

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

Frances Williamson,	)	
Employee/Claimant,	)	OJCC Case No. 03-021345DBB
	)	
vs.	)	Accident date: 5/23/2001
	)	
Manatee Rural Health Center/Bridgefield	)	Judge: Diane B. Beck
Employers Insurance Company,	)	
Employer/ Carrier/Servicing Agent.	)	
_____	)	

---

**FINAL COMPENSATION ORDER**

---

This cause was heard before the undersigned Judge of Compensation Claims at Sarasota, Manatee County, Florida on May 31, 2011 upon the petition for benefits filed on August 23, 2010. Mediation occurred on December 7, 2010, and the parties' Uniform Statewide Pretrial Stipulation was filed on December 27, 2010. Alex Lancaster, Esquire was present on behalf of the claimant. Tiffany Stanton Hawks, Esquire was present on behalf of the employer/carrier (E/C).

**OVERVIEW**

Claimant Frances Williamson, 62 years old, was employed as a licensed practical nurse (LPN) by employer Manatee Rural Health Center on the accident date of May 23, 2001. She suffered a compensable injury to various parts of her body including her shoulder and thoracic and lumbar spine on that day while attempting to catch a falling patient. She asks that she be awarded permanent total disability (PTD) benefits, which E/C has denied on various grounds. For the reasons set forth below, I am finding in favor of E/C.

**CLAIMS AND DEFENSES**

Claimant seeks a determination that she is PTD from October 14, 2008; payment of those

benefits; and penalties, interest, costs, and attorney's fees.

The E/C defends on the basis that: the claimant's injury does not fall within the parameters of a catastrophic injury as defined in 440.02(37); the claimant does not meet the statutory definition of PTD per 440.15(1)(b); the claimant has failed to test her employability or exhaust all rehabilitation avenues; the claimant is capable of working within the restrictions assigned by her authorized providers; there is no medical or rehab evidence that the claimant is PTD; the claimant's subjective complaints outweigh the objective findings; the claimant is voluntarily limiting her income; no penalties, interest, costs, or attorney's fees due or owing; and res judicata.

### **STIPULATIONS**

- a. The date of accident is May 23, 2001 and Manatee County, 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 accepted claimant's accident and lumbar back injury as compensable.
- d. The claimant 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. If medical benefits are determined to be due, the exact amount payable to health care providers will be handled administratively and medical bills need not be placed in evidence at trial.
- g. Dr. Prieve is authorized to treat claimant.

### **EVIDENCE AND WITNESSES**

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

Exhibit 2: Deposition of Frances Williamson taken on November 29, 2010.

Exhibit 3: Deposition of Dr. Raymond Prieve taken on August 22, 2007.

- Exhibit 4: Deposition of Dr. Raymond Priewe taken on March 30, 2011.
- Exhibit 5: Dr. Raymond Priewe's medical records.
- Exhibit 6: Functional capacity evaluation (FCE) report.
- Exhibit 7: Deposition of Rebecca Balter taken on May 23, 2011.

Claimant offered the decision of the Social Security Administration awarding claimant Social Security Disability benefits but it was not received over E/C's objection that it was untimely and not authenticated.

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

Frances Williamson and Dr. Anita Rothard appeared and testified at the hearing. David Brubeck testified by telephone. Counsel for the parties presented oral argument and submitted written Trial Memoranda.

#### **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, Manatee County, Florida. The stipulations of the parties are approved and accepted as findings of fact.
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. 1<sup>st</sup> DCA 1997).
3. After her work accident claimant returned to light duty work with employer for a little over three months, until taken off work by her then treating physician Dr. Callahan. Pursuant to a 2004 Final Compensation Order, claimant attained overall maxim medical improvement (MMI) on October 30, 2003.

4. Claimant testified at her most recent deposition taken November 29, 2010 that she has been on Social Security disability for approximately eight years, and that during this time Dr. Priewe has not told her what she could or could not physically do as far as work duties. She has a driver's license and a car and no restrictions from doctors on driving. Claimant testified that since her prior deposition in 2008 she has not worked or looked for work. She said she is completely computer illiterate.

