

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

---

James Puterbaugh,

Claimant,

vs.

OJCC CASE NO:02-004611 WJC

JUDGE: W. James Condry

D/A: December 13, 2001

Reedy Creek Improvement  
District/Unisource Administrators, Inc.,

Employer/Servicing Agent.

---

**ORDER ON IMPAIRMENT BENEFITS**

---

**AFTER PROPER NOTICE** to all of the Parties, a Hearing was held on this claim in Orlando, Orange County, Florida, on Wednesday, February 6, 2008, at 1:30 p.m., before the undersigned Judge of Compensation Claims. Present at the trial were the Claimant, James Puterbaugh, and his attorney, Paul A. Kelley, Esquire. Appearing on behalf of the Employer/Carrier was their attorney, Rex A. Hurley, Esquire, and the Employer representative, Dana Keller. No live testimony was presented before the undersigned on the date of the trial. However, legal arguments were presented by counsel for the respective Parties.

Following close of evidence and legal arguments, the undersigned announced his decision in favor of the Claimant, on the Record, and requested Counsel for the Claimant to

prepare and provide a Proposed Final Order to this Court within seven (7) days. Thereafter, Counsel for the Employer/Carrier was invited to submit comments and/or objections in response to the Claimant's Proposed Order. The undersigned has reviewed and considered the proposed order as offered by Claimant's Counsel as well as Defense Counsel's comments. The undersigned finds in favor of the Claimant, all as more particularly set forth below.

**The Claimant sought the following BENEFITS:**

1. Payment of impairment benefits based on the 10% rating assigned by Dr. Patrick Mathias; and
2. Penalties, interest, costs and attorney's fees based on Florida Statute §440.34.

**The Employer/Carrier DEFENDED on the following grounds:**

1. The Employer/Carrier properly paid the 5% rating assigned by Dr. Kakkar; and
2. No penalties, interest, costs or attorney's fees are due.

**At the time of trial, the following EXHIBITS were admitted into evidence:**

JCC's Exhibit #1: The Pretrial Stipulation and Order as approved by this Court on February 13, 2006;

JCC's Composite Exhibit #2: The Claimant's Trial Memorandum dated January 30, 2008, along with two supporting cases; and the Employer/Carrier's Hearing Information Sheet dated February 4, 2008; and

JCC's Exhibit #3: The Deposition of Dr. Chakravarthy Raghaven, this Court's Expert Medical Advisor, as taken August 27, 2007, together with attachments;

Employer/Carrier's Exhibit #1: The Deposition of Dr. Michael A. Nocero, Jr., as taken January 21, 2008, together with attachments; and

Employer/Carrier's Exhibit #2: The Deposition of Dr. Sunil Kakkar, as taken May 31, 2006, with no attachments.

At the time of the trial, the following EXHIBITS were PROFFERED:

Claimant's Proffer #1: The Curriculum Vitae of Patrick F. Mathias, MD., FACC, FCCP, FACA.

The Parties STIPULATED to the following:

1. The Judge of Compensation Claims has jurisdiction over the Parties and the subject matter, and venue is proper in Orlando, Orange County;
2. There was an employer/employee relationship on the date of accident, December 13, 2001;
3. There was workers' compensation insurance in effect on the date of accident;
4. The accident or occupational disease, and the injuries or conditions (essential hypertension) were accepted as compensable;
5. There was timely notice of the pretrial conference and the trial/final hearing;
6. The Average Weekly Wage and Compensation Rate were \$1,183.40, and \$571.00 (maximum for 2001), respectively; and
7. Dr. Sunil Kakkar was authorized to provide treatment for the essential hypertension.

No witnesses testified live before me at trial.

In making my Findings of Fact and Conclusions of Law in this claim, I have carefully considered and weighed all of the testimony and evidence presented to me, including all deposition testimony, as well as exhibits, and have resolved any and all conflicts therein. In this case, the opinions of this Court's Expert Medical Advisor, Dr. Chakravarthy Raghaven, and those of Dr. Patrick F. Mathias, Dr. Michael A. Nocero, Jr., and Dr. Sunil Kakkar, agreed in many areas, but likewise differed on some points. To the extent that the opinions were consistent, I accept that testimony from each physician. However, wherever the testimony may be in conflict, except as otherwise stated herein, I accept the testimony and opinions of Dr. Chakravarthy Raghaven, over those of any other physician, and as being more consistent with logic and reason when viewed in light of the totality of the medical evidence and facts of this claim. I also note that, pursuant to Florida Statute §440.13(9)(c), the "opinion of the expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims". In arriving at the Findings of Fact and Conclusions of Law, I have further rejected all of the evidence and inferences which may be inconsistent with these findings and conclusions.

After having carefully considered the deposition evidence, and arguments presented at trial, as well as all of the medical evidence, the statutes, the Claimant's Trial Memorandum and applicable case law, the Employer/Carrier's Hearing Information Sheet, and the closing arguments of counsel, the undersigned Judge of Compensation Claims makes the following determinations:

1. In my determination herein, I have attempted to distill the testimony and salient facts together with the findings and conclusions necessary to the resolution of this matter. I have not necessarily attempted to completely summarize the substance of any deposition witness, nor have I attempted to state non-essential facts. Because I have not done so should not be construed that I have failed to consider all of the evidence.

