

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2903

CITY OF
TALLAHASSEE/TALLAHASSEE
FIRE DEPARTMENT,

Appellants,

v.

TONNIE ROLLINS,

Appellee.

On appeal from an order of the Judge of Compensation Claims.
Jacquelyn L. Newman, Judge.

Date of Accident: October 23, 2016.

April 6, 2020

PER CURIAM.

AFFIRMED.

WOLF, MAKAR, and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Mary E. Cruickshank and Christopher J. DuBois of DuBois & Cruickshank, P.A., Tallahassee, for Appellants.

Kimberly A. Hill of Law Offices of Anidjar & Levine, P.A., Fort Lauderdale, for Appellee.

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

Tonnie Rollins,
Employee/Claimant,

OJCC Case No. 18-018606JLN

vs.

Accident date: 10/23/2016

City of Tallahassee Fire Department/City
of Tallahassee,
Employer/Carrier/Servicing Agent.

Judge: Jacquelyn L. Newman

_____ /

FINAL COMPENSATION ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims for final hearing in Tallahassee, Leon County, Florida on June 21, 2019 on the Petition for Benefits filed on August 1, 2018. Kristine Callagy, Esquire, appeared on behalf of the Employee/Claimant, Tonnie Rollins, who appeared live at the final hearing and testified. Christopher J. DuBois, Esquire, appeared on behalf of the Employer/Carrier, the City of Tallahassee. Corlis Hill, Workers' Compensation Examiner for the City of Tallahassee, also appeared live at the final hearing and testified on behalf of the Employer/Carrier.

At the hearing, the following claims were made:

1. Payment of temporary total disability (TTD) benefits from July 17, 2018 to September 26, 2018 at the correct rate; and
2. Penalties, interest, costs, and attorney's fees.

The claims were defended on the following grounds:

1. Alleged temporary total/temporary partial disability status unrelated to the accident;
2. Major contributing cause defense;

3. Appropriate temporary total/temporary partial disability benefits paid on a timely basis;

4. Claimant reached maximum medical improvement (MMI) such that no additional temporary total/temporary partial disability benefits due; and

5. No penalties, interest, costs, and attorney's fees due at the expense of the Employer/Carrier.

The following documents were admitted into evidence:

Judge's Exhibits:

1. Petition for Benefits filed August 1, 2018 (DN 1);
2. Response to Petition for Benefits filed August 29, 2018 (DN 9);
3. Uniform Statewide Pretrial Stipulation filed September 27, 2018 (DN 12);
4. Claimant's Trial Memorandum, filed June 18, 2019 (argument only) (DN 44); and
5. Employer/Carrier's Trial Memorandum, filed June 19, 2019 (argument only) (DN 46).

Claimant's Exhibits:

1. Medical records of Patient's First (DN 27);
2. Deposition of Elizabeth Dixon, with exhibits, taken on February 4, 2019 (DN 38);
3. Deposition of Brandon Hays Conway, with exhibits, taken on February 6, 2019 (DN 39);
4. Deposition of Kyle Keith Coston, with exhibits, taken on February 6, 2019 (DN 40);
5. Deposition of Yolande Williams, with exhibits, taken on October 26, 2018 (DN 41);
6. Deposition of Corlis Hill, with exhibits, taken on October 23, 2018 (DN 47 and 49); and
7. Deposition of Dr. Craig Fredericks, with exhibits, taken on April 26, 2019 (DN 48).

Employer/Carrier's Exhibits:

None.

Objections to Admission of Medical Evidence Overruled:

The Employer/Carrier objected to the medical records of the Patient's First Clinic, arguing that the records are not those of authorized treating health care providers. The docket shows that the Claimant filed a Motion to Admit Medical Records of the Patient's First Clinic on February 11, 2019, pursuant to section 440.29(4), Florida Statutes, which allows the medical reports of authorized treating health care providers to be received into evidence by proper motion. § 440.29(4), Fla. Stat. (2016). An Order Admitting Medical Records in Evidence was entered on February 26, 2019, allowing any party the opportunity to object or file a response in opposition to the motion within 30 days of entry of the Order. No objection or response was filed by the Employer/Carrier. I agree with the Claimant's position that the objection has been waived because no objection to admission of the medical records was timely raised. Accordingly, the Employer/Carrier's objection to the admission into evidence of the medical records of the Patient's First Clinic is overruled.