5. Claimant testified at final hearing that she attended school to the 9<sup>th</sup> grade and later obtained a G.E.D. She worked as a waitress, bartender, and cashier and then obtained her LPN in 1984. She treated with Dr. Callahan and Dr. Siddom in the past and currently treats with Dr. Priewe. She continues to suffer back, leg, and feet pain and her medication consists of Fentanyl patches, Oxycodone, Lyrica, and Cymbalta, which she said makes her tired, sleepy, and not able to focus. She does not sleep well. She said she has bladder problems which she attributes to her back condition.

6. Claimant testified that she has looked for work and had interviews and employment leads provided to her. She still cannot do much on a computer but her kids get her to where she needs to go on the internet to shop. She said she followed up on the job leads given to her by sending resumes to the addresses on the leads, four of which were returned as not a proper address or undeliverable. She also went to places around her home in Sun City and put in applications, including Remax and Parker Real Estate. She also applied at Wal-Mart, Sams Club, PetSmart, Holiday Inn Express, Walgreens, CVS, Tampa Marriott, lawn care, Pitman Trucking, R & D Diesel, insurance, various hospitals and unit secretary, and a bank. She applied for housecleaning although she does not think she could do that. She thinks she could do a telephone job if she could move around frequently. She does not think she could work more than four hours on a good day, after which she would have to go home and lay down.

7. Claimant testified that she is comfortable with a simple computer online program such as Wal-Mart and Sams Club have and could do that. She has used that type of program before. She did receive information about computer classes at Sun City Center but she hasn't signed up for a class. She

continues to receive her own Social Security Disability benefits of approximately \$699.00 per month and some additional benefits (around \$1,500.00 monthly) from her husband's Social Security and pension since he passed away.

8. Claimant began treating with pain management physician Dr. Raymond Priewe on November 27, 2006. He testified at his 2007 deposition that he was treating claimant for her low back pain and radicular spine pine, and that she required a significant dose of narcotic analgesics consisting of Duragesic patches, MS Contin, Xanax, Cymbalta, and Lyrica.

9. At his 2011 deposition Dr. Priewe testified that he continues to treat claimant for low back pain, thoracolumbar spine pain secondary to degenerative disc disease and spondylosis. He did not see any significant deterioration in her symptoms, noting that a repeat MRI done December 3, 2010 showed the lumbar and thoracic spine essentially the same as seen initially; he did not think her condition went downhill.

10. It was Dr. Priewe's opinion that claimant can do some kind of modified sedentary work based on the FCE, physical exam, and her activity level. He noted that it was felt claimant did not give maximum effort with regard to her December 2010 and January 2011 FCEs and that she could perform much more physically than she had on the tests. He felt she would be limited to lifting no more than five to ten pounds and could do desk work or filing sitting six hours out of an eight hour workday, if she was allowed to get up periodically. Dr. Priewe testified that he could not give any medical certainty that claimant's restrictions were not exactly the same as he had assessed prior to the FCEs because there was some question about claimant's effort and the testing; in reviewing the FCEs he noted claimant is capable of light duty work, again referencing some problems with reliability and symptom magnification and consistent sub-maximal efforts.

11. Dr. Priewe testified that claimant never complained about side effects related to her medication, including sedation, ataxia, confusion, mental slowing, or any of those things. She reported

being more functional as a result of her medication and lower pain scores of 4 and 5. He indicated he last saw her March 10, 2011 and she remained at MMI with a 4 percent permanent impairment rating.

12. Claimant underwent another FCE on March 23, 2011 and was determined to be in the sedentary work category. Her validity score was 72 percent. It was noted that she demonstrated high subjective symptoms and minimal symptom magnification. Although her results were deemed valid, the evaluator listed the validity as “Borderline, Results are Conservative”.

