

TREJO-PEREZ v. ARRY'S ROOFING/BUILDERS INS. GROUP
CASE NO. 1D13-1889 (June 3, 2014)

Claimant challenges denial of request for referral of Spanish speaking psychologist recommended by authorized provider.

FACTS:

The carrier authorized a non-Spanish speaking provider and an interpreter; however the Claimant does not attend the scheduled appointment and requests Spanish speaking psychologist. The only medical evidence presented at the Final Hearing was the deposition testimony of Dr. Alves. The JCC reviewed the evidence and found that based on the doctor's testimony, the requested benefit did not rise to the level of medical necessity. The Claimant argued the JCC ignored the unrebutted testimony of Dr. Alves.

HOLDING:

First DCA holds question is not whether the testimony was unrebutted, but whether it was sufficiently persuasive to the finder of fact, in the first instance, to establish medical necessity. Here, the JCC permissibly determined that Dr. Alves' testimony failed to satisfy this statutory requirement as to the recommendation for a Spanish-speaking psychologist, and for that reason, the JCC did not err in rejecting the testimony. The JCC found and articulated a reasonable evidentiary basis—Claimant's own testimony—on which to reject the doctor's testimony as to the need for a Spanish-speaking psychologist. This was permissible under the holding in *Wald v. Grainger*, 64 So. 3d 1201 (Fla. 2011).

**BREVARD COUNTY SCHOOL BOARD and SEDGWICK CLAIMS SERVICES v. ACOSTA
CASE NO. 1D13-4503 (June 9, 2014)**

E/C appeals JCC ruling that surgical repair to claimant's left shoulder is compensable based on "hindrance-to-recovery doctrine."

FACTS:

Claimant's suffered a compensable injury to the right shoulder. Thereafter, a request for surgery to the left shoulder was made and denied as the left shoulder was not injured in work accident. The only medical testimony provided was from Dr. White who testified the claimant needed surgery to both left and right. Dr. White further testified that the two conditions were not connected and, although preferable for the left shoulder surgery to take place first, the result of the right shoulder would be unaffected by the order of the surgery.

HOLDING:

The DCA explains the question is not whether the surgery is medically necessary but rather why is it necessary. In this case, because the findings do not demonstrate that the purpose of the proposed treatment of the left shoulder is to treat Claimant's compensable right shoulder injury, the JCC erred when she found the left shoulder surgery to be compensable. Accordingly, the final compensation order awarding Claimant surgical repair of the left shoulder was reversed.

Take away:

When dealing with the hindrance to recovery doctrine, must look to the purpose of the treatment to determine whether it's compensable. The E/C is not responsible for medical treatment required independently, if the removal of the hindrance is only incidental to the recovery of the compensable injury.

CACERES v. SEDANO'S SUPERMARKETS and JOHNS EASTERN CO., INC.
CASE NO. 1D13-5653 (June 3, 2014)

FACTS:

Claimant appeals an order of the Judge of Compensation Claims denying compensability of his injuries claimed under a theory of repetitive trauma with an alleged date of accident of September 22, 2003. Claimant argues that the JCC erred when he found that the report of injury was late, forever barring the prosecution of any claims. Claimant also argues that the JCC erred by ruling on reserved claims for attorney's fees and costs related to previously provided benefits.

HOLDING:

DCA says JCC wrongly interpreted the statute because he seems to read "whichever occurs first" into 440.185(1). Per 440.185(1), a claimant must advise the employer of injury within 30 days of either date of injury or date of the initial manifestation. Moreover, when dealing with a theory of repetitive trauma, the "date of injury" is the last date of exposure to trauma. Since the JCC believed the reporting was late, he never made the analysis as to alternative dates for time reporting based on the alleged repetitive trauma. As such, the First DCA reverses and remands for further findings regarding this repetitive trauma claim to include findings as to whether Claimant suffered injury, and the date of the injury.