

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DORSCH, INC. D/B/A
FLORIDA FUN BIKE SUPER
CENTER/FEDERATED
MUTUAL INSURANCE
COMPANY,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D08-5873

Appellants,

v.

NORMAN HUNT,

Appellee.

Opinion filed July 24, 2009.

An appeal from an order of the Judge of Compensation Claims.
Mark Hofstad, Judge.

Date of Accident: August 22, 2002.

Robert M. Todd of Robert M. Todd, P.A., Clearwater, for Appellants.

Carl A. Feddeler of Smith, Feddeler, Smith & Miles, P.A., Lakeland; Susan W. Fox of Fox & Loquasto, P.A., Tampa; and Wendy S. Loquasto of Fox & Loquasto, P.A., Tallahassee, for Appellee.

PER CURIAM.

In this appeal from an order of the Judge of Compensation Claims (JCC), the Employer/Carrier (E/C) raises four issues and the Claimant raises one issue on

cross-appeal. We affirm, without comment, three of the issues raised by the E/C. We reverse and remand the fourth issue for further proceedings. Because of this disposition, we find it unnecessary to reach the issue on cross-appeal.

Following Claimant's filing of a grievance and subsequent petition for benefits, the E/C offered Claimant, on two occasions, different lists of three psychiatrists from which to make a selection. In the order on appeal, the JCC found the E/C failed to "timely schedule an appointment for a psychiatrist to examine and provide medical care and treatment to the Claimant as requested," citing to Butler v. Bay Center, 947 So. 2d 570 (Fla. 1st DCA 2006). The JCC interpreted Butler as providing that "once the employer/carrier 'authorized an appointment' with a physician within the requested specialty, the claimant had the obligation to accept care and treatment from the authorized physician." The JCC then interpreted the phrase "authorized an appointment" to mean that an appointment with a specific physician was "actually scheduled." The JCC erred in this interpretation. Butler does not stand for the proposition that an appointment must be scheduled within the specified time. It requires merely that the appointment be timely authorized.

At times, chapter 440 has required an E/C to offer a claimant a list of at least three physicians from which to select when a one-time change was requested. See, e.g., § 440.13(2)(f), Fla. Stat. (2002). Here, although the Claimant did not request

a one-time change, the E/C's willingness to offer Claimant a choice, as opposed to simply scheduling an appointment, did not represent a failure or a refusal on the E/C's part to meet its statutory obligation to provide Claimant the requested medical treatment pursuant to section 440.13(2)(c), Florida Statutes (2002). See, e.g., City of Bartow v. Brewer, 896 So. 2d 931, 933 (Fla. 1st DCA 2005) ("Section 440.13(2)(c), Florida Statutes, does not authorize the JCC to order treatment with a specific physician, where the E/C promptly offers qualified alternatives."). Accordingly, the JCC erred in finding that Dr. Walker was authorized by operation of law because the E/C failed to timely schedule an appointment. On remand, the JCC shall revisit this issue applying the correct law, as set out in this opinion. We note, for purposes of the proceedings on remand, that the relevant evidence as to whether the E/C responded in a timely fashion to Claimant's request for psychiatric treatment begins with the grievance filed in November 2003.

AFFIRMED IN PART; REVERSED IN PART; and REMANDED, with directions.

WEBSTER, DAVIS and LEWIS, JJ., CONCUR.