STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FT. LAUDERDALE DISTRICT OFFICE

Louis M. Nettina, Employee/Claimant,	)	
vs.	)	OJCC Case No. 09-009843GBH
City of Pembroke Pines (Fire Department), Employer,	)	Accident date: 11/14/2007
and	)	
Gallagher Bassett Services, Inc., Carrier/Servicing Agent.	)	

FINAL COMPENSATION ORDER

After due and proper notice to the parties, the above entitled cause came before the undersigned Judge of Compensation Claims on October 21, 2009. This order resolves the Petition for Benefits filed with DOAH on April 14, 2009.

A. Stipulations:

The parties stipulated to the following:
1. The undersigned has jurisdiction over the parties and subject matter.
2. That venue of the claim is in Broward County.
3. There was an employer/employee relationship on the date of accident.
4. Workers' compensation insurance coverage was in effect on the date of accident.

B. Claims and Defenses:
1. Pursuant to the Pretrial Stipulation claims were made for the following benefits:

    a. Authorization for evaluation, treatment and payment with a board certified cardiologist to treat Claimant's 112.18 hypertension condition;
    b. Authorization for provision and payment of an advance pursuant to F.S. 440.20(12)(c).
    c. Claimant requested an advance from the employer/carrier in the sum of $500.00. The Claimant has suffered a physical impairment, actual or apparent as a result of the work related accident and injuries. As a result of this accident, the claimant has suffered F.S.

112.18 hypertensive injury. The claimant has further suffered a physical impairment as a result of the injuries sustained in this accident. In Workers of Florida v. Williams, 743 So. 2d 609, 610 (Fla. 1st DCA 1999) the court opined that from the plain reading of F.S. 440.20 (12)(c)an advance is just and proper simply upon the claimant's showing that he has suffered either a substantial loss of earning capacity or a physical impairment. There is no consideration that is to be given to any potential prejudice the employer/carrier may suffer as a result of said advance.

d. Claimant claims costs of $12.00 for certified mail of this petition for benefits. Additionally, claimant claims payment of attorney's fees and costs for proving entitlement to fees and costs incurred with filing this petition. Furthermore, claimant claims all costs associated with this claim pursuant to Florida Statutes 440.34 and 57.104, along with all other applicable law, along with fees and costs for proving entitlement to same.

e. Interest and Penalties on unpaid benefits.

f. Costs and attorney's fees from E/C under Section 440.34(3)(a)-(d), Florida Statutes.

2. Pursuant to the Pretrial Stipulation the Employer/Servicing Agent asserted the following defenses:

a. There is no competent substantial evidence to support the foregoing claim/petition for medical only benefits. The Employer/Servicing Agent asserts the presumption of Section 112.18 F.S is no longer applicable since the Claimant's hypertension condition is not resulting in any type of disability and/or disablement. The Claimant has reached maximum medical improvement and has remained gainfully employed with the City of Pembroke Pines without any lost time and/or disablement.

b. The Claimant is not presently disabled as a result of his hypertension condition. The episode/event of 11/14/2007 is no longer the major contributing cause of the Claimant's condition for which treatment is sought.

c. The Employer/Servicing Agent asserts that the application of Section 440.09, F.S. and that the claimant's accident of November 14, 2007is no longer the major contributing cause of the Claimant's condition for which treatment is sought since the Claimant's hypertension and/or cardiac condition is not resulting in a disablement or disability.

d. The Employer/Servicing Agent's failure to deny compensability within 120 days waives only the right to contest an injury "arose out of, and occurred within the course of the Claimant's employment." The Employer/Servicing Agent who does not deny

compensability within 120 days has not waived anything beyond the ability to contest the presumption injury was in the line of duty.

