

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

Anthony Venero,
Employee/Claimant,

OJCC Case No. 16-010895MAM

vs.

Accident date: 8/4/2014

Citrus County School Board/Florida
School Boards Insurance Trust,
Employer/ Carrier/Servicing Agent.

Judge: Mark A. Massey

FINAL COMPENSATION ORDER

This cause came for hearing before the undersigned Judge of Compensation Claims on 10/17/16. Claimant was present and was represented by David E. Hill, Esquire. E/C was represented by Morgan A. Indek, Esquire. The hearing was held to adjudicate the petitions for benefits filed 05/06/16 and 08/31/16.

CLAIMS

1. Authorization of a doctor to evaluate and provide care for the claimant's injured shoulder/right upper extremity.
2. Authorization of medical care for the right upper extremity including the right bicep.
3. Costs and attorney's fees.

DEFENSES

1. No further treatment is medically necessary.
2. Major contributing cause (withdrawn).
3. No costs or attorney's fees due or owing.

JUDGE'S EXHIBITS

1. Petition for benefits filed 05/06/16 (D-1)
2. Response to petition filed 05/18/16 (D-7)
3. Petition for benefits filed 08/31/16 (D-20)
4. Response to petition filed 09/12/16 (D-28)
5. Pre-Trial Stipulation filed 09/06/16 (without attachments) (D-24)
6. Claimant's Trial Summary, for argument only (D-41)
7. E/C's Hearing Information Sheet, for argument only (D-39)

CLAIMANT'S EXHIBITS

1. Deposition of Dr. Sancetta taken 09/22/16 (D-34)
2. Medical record composite attached to pre-trial stipulation (D-24)

EMPLOYER/CARRIER'S EXHIBITS

1. Deposition of Dr. Nadler taken 9/27/16 (D-37)
2. Deposition of claimant taken 08/29/16 (D-36)
3. Deposition of Shelly Cook taken 09/28/16 (D-40)

FINDINGS OF FACT

Claimant sustained injuries to his right shoulder and right biceps tendon in a compensable work accident on 08/04/14. After a brief period of treatment at an occupational care clinic, he was referred for orthopedic care and treatment. He came under the care of orthopedic surgeon Dr. Michael Riley beginning on 09/05/14.

Following an MRI arthrogram which was consistent with a SLAP lesion and possible longhead of the biceps tendon rupture, Dr. Riley recommended diagnostic arthroscopic surgery with labral repair and possible biceps tenodesis. The surgery was performed on 12/01/14.

According to the operative report, Dr. Riley determined that the shoulder pain was coming from the subacromial space. He therefore performed a subacromial decompression along with debridement of the labral tear and acromioplasty. However, the biceps tenodesis was not performed at that time.

Claimant treated with Dr. Riley post-surgically until 04/09/15, at which time he did not believe the claimant had reached MMI, and gave the claimant a prescription for Naprosyn. (Dr. Riley is now deceased).

Claimant's care was transferred to orthopedic surgeon Dr. Steven Nadler, who evaluated the claimant on 07/21/15. Dr. Nadler is of the opinion that no further treatment is reasonable or medically necessary for either the shoulder or the biceps tendon.

Claimant obtained an independent medical examination with osteopathic physician Dr. Anthony Sancetta. Dr. Sancetta recommended continued conservative care including physical and occupational therapy and pain management, under the supervision of an orthopedist or physiatrist. He also recommended EMG and nerve conduction studies.

ANALYSIS

A claimant bears the burden of proof to prove up all elements of his claim. *Bob Wilson Dodge v Mohammed*, 692 So. 2d 287 (Fla. 1st DCA 1997). A claimant seeking further medical care and treatment must prove that such care is medically necessary. *Amoco Container Co. v Singh*, 418 So. 2d 395 (Fla. 1st DCA 1982). Based on the greater weight of the evidence, I find that claimant has failed to carry his burden of proof in this case.

Dr. Nadler is a board certified orthopedic surgeon who is experienced in treating the types of injuries, and performing the types of surgeries, involved in this case. In assessing the

claimant's shoulder, Dr. Nadler noted that the shoulder had been surgically repaired about eight months prior to the time he saw the claimant, the surgery was appropriate and in fact "excellent," with a good result, and there had been more than enough time for a full recovery. From a purely objective standpoint, Dr. Nadler did not believe any further treatment of the shoulder was medically necessary.

In regard to the biceps tendon, Dr. Nadler acknowledged that the claimant has a torn biceps tendon. However, he did not believe a biceps tenodesis (reattachment of the tendon) was indicated, and is likely not even possible this long post-injury. In addition, Dr. Nadler did not believe the biceps tendon was the cause of the claimant's pain complaints. He noted that Dr. Riley apparently chose not to perform the biceps tenodesis when he did the shoulder surgery, and explained that this is not uncommon. (Interestingly, claimant testified that he had the same problem with his other (left) biceps resulting from an accident several years ago, and it was unable to be repaired surgically, once he was more than a few weeks out from that accident, which also seems to be the case here).

