

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

Adrian Barber,
Employee/Claimant,

OJCC Case No. 15-007968JLL

vs.

Accident date: 7/16/2014

Florida Department of Corrections/Division of
Risk Management,
Employer/Carrier/Servicing Agent.

Judge: John J. Lazzara

ABBREVIATED FINAL ORDER

THIS MATTER came for Final Hearing on November 7, 2016, before the Judge of Compensation Claims John J. Lazzara, in Tallahassee, Leon County, Florida. The parties were represented by counsel as indicated below. The undersigned judge has jurisdiction of the parties and the subject matter, and it is determined based on the parties' pretrial stipulation that there is no dispute as to the compensability of the captioned accident. Therefore an abbreviated final order is appropriately entered pursuant to §440.25(4)(d), Florida Statutes (Supp. 2009) and Rule 60Q-6.119, Fla. Admin. Code.

The pending claims/issues presented for adjudication as raised in the Petitions for Benefits filed April 10, 2015 and April 6, 2016 were the following:

1. Determination of the compensability of the claimant's hypertension under §112.18(1), Fla. Stat.;
2. Authorization of a board-certified cardiologist to evaluate and treat, if necessary, claimant's hypertension;
3. Payment of permanent impairment income benefits (PIB) based on the 8% permanent impairment rating (PIR) assessed by Dr. Patrick Mathias, M.D., the claimant's independent medical examiner (IME);
4. Interest and penalties on all past due payments of compensation;
5. Reasonable attorney's fees for claimant's counsel of record; and
6. Reimbursement of taxable costs for these proceedings.

The Employer/Carrier raised the following defenses to the aforesaid issues and claims:

1. The claimant has not been disabled and thus the alleged hypertension is not compensable under section 112.18(1), Fla. Stat.;
2. In the event claimant's alleged hypertension is determined compensable, any PIBs should be based on the 6% PIR assessed by Dr. Steven Borzak, M.D., the expert medical advisor (EMA); and
3. The Employer/Carrier denies claimant's entitlement to penalties, interest, costs and attorney's fees at their expense.

The exhibits received in evidence in this cause are those reflected in the Exhibits & Witnesses List attached as an addendum to this order and incorporated herein by reference.

After due consideration of this matter and after having reviewed and considered the evidence presented at the final hearing and having heard, observed and considered the demeanor of the witnesses who appeared and testified, the undersigned judge of compensation claims holds as follows:

1. The undersigned judge has jurisdiction over the parties and the subject matter of this claim;
2. The pretrial stipulations entered into by and between the parties are adopted and incorporated herein by reference;
3. There is no dispute as to the compensability of the accident or incident of July 16, 2014. However, the employer/carrier stipulates that only the dehydration and heat exhaustion were accepted as work-related and not the claimant's alleged hypertension;
4. The evidence presented supports the position of the claimant on most of the issues/claims presented for adjudication; specifically, (a) the compensability of the claimant's hypertension is presumed to have been accidental and suffered in the line of duty under §112(18); and (b) authorization of a board-certified cardiologist to evaluate and treat, if necessary, the claimant's hypertension.

The evidence further demonstrated that the claimant met the all of the four (4) elements under the Heart/Lung Bill which requires: (1) showing that the claimant is a member of a protective class (correctional officer); (2) developed a protected condition (hypertension); (3) underwent a pre-employment physical which failed to identify evidence of the claimed protected condition; and (4) the protected condition resulted in a, albeit brief and minor, temporary disability consisting of two (2) days off work. The medical evidence presented shows that Ms. Barber was told to remain off work for two (2) days and prescribed blood pressure medication by the emergency (ER) room physician due to a spike in her blood pressure and diagnosis of uncontrolled hypertension. The medical experts in this matter all seem to agree that the claimant did not suffer any dehydration or heat exhaustion at the time of the incident which required the initial emergency room visit. Dr. Joseph C Baker, M.D, the cardiologist Ms. Barber first saw on August 12, 2014; Dr. Patrick Mathias, M.D., the claimant's cardiologist IME physician; and Dr. Michael A. Nocero, Jr., M.D., the employer/carrier's cardiologist IME physician, all opined that the claimant did not suffer from heat exhaustion or dehydration based on hospital records and agreed that it was reasonable for the claimant to follow her ER physician's advice of not returning to work for two (2) days.¹

Dr. Steven Borzak, M.D., the Cardiac Expert Medical Advisor (EMA), also found that the claimant did not suffer from heat exhaustion or dehydration on the day of the accident, but rather had uncontrolled hypertension. He noted that the emergency room physician restricted the claimant from work for two (2) days and that she was provided blood pressure medication. He initially agreed that several days off work was appropriate, but later recanted and also equivocated regarding the issue of disability and its cause. Dr. Borzak's opinion as to disability did not comport with the totality of the more clear and convincing medical evidence and, therefore, does not warrant the mantle of presumption of correctness.

