STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
JUDGE OF COMPENSATION CLAIMS

Daniel Stahl,	**Judge** : Stephen L. Rosen
Employee	**DOAH No.** : 04-022489GCC
vs.	**D/A** :12/8/2003

Hialeah Hospital and
Sedgwick Claims Management,

Employer/Servicing Agent.
_____/

FINAL MERITS ORDER

THIS CAUSE came on before me for entry of an agreed Order determining the merits of the pending claims. This order is a Final and Appealable order resolving all issues ripe for adjudication with the exception of the issues of entitlement to, and amount of, Claimant attorney fees and Costs and E/SA Costs. The parties have agreed to the entry of this order but neither party in so doing waives any right to complain on appeal or cross appeal of legal errors. The parties recognize that the OJCC does not have jurisdiction to enter rulings on the constitutional issues raised.

The Claimant is Daniel Stahl. He has been represented in this matter by attorney Mark L. Zientz, Esq. The Employer/Servicing Agent is Hialeah Hospital (a Tenet owned Hospital) and Sedgwick Claims Management Services, hereinafter E/SA. The E/SA are represented by Vanessa Lipsky, Esq.

The stipulations of the parties and the claims and defenses were contained in a pre-trial order rendered June 7, 2011 which is incorporated herein as if fully set forth. There was one E/SA amendment to the pre trial dated June 10, 201, also incorporated herein, which merely added witnesses and exhibits.

Petitions for benefits (PFB) were served on the E/SA on February 23, 2011 and May 3, 2011. The

February 23, 2011 PFB asked for "Compensation for Disability, partial in nature, from MMI (October 7, 2005)to date along with Penalties, Interest, Costs and Attorney Fees. The May 3, 2011 PFB claimed Permanent Total Disability and Supplemental benefits from October 7, 2005, re-authorization of Dr. Yates and psychiatric care along with Penalties, Interest, Costs and Attorney Fees.

The E/SA defended the claims by asserting, in the pre-trial order that the Claimant had been paid impairment income benefits for a 6% impairment and no factual or legal basis existed, nor does the statute provide any permanent partial disability benefit; the Statute of Limitations has run; the doctrine of res judicata or law of the case bars the claims; that claimant is not PTD and has voluntarily limited his income; that the physical injury is not the Major Contributing Cause (MCC) of the need for Psychiatric treatment and claim for PTD is barred by the doctrine of laches. Penalties, interest costs and attorney fees were also denied.

1- The undersigned Judge of Compensation Claims (JCC) has jurisdiction of the parties and the subject matter but the jurisdiction is limited to benefits available pursuant to chapter 440, Fla. Stat.;

2- The Average Weekly Wage is at least $912.00 per week entitling claimant to have any indemnity benefits awarded at the rate of $608.00 per week, the maximum in effect for this claimant's date of injury;

3- On December 8, 2003 the Claimant, while in the course and scope of his employment with Hialeah Hospital, was required to move a patient without adequate staff to assist and in doing so suffered an injury arising out of his employment to his lower back;

4- The Claimant was authorized by the E/SA to treat first with Dr. Gary Gieske and then with Dr. Basil Yates. Following a period of treatment prescribed by Dr. Yates, the doctor opined that the Claimant had reached MMI on October 6, 2005, that claimant was left with a 6% permanent impairment rating using the Florida Uniform Permanent Impairment Schedule (1996), and that Claimant was restricted to no lifting above 10 lbs. There are no contrary medical opinions on these issues;

5- After reaching MMI the Claimant received from the E/SA the appropriate amount and timely payment

of impairment income benefits (IIB's) for 12 weeks at 75% of his TTD rate. Thereafter no further indemnity benefits have been paid or provided;

6- After the PFB's noted above were filed, the E/SA filed a Motion for Summary Disposition pursuant to Rule 60Q-6.120 requesting that the Claims be denied on the ground that the Statute of Limitations (SOL) had run. In an Amended Order rendered June 23, 2011 the JCC ruled that the SOL had not run. No appeal was taken from this order within the 30 days after its entry, nor was the issue of the SOL order appealed or cross-appealed in later appellate proceedings;

7- The June 23, 2011 Order also disposed of the E/SA motions for Summary Disposition related to the claim for 'permanent partial disability benefits' by finding that this category of benefit is no longer available as a workers' compensation benefit and any argument for said classification of indemnity raises a constitutional issue which is outside the jurisdiction of the OJCC. The JCC also ruled that the result of the claimant's attempt to have his claim adjudicated in the Circuit Court, unsuccessfully, did not bar his workers' compensation claim by *res judicata.* The order of June 23, 2011 is incorporated herein as if fully set forth.

