

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ST. PETERSBURG DISTRICT OFFICE

Ralph Velez,
Employee/Claimant,

OJCC Case No. 15-027769SLR

vs.

Accident date: 9/11/2015

City of Zephyrhills,
Employer,

Judge: Stephen L. Rosen

Gallagher Bassett Services, Inc.,
Carrier/Servicing Agent.

_____ /

FINAL ORDER

This Cause came on for hearing before the undersigned Judge of Compensation Claims on September 15, 2016. The claimant, Ralph Velez, was represented by Tony A. Oliver, Esq. and George B. Cappy, Esq. The employer, City of Zephyrhills, and the carrier, Gallagher Bassett Services, Inc., were represented by Tim Jesaitis, Esq.

For purposes of this order, the employee will be referred to as "employee" or "claimant". The employer/carrier will be referred to as "employer" or "carrier" or "employer/carrier".

This Final Order resolves the petitions for benefits filed November 25, 2015. The parties agree that the petition for benefits filed September 14, 2016 is not ripe for determination at this hearing as the employer/carrier's response time has not yet run and that petition has not yet been mediated.

All evidence was received and the record was closed on September 15, 2016.

Claim was made for the following:

1. Reimbursement to claimant for medical bills related to industrial accident and claimant will directly reimburse his health care provider.

2. Payment of outstanding medical bill from Florida Hospital for date of service September 12, 2015-September 13, 2015 and compensability of treatment rendered on these dates.
3. Compensability of disabling arterial and cardiovascular hypertension and/or heart disease pursuant to F. S. 112.18(1).
4. Reimbursement of costs of litigation and reasonable attorney's fees at the expense of the employer/carrier.

The claim was defended on the following grounds:

1. The claimant's employment is not the major contributing cause of the claimant's coronary artery disease, cardiac event of September 11, 2015, cardiac/heart condition, or hypertension.
2. Claimant's personal (lifestyle) medical history is the major contributing cause of the claimant's heart/cardiovascular condition.
3. The employer/carrier has rebutted the presumption as it appears in F. S. 112.18.
4. The claimant has not suffered an accident as defined in F. S. 440.02(1).
5. Claimant has suffered an intentional injury and is barred from workers' compensation benefits pursuant to F. S. 440.09(3).
6. No evidence to support the claim/petition.
7. Arterial and cardiovascular hypertension and/or heart disease is not/are not compensable.
8. No entitlement to reimbursement of costs or reasonable attorney's fees at the expense of the employer/carrier.

Affirmative Defense of Claimant:

1. The employer/carrier cannot rebut the presumption with competent substantial evidence or clear and convincing evidence pursuant to F. S. 440.09, 440.151, or Fuller decision with objective medical evidence of causation.

The parties entered in the following stipulations:

1. I have jurisdiction of the parties and the subject matter of this claim.

2. Venue lies in Pinellas County although the accident occurred in Pasco County, which is part of STP District.
3. On the date of incident there existed an employer/employee relationship with workers' compensation coverage through Gallagher Bassett Services, Inc.
4. The average weekly wage was sufficient to establish the maximum corresponding compensation rate of \$842 per week. The parties agree that if average weekly wage, in and of itself, becomes relevant to this claim if compensability is established, average weekly wage will be determined administratively.
5. On the date of incident, there was not a managed care arrangement in place.
6. The petitions for benefits and responses thereto were filed as noted elsewhere in this order. Additionally, the employer/carrier timely filed a notice of denial on October 22, 2015.
7. Prior to the start of the final hearing, the employer/carrier stipulated that the presumption as it appears in F. S. 112.18 is applicable to this claimant. However, the employer/carrier maintains that it has rebutted the presumption.

The following documents were offered into evidence:

Judge's Exhibits:

1. Petition for benefits filed November 25, 2015, with attachments.
2. Response to petition for benefits filed November 30, 2015.
3. Uniform pretrial stipulation form and order approving uniform pretrial stipulation form filed March 30, 2016.
4. Claimant's trial memorandum (for argument only).
5. Employer/carrier's trial memorandum (for argument only).

Claimant's Exhibits:

1. Deposition of Patrick Mathias, M. D., Claimant's independent medical examiner, taken August 16, 2016, with attachments.
2. Claimant's case law in support of his position.

Employer/Carrier's Exhibits:

1. Deposition of the claimant taken January 28, 2016, with attachments.
2. Deposition of Benedict Maniscalco, M. D., taken April 7, 2016, with attachments.
3. Deposition of Joseph Nystrom, M. D. taken March 16, 2016, with attachments (for history only).
4. Lifescan medical records (for history only).
5. Medical records of Sindlu Dadlani, M. D. (for history only).
6. Prime Therapeutics Pharmacy records.
7. Walgreens pharmacy records.
8. Publix pharmacy records.
9. Florida Medical Clinic records (for history only).
10. Indemnity payout records of the employer.
11. Notice of denial (DWC-12) dated October 22, 2015.
12. Weight statement of the employer.
13. Claimant's 2015 payroll records with the employer.
14. Case law in support of employer/carrier's positions.

After reviewing all documentary evidence, hearing live testimony, and otherwise being fully apprised of the applicable case and statutory law, I find:

1. I have jurisdiction of the parties and the subject matter of this claim.
2. Venue lies in Pinellas County, Florida which is part of St. Petersburg district and includes Pasco County where the claimant's heart attack actually occurred.
3. The stipulations of the parties are adopted and shall become part of the findings of facts herein.