e. In this instant case, the Employer/Servicing Agent is asserting multiple defenses, including the assertion that the statutory presumption provision of Section 112.18 F.S is no longer applicable or viable in light of the fact that the Claimant's hypertension and/or heart condition is not presently disabling and/or causing any type of disablement to the claimant since he has been able to return back to work without restrictions in his pre-accident employment. The claimant's presumed compensable condition involving high blood pressure and/or heart condition is no longer a major contributing cause of which treatment is sought in light of contention that the high blood pressure and/or heart condition of the claimant is not causing disability and therefore the presumption at this time does not apply. In the alternative, the Employer/Servicing Agent is asserting that the claimant's need for any type of medical/health care involving his hypertension and/or heart condition is due to personal matters and/or conditions, including but not limited to, his low back and/or shoulder conditions. Alternatively, the claimant's need for treatment is due to also non compensable factors, reasons and/or causes such as congenital and/or family historical matters, etc.

f. The Employer/Servicing Agent objects to the presentation of any medical evidence and/or testimony that violates Section 440.13, F.S. (Specifically, all medical/health care testimony and/or evidence needs to be from an authorized health care provider, parties' IME physician, and/or expert medical advisor appointed by the Judge of Compensation Claims and/or the Division of Administrative hearings). Alternatively, the claimant's hypertension and/or cardiac condition is idiopathic in nature.

g. There is no competent substantial evidence that the advancement provision of Chapter 440.20 is applicable in this instant case. The claimant has returned to same or equivalent employment with no substantial reduction in wages and has not suffered a substantial loss of earning capacity and/or a physical impairment; actual or apparent. Additionally, the Employer would have no means and/or avenue in which to be reimbursed any type of advanced payment of compensation in light of the fact that the claimant at the present time is receiving his full wages since he has returned to full time gainful employment. (The Claimant does not have any functional restrictions and/or limitations.)

h. There is no competent substantial evidence to support the [claim] for penalties, interest, costs and/or attorney's fees and the Employer/Servicing Agent denies responsibility for same.

C. **Documentary Evidence:** The following documentary matters were offered into evidence as exhibits by Claimant (C) and the Employer/Servicing Agent (E/SA).

Exhibit #

1. Pretrial Stipulation (Judge)
2. Employee/Claimant's First Amendment to Pretrial Stipulation Exhibit list (C)
3. Petition for Benefits (C)
4. Response to Petition for Benefits – Prepared on 4/17/2009 (C)
5. Response to Petition for Benefits – Filed with DOAH on 4/21/2009 (C)
6. First Report of Injury (C)
7. First Report of Injury (C)
8. Notice of Denial (C)
9. Senate Bill 847 - Identification (C)
10. Senate Bill 702 (C)
11. Substantive Analysis (excerpt from Exhibit 10) (C)
12. Deposition Transcript of Theodosha King – with attachments (C)
13. Claimant's Trial Memorandum – Identification (C)
14. Deposition Transcript of Louis Nettina – with attachments (E/SA)
15. Deposition Transcript of Dennis M. Spiller, D.O. – with attachments (E/SA)
16. Employer/Servicing Agent's Trial Memorandum – Identification (E/SA)

D. Findings of Fact and Conclusions of Law:

While I have not detailed a complete resume of all the facts and evidence presented before me, I have carefully considered it in making my findings of fact and conclusions of law, resolving all conflicts where they may exist. I have carefully evaluated the medical records and the deposition testimony submitted. Upon consideration of the evidence presented, the argument of counsel and the stipulations of the parties all of which I have carefully reviewed, the undersigned finds as follows:

FACTS

1. On November 14, 2007 Claimant was diagnosed with hypertension during a physical examination. Claimant signed the First Report of Injury on November 19, 2007. The adjuster prepared a Notice of Denial on July 28, 2008. Reasons for the denial included the assertion that no application of Florida Statutes Section 112.18 was applicable; no period of disablement/disability.

2. **Louis Nettina**: The deposition of the Claimant, Louis Nettina, was taken on June 12, 2009. He testified that he was hired to work for the City of Pembroke Pines by the fire department in August of 1985. He underwent a physical examination. According to his testimony he passed the physical and was not advised of any problems. He was initially hired by the fire department to work as an uncertified firefighter. After completing his training at the Fire

Academy he became a certified firefighter. At the time of his deposition he was a battalion chief.