The Employer/Carrier also objected to the depositions of Elizabeth Dixon, Brandon Conway, and Kyle Coston, the medical providers with the Patients First Clinic, whose testimony was offered into evidence by the Claimant. The Employer/Carrier objected to the testimony of the providers from the Patients First Clinic, arguing that the testimony was not that of authorized treating providers as is required by section 440.13(5)(e), Florida Statutes, and is therefore not admissible in proceedings before the judge of compensation claims. § 440.13(5)(e), Fla. Stat. (2016). Although the Employer/Carrier concedes that the Patient's First Clinic was authorized at one time for treatment of the Claimant's October 23, 2016 back injury, it contends that the medical testimony and records submitted by the Claimant at this hearing pertain to the more

recent accident date of July 8, 2018, for which compensability was denied by the Employer/Carrier. The Employer/Carrier contends that the treatment the Claimant received at Patient's First from July through September of 2018 was not authorized by the Employer/Carrier for his October 23, 2016 back injury.

As will be discussed hereinafter, the testimony in this case establishes that the Claimant was seeking treatment for complaints of back pain and weakness in the lower extremities in July of 2018. He requested both a change in physician for re-evaluation of his October 23, 2016 back injury and medical treatment for what he believed to be a new injury to his back sustained at work on July 8, 2018. Tallahassee Fire Department (TFD) officials sent the Claimant to the Patient's First Clinic for medical treatment and signed an authorization form on the new accident claim even though the City's Risk Management Department never formally authorized the care and ultimately denied compensability of the claim. There is no evidence that the Claimant was ever advised by the Employer/Carrier that the Patient's First Clinic had not been authorized for treatment of his back on the new accident claim or that the Clinic had been de-authorized regarding the October 23, 2016 accident claim. Additionally, the relevant medical bills of the Patient's First Clinic were paid by the City's Risk Management Department under the October 23, 2016 accident claim. Ultimately, the Claimant's authorized treating physician, Dr. Fredericks, opined that the Claimant's recurrent back symptoms in July of 2018, were causally related to his original October 23, 2016 back injury and subsequent surgery with Dr. Rumana. For these reasons, I find that the practitioners at the Patient's First Clinic were "authorized treating providers" as contemplated by section 440.13(5)(e), Florida Statutes, and their medical opinion testimony is admissible.

The Employer/Carrier also objects to any reliance on the medical opinions of the physician assistant and nurse practitioners at the Patient's First Clinic, arguing that such "non-physicians" are unable, within a reasonable degree of medical certainty, to address causation and disability issues. I disagree. Section 440.13(5)(e), Florida Statutes, limits medical opinion testimony in workers' compensation cases to the opinions of an "authorized treating provider." § 440.13(5)(e), Fla. Stat. (2016) (emphasis added). The statute does not limit medical testimony to that of physicians only. I find that a Physician Assistant or an ARNP is a medical "provider" under any definition of the word and is qualified to testify in a workers' compensation proceeding.

Alternatively, I find that the depositions of Elizabeth Dixon, Brandon Conway, and Kyle Coston, the medical providers with the Patients First Clinic, and their respective medical records are admissible in this case even if they were not "authorized medical providers" as contemplated by section 440.13(5)(e), Florida Statutes. Testimony by medical professionals providing factual information as to the provider's office records, the patient's complaints and diagnosis, and treatment prescribed is admissible even if the provider has not been authorized in connection with a workers' compensation claim. Office Depot, Inc. v. Sweikata, 737 So. 2d 1189, 1191 (Fla. 1st DCA 1999). Only medical opinion testimony is limited to expert medical advisors, independent medical examiners, and authorized treating providers. Id. In this case, it is unnecessary for the undersigned to rely solely on the medical opinions of the Claimant's Patient First providers because additional testimony was offered, and relied on, from the Claimant's authorized treating physician.

