

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

VENDA WEST,

Appellant,

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

v.

CASE NO. 1D10-4658

UNIVERSITY OF MIAMI and
GALLAGHER BASSETT
SERVICES,

Appellees.

Opinion filed July 22, 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.

PER CURIAM.

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, we note the JCC erred in listing a ripeness challenge as a defense to Claimant's claim for the need for a plastic surgeon, as the record indicates the E/C never lodged that defense before the JCC. Fifth, we note the JCC erred in declining to rule on the claim for a plastic surgeon, and we remand the case for a ruling on that claim.

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

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