

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

William Rainey,
Employee/Claimant,

OJCC Case No. 15-011748SLR

vs.

Accident date: 1/31/2015

State of Florida - Department of
Corrections - Zephyrhills CI,
Employer,

Judge: Stephen L. Rosen

Division of Risk Management,
Carrier/Servicing Agent.

_____ /

FINAL ORDER

This Cause came on for hearing before the undersigned Judge of Compensation Claims on January 6, 2015. The claimant, William Rainey, was represented by Tonya A. Oliver, Esq. and Jason Fox, Esq. The employer, State of Florida Department Of Corrections, and the carrier, State of Florida Risk Management, were represented by Curt L. Harbsmeier, 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 May 26, 2015. The parties agree that the petition for benefits filed January 5, 2016 is not ripe for determination and jurisdiction shall be reserved should the issues in that petition come to hearing at a later date.

All evidence was received and the record was closed on January 6, 2016.

Claim was made for the following:

1. Compensability of disabling coronary artery disease pursuant to F. S. 112.18(1).
2. Temporary total or temporary partial disability compensation from January 31, 2015 to the

date of maximum medical improvement and return to work on May 27, 2015.

3. Authorization of medical care and treatment with a cardiologist, a primary care physician, or internal medicine specialist for coronary artery disease. Claimant is not under the care of an authorized treating physician at the present time as the claim has been controverted.

4. Penalties, interest, reimbursement of costs of litigation and attorney's fees at the expense of the employer/carrier.

The claim was defended on the following grounds:

1. Claimant's coronary artery disease was pre-existing and the presumption statute does not apply.

2. Compensability of the claimant's coronary artery disease is denied.

3. Claimant was diagnosed with hypertension and diabetes pre-hire, therefore, this claim is not compensable under F. S. 112.18(1).

4. Medical care and treatment is not reasonable or medically necessary, relative to this employer, as claim is not compensable.

5. Claimant has not been taken off work by any authorized physician.

6. There is no competent, substantial evidence to support entitlement to temporary total or temporary partial disability benefits.

7. Claimant's wage loss, if any, is not a result of the work injury; claimant continues to work for the employer.

8. Claimant has not been placed on light duty by any authorized treating physician.

9. Work is not the major contributing cause of the claimant's accident, injuries or disability.

10. No penalties, interest, reimbursement of costs or attorney's fees are due at the expense of the employer/carrier.

11. The employer/carrier seeks all cost reimbursement as associated with this matter as the prevailing party pursuant to F. S. 440.34.

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.
3. On the date of incident, there existed an employer/employee relationship with workers' compensation coverage through State of Florida Division of Risk Management.
4. The claimant reached maximum medical improvement on May 27, 2015.
5. On the date of accident, the average weekly wage was \$740.48.
6. On the date of accident, there was not a managed care arrangement in place.
7. The petitions for benefits and notices of denials thereto were filed as noted elsewhere in this order.
8. Both parties withdraw any Daubert objections. Neither party has requested the appointment of an expert medical advisor on the pending issues.

The following documents were offered into evidence:

Judge's Exhibits:

1. Petition for benefits, filed May 26, 2015.
2. Response to petition for benefits/notice of denial, filed June 5, 2015.
3. Mediation conference report, filed September 15, 2015.
4. Uniform pretrial stipulation form and order approving uniform pretrial stipulation form, filed October 2, 2015.
5. Claimant's trial memorandum, with attached cases (for argument only).
6. Employer/carrier's trial memorandum, with any attachments (for argument only).

Claimant's Exhibits:

1. Deposition of Satish Sivasankaran, M. D. (hereinafter referred to as "Dr. Siva"), taken November 16, 2015, with attachments.

Employer/Carrier's Exhibits:

1. Exhibit list, filed January 4, 2016.
2. Deposition of Michael Nocero, M. D., taken September 21, 2015, with 6 attachments.
3. Medical records composite of unauthorized physicians for historical purposes only.
4. Composite of employer's personnel records, including pre-employment physical of claimant.

Joint Exhibits:

1. Deposition of the claimant, taken July 21, 2015.

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.
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, William Rainey, is 44 years old on the date of hearing. He was hired by the employer on November 20, 2009 as a corrections officer at the Zephyrhills correctional Inst. in Pasco County Florida. His duties included control, custody, and care of inmates at that facility.
6. Prior to hiring, the claimant underwent a pre-employment physical examination with Lab Corp and indicated that he had been suffering from diabetes at the time of the physical examination. The physical examination shows blood pressure of 142/94 with a repeat examination of 140/90 but there is no diagnosis of hypertension made at the pre-employment physical. Claimant denies ever having been formally diagnosed as hypertension prior to his pre-employment physical

examination but does freely admit to having suffered from diabetes at the time of the pre-employment physical examination.

7. Claimant began his shift on January 30, 2015 with the employer which carried him over into the early morning hours of January 31, 2015. During his shift, he felt some discomfort in his chest and went home and went to bed. He awoke with further discomfort which turned into significant pain and his wife, a nurse, took him to a local hospital. There he was placed in the cardiac unit and was diagnosed with blockage of 3 coronary arteries. A stent was placed in one artery and it was recommended that the claimant undergo double bypass surgery, which was done on March 19, 2015. The claimant was released to full duty and returned to work with the employer on May 27, 2015 and as a correctional officer Sgt. since that time through the present.