3. The Claimant testified that on November 14, 2007 he went to his private physician, Gregory Baraniak, for a regular checkup and at that point he was diagnosed with hypertension. He also stated that he saw Dr. Baraniak for shoulder problems, back problems and high cholesterol. The doctor prescribed medication for hypertension and after leaving the doctor's office the Claimant called his supervisor to advise him of the situation. At the time of his deposition the Claimant's personal physician was Dr. Talati. He stated that this physician was treating him for hypertension and high cholesterol.

4. The Claimant testified that since his diagnosis with hypertension he has remained gainfully employed with the City of Pembroke Pines as a firefighter. He had not missed any time from work since the hypertension diagnosis. According to his testimony he was always able to essentially perform his duties and responsibilities as a firefighter since November 14, 2007 without any restrictions. He recalled seeing Dr. Spiller twice. Dr. Baraniak, Dr. Talati and Dr. Spiller were the only doctors who evaluated and treated him for hypertension. None of the doctors restricted him from performing his duties as a firefighter.

5. Claimant testified that he paid for his first prescription for hypertension. Then, workers' compensation paid for the medicine from January of 2008 until July of 2008. He testified that from July 2008 to present, he pays the deductable for his medications and his health insurance provider pays a portion of the medication cost. Initially he testified that he did not know the amount of his copayments because he paid for other medications in addition to the medication for hypertension. He later stated that his copayments for medications were $10.00 per prescription. He testified that his medication for high cholesterol was never covered by workers' compensation. According to his testimony he only took one medication for hypertension and his health insurance copayment was $10.00.

6. There came a point in time when he was notified by Gallagher Bassett that workers' compensation would no longer pay for medications prescribed by Dr. Spiller. He was notified by the pharmacy and he subsequently called Gallagher Bassett and spoke with Theo King.

7. Claimant testified that he could continue to see Dr. Spiller through his health insurance [provider] if he chooses to do so. He would have to pay a copayment.

8. **Theodosha King**: The deposition of Theodosha King was taken on September 24, 2009. She was the adjuster currently assigned to handle the claim regarding Louis Nettina. The claim was previously handled by two prior adjusters. Ms. King began handling the claim on June 5, 2008.

9. According to the adjuster's testimony the initial adjuster assigned to handle the claim authorized medical treatment with Dr. Dennis Spiller. Authorization was pursuant to Florida's Heart Bill. The adjuster never issued a 120 day letter. Claimant's first appointment with Dr. Spiller was November 26, 2007 and the second, May 27, 2008. The Claimant treated with Dr. Spiller for two dates of service. Dr. Spiller placed Claimant at maximum medical improvement (MMI) on November 26, 2007.

10. Early in her deposition testimony the adjuster testified that she did not perform any investigation before she denied this claim. Subsequently she testified that she requested the narrative medicals from the doctor in order to review them to determine if there were any restrictions placed upon the employee and to confirm that he remained at MMI and to determine the etiology of his high blood pressure.

11. The adjuster testified that she denied the claim because there was no disablement involved. According to her testimony, the denial was not due to any newly discovered evidence. When Gallagher Bassett received the Notice of Injury on November 20, 2007 the servicing agent knew that the Claimant did not suffer a disability as a result of the hypertension diagnosis. Notwithstanding the lack of any disability, the servicing agent authorized a cardiologist to treat the Claimant pursuant to Florida's Heart Bill. Ms. King testified that she did not know why the claim was accepted as compensable, and that information was not contained in the file. She agreed that a claim was made and benefits were authorized.

12. An entry in the log notes dated 11/20/2007 indicated that the servicing agent contacted Chief Gilmartin and was advised that the Claimant had not returned to work but Chief Gilmartin believed he was able to return. This entry noted that the Claimant was having his physical with his primary doctor and was diagnosed with hypertension. The entry further noted that the Claimant was not in the course and scope of employment, but stated that the accident will be accepted as compensable under the "Heart and Lung Law".

13. The log notes also noted that the Claimant went to the cardiologist on 11/26/2007. He was able to work regular duties with no restrictions. The adjuster also spoke with Claimant's boss, who advised that the Claimant did not miss any time from work because he works every third day and also had a vacation day.

