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

Jackie Ortiz, Personal Representative of the Estate of Jeremy Ortiz, Sr., Claimant /Employee,	)	OJCC Case No. 10-020819DBB
vs.	)	Accident date: 8/14/2010
OfficeMax Incorporated, /Liberty Mutual Group, Employer/ Carrier/Servicing Agent.	)	Judge: Diane B. Beck

FINAL COMPENSATION ORDER

This cause was heard before the undersigned Judge of Compensation Claims (JCC) at Sarasota, Manatee County, Florida on August 2, 2011 upon the petition for benefits filed on September 7, 2010 1. It was brought to my attention that additional petitions for benefits were filed on June 14, 2011 that have not yet been mediated, and jurisdiction is reserved to address these petitions at a subsequent proceeding if they are not resolved. Mediation of the September 7, 2011 petition occurred on February 7, 2011, and the parties' Uniform Statewide Pretrial Stipulation was filed on February 14, 2011. Gregory P. Linehan, Esquire was present on behalf of the claimant. Donna L. Kerfoot, Esquire was present on behalf of the employer/carrier/servicing agent (E/C).

OVERVIEW

Claimant Jackie Ortiz (hereafter "claimant") is the Personal Representative of the Estate of employee Jeremy Ortiz, Sr., and Jeremy Ortiz Sr.'s mother. Jeremy (hereafter "employee") passed away on March 5, 2011. On the date of accident alleged of August 14, 2010 he was employed with OfficeMax

1 A more detailed list of the parties' pretrial stipulations, claims and defenses, and my evidence log can be found at appendices 1, 2, and 3 at the end of this order.

Incorporated as a part-time sales associate. He alleges injury to his neck and back from lifting a printer at work, and claimant requests temporary total/temporary partial disability (TTD/TPD) benefits on his behalf. E/C has denied the claim in its entirety. For the reasons set forth below, I am finding in favor of claimant on the issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I have resolved all conflict in the testimony and evidence. Upon review of the evidence and applicable law, I make the following findings of fact and conclusions of law:

1. I have jurisdiction over the subject matter and parties, and venue is proper in Sarasota, Florida.

2. Any and all issues raised by way of the petition for benefits which are the subject matter of the final hearing, but which issues were not tried at the hearing are presumed resolved, or in the alternative, deemed abandoned by the claimant and therefore are denied. *See*, *Betancourt v. Sears Roebuck & Co.*, 693 So.2d 253 (Fla. 1st DCA 1997).

3. Employee testified at his deposition that he had a prior workers' compensation injury to his low back while working for Wal-Mart. He underwent physical therapy, saw an orthopedic physician, and treated with a pain management doctor, including injections. He was also prescribed medications including Celebrex, Flexeril, Vicodin, Lunesta, and Valium. He was off work for about six months and then returned to work full-time. He ultimately settled this claim, receiving $6,000.00 and he had to resign. He left Wal-Mart in either 2006 or 2007.

4. Employee began working for OfficeMax in November 2009 as a part-time sales associate, a position which did not include health insurance benefits or paid time off. He missed work for approximately a week due to a hospitalization for diverticulitis, but denied other health problems. Employee testified that he was never formally on light duty other than two days light duty related to his diverticulitis and after a concussion he suffered in an earlier work related injury with OfficeMax in

January 2010 (not at issue in this proceeding). Employee denied other accidents or injuries, including to his neck.

5. According to employee, on August 14, 2010 he was stocking printers as part of his work duties, grabbed a printer weighing about fifteen pounds from a pallet, and lifted it to put it on his right shoulder when he slipped and something popped in his neck. He said he had pain that shot down his arms and legs, worse on the left, he saw stars, and he fell to the ground with the printer falling and hitting him between his shoulder blades. Employee said a customer and her daughter observed him and he heard Stephanie in employer's Impress department say that one of theirs was down in aisle one.

6. Employee said Ron and Gary came and he told them he hurt his neck lifting a printer and was in pain. He said he was taken to the front of the store in a wheeled chair and they began filling out a report. He called his fiancé, who was coming to bring him lunch, and she took him to the Sarasota Memorial Hospital Emergency Room where he was given an off work slip. He gave the slip to Cynthia at OfficeMax.

