

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

OFFICE OF THE JUDGE OF COMPENSATION CLAIMS

2007 AUG 28 AM 10:34

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OJCC CASE NO.: 05-032667PTT
D/A: 8/24/2005

MERITS ORDER DENYING BENEFITS

THIS MATTER came on for hearing before the undersigned Judge of Compensation Claims on August 17, 2007, in Brevard County, Florida, for a Petition for Benefits received by DOAH on February 12, 2007. Present and representing the Claimant was Ronald S. Webster, Esquire. Present and representing the Employer/Carrier was Derrick E. Cox, Esquire. On that date, the record was opened, testimony and evidence was taken, and the record was then closed. Following the hearing, the findings of fact and conclusions of law were announced by the undersigned judge, and they are incorporated herein by reference.

The issues for trial were payment of medical bills including, but not limited to, bills from Dr. Bloom, prescriptions from Dr. Bloom, co-pays to the Claimant, out-of-pocket expenses to the Claimant, bills from Wuesthoff Hospital, payment of mileage to doctors, compensability of the Claimant's back condition, and costs and attorney's fees.

The Employer/Carrier defended the claims for payment of medical bills and mileage as being non-specific. The Employer/Carrier argued that the Claimant only sustained a temporary exacerbation of the low back at it pertained to the August 24, 2005 accident, which resolved as of December 29, 2005. Finally, the Employer/Carrier argued that no costs or attorney's fees were due and owing.

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the evidence that was presented to me. I have observed the candor and demeanor of the witnesses and resolved all of the conflicts in the testimony and evidence. In writing this Order, I have attempted to distill the salient issues together with findings and conclusions necessary to their resolution. Even though I have not attempted to summarize the testimony of each witness or to state non-essential facts, this does not mean that I have failed to consider all the evidence. After careful consideration of all of the evidence presented, and after having resolved any conflicts therein, I hereby find as follows:

1. The stipulations of the parties are factual and incorporated by reference herein as if set out in length herein.
2. Based on the evidence that has been presented to me, I hereby deny all benefits requested by the Claimant.
3. I am denying the Claimant's request for payment of medical bills, co-pays, prescriptions, mileage, and reimbursement to Dr. Bloom and Wuesthoff Hospital because these requests are non-specific. Florida Statute §440.192(2)(h) requires a specific listing of all medical charges alleged unpaid, including the name and address of the medical provider, the amounts due, and the specific dates of treatment. In this case, the Claimant failed to produce any evidence of specific unpaid medical charges, the amount of the unpaid charges, or the specific

dates of treatment. The Claimant failed to produce any medical bills showing unpaid charges from either Dr. Bloom or Wuesthoff Hospital.

I am also denying the mileage claim because Florida Statute §440.192(g) requires that specific travel costs be itemized, including the dates of travel, the purpose of the travel, the means of transportation, the specific amount of mileage requested, the date the request for mileage was filed with the carrier and a copy of the request filed with the carrier. In this case, the Claimant failed to list any dates of travel, the specific amount of mileage claimed, the date the request for mileage was filed, or a copy of the request for mileage. Therefore, the Claimant's request for payment of mileage is also denied as being non-specific.

The word "specificity" is defined in Florida Statute §440.02(40). I find that the benefits requested do not meet the definition of specificity as contained in that section of the Statute. I further find that any benefit due but not raised at the final hearing which was ripe, due or owing at the time of the final hearing is waived, pursuant to Florida Statute §440.25(4)(d).

4. I am also denying the Claimant's request for payment of medical bills, prescriptions, co-pays and mileage because there was no competent substantial evidence presented by the Claimant to support those claims. The Claimant testified that he treated with Dr. Bloom for low back injuries sustained prior to August 24, 2005. The Claimant was aware that Dr. Bloom was not authorized to treat him for the August 24, 2005 accident. There was no medical evidence showing when Dr. Bloom treated the Claimant following the August 24, 2005 accident. There was no evidence showing whether any of the generic medical charges requested were due to the Claimant's prior condition or the August 24, 2005 exacerbation.

There was also no evidence of any specific treatment the Claimant received due to his low back exacerbation following the August 24, 2005 accident. Moreover, the Claimant testified

that he believed his medical bills had been paid through either group health insurance or the State Farm PIP provider. However, again there was no evidence or documentation to support a request for repayment or reimbursement. Overall, I find that the Claimant failed to meet his burden of proof for the nonspecific requested benefits listed in the pretrial stipulation, including payment of Dr. Bloom's bills, Dr. Bloom's prescriptions, the Wuesthoff Hospital bills, co-pays and other out-of-pocket expenses, and mileage to the doctors. Therefore, these claims are denied for this reason as well.

5. Regarding compensability of the Claimant's low back condition, the Employer/Carrier agreed prior to trial that the Claimant sustained a temporary exacerbation of his low back due to the August 24, 2005 accident. The Employer/Carrier completed a Notice of Action/Change form on August 6, 2007, stating that the Claimant's low back exacerbation was compensable for the period of August 24, 2005 to December 29, 2005. Therefore, the issue for my determination was compensability of the Claimant's low back effective as of December 30, 2005.