14. A letter from Dr. Gregory P. Baraniak, M.D., Claimant's family physician, was included with the adjuster' file. This correspondence was dated November 20, 2007 and addressed to "To Whom It May Concern". The letter advised that the Claimant was seen by this physician on November 14, 2007, diagnosed with hypertension and prescribed medication for this condition. Dr. Baraniak advised that in his opinion the Claimant could work under normal circumstances at full-duty level. A DWC-25 and a letter to the Claimant dated February 8, 2008 both included in the adjuster's file and attached to the transcript of her deposition,

indicated that the Claimant was placed at MMI on November 26, 2007with a 0% permanent impairment rating. The letter to the Claimant advised that he was required to pay $10.00 for each visit to his doctor.

15. According to the payout ledger the servicing agent paid $746.17 in medical benefits. This included payments to the treating physician and prescriptions.

16. **Dennis M. Spiller, D.O.**: The deposition of Dr. Spiller was taken on October 20, 2009. He testified that he is a cardiologist licensed to practice medicine in the State of Florida. According to his testimony he evaluated the Claimant on November 26, 2007 and again on May 28, 2008. His diagnosis included hypertension and hyperlipidemia with stable cardiac status. Dr. Spiller testified that the Claimant had no restrictions on November 26, 2007 and from a cardiac standpoint the Claimant was fit for full duty. He further testified that on November 26, 2007 the Claimant was at MMI with no impairment rating. There was no indication that he provided treatment during the May 28, 2008 visit. His report noted that the Claimant should continue the current medication and no changes were indicated. He noted that he would see the Claimant back in six months.

17. When asked how he determined that the Claimant was at MMI, Dr. Spiller explained that he considered it a major ordeal for the Claimant's blood pressure to be up on a one-time visit. He further stated that the Claimant showed him blood pressure readings that he had been getting at home and they were all normal. He further testified that the Claimant had one isolated elevated reading. According to his testimony one isolated elevated reading did not mean the Claimant had totally uncontrolled hypertension.

18. Dr. Spiller opined that most likely the Claimant had essential hypertension. He further stated that the cause is not clear, but there may be factors that increased his risk, such as family history. He stated that both of the Claimant's parents were diagnosed with hypertension and that would be a risk factor.

19. Dr. Spiller believed he was first authorized to see the Claimant on November 26, 2007. He was only authorized to treat the hypertension. He was not authorized to treat the Claimant for his [high] cholesterol. He further testified that he did not prescribe medications for the Claimant's hypertension because he was already taking a medication for this condition. According to his testimony he only provided an evaluation or consultation on November 26, 2007. The May 28, 2008 report noted that Dr. Spiller would see the Claimant back in six months. However, he testified the he believed the Claimant would get back with his own primary physician for fine-tuning of his blood pressure.

APPLICATION OF LAW

20. **Disability**: Sec. 112. 18 (1) states in part that, "Any condition or impairment of health of any ... fire control district firefighter or any law enforcement officer or correctional officer as defined in s. 943.10(1), (2), or (3) caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer shall have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition...."

21. Disability means incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury. Sec. 440.02(13) Fla. Stat. (2007).

22. It was undisputed that Claimant was diagnosed with hypertension. It was also undisputed that the condition never resulted in disability. The Claimant testified that since his diagnosis with hypertension he has remained gainfully employed with the City of Pembroke Pines as a firefighter. He did not miss any time from work as a result of the hypertension diagnosis. According to his testimony he was always able to essentially perform his duties and responsibilities as a firefighter since November 14, 2007 without any restrictions.

23. Additionally, a correspondence from Dr. Baraniak, Claimant's private physician, noted that the Claimant was seen by this physician on November 14, 2007, diagnosed with hypertension and prescribed medication for this condition. Dr. Baraniak advised that in his opinion the Claimant could work under normal circumstances at full-duty level.

24. Dr. Spiller also testified that the Claimant had no restrictions on November 26, 2007 and from a cardiac standpoint the Claimant was fit for full duty. He further testified that on November 26, 2007 the Claimant was at MMI with no impairment rating.

25. According to the evidence presented at trial the Claimant was never disabled as a result of hypertension. Therefore, he was not entitled to workers' compensation benefits pursuant to sec. 112. 18 (1) Fla. Stat. (2007).