2. The undersigned Judge of Compensation Claims has jurisdiction over the Parties and the subject matter of this claim.

3. The stipulations and agreements of the Parties are either set forth in the Pretrial Stipulation filed herein or as announced on the record are accepted and adopted by this Court.

4. The Claimant, James Puterbaugh, is a 53 year old male who has been employed as a firefighter/paramedic for Reedy Creek Fires Services for 28 years. The Claimant developed essential hypertension, which temporarily disabled him on December 13, 2001. The Employer/Carrier accepted compensability of the Claimant's essential hypertensive condition and authorized Dr. Sunil Kakkar to be the Claimant's treating cardiologist for the December 13, 2001 date of accident.

Dr. Kakkar began treating the Claimant on January 16, 2002, and ultimately assigned a 5% permanent impairment rating, based on a December 4, 2002 date of maximum medical improvement.

The Claimant obtained an independent medical examination by Dr. Patrick Mathias on March 27, 2003. Dr. Mathias assigned a 10% impairment rating for the Claimant's

hypertensive condition. At the time of the presentation, the Claimant complained of lack of energy, feeling tired, with heavy and blurry vision whenever his blood pressure is elevated.

Based on the conflict between the medical experts regarding the impairment rating, cardiologist, Dr. Chakravathy Raghavan, was appointed as this Court's Expert Medical Advisor, pursuant to Florida Statutes §440.13(9). Dr. Raghavan evaluated the Claimant on October 23, 2006, and assigned a 10% permanent impairment rating for the Claimant's essential hypertensive condition.

Subsequently, the Employer/Carrier obtained an independent medical examination with Dr. Michael Nocero, Jr., cardiologist, in December 2007. He was asked to address the proper impairment rating. Dr. Nocero did not see or examine the Claimant, but based his opinions on review of the medical records regarding the tests and treatment provided to the Claimant. On January 21, 2008, Dr. Nocero testified in deposition that the Claimant had essential hypertension, and opined an impairment rating of 5% would be appropriate.

Impairment benefits were paid by the Employer/Carrier based on the 5% impairment rating assigned by Dr. Kakkar. Despite the written opinion of Dr. Raghavan, the Expert Medical Advisor, the Employer/Carrier refused to pay the additional 5% impairment rating. Accordingly, the Claimant filed a Petition for Benefits on November 3, 2005, requesting payment of the additional 5% impairment rating.

5. The primary issue for consideration before this Court was the appropriate permanent impairment rating to be assigned for the Claimant's compensable essential

hypertensive condition. In this claim, two physicians opined the Claimant's appropriate rating should be 5%, and two opined the correct impairment rating should be 10%.

6. Although case law allows the Court to give greater weight to the opinion of the treating physician, the undersigned finds there is no sufficient basis in this claim to do so. Although Dr. Sunil Kakkar, the authorized treating physician, had the most contact with the Claimant, I find it did not provide him with any additional advantage in determining an appropriate impairment rating.

7. In review of the medical records attached to the deposition of Dr. Michael Nocero, I find the Claimant had multiple blood pressure readings in excess of 140/90, while on blood pressure medications. More specifically, there is a document from Orlando Health Care Group that charts the Claimant's blood pressure since January 23, 1996. In quick review of these records, the undersigned noted at least six (6) events where the Claimant's systolic blood pressure was 140 or higher, and at least thirteen (13) visits where the Claimant's diastolic blood pressure was 90 or higher. This is very significant in that the Employer/Carrier's expert, Dr. Nocero, testified in his deposition on page 16, beginning on line 4, was that, "I was struck by the fact that his blood pressure was always 110 systolic, 120 systolic, 80, 85. He never really ran ranges that were even close to 140 over 90. And that's why he's being well treated, and that's why my impairment rating is five percent". Therefore, I find the facts in evidence before me do not support Dr. Nocero's belief that the Claimant's blood pressure was never really in "ranges that were even close to 140 over 90".

8. I find the Claimant's essential hypertension to appropriately fall within Class I under the Florida Impairment Guides. This finding is supported by the opinions of each of the expert cardiologists. Class I for essential hypertension allows for an impairment rating to be assigned between zero (0%) to fourteen (14%) percent.

9. I further find that there is no clearly defined standard or specific criteria by which to determine the exact appropriate impairment rating to assign a given individual with essential hypertension, and is based on the subjective opinions of the physicians. Therefore, it is within the discretion of the examining physician. This finding is supported by the deposition testimony of the physicians, (Dr. Nocero, page 19, and Dr. Raghavan, pages 11 and 12) that there is no objective or scientific measure that a physician can use to determine what would be the exact appropriate impairment rating to assign to an individual. Dr. Nocero indicated the impairment rating is neither scientific nor objective, but rather based on the experience, training and judgment of the physician.