7. Employee last worked on the date of accident alleged and testified that he hasn't worked since because he was told not to work by his doctor. He testified that in addition to going to the Emergency Room on the day of the accident, a few days later he went to a Sarasota Memorial Hospital walk-in clinic at the direction of the insurance company. Employee testified that he received a toll free number to call the insurance company from Cynthia at OfficeMax. He was referred by the walk-in clinic to an orthopedic/neurosurgeon physician and was to remain off work until seen by that doctor. He also took that paperwork to employer. Employee also treated on his own with Dr. Beebe, a pain management physician.

8. Employee said that he was encouraged by his manager and assistant manager to apply for a furniture technician specialist position when it became open. He applied at the beginning of August 2010 because he wanted the medical benefits that came with the job. Employee denied being told before

his accident that he wasn't going to get this job; he said he was awaiting an interview with Jan and he got hurt before that interview.

9. Employee testified that he asked Jan, Cynthia, Ron, and Gary if he was still employed with OfficeMax after his accident and no one would tell him. He applied for unemployment compensation benefits and began receiving $126.00 per week the last week of December 2010 and was continuing to receive $252.00 every two weeks at the time of his deposition.

10. Ronald Lynch is an assistant manager for OfficeMax and he worked in a supervisory capacity with employee. Lynch was at work on August 14, 2010 and received a call on his radio around 2:30 PM regarding the accident. He was told that employee was hurt in aisle one, which is in the back of the store and opposite from the aisle where employee should have been working. They were made aware that employee was hurt by a customer who saw him in the aisle and told an associate. Lynch found employee crouched or squatting down on one knee with the other knee bent beside a pallet with two printers in boxes on it. Employee told Lynch he tried to pick up a printer and felt a pop and pain in his neck and tingling down his left arm. Employee had a grimace on his face and it looked like he was in pain. He did not tell Lynch he was hit by the printer and the printer did not appear to be dropped or damaged or out of place.

11. According to Lynch employee had a previous non work related injury to his ankle and also had surgery. He was on light duty for a few days before the accident because he had a cane so they didn't want him climbing ladders or lifting. He normally worked the electronics area which includes computers, printers, and networking electronics. Lynch said if employee was at full capacity restocking would be part of his duties, but he shouldn't have been restocking that day because he was on light duty. Lynch did not have a doctor's note for the light duty and said Jan made the decision to place employee on light duty.

12. Lynch and employee went to the office after the accident to fill out a report that is

required by the corporate office. Lynch asked employee if he wanted to seek medical care and offered to call 911 (although he later testified he thought it was a gray area whether employee needed to go because he refused the 911call and called his girlfriend instead). Employee told him he would call his girlfriend to take him. Lynch did not tell employee not to go to the hospital or to wait until they heard from the corporate office. Lynch acknowledged that as assistant manager he could have told employee to go to the hospital and that as it was Saturday the clinics where he would normally go would not be open. Lynch said employee's girlfriend showed up in ten minutes and took him.

13. Lynch testified that employee applied for a furniture technician position because he wanted full time work and benefits, but his attendance was not good enough to get the job, although he had to be considered for the position. Lynch said employee had surgery for diverticulitis and called out and was late frequently. He thought employee may have been verbally warned about his attendance.

14. Lynch did not believe that employee's accident was staged as he appeared to be in severe pain. He was not saying that employee faked his injury to get back at OfficeMax for not giving him the full time job he applied for, and Lynch had nothing to show that the accident did not happen. Lynch had no knowledge of employee having any prior neck problems. However, he questioned it in his mind because it was a small printer and employee was used to picking up heavier weights, and employee's girlfriend showed up in ten minutes, while employee often had to wait for her to give him a ride at closing. Lynch doubted she would be bringing employee lunch because he had only been on the job for thirty minutes before the accident.

15. Janet Flahive is the store manager for OfficeMax. She testified that she put employee on light duty when he came in using a cane. She thought that employee had an ankle problem and was afraid he would roll his foot and so was using the cane as a precaution. She did not have any doctor's slip for the light duty. This occurred sometime after his diverticulitis operation in June or July 2010. He was told not to climb ladders or pick up printers and was to continue working in the electronics area but with

smaller items such as DVDs. Employee brought paperwork from Doctors Hospital to Flahive and was off work from diverticulitis from June 25, 2010 to July 2, 2010.

