beach/Premier Group Insurance,
Employer/Carrier/Service Agent.

Judge: Wilbur W. Anderson

COMPENSATION ORDER

I find all claims are barred because Claimant failed to give timely notice of her injury to her employer, and because none of the exceptions to the notice requirement apply.

PROCEDURAL BACKGROUND

Claimant filed a petition for benefits on March 15, 2016. The case was mediated on May 27, 2016, and the final hearing was held on August 26, 2016. Matthew E. Romanik represented Claimant. W. Rogers Turner, Jr., represented the Employer/Carrier.

CLAIMS

1. Compensability: Authorization of payment and medical treatment by medical (sic) Lindsay Podhajsky, M.D., authorization and payment for MRI for: Payment for past medical care Halifax Health 12/4/15, \$400.00 and \$1,596.50, penalties, costs and attorney fees.
2. TPD: 11/6/15 and continuing with interest, mileage of \$10.68.

DEFENSES

1. Claimant did not notify employer of accident occurring on 11/5/15, Claimant notifies employer of an incident involving a resident but no notification given of injury by accident in the course and scope within 30 days of 11/5/15.

2. Claim for 11/5/15 not compensable, no medical or indemnity due, no PICA due.

EXHIBITS

JCC Exhibits

1. Petition for benefits filed 3/15/16 (4)*
2. Pretrial stipulation filed 6/24/16 (21)
3. Claimant's supplement to pretrial stipulation filed 7/25/16 (23)
4. Employer/Carrier's amendment to pretrial stipulation filed 7/25/16 (24)
5. Employer/Carrier's amendment to pretrial stipulation filed 8/19/16 (25)
6. Claimant's memorandum of law filed 8/23/16 (argument only) (27)
7. Employer/Carrier's memorandum of law filed 8/24/16 (argument only) (32)

Claimant Exhibits

1. Deposition of Dr. Charles Kollmer taken on 8/16/16, filed on 8/23/16 (28)
2. Medical records filed 8/23/16 (factual purposes) (29)

E/C Exhibits

1. Notice of denial dated 1/27/16, filed 8/26/16 (37)
2. Risk management incident report dated 1/15/16, filed 8/26/16 (38)
3. Risk management statement/interview documentation dated 11/3/15, filed 8/26/16 (39)
4. Notice of filing Authority filed 8/26/16 (35)
5. Deposition of Patrice Gutierrez taken on 4/13/16, filed 8/26/16 (36)
6. Deposition of Patrice Gutierrez taken on 8/17/16, filed 8/30/16 (40)

WITNESSES

Claimant

1. Patrice Gutierrez

* Numbers in parentheses refer to the OJCC docket number.

Employer/Carrier

1. Stacey Arzuaga
2. Pauline Cloutier

FINDINGS OF FACT

1. The stipulations of the parties are accepted and adopted.
2. This case turns primarily on a factual dispute. Having carefully considered all of the documentary evidence and the testimony presented, particularly the testimony of Claimant at hearing and by deposition, the testimony of the assistant director of nursing for the Employer, Stacy Arzuaga, and the testimony of the director of nursing for the Employer, Pauline Cloutier, I make the following findings of fact:

3. Claimant, an LPN, was helping a CNA with a patient of the Employer's facility on November 5, 2015, when the patient started to fall. Claimant grabbed the patient to prevent the fall. In doing so, Claimant leaned against a wall for support. Because the incident involved a patient of the facility, Claimant reported it to the assistant director of nursing, Ms. Arzuaga, shortly thereafter.

4. Although Claimant informed her supervisor that there had been an incident involving a patient shortly after it happened, I accept the testimony of Ms. Arzuaga that at no time prior to December 7, 2015, did Claimant tell her that she (Claimant) was injured in any way. I also accept the testimony of the director of nursing, Pauline Cloutier, that Claimant never told her in the 30 days following the November 5, 2015, incident that she was injured in any way. In addition, I accept Ms. Arzuaga's and Ms. Cloutier's testimony that they did not have actual knowledge of the injury within this 30-day period. I find Ms. Arzuaga's and Ms. Cloutier's testimony straightforward, truthful, and credible. I find Claimant's testimony that she reported

and complained of an injury to her supervisors within the 30-day period inconsistent, implausible, and lacking credibility.

CONCLUSIONS OF LAW

1. Section 440.185(1), Florida Statutes (2015), provides:

(1) An employee who suffers an injury arising out of and in the course of employment shall advise his or her employer of the injury within 30 days after the date of or initial manifestation of the injury. Failure to so advise the employer shall bar a petition under this chapter unless:

- (a) The employer or the employer's agent had actual knowledge of the injury;
- (b) The cause of the injury could not be identified without a medical opinion and the employee advised the employer within 30 days after obtaining a medical opinion indicating that the injury arose out of and in the course of employment;
- (c) The employer did not put its employees on notice of the requirements of this section by posting notice pursuant to s. [440.055](#); or
- (d) Exceptional circumstances, outside the scope of paragraph (a) or paragraph (b) justify such failure.

2. I conclude the claim is barred because I made a factual finding that Claimant did not provide timely notice of the injury within 30 days after the date of or initial manifestation of the injury and because I also conclude none of the exceptions set forth in paragraphs 440.185(1)(a)-(d) apply. Finally, I find and conclude Claimant was aware of the nature, seriousness and probable compensable character of the injury when it allegedly occurred.

3. Because all claims are barred by section 440.185(1), it is unnecessary to address the remaining claims and defenses.

It is therefore,

ORDERED AND ADJUDGED that the claim is barred by section 440.185(1), Florida Statutes.

DONE AND ELECTRONICALLY TRANSMITTED VIA EMAIL TO THE ATTORNEYS AND CARRIER LISTED BELOW this 19th day of September, 2016, in Daytona Beach, Volusia County, Florida.



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