

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

EMPLOYEE:

Roosevelt Pearson
721 Southeast Tarpon Avenue
Stuart, Florida 34994

ATTORNEY FOR EMPLOYEE:

J. D. Lewis, III, Esquire
1115 East Ocean Boulevard
Stuart, Florida 34996

EMPLOYER 1:

Eddie Higgins Land Clearing
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ATTORNEY FOR

EMPLOYER/CARRIER:

Robert Gluckman
Hurley, Rogner, Et al.
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CARRIER:

AIG Claim Services, Inc.
Post Office Box 1833
Alpharetta, Georgia 30023

OJCC#: 06-017344RDM

VENUE: Martin County

D/A: 12/5/2005

ORDER ON THE MERITS

A MERITS HEARING was conducted. 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 on the date indicated while working in Martin County, Florida. There is no objection to this matter

being heard in Saint Lucie County, Florida.

2. There was an employer/employee relationship.

3. Workers' compensation insurance coverage applies.

4. In general terms, the accident and immediate injuries are accepted as compensable.

5. The employer was timely notified of the accident.

6. The average weekly wage (AWW) is \$431.52.

7. Benefits payable under this order, if any, will be handled administratively with the JCC retaining jurisdiction to determine specific amounts due if necessary.

8. All medical benefits sought herein are prospective.

9. All issues pertaining to attorney's fees and costs are reserved for subsequent hearing.

D. Claimant seeks the following:

1. Temporary total disability benefits (TTD) or temporary partial disability benefits (TPD) from February 24, 2006 to the present.

2. Provision of surgery to claimant's left knee per the recommendation of Dr. Katzman.

3. Penalties and interest on all overdue indemnity benefits.

4. Attorney's fees and costs.

E. The employer/carrier (E/C) responds stating:

1. Claimant is at maximum medical improvement (MMI). Hence, no indemnity benefits are payable.

2. All medically necessary and causally related medical care has been timely provided.

3. The major contributing cause of claimant's need for knee surgery is not the industrial accident of December 2005.

4. Claimant is voluntarily limiting his income.

5. General denial of all remaining claims.

6. Payment of costs pursuant to Section 440.34(3), *Florida Statutes (2006)*.

F. The only petition for benefits pending was filed June 14, 2006. This order disposes of that petition except to the extent that jurisdiction is retained as indicated below.

HAVING CONSIDERED the evidence presented, together with argument of 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 is 52 years old. He looks older than his stated age. He has a high school education. Claimant makes a credible appearance as a witness, answering questions in a forthright manner.

Claimant's speech is heavily influenced by a Gullah

accent. So much so, even though claimant is readily understandable, I question whether this translates into his being characterized as a "very poor historian" in some medical reports. Claimant's primary employment during his vocational life has been as a heavy equipment operator. He is employed as a laborer at the time of this accident.

Claimant was doing shoveling work when he twisted his left knee. He worked the remainder of the day but that evening the pain intensified. He was referred by the employer to a walk-in clinic, Regency Square Emergency Care.

5. Claimant initially presents to Richard D. Lowe, D.O., on December 6, 2006. Dr. Lowe is board certified in emergency medicine.

Claimant was limping. He is reported as having full range of motion in the left hip, knee and ankle. Claimant's primary symptom, beside limping, was "patellar apprehension" meaning touching the kneecap elicited pain. Twisting the ankle produced pain in the knee.

Dr. Lowe believes claimant had a knee sprain, possibly accompanied by torn cartilage.

X-rays were normal. Claimant was given a soft knee brace and placed on crutches. He was prescribed an anti-inflammatory.

Dr. Lowe places claimant on light duty to perform a seated job.

6. Because no such job was available and it being unlikely claimant could perform effectively in an office setting, he was unable to return to work. Indemnity benefits were paid through February 23, 2006.

7. Claimant next comes under the care of Paul Mondo, M.D., a board certified orthopedic surgeon. He presents with pain in his hip when it was put through a range of motion.

Claimant's left knee displayed a good range of motion and otherwise shows no signs of injury in the clinical examination.

Dr. Mondo suspects claimant likely had advanced arthritic hip disease with referred pain to his knee. This is a common phenomenon.

E/C would not authorize an x-ray of the pelvis even though the reason for doing so was to make a differential diagnosis.

By the second visit of January 11, 2006, claimant had undergone an MRI. This revealed a probable acute bone bruise of the tibia and some early arthritis in the femoral condyle as well as arthritis and swelling of the ligaments. There is no evidence of a meniscal tear.

Dr. Mondo recommends conservative care with cortisone injections opposed to performing an arthroscopy. By the time of this January 25, 2006, visit, E/C changes its position and agrees that Dr. Mondo may x-ray the left hip. These films show advanced degenerative changes.

