

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

MICHAEL KINLOCK)
Employee/Claimant)
vs.) OJCC Case No. 06-015661-TWS
THE GABLES at Hunter's Creek)
Employer) Accident Date: 1/9/2005
and)
ZURICH AMERICAN INSURANCE Co.)
Carrier/Servicing Agent)
_____/) **Judge: Thomas W. Sculco**

Final Compensation Order

After proper notice to all parties, a hearing was held and concluded on this claim in Orlando, Orange County, Florida on July 21, 2011. Present at the hearing was Attorney Christopher Mank for the employee and Attorney Nicole Conte for the employer/servicing agent, hereinafter referred to as the E/SA. This Order addresses the Petition (s) for Benefits filed with DOAH on 12/23/2010.

At hearing the evidence consisted of the testimony of:
Michael Kinlock.

DOCUMENTARY EVIDENCE

- #1 Claimant's: Trial Memorandum.
- #2 Employer/Carrier's: Trial Memorandum.
- #3 Joint: Pre-Trial Stipulation
- #4 Claimant's: Deposition of Jeffrey Rosen, M.D.
February 1, 2010
- #5 Claimant's: Deposition of Robert Murrah, M.D.
January 13, 2010
- #6 Claimant's: Deposition of Fabio Fiore, M.D.
July 12, 2011
- #7 Employer/Carrier's: Deposition of Jeffrey Rosen, M.D.
July 13, 2011
- #8 Employer/Carrier's: Deposition of Michael Kinlock
June 23, 2011
- #9 Employer/Carrier's: Deposition of Michael Kinlock
July 7, 2006

After hearing all of the testimony and evidence presented, and after having resolved any and all conflicts therein, the undersigned Judge of Compensation Claims makes the following findings of fact and conclusions of law: The issues for determination, as narrowed by the parties at the time of the

final hearing, are claimant's claims for: 1-authorization of medical care and treatment for the right knee; and 2-costs and attorney's fee. Claimant requested I reserve jurisdiction on the petition for benefits dated 7/5/11 as that PFB has not yet been mediated.

The E/C took the positions that claimant has exhausted his statutory right to a one-time change of physician; that the major contributing cause of the need for treatment is not the compensable injury; and no costs or attorney's fees were owed.

BACKGROUND

On 1/9/05, claimant suffered a compensable injury to his right knee with the employer. He underwent surgery with Dr. Michael Leddy to repair a torn meniscus. Claimant was still having problems in his knee, and exercised his right to a change of physician to Dr. Robert Murrah.

Dr. Murrah eventually performed another surgery on claimant's knee on 2/27/06. He placed claimant at MMI on 12/12/06. Claimant returned to Dr. Murrah in 2007 and 2008 with continued complaints. Claimant also complained of left leg symptoms, which Dr. Murrah declined to relate to the compensable injury. On 11/11/08, claimant called Dr. Murrah's office and left a message as follows:

Not related to his knee? Very upset & wants to talk to

you. Really angry on the phone & wants to know why you say it's not related to his knee "Is it cause he's black." He will get a lawyer and fight you about this. Wants to talk to you!!

Dr. Murrah spoke to claimant that day, and prepared an office note regarding that conversation. Dr. Murrah noted that claimant was "somewhat confrontational" with his staff, and stated that he was "extremely emotional" in their conversation. Dr. Murrah indicated he was discharging claimant from his care in the 11/11/08 note.

The E/C then authorized Dr. Jeffrey Rosen to treat claimant's right knee injury. Claimant saw Dr. Rosen on 12/17/08 and again on March 3 of 2010. At the 3/3/10 office visit, Dr. Rosen testified that he tried to explain to claimant that he had nothing more to offer him, and that he did not believe that further treatment was necessary. Dr. Rosen testified that claimant immediately became "belligerent" and "insulting", and stormed out of the office. As a result, Dr. Rosen discharged claimant from his care. Claimant then saw Dr. Fabio Fiore for an IME.

CLAIM FOR MEDICAL CARE FOR THE RIGHT KNEE

Claimant's claim for care for his right knee involves two issues. First, is the conflict in medical opinions between Dr. Rosen, and Dr. Fiore and Dr. Murrah regarding claimant's need for medical care for his right knee. Specifically, in his most

recent deposition of 7/13/11, Dr. Rosen testified that claimant had no current need for medical care for his right knee as a result of the compensable injury. In contrast, Dr. Fiore recommended corticosteroid injections to the right knee, and indicated claimant has post-traumatic arthritis and may need a total knee replacement in the future. Dr. Murrah indicated that ongoing palliative care would be appropriate for claimant's right knee, as well as consideration for synvisc injections.

In considering all the evidence presented, I accept the opinions of Dr. Fiore and Dr. Murrah that claimant does need medical care for his right knee at this time, and potentially in the future as well. While Dr. Rosen is a highly qualified physician, I feel the opinions of Dr. Fiore and Dr. Murrah are more logical and reasonable in light of claimant's objectively established significant injury and surgeries.

The E/C also argues that even if claimant needs medical care for his injury, that appropriate care has been authorized and that claimant's own inappropriate behavior caused Dr. Murrah and Dr. Rosen to discharge claimant from their care. The E/C reasons that claimant has already had his one-time change of physician, and that he should not be rewarded for his "bad behavior" by forcing the E/C to authorize yet another physician to treat his right knee.

While I agree with the E/C that claimant's behavior towards his physicians is a legitimate issue and concern in this case,

the remedy proposed by the E/C, a denial of ongoing care, is simply not supported by the statute, rules, or appellate case-law.

As argued by the E/C, I do find that claimant has behaved rudely, aggressively, and inappropriately towards Dr. Murrah and Dr. Rosen. Consequently, in order to effectuate the E/C's ability to provide claimant with medically necessary care and attendance, I am ordering claimant to behave courteously, respectfully, and appropriately towards medical providers authorized by the E/C in this case. See Section 440.33, Fla. Stat. (2005) (authorizing JCC to "do all things conformable to law which may be necessary to enable the judge effectively to discharge the duties of her or his office"). Violation of this order could subject claimant to sanctions, including the striking of claims or petitions, the imposition of costs and attorney's fees, or any other appropriate sanction. See Rule 60Q-6.125(1). Consequently, given my finding that ongoing care for the right knee is medically necessary as a result of the compensable injury, the E/C is ordered to authorize a physician to provide such medically necessary care.

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

1. The E/C is ordered to authorize medical care and treatment for claimant's compensable right-knee injury.
2. Claimant is ordered to behave courteously, respectfully, and appropriately towards medical providers authorized by the E/C in this case.
3. Claimant is entitled to attorney's fees and costs from the E/C pursuant to Section 440.34(3), Fla. Stat. (2005) for securing medical care for the right knee as ordered above. Jurisdiction is reserved to determine the amount of attorney's fees and costs owed.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 25th day of August, 2011.



Thomas W. Sculco

Thomas W. Sculco
Judge of Compensation Claims
400 West Robinson Street, Suite 608N
Orlando, Florida 32801-1701

This is to certify that a true and correct copy of the foregoing Order has been furnished by electronic mail to counsel listed

below.

Marla Miller
Digitally signed by Marla
Miller
Date: 2011.08.25 13:49:01
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Assistant to Judge Sculco

Served by Electronic Mail:

Christopher R. Mank, Esquire

Nicole Conte, Esquire