Claimant's IME, Dr. Sancetta, is an osteopathic physician with a focus on "musculoskeletal medicine," which he described as working with bones, ligaments, tendons and muscles all throughout the body. Dr. Sancetta admits that he is "not an orthopedic surgeon," and he does not have much experience dealing with the type of biceps tendon injury involved here, nor does he perform the type of biceps tendon surgery involved here. In fact, he recommended that it be evaluated by an orthopedic surgeon (in addition to the two previous authorized orthopedic surgeons).

In regard to the shoulder, Dr. Sancetta believed that claimant has a residual subacromial

impingement which had not been alleviated completely by the arthroscopic surgery, causing ongoing pain and functional limitations, and requiring additional treatment. However, Dr. Sancetta's opinions are largely unsupported by objective findings, and his rationale for the specific treatment he recommended is not clear from the record.

I accept the opinion of Dr. Nadler that no further treatment is medically necessary for the shoulder. I find that Dr. Nadler, as an orthopedic surgeon, is better qualified to address this issue than Dr. Sancetta, an osteopathic physician and non-surgeon. Further, Dr. Nadler's opinion is more persuasive than that of Dr. Sancetta because it is based on objective findings (or the lack thereof) rather than subjective complaints. Dr. Nadler acknowledged that the shoulder, and specifically the subacromial space, is most likely the source of claimant's reported pain (although he felt the complaints were somewhat out of proportion), but to the extent that one would normally expect some residual pain following this type of shoulder procedure, the surgery has already been done so there is really nothing else that can be done for it. (Dr. Nadler deposition p.9) I find this to be more logical and persuasive than Dr. Sancetta's recommendation for therapy and other treatment, which did not seem to have a clear goal or a clear basis from an objective standpoint.

I also accept Dr. Nadler's opinion that no further treatment is medically necessary for the biceps tendon. First, Dr. Nadler did not believe the biceps tendon was the source of claimant's pain, which he says is typical of this type of injury (Nadler deposition p.8); even Dr. Sancetta acknowledged that this is often the case (Sancetta deposition p.16). To the extent that Dr. Sancetta felt that was not the case here – that the biceps tendon is a source of pain – I find that such opinion is speculative and not supported by objective findings; and further, I accept the

opinion of Dr. Nadler over that of Dr. Sancetta based on Dr. Nadler's qualifications and experience with this type of injury. Second, Dr. Nadler did not believe it was even possible to repair the biceps tendon at this point in time. I find Dr. Nadler's explanation of the reasons for this to be detailed, clear and logical (Dr. Nadler deposition p.7-8). Even Dr. Sancetta acknowledged that it would be unusual for this much time to have passed before performance of a biceps tenodesis, if it was going to be performed at all (Sancetta deposition p.17-18). And there was obviously *some* reason Dr. Riley chose not to perform it, although the exact reason may be a matter of some speculation or disagreement. Finally, the inability to surgically repair the tendon after this much time is consistent with claimant's previous experience with the same type of injury.

In sum, I accept the testimony of Dr. Nadler over that of Dr. Sancetta to the extent they differ, and find that the greater weight of the medical evidence and testimony is that no further treatment is medically necessary. As a result, I find that claimant has not carried his burden of proof. *Echevarria v Luxor Investments*, 159 So. 3d 991 (Fla. 1st DCA 2015). (It should be noted that I found the claimant, Mr. Venero, to be an honest and credible individual, and I do not doubt that his complaints of pain and desire for further care are legitimate. However, I must base my decision on the medical evidence and testimony).

Among other arguments raised by claimant's counsel, is the argument that, because the claimant's injury is permanent, E/C are obligated to provide ongoing medical care for same, citing *Homler v Family Auto Mart*, 914 So. 2d 1071 (Fla. 1st DCA 2005). Dr. Nadler believed the claimant was at MMI with no permanent impairment; Dr. Sancetta believed he is not yet at MMI, because he needs further treatment, but that the injuries are permanent by their nature. I

make no finding as to MMI or PIR, as those issues are not before me. But even assuming claimant has (or will have) a permanent impairment, that in itself does not automatically entitle him to further medical care, without some further showing that such care is reasonable and medically necessary. See *Echevarria v Luxor Investments*, supra, citing *Smith v James Pirtle Constr.*, 405 So. 2d 290 (Fla. 1st DCA 1981), and distinguishing *Homler v Family Auto Mart* because in *Homler* there had been such a showing.

WHEREFORE it is hereby ORDERED AND ADJUDGED:

1. The claims for ongoing medical care and treatment for the right shoulder and right upper extremity are denied.
2. The claims for costs and attorney's fees are denied.

DONE AND SERVED this 31st day of October, 2016, in Tampa, Hillsborough County, Florida.



A blue ink handwritten signature of Mark A. Massey, which is a stylized, wavy line.

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