At this point, Dr. Mondo believes claimant's hip "...was the root of his problem rather than the bruised knee."

The last visit with Dr. Mondo occurs February 24, 2006. He concludes claimant's knee was essentially normal. However, the severe degenerative arthritis in claimant's left hip prevents him from working. Claimant reached MMI as to the knee with no permanent partial impairment.

Dr. Mondo believes claimant's avascular necrosis long predated the industrial accident and if the industrial accident played any part at all in claimant's hip disease, it was minimal.

8. Claimant's care was switched to Scott S. Katzman, M.D., also a board certified orthopedic surgeon. On the initial clinical examination of May 17, 2006, claimant displays some joint line tenderness and a slight antalgic gait. Otherwise, the examination is normal.

At least according to the progress notes placed in evidence, claimant's next visit to Dr. Katzman's office was February 27, 2007. He had a cortisone injection which

provided about ten days of relief. The process was repeated on March 13, 2007, again with temporary relief.

Dr. Katzman's progress note of June 13, 2007, apparently confuses the left and right knee. It appears, however, claimant had pain in both knees. A note stating E/C had denied treatment to the left knee but approved an evaluation to the right knee concludes, "He actually states (to) me though that his left knee bothers him more than the right knee."

Although Dr. Katzman's opinions are somewhat contradictory, I determine the nub of his testimony is as follows:

"Q: Are you saying as of today your recommendation would be arthroscopy or an injection in the hip to see if the hip is really the cause of his knee pain?

A: Yes, I think that would be reasonable."

9. Edward Rossairo, M.D., is a board certified orthopedic surgeon performing an independent medical examination at E/C's behest on August 31, 2006. Claimant reports previously having three injections of the knee. The clinical examination of the knee is described as "very benign."

However, claimant has extreme pain in his hip. Most

of the pain in claimant's knee appeared to be referred from the hip.

X-rays taken by Dr. Rossario of the left hip showed severe end-stage changes with no appreciable joint space. "I was shocked the poor guy could even walk."

Dr. Rossario opines any left knee pain claimant experiences is referred from the hip.

Dr. Rossario testifies that given the severity of claimant's hip disease, other recent medical reports advising claimant had a full range of motion in the hip are inaccurate. I accept this opinion.

This physician testifies claimant is at MMI. A diagnostic arthroscopy of the left knee is not medically necessary. What claimant requires is a total hip replacement.

10. I accept the testimony of Doctors Mondo and Rossario regarding the cause of claimant's present limitations and surgical needs.

In reaching this conclusion, I compare Dr. Katzman's deposition testimony with his report of May 17, 2006. Dr. Katzman observes, in effect, that claimant has end-stage avascular necrosis of his left hip as of the May 17, 2006, visit. That testimony is inconsistent with the May 17, 2006, progress note reading, "He does have some problems as

well to his left hip." The progress not continues that with arthroscopic surgery, claimant "...will be able to return back to a work status as he was pre-accident."

11. Given the benign clinical findings and minor pathology shown on the MRI study, I conclude there is no reason for claimant undergoing an arthroscopic examination. Given claimant's severe end-stage hip disease, it seems especially pointless to undergo this surgery when it is the hip that needs attention.

Hence, the claim for left knee surgery is denied.

12. Finding claimant reaches MMI for the injury to the left knee on February 24, 2006, the claim for TTD or TPD beyond that date is denied. § 440.15(2)(a)&(4)(a), *Fla. Stat.* (2005).

13. Since no TTD or TPD benefits are due, the claim for penalties and interest is denied.

14. Pursuant to stipulation of the parties, all issues pertaining to attorney's fees and costs which survive the foregoing findings are reserved for subsequent hearing.


WHEREFORE, it is

ORDERED AND ADJUDGED as follows:

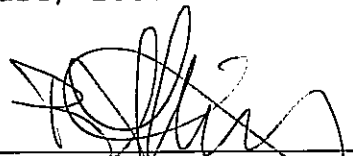
a. The claim for surgical care of claimant's left knee is denied.

- b. The claim for additional temporary total and temporary partial disability benefits is denied.
- c. The claim for penalties and interest is denied.
- d. All issues pertaining to attorney's fees and costs surviving the foregoing findings are reserved for subsequent hearing.

DONE AND ORDERED in chambers, in Fort Pierce, Saint Lucie County, Florida, this 21 day of August, 2007.


Robert D. McAliley
Judge of Compensation Claims
Division of Administrative Hearings
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Compensation Claims
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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 22 day of August, 2007.


Assistant to the Judge of
Compensation Claims

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