

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

VENDA WEST,

Appellant,

v.

CASE NO. 1D10-4658

UNIVERSITY OF MIAMI and  
GALLAGHER BASSETT  
SERVICES,

Appellees.

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Opinion filed September 16, 2011.

An appeal from an order of the Judge of Compensation Claims.  
Stephen L. Rosen, Judge.

Dates of Accidents: October 3, 2005; November 2, 2005.

Edward Schroll, Miami, for Appellant.

Toni L. Villaverde of Toni L. Villaverde, PLLC, Coral Gables, for Appellees.

ON MOTION FOR REHEARING

PER CURIAM.

We deny Appellant's motion for rehearing. We grant Appellees' motion for rehearing to the extent that we withdraw the opinion issued on July 22, 2011, and substitute the following opinion in its place.

In this workers' compensation appeal and cross-appeal, Claimant and the Employer/Carrier (E/C) both challenge an order of the Judge of Compensation Claims (JCC) that awarded some benefits and denied others. We affirm the order, except as to the following. First, we reverse the award of temporary partial disability benefits for the period from January 23, 2007, through March 3, 2008, because the JCC found Claimant reached maximum medical improvement before January 23, 2007. See § 440.15(4), Fla. Stat. (2005). Second, we reverse the portion of the award of costs and attorney's fees associated with the aforementioned award. Third, we reverse the denial of penalties on the late payment of temporary partial disability benefits for the period from November 5, 2005, through June 13, 2006, because an award of penalties on late payment of indemnity benefits is not discretionary, but mandatory. See § 440.20(6)(a), Fla. Stat. (2005); Bell v. Univ. of Fla., 652 So. 2d 460 (Fla. 1st DCA 1995). See generally Jones v. City of St. Petersburg, 46 So. 3d 637 (Fla. 1st DCA 2010) (defining when penalties are due). Fourth, because the JCC failed to determine whether the claim for a plastic surgeon was properly before him, see Univ. of Miami v. West, 8 So. 3d 1193, 1194 (Fla. 1st DCA 2009), we remand for a ruling on that issue and, should the JCC determine the claim was indeed properly before him, for a ruling on the merits of the claim for a plastic surgeon.

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings as indicated herein.

VAN NORTWICK, WETHERELL AND ROWE, JJ., CONCUR.