10. The undersigned finds there is clearly a supportable basis in the medical evidence for the 10% impairment rating assigned by Dr. Mathias and Dr. Raghavan. Both Dr. Mathias and Dr. Raghavan performed physical examinations on the Claimant and took a medical history which included discussions of his symptoms and complaints. In addition, they reviewed the medical records from prior treatment which evidenced periods of uncontrolled hypertension with associated complaints. Dr. Nocero never examined the Claimant and clearly missed the medical history regarding uncontrolled hypertension with readings in excess of 140 over 90.



Although it could also be argued there is a supportable basis for the 5% impairment rating assigned by Dr. Kakkar and Dr. Nocero, I find the assignment of the 10% impairment rating by Dr. Mathias and Dr. Raghavan to be more consistent with logic and reason in consideration of the totality of the medical evidence.

11. The Claimant proffered the Curriculum Vitae of Dr. Patrick Mathias in order to argue he is more qualified to render an opinion regarding essential hypertension. This Court is familiar with the qualifications of Dr. Mathias and has accepted him as an expert in many cases. However, in making my findings, it was not necessary for me to consider the Curriculum Vitae of Dr. Mathias. Although Dr. Mathias does have additional certifications for special competency for hypertension, it had no affect with the undersigned's rulings. This Court would have made the same determinations whether or not Dr. Mathias had this additional expertise.

12. I find that the opinions of Dr. Chakravarthy Raghavan, the Court appointed Expert Medical Advisor, are presumed to be correct pursuant to Florida Statutes §440.13(9)(c). I find that Dr. Raghavan used appropriate criteria in determining the correct impairment rating to assign the Claimant. Dr. Raghavan testified that the Claimant's essential hypertension is now well controlled by medications. However, the Claimant will need to continue on his hypertensive medications. Despite the thorough deposition examination of Dr. Raghavan by Attorney Hurley, Dr. Raghaven stood by his impairment rating of 10%.

13. I further find that the Employer/Carrier failed to provide clear and convincing evidence sufficient to overcome the presumed correct opinions of the Expert Medical

Advisor. I likewise find there was no evidence presented before me to indicate that the Expert Medical Advisor departed from the medical evidence in formulating his opinion. As previously stated herein, I find the opinion of Dr. Raghavan to be supported by the totality of the accepted medical evidence.

14. I find that the Claimant reached maximum medical improvement for his essential hypertension as of December 4, 2002, pursuant to the opinion of Dr. Kakkar, the authorized treating physician. The other two physicians who actually saw the Claimant, Dr. Mathias and Dr. Raghavan, indicated that the Claimant would have been at maximum medical improvement at least as of the dates they evaluated the Claimant's condition. Dr. Nocero testified the Claimant was at maximum medical improvement but did not provide an opinion as to the date. In review of the medical records, the Claimant's condition appeared to be stabilized and he did not appear to make any further improvement from his essential hypertension condition since that date.

15. I find the Employer/Carrier had adequate and timely notice of the impairment rating provided by Dr. Raghavan, this Court's expert medical advisor, on October 23, 2006, and despite that knowledge failed to timely pay the additional 5% impairment rating within seven days of the date due. I do not find that sufficient cause was provided by the Employer/Carrier for their refusal to pay the additional 5% impairment rating. Accordingly, I find that penalties and interest are due from the Employer/Carrier to the Claimant.

16. I find that Counsel for the Claimant is entitled to payment of a reasonable attorney's fee and reimbursement of his costs from the Employer/Carrier for successful prosecution of this claim.

**WHEREFORE**, based upon the foregoing findings of fact and conclusions of law, **IT IS THE ORDER** of the undersigned Judge of Compensation Claims that:

1. The Employer/Carrier shall pay the Claimant impairment benefits based upon a 10% impairment rating for his essential hypertension. The Employer/Carrier shall be entitled to a credit for the 5% impairment benefits already paid to the Claimant.

2. The Employer/Carrier shall pay penalties and interest to the Claimant for failure to timely provide impairment benefits based upon the 10% impairment rating assigned by Dr. Raghavan on October 23, 2006. Interest shall be calculated from this date and not from the date of maximum medical improvement.

3. The Employer/Carrier shall reimburse the Claimant for reasonable costs incurred in preparation for these proceedings.

4. The Employer/Carrier shall pay a reasonable attorney's fee for the successful prosecution of this claim.

5. Any arguments, issues or defenses not raised at trial are hereby waived.

6. Jurisdiction is hereby reserved to determine the amount of attorney's fees and costs due the Claimant's Attorney from the Employer/Carrier, should the Parties be unable

to reach agreement thereon.

**DONE AND ORDERED** in Chambers in Orlando, Orange County, Florida.



HONORABLE W. JAMES CONDRY  
JUDGE OF COMPENSATION CLAIMS

I **HEREBY CERTIFY** that the foregoing Order was entered on this 26<sup>th</sup> day of February, 2008, and that a conformed copy was sent on that date by U.S. Mail to the Parties and Counsel at their addresses of record.



JUDICIAL ASSISTANT TO JUDGE CONDRY