

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

Roderick Fordham,
Employee/Claimant,

vs.

OJCC Case No. 14-023702SLR

Pinellas County Sheriff's Office,
Employer,

Accident date: 9/10/2014

Pinellas County Risk Management,
Carrier/Servicing Agent.

Judge: Stephen L. Rosen

FINAL ORDER

This Cause came on for hearing before the undersigned Judge of Compensation Claims on July 15, 2016. The claimant, Roderick Fordham, was represented by Tonya A. Oliver, Esq. The employer, Pinellas County Sheriff's Office, and the carrier, Pinellas County Risk Management, were represented by Nancy S. Meyer, 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 petition for benefits filed November 25, 2015. A petition for benefits was filed July 13, 2016 and the parties agree that that petition is not ripe for determination in this order.

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

Claim was made for the following:

1. Temporary total or temporary partial disability compensation from May 30, 2015 through June 28, 2015, at the appropriate average weekly wage and compensation rate.

2. Penalties, interest, 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. No medical evidence to support payment of temporary indemnity benefits for the period claimed.
2. No authorized physician imposed work restrictions related to the industrial accident for the period claimed.
3. Claimant took time off work related to the industrial accident and was paid full wages by the employer.
4. Claimant's employer did not refuse to allow claimant to return to work.
5. No entitlement to penalties, interest, reimbursement of costs of litigation, or reasonable attorney's fees at the expense of the employer/carrier.

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, Florida where the accident occurred.
3. On September 10, 2014 there existed an employer/employee relationship and the claimant suffered compensable heart disease pursuant to F. S. 112.18(1).
4. On the date of accident, there was not a managed care arrangement in place.
5. There is timely notice of the accident and timely notice of the hearing given to the parties.
6. On the date of accident the average weekly wage, including fringe benefits, was \$1,313.52. The parties will administratively determine the appropriate compensation rate if indemnity benefits are awarded.
7. The employer/carrier's payout sheet can be stipulated into evidence.
8. The parties agree that the claimant reached maximum medical improvement on September 30, 2015.
9. The petition for benefits and responses thereto were filed as noted elsewhere in this order.

The following documents were offered into evidence:

Judge's Exhibits:

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

Claimant's Exhibits:

1. Filing of DWC-4 dated October 16, 2015.

Employer/Carrier's Exhibits:

1. Time off memo generated by the claimant in November 2015.
2. Deposition of Diane M. Freytag taken May 24, 2016, with any attachments.

Joint Exhibits:

1. Deposition of the claimant taken June 29, 2016, with attachments.
2. Deposition of Brien E. Pierpont, M. D., initially the employer/carrier's independent medical examiner who became the current authorized treating physician, taken January 1, 2016, with attachments.
3. Deposition of Satish Sivasankaran, M. D., claimant's independent medical examiner, taken June 23, 2016, with attachments.
4. Deposition of Douglas Spriggs, M. D., formerly authorized treating physician, taken June 27,

2016, with attachments.

5. Payroll records of employer.

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 St. Petersburg District, Florida
3. The documentary exhibits offered by the claimant are admitted into evidence and shall become a part of the record herein.
4. The claimant, Roderick Fordham, is currently 63 years old and worked as a correctional deputy for the employer from 2001 until his separation in November 2015 due to the inability to work full duty.
5. During a routine physical examination on August 21, 2015 diagnostic study showed multiple blockages in the claimant's coronary artery system. The claimant went through cardiac bypass surgery on October 6 2014. The claimant initially used FMLA time and return to work full duty in December 2014. Although the claimant continued to work his regular shifts, which were 12 hour days, his undisputed testimony is that his entire lifestyle physically changed after the cardiac bypass surgery. Specifically, the claimant ran 6 miles per day and had no difficulty with fatigue or mental acuity issues. After he returned to work in December 2014, the claimant's undisputed testimony is that he was plagued by fatigue, weakness, and mental acuity issues.
6. The evidence reflects that there were difficulties with the claimant's medication and that different medication regimens were tried after December 15, 2014. Nevertheless, the claimant continued to work his regular shifts.
7. In November 2015, the claimant "bid" on vacation time for 2016. This is the normal procedure for employees in his capacity. The claimant chose to use his vacation in the month of June 2015.

8. Although the employer had initially controverted and denied the claimant's heart condition as compensable, they rescinded that denial and provided the claimant medical care. The claimant's first appointment with his initial authorized physician, Dr. Spriggs, took place on May 29, 2015. He finished his work on that day and reported to work the next day, May 30, 2015. After about 3 hours, he was feeling very fatigued and his employer sent him home. The claimant did not work from May 31, 2015 until June 29, 2015 when Dr. Spriggs took him off work completely. The employer/carrier initiated temporary total disability indemnity payments on June 29, 2015.