16. Flahive said that it was around this time that she began having problems with employee's attendance. She tried to help him on a personal level because she has custody of her grandchildren and employee had a child taken away from him. Employee needed every Tuesday off for drug testing and Flahive accommodated this request. She testified that on July 25, 2010 employee left early because he was upset that OfficeMax would not give his girlfriend cash for a printer that she was trying to return without a receipt. He was a no call no show on August 5, 2010 and on August 10, 2010 he was sent home because he was impaired, mumbling and slurring his words. Employee told Flahive that antibiotics he was taking caused this. On August 11, 2010 employee's girlfriend called in to report that he was in the hospital and would not be in. Flahive said she never wrote employee up because she had sympathy for him.

17. According to Flahive, employee wanted to apply for the furniture specialist position and she asked him how he would be able to do this job if he can't lift fifty pounds. Employee told her he was able to do the lifting, so he was interviewed for the position. Flahive denied encouraging employee to apply for the position. She interviewed him, and said she told him on August 12, 2010 that he would not be getting the job, and she filled the job on August 13, 2010. She testified that employee was upset that he did not get the job, but in her mind not getting the job did not have anything to do with his accident.

18. Flahive was off work on August 14, 2010 and was called and told by Lynch about the accident. She never talked to employee about the accident. He did call on August 30, 2010 and asked to be placed on the work schedule, and she told him he would have to bring in a doctor release. They left messages for each other thereafter but did not have any further discussions regarding work. According to Flahive, employee should not have been in aisle one and should not have attempted to pick up the printer. He was responsible for the digital media aisle and restocking that aisle but not for restocking printers

because of his light duty. She did not have her file with her at hearing and was not sure which off work slips she received, but did recall receiving a note that employee should not return to work until seen by an orthopedic. Flahive testified that she was not there when employee's accident occurred and had no evidence to show that it did not occur.

19. Charles W. Myron is carrier's adjuster and has been on the file since August 23, 2010, with no other adjusters prior to his involvement. He denied the claim based on reviewing the file and contacting employer who had concerns, including that there were no witnesses to the accident, employee was seeking medical treatment outside work, and the employee recently asked for full time work because he was seeking medical benefits and did not get the job. Myron did not speak with employee or obtain a recorded statement from him by a field representative. He did not pay any indemnity benefits, but did make two payments to Sarasota Memorial Hospital in October 2010, which he testified were released on his error and the visits were not authorized.

20. Myron said it is possible employee was given a list of clinics or hospitals if he called an 800 number, but the person who gives that list is not permitted to give authorization for treatment. Myron did receive reports from Sarasota Memorial Hospital, including one dated August 21, 2010 indicating claimant could not return to work until seen by an orthopedic, but no reports were received prior to his denial of the claim. He agreed he had no knowledge of what medical treatment employee was receiving prior to his accident. According to Myron, his general overview of the claim was that it was fraudulent as employee was looking for full time work for medical benefits and the next day within fifteen minutes of coming to work had an accident at a part of the store where no one would see it. He talked to both Lynch and Flahive who had concerns, and agreed that neither of them said the accident was staged. He said that employee did not injure similar body parts in the January 10, 2010 accident with employer as a file cabinet fell and hit him on the head in that accident (which was accepted as compensable by E/C).

21. Employee underwent an independent medical examination (IME) with board-certified

orthopedic surgeon Dr. Roland Vance Askins, III on March 2, 2011. Dr. Askins reviewed employee's records from Sarasota Memorial Hospital as well as x-rays and CT scans of his cervical spine. Employee gave a history of working on August 14, 2010 when he picked up a printer with his right arm and went to put it up onto his right shoulder when he felt a pop in the lower portion of the left side of his neck and had pain and discomfort; that it put him on his knees and he "saw stars". After that he had numbness in the left upper and lower extremity and weakness in his quad. He was seen in the emergency room multiple times in August and September.

22. Dr. Askins also reviewed employee's records from a January 2010 accident when a 400 pound cabinet hit him directly on the back of the head where he had loss of consciousness and underwent a CT scan of the brain and neck, and was treated for a post-injury concussion. He did not have physical therapy or follow up care after that visit.

23. After the August 14, 2010 accident when employee presented in the emergency room multiple times he was given pain medication, repeat pain medication, and muscle relaxers. The doctors recommended that he follow up with someone under the direction of worker's comp and he was referred to the neurosurgeon that may have been on call, according to Dr. Askins.