5. The claimant's hypertension being determined compensable, the evidence presented

¹ However, Dr. Nocero later opined that he disagreed with the ER physician two (2) day off work restriction, yet in his deposition he stated that it was reasonable for the claimant to have followed the ER physician's advice and stay off work for two days as she testified.

supports an award of PIBs based on a PIR. Dr. Mathias, Dr. Nocero and Dr. Borzak all find that the claimant has reached maximum medical improvement (MMI). Dr. Mathias opined that the claimant suffered an 8% PIR, while Dr. Nocero found that she suffered a 0% PIR. Dr. Borzak, the EMA, in this cause found that the claimant reached MMI on June 10, 2015 and assigned a 6% PIR. I accept Dr. Borzak's medical opinion as the most accurate impairment rating in this matter. His assessment of the PIR is in accord with the 1996 Florida Impairment Impairment Rating Schedule (Hypertensive cardiovascular Disease, Class 1), and because his opinion in that regard is presumed correct under §440.13(9) and not overturned by any clear and convincing evidence to the contrary.

6. Pursuant to Rule 60Q-6.119, Fla. Admin. Code, any party may file a request for specific findings of fact and conclusions of law within 10 days from the entry of this abbreviated final order. In that event, this order will be vacated and counsel for the claimant shall submit a proposed Final Order, within 15 days of the request, consistent with the holding herein and his trial summary and closing argument. The proposed order shall be uploaded to the case docket in this case, and the proposed order shall be emailed to this tribunal in Word format for further editing. The proposed Final Order shall contain findings of facts, conclusions of law and the mandate as required by §440.25(4)(e), Florida Statutes (Supp. 2009).

WHEREFORE, it is **ORDERED** that the employer/carrier:

1. Pay the claimant Permanent Impairment Income Benefits pursuant to §440.15(3), Fla. Stat., based on the 6% permanent impairment rating assessed by Dr. Steven Borzak, M.D.;
2. Furnish to the claimant, Adrian Barber, a medical evaluation with a board certified cardiologist, and treatment if medically necessary, for her compensable hypertension;
3. Pay claimant's attorney, John J. Rahaim, II, Esquire, a reasonable attorney's fee in an amount to be determined at a later time or by agreement of the parties, subject to approval of the undersigned judge; and
4. Pay the costs of these proceedings.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida.

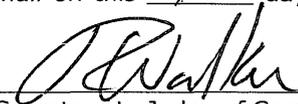




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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing abbreviated final order was entered and a true copy was furnished by electronic mail on this 7th day of December, 2016 to the carrier/servicing agent and counsel of record.



Secretary to Judge of Compensation Claims

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ADDENDUM TO ABBREVIATED FINAL ORDER – EXHIBITS & WITNESS LIST

Claimant's Exhibits

1. Petitions for Benefits (PFBs) filed 4/10/2015 and 4/6/2016.
2. Deposition of Dr. Patrick Mathias, M.D., taken 3/1/2016, together with exhibits.

Employer/Carrier's Exhibits

1. Notice of Denial dated 11/6/2014.
2. Response to PFB filed 4/22/2015.
3. Response to second PFB filed 4/19/2016.
4. Amendment to Uniform Statewide Pretrial Stipulation filed 3/24/2016 and 10/26/2016
5. (I.D. purposes only) American College of Occupational and Environmental Medicine (ACOEM) Guidelines, §4.7.3 – Hypertension. (*Objection overruled as no timely objection at the time the document was introduced at the deposition of Dr. Borzak*).
6. Claimant's Deposition.

Joint Exhibits

1. Medical records of Dr. Andrea Randall, M.D.
2. Patient's First Medical Records.
3. Capital Regional Medical Center Medical Records.
4. Deposition of Dr. Joseph C. Baker, M.D., taken 1/19/2016, together with

exhibits.

5. IME report of Dr. Michael A. Nocero, Jr., M.D., dated 2/15/2016.
6. Deposition of Michael A. Nocero, Jr., M.D., taken 3/7/2016, together with

exhibits.

7. Order Appointing Expert Medical Advisor (EMA) entered 7/12/2016.
8. EMA report of Dr. Steven Borzak, M.D., dated 8/5/2016.
9. Judge of Compensation Claims' Correspondence to Dr. Steven Borzak, M.D.
10. Addendum to the EMA Report.
11. Deposition of Dr. Steven Borzak, M.D., taken 11/2/2106, together with

exhibits.

12. Two (2) Pretrial Stipulations and Orders.

Live Witnesses at Final Hearing

1. Adrian Barber, the Claimant/Employee.