13. Claimant’s vocational expert, Dr. Anita Rothard, testified that she evaluated claimant on two occasions: January 10, 2005 and March 7, 2011. Her test results for claimant were good, showing claimant’s reading, spelling, and arithmetic are at the high school level, and her word recognition at a post high school level. She demonstrated severe depression that improved somewhat for the second test. Claimant’s past work experience was as a cashier, retail sales clerk, quality control for a production line, waitress, and LPN. Her restrictions in 2005 were in the light category and currently were in the sedentary category.

14. Dr. Rothard testified that claimant can’t work as an LPN, cashier, sales person, or on a production line. Claimant is closely approaching advanced age and has no transferable skills, according to Dr. Rothard. Dr. Rothard said claimant’s restrictions included working one to four hours per day, and she could not find any jobs within those restrictions. It was Dr. Rothard’s opinion that claimant cannot do sustained work at the sedentary level even if a job is carved out for her because she can’t regularly attend work. According to Dr. Rothard, claimant’s previous light restrictions would have allowed her to return to work as her skills are good. Dr. Rothard testified that she watched claimant deteriorate and her memory is not as sharp; she doesn’t recall as quickly and her second evaluation took longer. It was her opinion that claimant did not have the typing or computer skills for the various medical clerk positions testified to by E/C’s expert, and that they are all full-time jobs and claimant can only work one to four hours, which is not available in the general economy.

15. Rebecca Balter is a vocational counselor for ReEmployAbility. A re-employment assessment was conducted by Edward Garthwait, and Balter conducted a labor market survey after that and was asked to send some job leads to claimant and offer computer classes. The labor market survey outlined seven job leads that were open and available within a 50 mile radius of claimant's home consistent with her physical restrictions and vocational background. Balter used a physical demands analysis completed by Dr. Priewe indicating claimant was able to stand/walk, sit or drive up to four hours a day; could bend, squat, crawl, and reach occasionally; lift and carry up to 20 pounds occasionally and 10 pounds frequently.

16. The jobs found by Balter were: customer service representative with Scotts Lawn Service, customer service representative with Tenet Healthcare Corporation, day surgery receptionist with Brandon Regional Hospital, receptionist with JSA Healthcare Corporation, patient service representative with Moffitt Cancer Center, patient access service representative with University Community Health, and patient account representative with Pyramid Healthcare Solutions.

17. After finding these jobs, Balter sent eight job leads to claimant on March 29, 2011 and April 27, 2011 both in writing and via e-mail to an e-mail account that Balter created on claimant's behalf. Balter gave claimant a deadline for application, and for the e-mail applications followed up a day after the deadline by accessing the e-mail account. When she did the follow-up there was no correspondence in that e-mail account confirming receipt by the prospective employers.

18. Balter also sent claimant information regarding computer classes that would be available to her through her community center as a result of claimant telling her that she did not have computer skills. She asked claimant to contact her to assist with the registration process if she was interested in taking advantage of the classes. The letter indicated that carrier would be responsible for the costs of the classes, and included a map showing the community center is 1.4 miles from claimant's residence. She gave claimant a deadline to contact her, and claimant did not respond within that time.

19. When claimant told Balter she did not have computer skills, she also reported that she sent a resume and cover letter by regular mail to the employers for the job leads given to her. Balter followed up with the employers to determine if this was acceptable. One of the employers who was contacted reported that claimant's resume did not contain a phone number or e-mail address to contact claimant and that it contained personal information including claimant's age and that she has healthcare restrictions. Most of the employers contacted required online applications, and no other employers could confirm receipt of claimant's resume.

20. The job leads sent to claimant were: unit secretary at St. Anthony's Hospital, patient account representative at Pyramid Healthcare Solutions, unit secretary at Southbay Hospital, registrar at St. Joseph's Hospital North, customer service representative at APAC Customer Services, Inc., guest services representative at Tampa Marriott Waterside Hotel and Marina, patient service representative at Moffitt Cancer Center, and part-time customer service representative at Progressive Insurance.