24. On examination Dr. Askins found employee to be objectively weak in his left upper extremity (biceps, hand grip, finger abduction, and along the deltoid) and left quad, which was exactly what he described with regards to his acute injury event, and he had a lot more pain with lateral motion. Dr. Askins also noted that employee's consistent weakness was supported in his exam by four different physicians from August to September, and the weakness was reproduced by Dr. Askins in the upper extremities with a cervical pattern of C4-5 and 5-6. Dr. Askins explained that the pain could be paracervical muscle spasm or indicative of herniated disc pathology or nerve root injuries. Dr. Askins recommended an MRI for further evaluation, because employee had failed conservative measures consisting of pain medicine, muscle relaxers, and titrated steroids, and then probably a referral for an

orthopedic or neurosurgical spine physician for further evaluation and treatment.

25. Dr. Askins causally related employee's problems to the August 14, 2010 industrial injury and agreed the major contributing cause of his need for treatment was more than fifty percent the work-related injury. He opined the treatment employee was receiving at Sarasota Memorial Hospital was medically necessary and reasonable. Dr. Askins testified that in forming his opinions he relied on employee's truthfulness in giving the history of the onset and progression and etiology of the symptoms he presented with, along with the documentation through four ER visits. Employee told Dr. Askins that his symptoms have always been left-sided, despite notations in an August 15, 2010 ER report indicating they were right hand, right shoulder, right arm and right leg. Dr. Askins said it could be a wrong-sided dictation in the report; he would defer to the patient who knows his own history. Dr. Askins explained that it was consistent for employee to complain of the left sided symptoms, and he was able to reproduce those symptoms; right shoulder pain would not give left sided numbness and tingling. He noted the pop in his neck is consistent with employee's history at the ER and suggests a herniated disc; the shoulder pain could be from putting the computer or whatever object on the shoulder.

26. Dr. Askins testified that he did not see any bony changes that were different between employee's January 2010 cervical CT scan and the August 2010 cervical CT scan, but the CT scan does not give as much delineation as an MRI. The CT changes were degenerative in nature and would have been there prior to January 10, 2010, according to Dr. Askins. Dr. Askins explained that CT scans don't show disc pathology, so trauma to the cervical region makes you highly suspicious that even though the CT scan may be the same from January to August, employee's symptoms are in a radicular nerve pattern and you need to be looking for the nerve. He noted employee's symptoms are reproducible in a C4-5, 5-6 distribution which also meets his CT scans which show degenerative changes there, so the CT scan is giving him information that now there is a new injury there in that region to the disc.

27. Dr. Askins asked employee if there was anything else significant other than the January

10, 2010 injury in his history and he said that was the only other injury, and that was the only records Dr. Askins had. He did not find anything else in Memorial's system related to that. Dr. Askins said employee did not give a history of a prior work-related accident when employed by Wal-Mart which involved a back injury, or a history of a December 21, 2009 accident for which he was seen at Doctors Hospital for another back injury.2 Employee did not give a history of light duty status at work and symptoms prior to the August 14, 2010 industrial accident or of hospitalizations during the year prior to the accident. Dr. Askins indicated if employee's prior injuries were lumbar it would be additional information in forming his causation opinions with regard to the left lower extremity weakness, but would have no inference on the complaints of left upper extremity.

28. Dr. Askins testified that employee had four ER visits with reproducible history and it was his impression that employee's symptoms were real; he wasn't getting a great deal or quantity of narcotics that would raise a red herring in the doctors' eyes because they were still prescribing it. The last ER doctor to see employee noted he expressed his frustration with workman's compensation; employee did not have a workman's compensation confirmation appointment to keep him even tried to follow up on. Dr. Askins thought Dr. Newman was trying to get employee "hooked up" with a neurosurgeon; Dr. Askins did not infer that there was a concern about employee's narcotic use.

29. Included within the Sarasota Memorial Hospital records reviewed by Dr. Askins as part of his IME was the January 10, 2010 report related to employee's other work injury of that date. It was noted that employee provided a past medical history of some chronic back issues. At his visits related to the August 14, 2010 accident, employee provided a history of prior lumbar pain/surgery and diverticulitis.

30. I reject E/C's argument that because employee was on light duty with restricted lifting that he was outside the course and scope of his employment when he lifted the printer from the pallet.

