

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

Felicia James,
Employee/Claimant,

vs.

City of Jacksonville, and City of
Jacksonville/City of Jacksonville Risk
Management, City of Jacksonville Risk
Management,
Employer/Carrier/Servicing Agent.

OJCC Case No. 14-015687RJH, 15-
009566RJH

Accident date: 3/14/2014

Judge: Ralph J. Humphries

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FINAL COMPENSATION ORDER

This Cause came on for a merits' hearing before the undersigned Judge of Compensation Claims on **August 29, 2016** in Jacksonville, Duval County, Florida. The subject matter of this hearing was a petition for benefits filed on January 18, 2016. A mediation conference on the petition was held on May 5, 2016. The claimant, **Felicia James**, was present and represented by John Rahaim, Esquire. The employer/carrier, **City of Jacksonville Sheriff's Office/City of Jacksonville Risk Management**, hereinafter referred to as the "Employer" or as the "E/C" was represented by Thomas Portuallo, Esquire.

The following stipulations have been reached between the parties:

1. The court has jurisdiction of the parties;
2. Venue properly lies in Duval County, Florida;
3. The date of accident is March 14, 2014;
4. There was an employer/employee relationship at the time of the accident;
5. Workers' compensation insurance coverage was in effect on the date of accident;
6. The accident or occupational disease was accepted as compensable and authorized care and treatment has been provided to the claimant;

7. Timely notice of the accident, injury, or occupational disease was given by the claimant on the date of accident or was not at issue;
8. Timely notice of the final hearing has been given;
9. The employer/carrier has stipulated to an increase in the permanent impairment rating from 9% to 10% and has paid the benefits relating thereto. It has also stipulated claimant's attorney is entitled to a reasonable attorney's fee and taxable costs for securing that increase in the permanent impairment rating.

The substantive claims for determination at the current merits' hearing are the following:

1. Claimant seeks impairment benefits based upon an impairment rating of 20%; and
2. Penalties, interest, costs, and attorney's fees.

The defenses raised by the E/C were the following:

1. The employer/carrier asserts the claimant sustained a 10% permanent impairment rating pursuant to the authorized treating cardiologist, Dr. Koren;
2. Employer/Carrier maintains its denial of the permanent impairment rating of 20% or 35% as alleged by the claimant per the opinion of the claimant's IME physician, Dr. Mathias;
3. Employer/Carrier stipulates that claimant's counsel is entitled to an attorney's fee and taxable costs for securing benefits associated with an increase in the permanent impairment rating from 9%, pursuant to the opinion of the former treating cardiologist Dr. Dietzius, to 10% pursuant to the opinion of the present authorized treating cardiologist, Dr. Koren;
4. Additional penalties, interest, costs, and attorney's fees are not due or owing.

The following documents were admitted into evidence at the current hearing:

Judge's Exhibits:

1. Petition for Benefits filed with DOAH on January 18, 2016;
2. Response to Petition for Benefits, filed with DOAH on January 26, 2016;
3. Pretrial Questionnaire completed by the parties and filed with DOAH June 1, 2016;
4. Claimant's Prehearing Statement admitted for purposes of argument only and not as evidence, filed with DOAH on August 26, 2016;

5. Employer/Carrier's Trial Memorandum admitted for purposes of argument only and not as evidence, filed with DOAH on August 25, 2016; and
6. Employer/Carrier's Amendment to the Uniform Statewide Pretrial Stipulation filed with DOAH on July 8, 2016.

Claimant's Exhibit:

1. Deposition of Dr. Mathias with attachments.

Employer's Exhibits:

1. Deposition of Dr. Dietzius with attachments;
2. Deposition of Dr. Koren with attachments;
3. Payout ledger filed at docket #80;
4. Amended payout ledger filed at docket #84.

In my determination herein I have attempted to distill all the testimony and salient facts together with the findings and conclusions necessary to the resolution of this matter. I have not necessarily attempted to summarize the substance of the claimant's testimony or the testimony of any live or deposition witness, nor have I attempted to state nonessential facts.

Because I have not done so should not be construed that I have failed to consider all of the evidence.

Based upon the evidence, I make the following findings of fact and conclusions of law:

1. I have jurisdiction of the parties and the subject matter.
2. The stipulations of the parties are accepted and adopted by me as findings of fact.
3. The evidence closed in this matter on August 29, 2016 after which closing arguments were made by the parties.
4. The claimant suffered a compensable accident and injuries on March 14, 2014. The compensable injuries include the claimant's hypertension.
5. Claimant seeks an increase in the permanent impairment rating for which benefits are to be paid by the employer/carrier from 10% to 20% resulting from claimant's hypertension. In support of her position, claimant argues the opinions of Dr. Mathias should be accepted over those of Dr. Koren. The deposition testimony of Dr. Dietzius was also

reviewed and considered. It was his opinion the claimant sustained a 9% permanent impairment rating. The rationale behind the opinion of Dr. Dietzius was not set forth in detail as it was with Dr. Mathias and Dr. Koren. By inference, however, his thoughts and opinions would appear to align with those of Dr. Koren rather than Dr. Mathias.