Findings of Fact and Conclusions of Law:

In making my findings of fact and conclusions of law, I have reviewed and considered all of the evidence presented, including the testimony of the witnesses. Although I have not attempted to summarize the substance of the testimony of any live or deposition witness, or list all of the facts of this case, I have considered all of the evidence presented and have attempted to resolve all conflicts in the evidence. After hearing argument of counsel and having considered the applicable law cited herein, I find as follows:

1. The Office of the Judge of Compensation Claims has jurisdiction over the parties and the subject matter of this claim.

2. The stipulations agreed to by the parties in the Uniform Statewide Pretrial Stipulation filed September 27, 2018 are accepted and adopted.

3. Any claims that were ripe for adjudication at the time of this hearing but were not pursued by either party (even where no evidence was produced and no ruling was made) will be presumed resolved and the issues waived. Betancourt v. Sears Roebuck & Co., 693 So. 2d 253 (Fla. 1st DCA 1997).

4. The Claimant, Tonnie Rollins, a Fire Captain and firefighter employed with the City of Tallahassee Fire Department (the "Employer"), was injured in an accident arising out of and within the course and scope of his employment on October 23, 2016. The Claimant tripped and fell on that date injuring his lower back. The Claimant testified that he received initial medical care from the Patient's First Clinic in Tallahassee and was later referred to Dr. Christopher Rumana, a Tallahassee neurosurgeon. Given significant MRI results, Dr. Rumana performed an L4-5 discectomy. By June of 2018 the Claimant had returned to work in a full-duty position

with the Tallahassee Fire Department.

5. The Claimant testified, however, that he was still having issues with his back and, on July 12, 2018, requested that the Employer/Carrier provide him with a change in physician for re-evaluation of his back injury. The Claimant also notified TFD officials that he sustained a new injury at work on July 8, 2018 while stepping onto a fire truck and twisting his back. The Claimant testified that he was experiencing pain in his back with shooting pains down his legs and weakness in his feet. TFD officials sent the Claimant to the Patient's First Clinic in Tallahassee where he was evaluated for back complaints, provided medication, and advised to stay off work or perform light duty work with restrictions. The Claimant testified that he advised his Employer of any work restrictions he was assigned, but that no light duty work was offered. He therefore remained off work during his treatment with Patient's First.

6. The Claimant was first evaluated at the Patient's First Clinic on July 17, 2018 by Brandon Conway, a licensed Physician Assistant. The Claimant complained of right-sided back pain that shoots down his right leg, with numbness in his left toes, and pain described as a "10" in severity on a scale of 1 through 10. The Claimant reported that he had been experiencing constant pain of the lower back since July 8, 2018 as a result of stepping onto a fire truck at work and twisting his back. The Claimant reported having a similar problem in the past and a history of an L4-5 discectomy in 2017. Mr. Conway was deposed on February 6, 2019 and testified that he prescribed medication for the Claimant, gave him an injection of Toradol in the office, and recommended that he rest for the next week. His work restrictions included limited bending, carrying, climbing and squatting and he was to follow-up in two weeks.

7. The Claimant was re-evaluated at the Patient's First Clinic on August 4, 2018 by

Elizabeth Dixon, an Advanced Registered Nurse Practitioner (ARNP). The Claimant again complained of back pain with numbness and tingling related to an injury. Ms. Dixon noted that the Claimant reported having already been referred to a specialist. Ms. Dixon recommended anti-inflammatory medication and continued follow-up and that the Claimant be placed in an off-work status for one week. Ms. Dixon was deposed on February 4, 2019 and testified that she recommended that the Claimant remain off-work until further evaluation because of worsening symptoms with numbness and tingling in addition to his back pain and the abnormal findings on examination.