8. No benefits were provided under the Florida Workers' Compensation law and a petition for benefits was filed on behalf of the claimant on May 26, 2015 at that time the employer/carrier denied the claim by notice filed June 5, 2015. However, the parties agree that the employer/carrier had already denied compensability through a filing on April 30, 2015. There is no argument by the claimant that the employer/carrier failed to deny the claim within 120 days and that it did receive notice on or about January 31, 2015 of the claimant's heart condition and inability to return to work.

9. The claimant relies only on the application of the "presumption" of compensability of his coronary artery disease as a member of a protected class pursuant to F. S. 112.18(1). Claimant submits that he is a member of the protected class, suffers from coronary artery disease which is a protected condition under that class, was disabled from earning wages as a result of his coronary artery disease, and passed a pre-employment physical that failed to reveal evidence of coronary artery disease.

10. Conversely, the employer/carrier contends that the claimant had evidence of coronary artery disease at the time of his pre-employment physical and hiring and cannot avail himself of the presumption or, in the alternative, if the presumption does apply, then the employer/carrier has submitted competent evidence sufficient to rebut the presumption and for either reason, the

claimant's coronary artery disease is not compensable.

11. I find that the main thrust of the employer/carrier's position that the presumption does not apply in the first place is based on the pre-employment physical, which shows elevated blood pressure readings. However, nowhere in the pre-employment physical is there a diagnosis of either hypertension for coronary artery disease. Therefore, I find that the presumption as it appears in F. S. 112.18(1) applies to this claimant. While there may be object of evidence of hypertension in the blood report read, there is no greater weight or preponderance of evidence to establish within reasonable medical certainty that the claimant had coronary artery disease at the time he underwent a pre-employment physical.

12. However, as the employer/carrier notes, the presumption may be rebutted by competent evidence that the claimant suffered from coronary artery disease at the time of hiring based on the opinions of medical experts reviewing records and diagnostic studies and interviewing the claimant. The employer/carrier relies on the opinions of Dr. Nocero, its independent medical examiner, that the claimant had objective evidence of more than risk factors that he had coronary artery disease at the time of hiring. Specifically, the fact that the claimant was a diabetic whose diabetes may not have been properly controlled led to the formation of plaque in the arteries which led to the coronary artery disease and the need for stenting and bypass surgery.

13. No diagnostic testing has been produced by the employer/carrier to confirm that the claimant had coronary artery disease at the time of his pre-employment physical and hiring in 2009. While the opinions of Dr. Nocero are well reasoned and the argument of the attorney for the employer/carrier is logically presented, the only objective evidence of the claimant's coronary artery disease comes after January 31, 2015 when the first evidence of diagnosed heart disease came to light, was diagnostically confirmed with testing, and resulted in stenting and double bypass surgery thereafter.

14. The intent of F. S. 112.18 is to raise the level of protection for the class of first responders for heart conditions occurring while the member of the protected class is employed. Causation is established by the application of the presumption, as it is here in this case. To accept the

argument that any first responder's who suffers from diabetes at the time of hiring as a member of a protected class already has coronary artery disease and, thus, would never avail himself or herself of the presumption.

15. I find that coronary artery disease must be established, in fact, at the time of the pre-employment physical and hiring in order to present competent evidence to rebut the presumption. In the instant case, there is no greater weight or preponderance of evidence to show that the claimant suffered from coronary artery disease at the time of his pre-employment physical and hiring. Thus, I reject, respectfully, the employer/carrier's argument that the testimony of Dr. Nocero establishes that the claimant suffered from coronary artery disease at the time of his pre-employment physical and hiring and either the presumption does not apply or it has been rebutted by competent evidence. The claimant's coronary artery disease is compensable.

16. I find that the claimant is entitled to temporary total disability compensation from January 31, 2015 through May 26, 2015 as the record establishes that he was unable to work during that period of time and under medical care. I reject the employer/carrier's argument that no "authorized" physician took the claimant off work during this period because the entire claim is controverted that could not have been an authorized physician at that time.

17. Penalties and interest apply on the late payments of temporary total disability compensation.

18. The attorneys for the claimant, Tonya A. Oliver, Esq. and Jason Fox, Esq., have performed a valuable service for their client and are entitled to a single attorney's fee and reimbursement of costs at the expense of the employer/carrier.

WHEREFORE, it is ordered that:

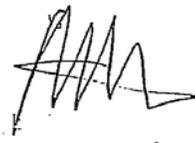
1. The claim for the claimant's coronary artery disease is compensable.
2. The employer/carrier shall provide the claimant with necessary medical care through a primary care physician, internal medicine specialist, or a cardiovascular physician chosen by the employer/carrier.

3. Employer/carrier shall pay the claimant temporary total disability compensation at the correct compensation rate from January 31, 2015 through May 26, 2015 with penalties and interest thereon.

4. Jurisdiction is reserved for all unmediated petitions for benefits that are currently filed.

5. The attorneys for the claimant, Tonya A. Oliver Esq. and Jason Fox, Esq., are entitled to a single attorney's fee as well as reimbursement of costs 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 7th day of January, 2016, in St. Petersburg, Pinellas County, Florida.



Stephen L
Rosen

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