2 Dr. Askins' IME report reflects that employee provided a history of sacroiliac injections which per employee's testimony were administered in treatment for the Wal-Mart back injury; in the patient medical history form filled out by employee for Dr. Askins he included a history of gastrointestinal, musculoskeletal/joints/back pain, back/disc injections sacroiliac, and a back disorder/back injury; the Doctors Hospital December 21, 2009 record was not received in evidence.

Lynch agreed that restocking was part of employee's regular duties. Employee told Flahive he was capable of lifting fifty pounds and she agreed to allow him to interview for the furniture technician position based on his representation that he was capable of the required heavy lifting. The restrictions were not imposed by any doctor but agreed to by Flahive due to her and employee's concern about his ankle; it is logical to assume that if he and Flahive agreed that he could lift fifty pounds for the furniture position that he could also lift a fifteen pound printer. Even if employee were exceeding the agreed restrictions he was still performing a work duty on employer's behalf during working hours and such did not rise to a level of misconduct or deviation from employment that would otherwise disqualify him from benefits.

31. Nor has E/C established that employee violated section 440.105, Fla. Stat. thereby barring his claims pursuant to section 440.09, Fla. Stat. E/C contends employee failed to provide full information to the employer, carrier, counsel, or physicians, and/or otherwise misrepresented or provided inaccurate information. Regarding the restrictions given to employee by Flahive, there is no medical evidence that employee had any injury to his ankle nor was there any notation by any medical provider that he used a cane. Thereafter employee professed ability to lift fifty pounds, therefore I find that whatever may have been affecting his ankle was not significant enough to list as an injury. Employee did disclose his prior back problems and diverticulitis at the ER, to Dr. Askins (even if he did not recall in deposition, his records reflect disclosure by employee), and during his deposition. I find that any inconsistencies among the records and employee's testimony are insignificant and not intentionally made.

32. Although apparently employer had concerns about employee's accident, both Lynch and Flahive had nothing to substantiate that an accident did not occur; Lynch believed employee was in pain and both said they did not believe the accident was staged. Accordingly, I accept employee's testimony that his accident occurred at work as he described and find that the accident arose out of and in the course and scope of his employment at OfficeMax. Dr. Askins' unrebutted medical testimony establishes that

the accident is the major contributing cause of employee's injury and need for treatment, and does not support E/C's defense that the major contributing cause of any disability or need for treatment is preexisting or an intervening or subsequent accident or injury. Although Dr. Askins did not specifically address work restrictions, he did testify that the treatment received at Sarasota Memorial Hospital (which included off work instructions) was reasonable and medically necessary.

33. Additionally, even if Dr. Askins had testified that employee would have no restrictions, employee was given off work slips at the ER and he testified that he had not worked since the accident because his doctors told him not to work. Accordingly, because he did not have notice that he was released to return to work (and no doctor released him to return to work), employee would be entitled to TTD benefits. *See, Lucas v. ADT Security, Inc.*, 2011 Fla. App. Lexis 11454 (Case No. 1D10-2094 Fla. 1st DCA July 22, 2011). Therefore, E/C should pay claimant TTD benefits from the date of accident until the last week of December 2010, along with penalties and interest for untimely payment.

34. In this case, employee began receiving unemployment compensation benefits the last week of December 2010, and section 440.15(10)(a), Fla. Stat. provides that no compensation benefits shall be payable for TTD for any week in which the injured employee has received unemployment compensation benefits. Employee testified that he and his fiancé could not make ends meet, therefore I do not find it inconsistent that he testified both that he had not worked because he was told not to work by his doctor but that he applied for and obtained unemployment compensation benefits (which require that a person must be able to work and look for work), particularly as his workers' compensation benefits were denied.

35. The only way to reconcile the case law requiring that an employee is eligible for TTD if he does not and should not know that he is released to return to work with the provision providing that TTD is not payable during periods when unemployment compensation benefits are paid, is to conclude that an employee who would otherwise be eligible for TTD is eligible for TPD upon receipt of

unemployment compensation benefits, with the unemployment compensation benefits primary and an offset to the TPD paid per section 440.15(10)(b), Fla. Stat. Therefore E/C should pay claimant TPD benefits from the last week of December 2010 to his death on March 5, 2011, with an offset for unemployment compensation benefits paid, and with penalties and interest for untimely payment.