8. The Claimant returned to the Patient's First clinic on August 25, 2018 and September 8, 2018 and was evaluated on those dates by Kyle Coston, ARNP. The Claimant reported that he had been injured at work and was returning for follow-up of his workers' compensation injury. The Claimant reported continued lower back pain and complained of sharp pain in his back and down his right leg. Mr. Coston was deposed on February 6, 2019 and testified that the Claimant was in the process of being scheduled for an MRI scan and referral to a neurosurgeon. In between those visits, the Claimant was advised to continue his current medications. Mr. Coston assigned work restrictions to include no lifting more than 5 pounds, no bending at the waist, limited twisting at the waist, and alternate sitting and standing positions. When the Claimant returned to Mr. Coston on September 8, 2018, he was still reporting continued lower back pain with pain going down his right leg. Mr. Coston recommended that the Claimant keep his appointment with the neurosurgeon and remain on the same work restrictions.

9. Corlis Hill, Workers' Compensation Examiner for the City of Tallahassee, testified that the Claimant's October 23, 2016 work-related accident was accepted by the Employer/

Carrier as compensable and remains a compensable claim for which medical treatment continues to be authorized. She also testified that the Patient's First Clinic was authorized for a period of time following the October 23, 2016 date of accident. The Claimant reported a new accident, however, occurring on July 8, 2018 when he stepped onto a truck at work. The Claimant reported that he felt pain in his back which continued to increase thereafter in his right leg with numbness in his left foot. The Employer/Carrier denied that any accident on that date was compensable, filing a Notice of Denial on October 31, 2018 asserting that the Claimant did not sustain an on-the-job accident on the date that he alleged. Ms. Hill testified that neither she nor anyone with the City's Risk Management Department authorized the Patient's First Clinic with regard to the Claimant's alleged accident date of July 8, 2018. Nevertheless, she acknowledged that the Claimant's supervisor with the Tallahassee Fire Department signed an authorization form for the Claimant to be seen at Patient's First regarding his alleged July 8, 2018 accident date. Ms. Hill testified, however, that the Claimant's supervisor would not have been in a position to make a determination about compensability of the accident and that he only signed the authorization to help provide care to the Claimant. Ms. Hill conceded that the medical bills of the Patient's First Clinic, for treatment the Claimant received from July 17, 2018 through September 8, 2018 were paid by the Employer/Carrier under the Claimant's October 23, 2016 accident claim.

10. Ms. Hill testified that the Employer/Carrier received a request from the Claimant for a "change in physician" on July 13, 2018 seeking an alternate neurosurgeon from Dr. Rumana for his October 23, 2018 back injury. After several other physicians were offered to the Claimant but declined by the Claimant, the Employer/Carrier authorized him to seek medical

care with Dr. Craig Fredericks, a neurosurgeon in Thomasville, Georgia.

11. Dr. Fredericks was deposed on April 26, 2019 and testified that he first evaluated the Claimant on September 27, 2018. On that date, the Claimant complained of back and leg pain and reported having a history of prior back surgery under the care of Dr. Rumana. The Claimant advised Dr. Fredericks that, after his surgery in 2017, he continued to have worsening left leg pain and the onset of right leg pain. He also complained of weakness to his left foot and was developing a foot drop which had been progressing since the time of surgery. Dr. Fredericks ordered a follow-up MRI scan which showed a “massive” ruptured disc at the L4-5 level, the site of his prior surgery. Dr. Fredericks testified that he scheduled the Claimant for surgery because of the danger of permanent paralysis of the left foot.

12. Dr. Fredericks placed the Claimant on an off-work status as of his initial evaluation on September 27, 2018. The Claimant remained off-work through the date of his surgery on January 2, 2019. On that date, Dr. Fredericks performed a combined posterior and interbody fusion at L4-5, bilateral laminectomy discectomy for recurrent ruptured disc at L4-5, and placement of an expandable titanium cage at L4-5. Dr. Fredericks testified that the Claimant’s condition has been improving since surgery and that his legs are better but that he is not yet fully healed and his back has not yet fused.