8- The claim for re-authorization of Dr. Yates is **Moot.** The only defense raised by the E/SA to the re-authorization of Dr. Yates was the SOL. Having previously determined the SOL did not run, the Claimant was entitled to return to Dr. Yates, the previously authorized doctor for any post MMI care that is determined to be medically reasonable and necessary and causally related to the industrial injury of December 8, 2003. The E/C have arranged for the Claimant to return to Dr. Yates. Pursuant to s.440.13(14)© Fla. Stat. 2003, the Claimant will be obligated to pay a $10.00 co-pay per visit to Dr. Yates as 'overall' MMI is stipulated by the parties;

9- The claim for permanent partial disability is **Denied.** All indemnity benefits for partial "disability" were removed from chapter 440 effective October 1, 2003. Even s.440.16 (2002) (The Obligation to Rehire) which arguably could have been considered a 'benefit' for partial loss of wage earning capacity, was repealed

eff. October 1, 2003;

10- In light of the fact that the JCC does not have jurisdiction over the constitutional issues, the parties have stipulated and agreed that had this claim been tried, the competent substantial evidence from the testimony of the claimant would have shown that following MMI the claimant was unable to return to work as a nurse due to the lifting restrictions placed upon him. He was unable earn in the same or other employment the wages he was earning at the time of his injury. Prior to obtaining work as a teacher claimant had not been told to perform a good faith work search. When Claimant ultimately became employed as an independent contractor teacher for a Nursing School he suffered a wage loss solely attributable to the permanent effects of his industrial accident, his restrictions and limitations prevent him from even sedentary work for extended periods of time. The evidence shows (up to claimant's engagement as an independent contractor/school teacher), the claimant had a wage earning capacity, was not catastrophically injured and could have obtained sedentary work within 50 miles of his home until he became employed as a nursing school teacher. He had a loss of wage earning capacity up to and including the time he has worked as a teacher. The evidence further proved that the testimony of the owner of the nursing school showed that the Claimant teaches in the morning, is allowed to and does lie down during the lunch break and then resumes teaching in the afternoon.

I find that this teaching arrangement is not 'sheltered employment'. While the nursing school is making a reasonable accommodation, the claimant is still performing the functions of a teacher which job was not created for him but is a real position which would have to be filled by someone if not the claimant. For these reasons the claimant, who does not qualify as a catastrophically injured worker is not entitled to any PTD benefits and same are **Denied.**

11- The Claim for authorization for a psychiatric evaluation and treatment is **Denied.** There is no Competent Substantial Evidence to support the need for such an evaluation nor any recommendation for such

an evaluation from any authorized doctor.

12- The Claimant has prevailed on the issue of the SOL and has obtained re-authorized medical care with Dr. Yates. Nevertheless, the issue of entitlement to an E/SA paid fee to the Claimant's Attorney and the amount thereof is reserved.

13- The Claimant has prevailed on some issues but not all. Nevertheless the issue of entitlement to costs reimbursement and the amount thereof is reserved.

14- There were no indemnity benefits awarded by this order and therefore no penalties or interest can be due. The claim fo penalties and interest is **Denied.**

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

a- The Claim for Permanent Partial Disability Benefits is **DENIED;**

b- The Claim for PTD and Supplemental benefits is **DENIED;**

c- The Claim for a Psychiatric evaluation and treatment is **DENIED;**

d- The Claims for Penalties and Interest are **DENIED;**

e- The Claims for Claimant Attorney Fees and Costs, both entitlement and amount, are **RESERVED.**

DONE AND ORDERED this 23rd Day of June 2014,

and electronically mailed to counsel.

Honorable Stephen L. Rosen
Judge of Compensation Claims

copies to: Vanessa Lipsky, Esq., vlipsky@eraclides.com and Mark L. Zientz, Esq.

mark.zientz@mzlaw.com