21. E/C's vocational expert, David Brubeck, testified that he reviewed Dr. Priewe's 2011 deposition and the FCE and used restrictions from the deposition of sedentary, with walking, sitting, and driving from one to four hours; bending, squatting, crawling, and reaching occasionally; and lifting ten pounds occasionally. He understood Dr. Priewe's testimony not to be that claimant is limited to working one to four hours per day, but that she needs to change position.

22. Brubeck noted that claimant has kept her LPN license active by obtaining continuing education units. He noted that the results of testing by Dr. Rothard show claimant's reading, writing, and math to be high school level. He indicated that Dr. Rothard did not perform a transferable skills analysis. It was Brubeck's opinion that claimant's residual functional capacity is at the sedentary performance demand level and that she has transferable skills within that capacity to perform jobs including outpatient receptionist, medical unit clerk, hospital admitting clerk, medical admission clerk, and medical billing clerk. He opined claimant is not able to return to her past relevant work during the last fifteen years as an

LPN.

23. Brubeck testified that he was aware of the ReEmployAbility job leads given to claimant, noting that Dr. Priewe approved the St. Anthony's Hospital unit secretary job, the Pyramid Healthcare and Southbay Hospital medical billing specialist jobs, the St. Joseph's hospital admission clerk/registrar job, the customer service representative and Tampa Marriott jobs (although these last two were deemed not as suitable by Brubeck because they are outside the medical field), the Moffitt Cancer Center hospital admitting clerk job, and the Progressive Insurance clerk job. It was Brubeck's opinion that claimant has the residual functional capacity to perform these jobs. He took into consideration that claimant's computer skills are limited but said there is a lot of on the job learning. He noted that claimant did input drug testing into a computer in her past job.

24. It was Brubeck's opinion that there are a significant number of jobs available in the national and local economy using labor data, and that a 15.6 percent growth is expected through 2018 in medical clerk positions. He opined that claimant is capable of substantial gainful activity based on her residual functional capacity, age, education, and work experience.

25. E/C contends that the PTD claim is barred by res judicata because claimant previously filed two petitions for benefits seeking PTD, both of which were voluntarily dismissed. Further, after these two dismissals, claimant filed a third petition for benefits seeking PTD and E/C moved for a summary final order denying the claim, which was granted on January 31, 2007. According to E/C claimant's current petition for benefits seeks PTD from a random date in October 2008 in an effort to avoid the application of res judicata as the evidence does not demonstrate any significant change in claimant's condition to warrant a new PTD claim from this date. I reject this argument. *See, Myers v. Hillsborough County School Board*, 982 So.2d 735 (Fla. 1<sup>st</sup> DCA 2008) (a PTD claim filed after a prior denial involves a different time frame and thus requires a different factual showing as to the claimant's inability to work at this later time, which was not ripe for review at the earlier hearing and not barred by

res judicata).

26. Claimant's claim for PTD is procedurally ripe as she reached overall MMI in the past per prior Order, and Dr. Priewe confirms that she remains at MMI with a 4 percent permanent impairment. In order to qualify for PTD for her date of accident, claimant must show that she has a "catastrophic" injury, as defined in section 440.02(37), Fla. Stat. (2000).

27. Claimant does not contend that she has any of the conditions contained in (a) through (e) of the aforementioned statutory section, so she must show pursuant to (f) of that section that she has any other injury that would otherwise qualify under chapter 440 of a nature and severity that would qualify her to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social Security Act, as it existed on July 1, 1992, without regard to time limitations in that Act. Accordingly, in determining her claim, the five-step sequential process used by the Social Security Administration in evaluating claims for Social Security Disability must be followed.<sup>1</sup>