Based on the deposition testimony of Dr. Homi Cooper, I find that the Employer/Carrier is not responsible for the Claimant's ongoing low back treatment since December 30, 2005. Dr. Cooper served as the Employer/Carrier's IME physician, and he was deposed on June 21, 2007. The Claimant gave Dr. Cooper a history of having back pain prior to the August 24, 2005 accident. Dr. Homi Cooper reviewed MRI's of the Claimant's low back dated October 13, 2005, February 5, 2003, and June 11, 2002. Dr. Homi Cooper testified that the Claimant had long-standing involvement of the L5-S1 nerve root on the left, which predated the August 24, 2005 accident. Dr. Cooper further testified that the lumbar MRI spine of October 13, 2005 was essentially the same as the previous MRI's. Dr. Cooper noted that the Claimant previously

underwent an L5-S1 lumbar laminectomy on March 6, 2003, performed by Dr. Robinson. Dr. Cooper further noted that Dr. Bloom saw the claimant on August 9, 2005, approximately two weeks before the August 24, 2005 accident, and the Claimant was continuing to complain of low back pain with occasional radiation into the lower extremity on that date. Dr. Cooper testified that the Claimant's low back accident was exacerbated by the accident of August 24, 2005, but the Claimant returned to baseline on December 29, 2005. Dr. Cooper testified that the Claimant reached maximum medical improvement for his low back on December 29, 2005, with a 0% impairment rating and no work restrictions as of December 29, 2005. Dr. Cooper further testified that the major contributing cause for all future medical treatment for the Claimant's low back after December 29, 2005 would be the Claimant's pre-existing condition of degenerative disk and joint disease and post-surgical lumbar diskectomy on March 6, 2003. Dr. Cooper testified that the Claimant did not require any further treatment for his low back after December 29, 2005, as it pertained to the August 24, 2005 accident.

I hereby accept Dr. Homi Cooper's opinions. Dr. Cooper is an expert in the field of occupational medicine, and his qualifications were stipulated to by both sides. Dr. Cooper has testified before me in many cases, and I am aware of his expertise in the field of occupational medicine. I also note that Dr. Cooper's opinions are uncontroverted. Based on the uncontroverted testimony presented by Dr. Cooper, I hereby find that the Claimant had a long-standing history of low back pain which predated the August 24, 2005 accident. I find that the Claimant had an exacerbation of his pre-existing low back pain due to the August 24, 2005 accident, which lasted until December 29, 2005. I find that the Claimant reached a point of maximum medical improvement for the low back exacerbation on December 29, 2005, with no impairment and no restrictions. I find that the Claimant is entitled to no further treatment for his

low back for the August 24, 2005 accident, effective as of December 30, 2005. I also find that the August 24, 2005 accident is no longer the major contributing cause of the Claimant's disability and need for treatment for his low back condition as of December 30, 2005. I am only rejecting Dr. Cooper's testimony regarding the reasonableness of the treatment provided by Dr. Bloom since Dr. Cooper was not established as an expert in the field of pain management.

I also had the opportunity to observe the Claimant during his trial testimony, and I find that he is a straightforward witness who gave general testimony regarding the August 24, 2005 accident. However, the Claimant has no medical expertise and his injuries are not readily observable to a layperson, so medical evidence is required for this case. The Claimant failed to produce any medical documentation regarding unpaid medical bills, specific co-payments made, outstanding prescriptions, or mileage logs. Moreover, the Claimant gave no testimony regarding treatment at Wuesthoff Hospital. Finally, as indicated above, the Claimant testified that he believed all of his bills were either paid through group health insurance or the PIP auto carrier. I find that the Claimant's testimony does not constitute competent, substantial evidence for the award of any specific benefits in this case. The Claimant's testimony is accepted to the extent it is consistent with Dr. Cooper's testimony, and the Claimant's testimony is rejected to the extent that it conflicts with Dr. Cooper's testimony.

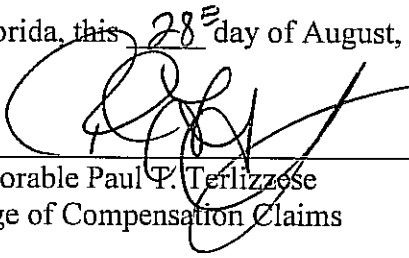
WHEREFORE, it is the Order of the undersigned Judge of Compensation Claims as follows:

1. The Claimant's generic request for payment of all medical bills, including, but not limited to, bills from Dr. Bloom, prescriptions of Dr. Bloom, co-payments, out-of-pocket expenses, payment of Wuesthoff Hospital bills, and reimbursement of mileage to doctors, is hereby denied.

2. I find that the Claimant sustained a temporary exacerbation to his low back as a result of the August 24, 2005 accident, which resolved on December 29, 2005. I find that the major contributing cause of the Claimant's disability and need for treatment pertaining to the low back as of December 30, 2005, is the Claimant's pre-existing low back condition and not the August 24, 2005 accident. Therefore, I hereby deny compensability of the Claimant's low back effective December 30, 2005.

3. Since the benefits requested by the Claimant are denied, I hereby deny the Claimant's request for payment of costs and attorney's fees.

DONE and ORDERED in Melbourne, Florida, this 28^E day of August, 2007.



Honorable Paul P. Terlizzese
Judge of Compensation Claims



THIS IS TO CERTIFY that the foregoing Order was entered on the 28^E day of August, 2007, and that a copy thereof was sent by regular U.S. Mail to all parties noted previously at their last known address.



Judicial Assistant