

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

Monte Moye,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 06-015833NSW, 07-031263NSW
State of Florida Fish and Wildlife/Division of Risk)	
Management,)	Accident date: 04/20/2005, 01/28/2002
Employer/ Carrier/ Servicing Agent.)	
_____)	

FINAL COMPENSATION ORDER

THIS CAUSE came on to be heard in Pensacola, Escambia County, Florida on 05-12-08 upon Claimant's claims for compensability of both dates of accident, temporary total and temporary partial disability benefits, authorization of a cardiologist, an IME, reimbursement of out-of-pocket prescription medications, penalties, interest, costs and attorney's fees. The Petition for Benefits was filed 11-07-07 (one for each date of accident). Mediation was conducted on 03-04-08; one hundred eighteen (118) days after the petitions were filed. The parties' pretrial compliance questionnaire was filed 04-10-08. The final hearing occurred one hundred eighty-seven (187) days after the petition was filed and this Order was entered sixteen (15) days thereafter. Steven Pyle, Esq. was present in Pensacola on behalf of the Claimant. Patrick Hammergren, Esq. was present in Pensacola on behalf of the Employer/Carrier (hereafter "E/C").

Submitted into evidence at the Final Hearing were the following documents, each accepted, identified and placed into evidence without objection except where noted, as Judge's Exhibits, Joint Exhibits, Claimant's Exhibits, or E/C Exhibits, as follows:

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

- #1. The parties' pre-trial questionnaire filed 04-10-08.
- #2. Petition for Benefits filed 11-07-07.
- #3. Response to Petition for Benefits filed 11-28-07.
- #4. Petition for Benefits filed 11-07-07.
- #3. Response to Petition for Benefits filed 11-28-07

JOINT EXHIBITS:

None.

CLAIMANT'S EXHIBITS:

- #1. Deposition of Dr. Jose Guitian taken 04-22-08.

E/C's EXHIBITS:

None.

In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

Based upon the parties' stipulations and the evidence and testimony presented, I find:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.
2. The parties' stipulations and agreements, set forth in the pretrial compliance questionnaire are accepted, adopted and made an order of the Office of the Judge of Compensation Claims. At the outset of the hearing, the parties stipulated that both dates of accident are compensable; that the AWW/CR for the 01-28-02 accident is \$890.63/593.00 and for the 04-20-05 accident is \$911.97/607.97; that Dr. Guitian is the authorized treating cardiologist for both dates of accident; that Claimant withdrew his claim for an IME; and that the sole remaining issue is reimbursement of Claimant's out of pocket prescription expenses and attorney's fees and costs related thereto, if any.
3. Any and all issues raised by way of the Petitions for Benefits ("PFB"), but which issues were not dismissed or tried at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the Claimant and, therefore, are Denied and Dismissed with prejudice. See, Scotty's Hardware v. Northcutt, 883 So.2d 859 (Fla. 1st DCA 2004).
4. Claimant, Monte Moye, has been a law enforcement officer with the employer for thirty-four (34) years. Following his first industrial accident on 01-28-02, he notified the employer of the same and was advised 03-12-02 that the compensability of his heart condition had been denied. Claimant testified he believed the employer knew what they were doing and accepted their denial of his claim. In April 2005 he first became aware of the heart/lung statute, believed the same applied to his claim and contacted the risk management department in Tallahassee. He stated he was advised the E/C had written to him 08-02-02 advising they were rescinding their denial, but as he had not

responded nor otherwise pursued his claim, the statute of limitations had expired.

5. Claimant testified he never received the 08-02-02 letter from the E/C. He stated in early August 2002, he and his wife separated and he had moved out of the home where the E/C's letter had been sent. According to Claimant, he initially moved in with his sister and later into a home owned by his mother and as he was an on-call officer, as required, he continued to keep his employer advised of each new address.

6. Claimant also identified a print-out from his pharmacy of medications prescribed by Dr. Guitian, his cardiologist. The printout reflected co-payments he personally made for medications procured under his personal health insurance. It is the reimbursement of these co-payments which is the issue herein.

7. Dr. Jose Guitian has been Claimant's cardiologist since 1994 or 1995. He testified Claimant has a history of coronary artery disease which required angioplasty in 1994 or 1995 followed with placement of a stent in the early 2000's and by-pass surgery in early 2008. He further testified he has prescribed Cartia, Plavix, Lipitor, Nitroquick and Atenolol. He also stated he wrote prescriptions for refills for Trazodone, an antidepressant medication for anxiety, and Bupropion, a stop smoking aid and anti-anxiety medication, both of which had been prescribed by other physicians.

8. In the pre-Trial Stipulation, the E/C set forth as its defense to the claim for reimbursement of out-of-pocket prescription reimbursement "[n]ot related to an authorized doctor no documentation to support claimant's claim he paid these." I find the parties' stipulation that Dr. Guitian is the authorized treating physician for both dates of accident defeats the first basis of the E/C's defense. I find Claimant's uncontroverted testimony he paid for the out-of-pocket co-payments as set forth in the pharmacy printout defeats the second basis of the E/C's defense. I do find that there are four (4) prescriptions from Dr. Tarnosky in January 2006 and two (2) prescriptions from Dr. Skinner for Efudex for which Claimant is not entitled to reimbursement as there is no evidence the same were prescribed by an authorized physician or that such medications were medically necessary as a result of Claimant's heart or hypertensive condition. In addition, there are eight (8) prescriptions for Bupropion, a stop smoking aid and anti-anxiety medication, and two (2) prescriptions for Trazodone, an antidepressant medication for anxiety, which, while refilled by Dr. Guitian, I find there was no competent substantial evidence supporting a finding either were medically necessary in the care and treatment of Claimant's heart or hypertensive conditions. Other than these prescriptions, Claimant has satisfied his burden of proof to entitle him to reimbursement in the amount of \$809.93 for prescription co-payments prescribed by Dr. Guitian and which were medically necessary in treatment of his heart and hypertensive conditions.

9. The parties announced no stipulation regarding the claims for temporary total and/or temporary partial disability benefits. No evidence in support of such claims was presented. There being no offer of proof in support, the claims for TTD and/or TPD benefits should be denied. It is therefore,

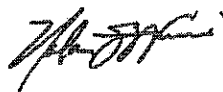
ORDERED AND ADJUDGED that:

1. Claimant claim for reimbursement of out-of-pocket prescription medications in the amount of \$809.93 is **GRANTED**. Claimant is entitled to attorney's fees and taxable costs for the prosecution of these benefits and they are **GRANTED**. Jurisdiction is reserved for determination of the appropriate amount of such fees and costs.

2. Claimant's claims for temporary total disability benefits and/or temporary partial disability benefits from 01-28-02 to the present are **DENIED**. As to these claims, the E/C shall go hence without day.

3. The parties stipulated to compensability of both dates of accident and authorization of a cardiologist, but not as to entitlement of attorney's fees and taxable costs with regards to such claims. Jurisdiction is reserved for determination of entitlement to and the appropriate amount of such fees and costs, if any.

DONE AND ELECTRONICALLY MAILED this 27th day of May, 2008, in Pensacola, Escambia County, Florida.



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