28. In applying the five-step sequential process to the facts of this case: (1) claimant is not working and she has not engaged in substantial gainful activity since approximately August 29, 2001; (2) claimant has a severe impairment consisting of low back pain and thoracolumbar spine pain secondary to degenerative disc disease and spondylosis with resulting restrictions that do not allow performance of her prior LPN work; (3) claimant does not meet or medically equal an impairment listed in Appendix 1, Subpart P, of 20 C.F.R. Part 404; (4) claimant has a residual functional capacity of sedentary (and perhaps light per the FCEs and Dr. Priewe) with restrictions of walking, sitting, and driving from one to four hours (can sit for six hours of an eight hour day with periodic position changes); bending, squatting, crawling, and reaching occasionally; and lifting ten pounds occasionally; this residual functional capacity does not allow her to return to her past relevant LPN work; and (5) considering claimant's sedentary (or light) residual functional capacity, her high school or more education, her closely approaching retirement

---

<sup>1</sup> Although it is not disputed that claimant receives Social Security Disability benefits, that fact alone is not sufficient to qualify her for PTD benefits. *See, Union Camp Corp. v. Hurst*, 696 So.2d 873 (Fla. 1<sup>st</sup> DCA 1997).

age of 62, her past work experience and transferable skills, I find that claimant is not disabled per the Medical-Vocational Guidelines (Grids), 20 C.F.R. Part 404, Subpart P, Appendix 2, Rule 201.07.

29. To the extent that claimant's nonexertional limitations, including pain and limitations on sitting and standing with need to change positions, may render the Grids inapplicable and vocational testimony should be considered, I accept the testimony of Balter and Brubeck over that of Dr. Rothard where they differ. Balter and Brubeck's testimony were more persuasive and consistent with logic, reason, and the other evidence in the case. Claimant's complaints of pain and effects of her medication were not credible or consistent with Dr. Priewe's records and testimony. Additionally, I interpret Dr. Priewe's testimony in the manner that Brubeck did; claimant is not limited to working only one to four hours per day, but must change position. Accordingly, I accept Brubeck's testimony that there are significant jobs that claimant can perform considering her residual functional capacity, age, education, work experience, and transferable skills, which is supported by the labor market survey and job leads found by Balter.

30. Alternatively E/C has established the defenses that claimant retains a substantial earning capacity; that she has failed to test her employability or exhaust all rehabilitative avenues; and that she is voluntarily limiting her income. Dr. Priewe approved all eight job leads provided to claimant by E/C and testified that claimant never complained of side effects from her medication. It appears that claimant did not begin job searching until recently and she looked for work such as in housecleaning that she did not think she could perform. She included unnecessary personal information on her resume including her age and health restrictions and followed up on the job leads by regular mail despite an e-mail account being created for her and the employers requiring online applications. Claimant professed herself as completely computer illiterate but later admitted she is capable of input and utilizing simple programs. Her vocational expert testified that she would not qualify for the jobs based on her lack of computer skills, but claimant failed to take advantage of computer classes close to her home which would be paid for by E/C. *See,*

*Advanced Masonry Systems v. Molina*, 4 So.3d 62 (Fla. 1<sup>st</sup> DCA 2009).

31. Because the claim for PTD is denied, no penalties, interest, costs, or attorney's fees are due at E/C expense.

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

- A. The claim for PTD from October 14, 2008 is denied.
- B. The claim for penalties, interest, costs, and attorney's fees is denied.

DONE AND MAILED this 20th day of June, 2011, in Sarasota, Manatee County, Florida.



---

Diane B. Beck  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
Sarasota District Office  
6497 Parkland Drive, Suite M  
Sarasota, Florida 34243-4097  
(941)753-0900  
[www.jcc.state.fl.us](http://www.jcc.state.fl.us)

Alex Lancaster, Esquire  
Lancaster & Eure, P.A.  
P.O. Drawer 4257  
Sarasota, Florida 34230  
[KarenT@lancasterlawyers.com](mailto:KarenT@lancasterlawyers.com)

Tiffany Stanton Hawks, Esquire  
Miller, Kagan, Rodriguez & Silver, P.A.  
6151 Lake Osprey Drive, Third Floor  
Sarasota, Florida 34240  
[colleeng@mkrs.com](mailto:colleeng@mkrs.com); [tiffanys@mkrs.com](mailto:tiffanys@mkrs.com)