6. The fundamental difference in the opinions of Dr. Koren and Dr. Mathias is whether the claimant has left ventricular hypertrophy (LVH). Dr. Koren, in an opinion thoroughly challenged by claimant's counsel, concludes the claimant does not have LVH whereas Dr. Mathias concludes it is present. Because, in Dr. Koren's opinion, the claimant does not have LVH, her permanent impairment rating falls within Class 1 of the 1996 Florida Uniform Permanent Impairment Rating Schedule. On the other hand, Dr. Mathias concludes the claimant does have LVH and therefore her rating falls within Class 2.
7. According to the Florida rating schedule, a Class 1 impairment rating applies if the "patient has no symptoms and the diastolic pressures are repeatedly in excess of 90 mm Hg; and the patient is taking antihypertensive medications but has none of the following abnormalities: (1) abnormal urinalysis or renal function tests; (2) history of hypertension cerebrovascular disease; (3) evidence of left ventricular hypertrophy; (4) hypertensive vascular abnormalities of the optic fundus, except minimal narrowing of the arterioles." Since Dr. Koren concludes there is no left ventricular hypertrophy, Class 1 applies in his opinion. Because Dr. Mathias concludes otherwise, he therefore concludes Class 2 ratings are applicable.
8. Having considered the testimony of Dr. Koren, Dr. Mathias and Dr. Dietzius, I accept the opinions of Dr. Koren over those of Dr. Mathias and conclude the claimant does not have left ventricular hypertrophy. I conclude the opinions of Dr. Koren in this regard are the more logical and reasonable opinions and are also the product of a better understanding and superior knowledge than those of Dr. Mathias on the very limited issue presented. While, certainly, Dr. Mathias is a knowledgeable cardiologist, Dr. Koren's knowledge is superior when considering the issue presented in this case. In this regard, I accept the testimony of Dr. Koren that he is a "hypertension specialist." He has not only engaged in several years of research dealing with hypertension, he has published multiple papers on hypertension including, relevantly, a paper entitled "Echocardiographic Relationship of Left Ventricular Hypertrophy on Outcomes in Hypertensive Patients." Dr. Koren explained in some detail his experience in the interpretation of echocardiograms and their use in determining the presence or absence

of LVH. Without belaboring the minutia of his testimony, in his opinion the claimant does not have LVH but does have concentric remodeling. He thus concluded claimant's impairment falls within the parameters of Class 1 since she had none of the abnormalities listed in the Florida impairment guides.

9. Dr. Mathias is of the opinion the claimant does have LVH and, on deposition, concluded her impairment rating fell within Class 2. Not only do I reject his opinion in that regard because of the superior knowledge of Dr. Koren, other factors caused me to question the reliability of his opinion. Perhaps most obviously, during the course of this claim Dr. Mathias has variously opined the claimant's impairment rating was first 10%. Subsequently, he concluded the appropriate rating fell within a Class 3 rating of 35%. Lastly, at the time of his deposition, he retreated from that opinion and concluded the appropriate rating was 20% for claimant's hypertension.
10. Additionally, Dr. Mathias has seen the claimant but once, his initial evaluation resulting in the 10% impairment rating, whereas Dr. Koren is the claimant's authorized treating physician and has seen her on multiple occasions. Dr. Mathias himself recognizes how this might factor into consideration since he would defer to an authorized treating physician who has seen the claimant on multiple occasions on the question of the date of maximum medical improvement. It follows Dr. Koren would also have superior knowledge on the extent of injury sustained by the claimant, especially on such a specialized question as that presented here. Both Dr. Koren and Dr. Mathias agree the claimant has experienced improvement in her condition and I conclude Dr. Koren has the superior vantage point under the facts and circumstances of this case to render an accurate opinion regarding the nature and extent of the claimant's condition.
11. The JCC, as the trier of fact "may accept or reject an expert's testimony, or give it the weight deserved considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all other evidence in the case." *White v. Bass Pro Outdoor World, LP*, 16 So.3d 992, 994 (Fla. 1st DCA 2009). For the reasons set forth herein and all other evidence presented, I accept the opinions of Dr. Koren where in conflict with those of Dr. Mathias. Those opinions were thoroughly challenged by claimant's counsel yet remained steadfast. I therefore find claimant has failed to meet her burden of proof to establish an impairment rating higher than 10%.

12. I find that the claimant's attorney has performed a valuable service and is entitled to an award of a reasonable attorney's fee and taxable costs against the employer for for securing an increase in the impairment rating to 10% as stipulated by the parties.
13. Any and all issues raised by way of the petition for benefits, but which issues were not dismissed or tried at the hearing, or which were ripe, due and owing but not raised at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the claimant, and therefore, are denied and dismissed with prejudice.

Wherefore, It Is CONSIDERED, ORDERED, and ADJUDGED as follows:

1. The claim seeking to increase the claimant's permanent impairment rating to 20% is hereby denied.
2. The claim seeking penalties, interest, attorney's fees and costs for securing an increase in the permanent impairment rating above 10% is hereby denied.
3. The E/C shall pay a reasonable attorney's fee and taxable costs to the claimant's attorney for securing an increase in the permanent impairment rating to 10% as stipulated by the parties. Jurisdiction is hereby reserved to determine the amount thereof if the parties are unable to amicably resolve this issue.

DONE AND ORDERED this 21st day of September, 2016, in Jacksonville, Duval County, Florida.



Ralph J. Humphries
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Jacksonville District Office
1809 Art Museum Drive, Suite 200
Jacksonville, Florida 32207-2840
(904)348-2790
www.fljcc.org

COPIES FURNISHED:

City of Jacksonville Risk Management

117 W. Duval St., Rm. 335
Jacksonville, FL 32202
RM-WC@coj.net

John J. Rahaim, II, Esquire
Law Offices of John J Rahaim II
4811 Beach Blvd, Suite 204
Jacksonville, FL 32207
jrahaim@jaxlegalhelp.com,jalbano@jaxlegalhelp.com

Thomas G. Portuallo, Esquire
Eraclides, Gelman, Hall, Indek, Goodman & Waters
4811 Atlantic Boulevard
Jacksonville, FL 32207
scrabtree@eraclides.com,tportuallo@eraclides.com