

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF JUDGE OF COMPENSATION CLAIMS
PORT SAINT LUCIE DISTRICT

EMPLOYEE:

Constance Jackson
4225 46th Lane
Vero Beach, Florida 32967

ATTORNEY FOR EMPLOYEE:

In proper person

EMPLOYER:

VNA of the Treasure Coast, Inc.
1111 36th Street
Vero Beach, Florida 32960

ATTORNEY FOR

EMPLOYER/CARRIER:

Anthony Amelio
Hurley, Rogner, et. al.
603 North Indian River
Drive Suite 102
Fort Pierce, Florida 34950

CARRIER:

FCCI Insurance Company
Post Office Box 58004
Sarasota, Florida 34232

OJCC#: 07-012193RDM

VENUE: Saint Lucie County

D/A: 9/24/2002

ORDER ON THE MERITS

A MERITS HEARING was conducted in this matter. The parties enter into stipulations and frame the issues as follows:

- A. The Judge of Compensation Claims (JCC) has jurisdiction over the parties and subject matter.
- B. The parties were properly notified of the merits hearing.
- C. As to the particulars of this case, the parties agree:

1. Claimant sustained injury by accident in Saint Lucie County, Florida on September 24, 2002.
2. There was an employer/employee relationship.
3. Workers' compensation insurance coverage applies.
4. The claimant had a compensable industrial accident resulting in injuries to her neck.
5. The employer was timely notified of the accident.
6. No indemnity benefits are at issue.
7. All issues pertaining to costs may be reserved for subsequent hearing.

D. Based on a pretrial stipulation prepared by the employer/carrier (E/C) and claimant's prior counsel, as well as her statements at the onset of the merits hearing, claimant seeks the following:

1. A determination that she sustained a compensable industrial accident injuring her low back as a result of the episode occurring September 24, 2002.
2. Continued authorization with Dr. Stanley Dzedzic.
3. Costs of litigation.

E. E/C responds stating:

1. General denial.
2. The claim is barred by the statute of limitations.
3. Entitlement to costs chargeable against claimant.

HAVING CONSIDERED the evidence presented, together with argument of claimant and defense counsel, I make the following determinations:

1. The JCC has jurisdiction over the parties and subject matter.

2. The parties were properly notified of the merits hearing.

3. The stipulations of the parties are accepted and incorporated by reference.

4. Claimant was previously represented by counsel who was permitted to withdraw on November 14, 2007. Claimant wrote well after this order was entered objecting to the withdrawal to which I responded by letter on December 17, 2007. Claimant was urged to obtain another attorney and directed to other potential resources.

At the merits hearing claimant reported that she was unable to find another attorney. She was closely questioned as to whether further time to obtain counsel would be beneficial. Claimant, however, wishes to proceed without further delay.

5. This case was tried concurrently with *Jackson v. VNA of the Treasure Coast, Inc., and AIG Claims Services, Inc.*, OJCC claim number 06-002997RDM, date of accident

August 12, 2005.

Although these cases have not been consolidated, and remain unconsolidated, the parties have no objection to hearing both cases concurrently for administrative efficiency.

I further indicated, and the parties agreed, that a combined order would be entered. Upon reviewing the evidence, however, I determine two orders are apt to be more efficient in the long run.

6. Claimant is 50 years old and is a licensed practical nurse. She worked for the employer in that capacity on September 24, 2002.

Claimant's prior and health and litigation history is not shown to be important in reaching a decision.

7. On the date of accident, claimant's job was to travel to various clients of VNA and provide healthcare services.

Claimant arrived at a private residence to care for an elderly patient who was "sort of out of it mentally." While attempting to lift him into bed, the patient resisted causing claimant to injure her neck.

Claimant was provided with several physicians. She eventually saw Johnny Benjamin, M.D., known to me as a board certified orthopedic surgeon. Dr. Benjamin performed

a cervical spine diskectomy and fusion secured by plates and screws.

She was paid temporary disability benefits from the date of accident through October 3, 2003.

Claimant was paid 27 weeks of impairment benefits beginning December 20, 2003, through September 25, 2004. The check was actually mailed September 10, 2004. This reflects a 9% permanent partial impairment. § 440.15(3)(a)3a, *Fla. Stat.* (2002). Based on the adjuster's deposition, I find claimant was last provided medical care on June 10, 2004.

A petition for benefits (PFB) was first received by E/C on April 30, 2007. The petition was promptly controverted by a "Response to Petition for Benefit" prepared May 9, 2007.

7. No medical records or testimony whatsoever directly dealing with the September 2002 accident is placed in evidence.

As best as I can tell, each and every medical report providing a history of a low back injury begins with symptoms starting August 12, 2005. Claimant gave several depositions in the August 2005 industrial accident, case number 06-002997RDM without contending she had a low back injury as a result of the September 2002 episode.

In these proceedings, claimant contends, in essence, a low back injury must have been sustained in September 2002 which was masked by medications given to treat her cervical pain. This is not supported by medical testimony in the first place and leaves unexplained how this phenomenon occurred between the date she was last provided care for the September 2002 accident and the accident occurring August 12, 2005.

8. Because claimant fails to prove in the first instance the episode occurring September 24, 2002, caused a low back injury, it is unnecessary to address the affirmative defense that the statute of limitations bars the claim.

9. All issues pertaining to costs are reserved for subsequent hearing.

WHEREFORE, it is

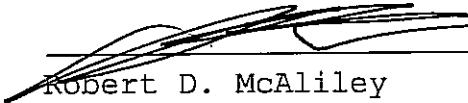
ORDERED AND ADJUDGED as follows:

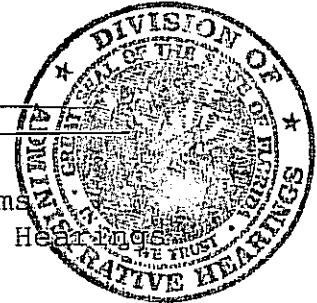
a. The claim for a determination that claimant sustained a low back injury as a result of the September 24, 2002, industrial accident is denied.

b. The claim for further medical care by Dr. Stanley Dziedzic is denied.

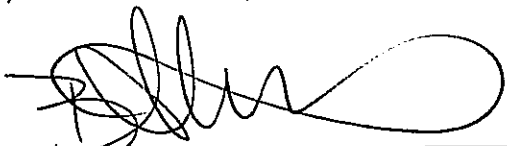
c. All issues pertaining to costs are reserved for subsequent hearing.

DONE AND ORDERED in chambers, in Fort Pierce, Saint
Lucie County, Florida, this 8 day of April, 2008.


Robert D. McAliley
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of
Compensation Claims
Port St. Lucie District Office
2806 South US Highway 1, Suite C-7
Fort Pierce, Florida 34982
(772) 429-2132
www.jcc.state.fl.us



I HEREBY certify that a true and correct copy of the
foregoing has been mailed via U.S. Mail to all of the
parties on this 8 day of April, 2008.


Assistant to the Judge of
Compensation Claims