36. Counsel for claimant is entitled to an attorney's fee and taxable costs related to the benefits secured herein at E/C expense pursuant to section 440.34(3)(b) and (c), Fla. Stat. (2010) and jurisdiction should be retained to address the amount.

WHEREFORE, based upon the forgoing, it is **ORDERED AND ADJUDGED:**

A. Employee's August 14, 2010 accident and injury are compensable and the claims are not barred pursuant to section 440.09, Fla. Stat. for violation of section 440.105, Fla. Stat.

B. E/C shall pay claimant TTD benefits with penalties and interest from the date of accident to the last week of December 2010 when employee began receiving unemployment compensation benefits.

C. E/C shall pay claimant TPD benefits with an offset for unemployment compensation benefits paid along with penalties and interest from the last week of December 2010 until March 5, 2011.

D. E/C shall pay claimant's counsel an attorney's fee and taxable costs related to the benefits secured and jurisdiction is retained to address the amount.

E. Counsel shall provide copies of this Order to their clients.

DONE AND ELECTRONICALLY MAILED to the attorneys this 8th day of August, 2011, in Sarasota, Manatee County, Florida.

Diane B. Beck
Judge of Compensation Claims
Division of Administrative Hearings
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Appendix 1: The Parties' Pretrial Stipulations

Contained within the parties' written pretrial stipulations and/or made orally on the record at the final hearing, the parties entered into the following stipulations which I accepted and adopted as findings of fact:

a. The date of accident alleged is August 14, 2010 and Sarasota, Florida is the proper venue.

b. There was an employer/employee relationship on the date of accident, and employer had workers' compensation insurance coverage in effect.

c. E/C did not accept employee's accident and injuries as compensable.

d. The employee gave timely notice of the accident and the parties received timely notice of the final hearing.

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

f. Employee's average weekly wage will be determined administratively.

g. E/C is entitled to an offset for unemployment compensation benefits received by employee if indemnity benefits are awarded.

Appendix 2: Claims and Defenses

Claimant seeks TTD/TPD benefits from the date of accident to March 5, 2011; and penalties, interest, costs, and attorney's fees.

The E/C defends on the basis that: claim has been denied in its entirety; no compensable accident/injury occurred in/arose out of course and scope of employment; no evidence of entitlement to TTD/TPD benefits; the major contributing cause of any disability is preexisting/intervening/subsequent accident, injury, and/or condition and not the alleged August 14, 2010 industrial accident/injury; employee has failed to provide full information to E/C, counsel, physicians and/or has misrepresented or otherwise provided inaccurate information and/or is otherwise not entitled to benefits pursuant to F.S. 440.09, 440.105, and/or other applicable statutory and case law provisions; and no entitlement to penalties, interest, costs, or attorney's fees.

Appendix 3: Evidence and Witness Log

Exhibit 1: Uniform Statewide Pretrial Stipulation as amended at the beginning of trial.

Exhibit 2: Deposition of Jeremy Ortiz, Sr. taken on February 18, 2011; over E/C's objection that he was listed as a live and not deposition witness. *See, Metropolitan Dade County v. Bermudez*, 648 So.2d 197 (Fla. 1st DCA 1994) (fact that a witness listed as a deposition witness for trial came live to the hearing to testify is not a ground to exclude his testimony); section 440.30, Fla. Stat. (2010) (depositions may be taken in connection with workers' compensation proceedings subject to the same rules as in civil actions); and Fla. R. Civ. Pro. 1.330(a)(3)(A)(2011) (the deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds that the witness is dead).

Exhibit 3: Deposition of Vance Askins, M.D. taken on April 20, 2011; E/C's objection to the Sarasota Memorial Hospital records Dr. Askins reviewed was partially sustained and the attached records are included in the record to evaluate Dr. Askins' testimony concerning them but are not separately admissible for the truth asserted or any medical opinions contained therein.

E/C offered the records of Doctors Hospital but they were not received based on claimant's objection that they were obtained in violation of the Rules as claimant had objected to the third party subpoena issued by E/C; that they were from an unauthorized provider; and that they were unauthenticated hearsay.

I took judicial notice of the appropriate pleadings in the court computer file.

Charles W. Myron testified by telephone at the hearing. Ronald Lynch and Janet Flahive appeared and testified at the hearing. Counsel for the parties presented oral argument and submitted written Trial Memoranda.