13. Dr. Fredericks was asked to address the Claimant’s work status as of July 17, 2018, when he began receiving treatment for back pain with the Patient’s First Clinic. Dr. Fredericks testified that if he had been treating the Claimant at that time he would have placed the Claimant on work restrictions. When asked about the reasonableness of specific work restrictions assigned as of the Claimant’s August 11, 2018 appointment with Patient’s First, Dr. Fredericks testified:

“I think it would be reasonable, but I have to say when I saw him, he told me his back and leg never got better and was getting worse. If that was the patient in front of me, I wouldn’t let them work at all, and I’d be getting a follow-up MRI. So, number one, I didn’t agree with waiting and not doing an MRI in the first place.”

Dr. Fredericks further clarified that he would have restricted the Claimant from working during the Claimant’s treatment with Patient’s First starting on July 17, 2018 through his initial evaluation of the Claimant on September 27, 2018. Dr. Fredericks testified at deposition:

Q (By Ms. Callagy) And, Doctor, if you had been providing care for Mr. Rollins starting on July 17th of 2018, based on the complaints that he presented to you on the first office visit, would you have restricted him from working for that entire time period?

- - -

A If he told me he did - - had bad leg pain and foot weakness, I wouldn’t let him work until I worked him up.

Dr. Fredericks testified that his opinions were based on both the Claimant’s subjective complaints and the objective findings on examination, including loss of strength in dorsal flexion of the foot and sensory loss. Dr. Fredericks confirmed that the Claimant’s recurrent ruptured disc and need for back surgery was causally related to the Claimant’s original work injury of October 23, 2016.

14. The Claimant was off work because of his complaints of back pain between July 17, 2018 and September 26, 2018 but was not provided workers’ compensation benefits during that time period. Instead, the Claimant received his full-time regular pay from the Employer during that time using his sick leave and pay for “Kelly Days.”¹ Given the Employer/Carrier’s authorization of Dr. Fredericks and his assigning the Claimant to an “off-work” status as of

¹ A “Kelly Day” is a day off given to firefighters to bring their work week down to the negotiated number of hours so that overtime will not have to be paid because of their unusually long shifts and complicated schedules.

September 27, 2018, the Employer/Carrier initiated workers' compensation benefits² to the Claimant on that date. At the time of the hearing, the Claimant remained off-work and continued to receive workers' compensation benefits.

Claim for Temporary Total Disability Benefits:

15. The Claimant now seeks payment of TTD benefits from July 17, 2018 to September 26, 2018. The Claimant argues that he was totally disabled from work during this time frame because of the back injury he sustained in his October 23, 2016 on-the-job accident. Pursuant to section 440.15(2)(a), Florida Statutes, an injured employee is entitled to TTD benefits if he can demonstrate "disability total in character but temporary in quality" based on medical evidence. § 440.15(2)(a), Fla. Stat. (2016). "Disability" has been defined as the "incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury." § 440.02(13), Fla. Stat. (2016). TTD benefits cease when the employee reaches MMI. § 440.15(2)(a), Fla. Stat. (2016). The medical evidence in this case demonstrates that the Claimant is not at MMI and that, during the time period in question, he was unable to work because of his compensable back injury. Specifically, I accept the testimony of Dr. Fredericks, the Claimant's authorized treating physician, that the Claimant's recurrent ruptured disc at L4-5 and resultant surgery was causally related to his original October 23, 2016 work accident. I further accept Dr. Fredericks's testimony that he placed the Claimant on an off-work status as of his initial evaluation on September 27, 2018 and that, given the Claimant's similar complaints of pain and weakness between July 17, 2018 and September 26, 2018, the Claimant should have been restricted from working as a result of his compensable back injury.

² Under the Tallahassee Fire Department contract, the Claimant receives full-pay status in lieu of workers' compensation benefits but is not charged any leave time and the City's Risk Management Department reimburses the Fire Department payroll.

Dr. Fredericks's testimony further establishes that the Claimant is still in an off-work status and has not been placed at MMI for his back injury. Thus, I find that TTD benefits should be awarded to the Claimant from July 17, 2018 to September 26, 2018.