4. The documentary exhibits offered by the parties are admitted into evidence and shall become a part of the record herein.

5. The claimant, Ralph Velez, is currently 52 years old. He began work with the Fire Department for the City of Zephyrhills in January 1991 and has currently attained the rank of captain. Over the years, his duties have mainly involved running calls for medical emergencies or fighting fires. His unrefuted testimony indicates that is a constantly stressful job which involves emotional stress such as receiving a call for an auto crash involving teenagers who were entrapped in the vehicle. The claimant had to operate the Jaws of Life to extract the victims and one of the victims perished. This occurred not too long before the claimant's heart attack on September 11, 2015. Claimant also testified that his job requires constant overtime as the Department is shorthanded and has been so for a period of time.

6. On September 11, 2015 the claimant suffered what the parties stipulate was a "heart attack" and went to the hospital. He was there for a minimum of one night and released. The parties stipulate that the employer/carrier has paid all necessary temporary partial disability indemnity benefits that are due to the date of the hearing.

7. Prior to suffering the heart attack, the claimant had been diagnosed with diabetes for at least 10 years. He was treated by Dr. Nystrom or his partner. The claimant was instructed to take medications as prescribed and to test his blood daily. He was allowed to self medicate according to his needs.

8. The claimant testified that there was a period of time before the heart attack when the prescribed medications had a negative effect. He would stop taking these medications but kept in contact with his doctor (Dr. Nystrom) who regularly adjusted the medications. The claimant regularly refilled his medications depending on the supply that he had on hand. He had attempted to lose weight with diet and exercise.

9. The testimony of the claimant before me and in his deposition differs to a degree. The employer/carrier defends the claim, in part, on the basis of the claimant "intentionally" injured

himself by failing to take his medications as prescribed by the doctors on a regular basis. No greater weight or preponderance of evidence is presented by the employer/carrier to support its premise that the claimant should be barred from all compensation for intentionally injuring himself, therefore that defense is DENIED.

10. While it may appear that the claimant was negligent in taking his medications and attempting to lose weight, I find that his actions do not rise to the level of intent to injure himself without evidence to support that premise of the employer/carrier. Therefore the defense of willful intent to injure is denied as it applies to this claim and the presumption.

11. The employer/carrier further argues that it has rebutted the presumption by using dictionaries to establish a definition of “cause” which, in the opinion of Dr. Maniscalco, may raise risk factors to a level of causation of the claimant’s cardiovascular disease/heart attack that would rebut the presumption.

12. The establishment of a presumption evidences legislative intent to raise a particular class of employees to a higher level. In the instant case, the presumption as it applies to firefighters establishes that an employee of a particular class who suffers cardiovascular disease/heart attack after passing a preemployment physical without evidence of same has established injury by accident to the application of the presumption. Thus the employee of that higher class need not prove accident or injury and it is incumbent upon the employer/carrier to present competent evidence to rebut the application of the presumption.

13. I accept the testimony of the claimant’s independent medical examiner, Dr. Mathias, the claimant has been identified to have coronary artery disease and that although the claimant has risk factors, these risk factors individually or collectively did not cause his coronary artery disease. Although the employer/carrier’s witness, Dr. Maniscalco, who was briefly authorized to treat the claimant by the employer/carrier, indicates that statistically, risk factors or a multiplicity of conditions can contribute to coronary artery disease. I find that the mere existence of risk factors is insufficient to establish alternative causation in order to rebut the presumption. The employer/carrier does not present objective medical evidence to establish that the claimant’s risk

factors caused the claimant's coronary artery disease.

14. The attorney for the employer/carrier eloquently argues dictionary of definitions that do not appear anywhere in F. S. 112.18 regarding the presumption as it applies to this claimant. Had the Legislature intended the specificity of definition argued by the employer/carrier either the legislature would have included such definition in the statute or the appellate courts would have established specific definitions of causation or rebuttal of causation in that statute. To date, this has not occurred.

15. I find that as the parties have agreed that the presumption applies to this claimant and that the employer/carrier has not presented on objective medical evidence or competent evidence to rebut that presumption, the claimant is entitled to workers' compensation benefits for the heart attack that occurred on September 11, 2015. The employer/carrier shall either reimburse the claimant for all outstanding medical expenses or medical expenses paid by the claimant pursuant to the Workers' Compensation fee schedule. The employer/carrier shall provide the claimant with medical care for his cardiovascular condition with a physician of its choice.

16. The attorneys for the claimant, Tonya A. Oliver, Esq. and George B. Cappy, Esq., have provided a valuable service for the claimant and are entitled to reimbursement of costs of litigation and reasonable fees at the expense of the employer/carrier.

WHEREFORE, it is ordered that:

1. The employer/carrier shall pay all outstanding medical bills and/or reimburse the claimant for out-of-pocket expenses as a result of the compensable heart attack on September 11, 2015.
2. The employer/carrier shall provide the claimant with medical care for his cardiovascular condition with a physician of the employer/carrier's choice or by agreement of the parties.
3. The employer/carrier shall pay to the attorneys for the claimant, Tonya A. Oliver, Esq. and George B. Cappy, Esq., reimbursement of costs of litigation and reasonable attorney's fees. Jurisdiction is reserved to determine the quantum of either, or both, if the parties are unable to

agree.

DONE AND ORDERED this 19th day of September, 2016, in St. Petersburg, Pinellas County, Florida.



Stephen L
Rosen

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