26. **Whether E/SA waived their right to deny authorization for evaluation, treatment and payment with a board certified cardiologist to treat Claimant's 112.18 hypertension condition**: Claimant asserted that the Employer waived its right to deny compensability of hypertension. The E/SA agreed that they provided medical benefits in excess of 120 days. However, they asserted that failure to deny compensability within 120 days waives only the

right to contest an injury arose out of, and occurred within the course of the Claimant's employment.

27. A distinction exists between the concept of compensability and a worker's entitlement to either compensation or benefits. City of Ocoee and PGCS v. Trimble, 929 So. 2d 687, 689 (Fla. 1st DCA 2006). An E/C who pays compensation or intentionally provides benefits, but fails to deny compensability within 120 days waives its right to contest an injury arose out of, and occurred within the course and scope of, the claimant's employment. Id. (citing North River, Ins. Co. v. Wuelling, 683 So. 2d 190 (Fla. 1st DCA 1996)). Issues concerning the worker's entitlement to benefits remain subject to challenge, including the extent of the compensable injury and the causal relationship between the compensable injury and the condition for which the worker seeks benefits. Id. at 690 (citing Checkers Rest. & Speciality Risk Servs., Inc. v. Wiethoff, 925 So. 2d 348, 349 (Fla. 1st DCA 2006)).

28. Claimant specifically requested authorization for evaluation, treatment and payment with a board certified cardiologist. The evidence presented at trial did not support the claim for an evaluation and treatment with a cardiologist. Dr. Spiller, a cardiologist, testified that he did not prescribe medications for the Claimant's hypertension because he was already taking a medication for this condition. According to his testimony he only provided an evaluation or consultation on November 26, 2007. Although he noted in the May 28, 2008 report that he would see the Claimant in six months, he testified that he believed the Claimant would get back with his own primary physician for fine-tuning of his blood pressure. Dr. Spiller did not address whether continued evaluations and treatment with a board certified cardiologist were medically necessary as a result of the hypertension diagnosis.

29. **Advance**: Sec. 440.20 (12)(c) Fla. Stat. (2007) states in part that in the event the claimant has not returned to the same or equivalent employment with no substantial reduction in wages or has suffered a substantial loss of earning capacity or a physical impairment, actual or apparent an advance payment of compensation not in excess of $2,000 may be ordered by any judge of compensation claims after giving the interested parties an opportunity for a hearing and after giving due consideration to the interests of the person entitled thereto. According to the evidence presented at trial the Claimant returned to work full duty following the diagnosis of hypertension. He did not suffer a substantial loss of earning capacity or physical impairment actual or apparent. Thus, he is not entitled to an advance.

CONCLUSION

30. Claimant was not entitled to workers' compensation benefits pursuant to sec. 112. 18 (1) Fla. Stat. (2007) because his hypertensive condition did not result in any disability. Although the E/SA failed to timely deny compensability, entitlement to benefits remains subject to challenge. There was no evidence that an evaluation and treatment with a cardiologist were

medically necessary. Finally, the Claimant did not suffer a substantial loss of earning capacity or physical impairment, actual or apparent. Therefore, he is not entitled to an advance pursuant to sec. 440.20 (12)(c) Fla. Stat. (2007).

WHEREFORE, IT IS ORDERED and ADJUDGED that:

1. The claim for authorization for evaluation, treatment and payment with a board certified cardiologist to treat Claimant's 112.18 hypertension condition is DENIED.

2. The claim for authorization for provision and payment of an advance pursuant to F.S. 440.20(12)(c) is DENIED.

3. The claim for an advance from the employer/carrier in the sum of $500.00 is DENIED.

4. The claims for interest and penalties on unpaid benefits are DENIED.

5. The claims for costs and attorney's fees are DENIED.

6. Any objections not ruled upon are deemed overruled.

7. Any issues not addressed herein are deemed denied.

DONE AND ORDERED this 24th day of November, 2009, in Lauderdale Lakes, Broward County, Florida.

Geraldine Hogan

Geraldine B. Hogan
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished this 24 day

of November, 2009 by electronic transmission to the parties' counsel of record and by U.S. Mail to the parties.

Assistant to the Judge of Compensation Claims

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