9. The claimant used vacation and sick time and received his full salary from May 30, 2015 through June 28, 2015.

10. The claimant testified in his deposition that Dr. Spriggs never gave him any note to stay off work or restrict his duty prior to June 29, 2015. The claimant's deposition testimony indicates that on June 15, 2015, after diagnostic tests were reviewed, Dr. Spriggs orally told him that he should not be working.

11. The testimony of Dr. Spriggs is somewhat contradictory of the claimant, but it is clear that Dr. Spriggs did not give notes to the claimant or the employer with regard to the claimant's work status until June 29, 2015.

12. The employer/carrier argues that the claimant was paid his full salary during the month of June 2015 and that there is no medical evidence from an authorized physician that the claimant was in any way restricted from work during that period. Therefore, temporary indemnity benefits, either total or partial, cannot be awarded.

13. However, the parties agreed that the claimant was not at maximum medical improvement during the month of June 2015. By that time, the employer/carrier had rescinded its denial of benefits and had accepted the heart condition as compensable. Therefore, I find that the claimant was eligible for temporary indemnity benefits during the period claimed from May 30, 2015 through June 28, 2015.

14. I find that no negative testimony was presented against the claimant's ability to work or his work ethic prior to his cardiac surgery in October 2014. When the claimant complained to the supervisor of fatigue on May 30, 2015, the supervisor sent him home. Clear records are presented into evidence that shows that the claimant was in contact with the employer and the employer did the appropriate bookkeeping documenting the claimant's absence through June 28, 2015.

15. I accept the claimant's testimony in conjunction with Dr. Spriggs testimony that Dr. Spriggs told the claimant he would call the claimant's employer on June 15, 2015 to put him on a no work status. That call was never made, but the claimant should not be penalized for lack of medical communication between the authorized physician and the employer. I accept the claimant's testimony that he was incapable of performing his job duties as a correctional officer in charge of numerous inmates during the period claim for temporary indemnity benefits.

16. However, there is no direct evidence presented that the claimant was temporarily and totally disabled as of June 15, 2015. And because of the conflict in the claimant's deposition testimony and his testimony before me, I find that Dr. Spriggs did not specifically tell the claimant that he was on a no work status (but failed to inform the employer of this) until June 15, 2015.

17. Therefore, I find that the claimant is entitled to temporary partial indemnity disability compensation for the period of June 15, 2015 through June 28, 2015 when he became temporary and totally disabled by specific medical opinion from Dr. Spriggs communicated to the employer. The employer/carrier shall provide the claimant with temporary partial disability forms for this period, and the claimant shall complete these forms and return them to the employer.

18. I find that interest is due on past due payments but because of the lack of communication between the physician and the employer, penalties are denied.

19. The attorney for the claimant, Tonya A. Oliver, Esq., has performed a valuable service for the claimant and is entitled to reimbursement of costs of litigation and reasonable attorney's fees

at the expense of the employer/carrier.

20. The claimant, by and through his attorney, has indicated that it is the employer's policy to pay no more than 100% of the claimant's average weekly wage as between temporary disability benefits and use of sick/vacation time to reach that 100% figure. Claimant agrees that the employer/carrier shall be entitled to all applicable offsets and claimant shall be entitled to all applicable reimbursements of his sick/vacation time to reach that 100% figure during the period of temporary partial indemnity awarded in this order.

WHEREFORE, it is ordered that:

1. The employer/carrier shall pay the claimant temporary partial disability compensation, plus interest thereon, for the period of June 15, 2015 through June 28, 2015. The employer/carrier shall provide the claimant with temporary partial disability forms for this period and the claimant, in turn, shall fully complete them and return them to the employer. Both the employer and the claimant shall be entitled to applicable offsets and reimbursements of sick/vacation time to reach a figure of 100% between temporary indemnity and use of personal time by the claimant.
2. The attorney for the claimant, Tonya A. Oliver, Esq., is entitled to reimbursement of costs of litigation and reasonable attorney's fees at the expense of the employer/carrier. Jurisdiction is reserved to determine the quantum of either, or both, if the parties are unable to agree.

DONE AND ORDERED this 18th day of July, 2016, in St. Petersburg, Pinellas County, Florida.



**Stephen L
Rosen**

Stephen L. Rosen
Judge of Compensation Claims
Division of Administrative Hearings

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