

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

Lenny Lopez,  
Employee/Claimant,

OJCC Case No. 15-011281MES

vs.

Accident date: 3/9/2015

Southeast Personnel Leasing/Packard  
Claims Administration,  
Employer/Carrier/Servicing Agent.

Judge: Margaret E. Sojourner

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**FINAL COMPENSATION ORDER**

A hearing was held in this matter in Altamonte Springs, Seminole County, Florida on November 17, 2021. Present at the hearing were Claimant, Lenny Lopez and his attorney, Bradley G. Smith. Also present at the hearing was attorney William R. Rogner, on behalf of the Employer/Carrier (EC).

**Issues:**

1. Temporary total disability from February 12, 2016 and continuing.
2. Temporary partial disability from February 12, 2016 and continuing.
3. Impairment benefits for ratings of 2% for the back and 8% for the shoulder.
4. Psychiatric medical care and treatment per the recommendations of Dr. Martinez.
5. Penalties, interest, costs and attorney's fees.

**Defenses:**

1. Claimant's loss of earnings, if any, is unrelated to the compensable accident.
2. The claimant has not filed DWC 19's.
3. No good faith job search has been performed.
4. Claimant has voluntarily limited his income.
5. Deemed earnings.
6. IB's not due.
7. No authorized doctor has referred claimant for psychiatric care and treatment.
8. All benefits are barred as claimant made material misrepresentations regarding the evaluation by Dr. Jager with the intent to obtain workers' compensation benefits.
9. No penalties, interest, costs or attorney's fees are due.

**Objections:**

The claimant sought to admit the testimony of Ramon Martinez as his IME physician and the EC objected as claimant had previously undergone an IME with Dr. Richard Smith in 2019. *Section 440.13(5)(b), Florida Statutes* provides that each party is bound by his selection of an IME and is entitled to another IME only if one of four criteria are met. The claimant did not offer any evidence to support his entitlement to a second IME. The EC's objection is sustained.

**Evidence Presented:**

The claimant sustained compensable injuries to his low back and left shoulder. He was treated by Dr. Reed, orthopedist, for his left shoulder and Dr. Goll, orthopedist for his low back. He was referred to pain management and ultimately the EC authorized four pain management doctors. The fourth doctor authorized was Dr. Jager. The claimant was late to his first scheduled appointment and was not seen. A second appointment was set and a disagreement arose as to whether claimant was seen by Dr. Jager at that appointment. Thereafter a petition was filed seeking a one-time change in pain management physician or an appointment with Dr. Jager. Claimant was deposed and testified that because he was about five minutes late for his second appointment Dr. Jager would not see him. He testified that he never made it past the lobby and was not seen by the doctor. He said he was told by the nurse that nothing could be done for claimant so the doctor would not see him. Dr. Jager was deposed and testified that he did see the claimant. He said he took a history from the claimant, reviewed claimant's MRI scans and examined the claimant. He noted that he did not have Dr. Frohwein's records at that time, but that claimant advised him of the treatment done by Dr. Frohwein.

The claimant testified at the final hearing that he still has symptoms in his shoulder and back. He stated that ever since he was injured he has constant pain and that the medications he takes cloud his mind. He said he went to all of his doctor's appointments but that he did not always remember the doctors' names. He acknowledged working during the time at issue but stated that he was out of work when the theme park where he was employed was closed due to the covid pandemic.

**Findings of Fact and Conclusions of Law**

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. I have resolved all of the conflicts in the testimony and documentary evidence. Venue is in Seminole county. I have jurisdiction over the parties and the subject matter of this claim. The stipulations of the parties are accepted by me.

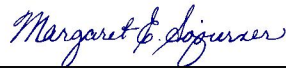
I find that the claimant made material misrepresentations for the purpose of obtaining worker's compensation benefits. I accept Dr. Jager's testimony that he did see and evaluate the claimant. I note that Dr. Jager did not have Dr. Frohwein's records but did record the claimant's history of treatment

provided by Dr. Frohwein. Claimant did not offer any evidence of how Dr. Jager would have come by this information other than from the claimant. I reject the claimant's argument that he was confused and did not remember the doctor's name. He testified very specifically in his deposition about missing his first appointment and being late for his second appointment. He was very clear that he did not make it past the lobby and did not see the doctor. He did not offer any evidence that this scenario occurred at a different doctor's office that he was confusing with Dr. Jager's office. As the only petition pending at the time the misrepresentation was made was for a one-time change or an appointment with Dr. Jager I find that claimant made these misrepresentations in order to obtain another appointment or a change in physician. Thus the misrepresentations were made with the intent to obtain benefits.

**Wherefore** it is ordered and adjudged as follows:

1. The claimant is not entitled to compensation or benefits under Chapter 440 as he has provided false, fraudulent, or misleading statements regarding his accident history with the intent to obtain benefits and as a result all claims are denied.

DONE AND SERVED this 2nd day of December, 2021, in Altamonte Springs, Seminole County, Florida.



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## **Exhibits**

### **Judges Exhibits:**

1. PFB filed at DN 273-274.
2. Response to PFB filed at DN 280.
3. PFB filed at DN 281-282.
4. Response to PFB filed at DN 283.
5. Mediation conference report filed at DN 294.
6. Pretrial stipulation filed at DN 293.
7. Claimant's trial memorandum filed at DN 302.
8. EC's trial memorandum filed at DN 299.

### **Joint Exhibits:**

1. Deposition of Dr. Reed filed at DN 35.
2. Deposition of Dr. Goll filed at DN 41.
3. Motion and order to admit medical records with attached medical records filed at DN 99-104.
4. One time change request documentation filed at DN 113.
5. Letter authorizing Dr. Jager filed at DN 114
6. Notice of defense under Sections 440.105(4) and 440.09(4), Florida Statutes filed at DN 116.
7. Deposition of Dr. Jager filed at DN 138.
8. Deposition of Lenny Lopez filed at DN 139.
9. Motion and order to admit medical records with attached medical records filed at DN 150-152.
10. Notice of IME filed at DN 154.
11. Notice of IME filed at DN 158.
12. Deposition of Dr. Mark Beckner filed at DN 171.
13. Deposition of Dr. Stephen Reed with exhibits filed at DN 189-194.
14. IME report of Dr. Ramon Martinez filed at DN 239.
15. Notice of objection to the unauthorized opinion of Dr. Martinez filed at DN 241.
16. Deposition of Dr. Broom filed at DN 269.
17. Deposition of Dr. White with exhibits filed at DN 271-271.
18. Payout ledger filed at DN 298.
19. Response and objection to claimant's untimely notice of IME.

### **Claimant's Exhibits:**

1. Deposition of Dr. Richard Smith with exhibits filed at DN 186-187.
2. Notice of IME filed at DN 300.

**Claimant's Proffered Exhibit:**

1. Deposition of Dr. Ramon Martinez with exhibits filed at DN 304-305.