16. The Employer/Carrier has denied the Claimant's request for benefits, arguing that his alleged temporary disability status from July 17, 2018 to September 26, 2018 is unrelated to the October 23, 2016 accident. The Employer/Carrier contends that the Claimant's treatment at the Patient's First Clinic during that time frame and any resulting work restrictions were related to the Claimant's alleged July 8, 2018 accident date – which was later denied by the Employer/Carrier – and were not based on any objective medical findings, only the Claimant's subjective complaints of pain that were subject to manipulation. The Employer/Carrier argues that Dr. Fredericks did not take the Claimant off of work until September 27, 2018 and that any medical opinion provided by Dr. Fredericks regarding the Claimant's work status prior to that time was based on incomplete and inaccurate information.

17. I reject the Employer/Carrier's arguments in this regard, however, and find that Dr. Fredericks's medical opinions establish that the Claimant's work restrictions prior to September 27, 2018 were causally related to his October 23, 2018 back injury. I find that the information provided to Dr. Fredericks regarding the Claimant's medical treatment and complaints of pain prior to September 27, 2018 was accurate and consistent with record evidence, including the Claimant's prior medical records and the Claimant's testimony. The medical records from the Patient's First Clinic demonstrate that the Claimant complained of right sided back pain, pain down his right leg, and numbness in his left toes as early as July 17, 2018. Although the Claimant related his complaints to an incident at work occurring on July 8, 2018, he also

reported having had a similar problem in the past, resulting in a prior surgery. The Claimant's testimony, which I find to be credible, establishes that he continued to have pain and numbness in his back and legs following his original surgery and treatment with Dr. Rumana and was seeking a change in physician to address his October 23, 2016 back injury as early as July 12, 2018. No evidence has been presented demonstrating that the Claimant was manipulating his medical examinations or exaggerating his complaints. Although the Claimant may have believed at the time of his treatment with Patient's First that his back symptoms were related to a new incident at work, Dr. Fredericks opined that the Claimant's symptoms were the result of a "massive" ruptured disc which he causally related to the Claimant's 2016 back injury and original surgery. It was logical for Dr. Fredericks to conclude that the Claimant's significant complaints of back pain and weakness in his lower extremities that existed when he evaluated him on September 27, 2018 were also present during the two month period prior to his evaluation, consistent with the Claimant's complaints to Patient's First practitioners. It was also reasonable for Dr. Fredericks to conclude that the off-work status that he imposed upon the Claimant on September 27, 2018 should have also been applied to the Claimant during the two month period prior to that time, consistent with the work restrictions imposed by Patient's First practitioners. I accept Dr. Fredericks's medical conclusions related to the Claimant's work status prior to September 27, 2018.

18. The Claimant received his full-time regular pay during the time that he was off work between July 17, 2018 and September 26, 2018 using his sick leave and pay for "Kelly Days." I find that the Claimant was entitled to the payment of TTD benefits during that time period. The Claimant, therefore, should be given a credit for any sick leave and/or other leave time used in

lieu of the workers' compensation benefits that were due. The undersigned has jurisdiction to order the reinstatement of the Claimant's sick and/or other leave time which has been used as a substitute for workers' compensation benefits. See Marion Correctional Institution v. Kriegel, 522 So. 2d 45, 47 (Fla 5th DCA 1988).

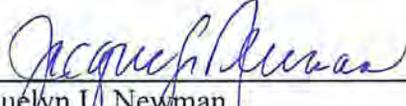
WHEREFORE, it is **ORDERED and ADJUDGED** that:

1. The claim for TTD benefits from July 17, 2018 to September 26, 2018 at the correct rate is GRANTED. Because the Claimant was paid during that time, the Employer/Carrier shall reinstate the Claimant's sick and/or other leave time used in lieu of any worker's compensation benefits now due.

2. The claim for penalties, interest, costs and attorney's fees is GRANTED with respect to the TTD benefits awarded in this Order.

3. Jurisdiction is reserved to determine the amount of the fees and costs due if the parties are unable to agree.

DONE AND SERVED this 18th day of July, 2019, in Tallahassee, Leon County, Florida.



Jacquelyn L. Newman
Judge of Compensation Claims
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