

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4063

MARY THOMPSON,

Appellant,

v.

ESCAMBIA COUNTY SCHOOL
BOARD/ESCAMBIA COUNTY
SCHOOL DISTRICT,

Appellees.

On appeal from an order of the Judge of Compensation Claims.
Nolan S. Winn, Judge.

Date of Accident: December 7, 2017.

August 17, 2020

PER CURIAM.

In this workers' compensation case, Claimant appeals an order of the Judge of Compensation Claims (JCC), which denied as premature her claim for surgery and denied her claims for temporary total disability (TTD) benefits and temporary partial disability (TPD) benefits from the date of accident forward. We affirm without further comment the denial of TTD and TPD benefits. We reverse the denial of surgery and remand for further findings for the reasons that follow.

Claimant was a school cafeteria employee who took a hard fall at work on December 7, 2017. Her diagnoses included right knee bruising, swelling, chondromalacia, and meniscus tear. Her authorized treating provider, Dr. O’Grady, determined that she was not a surgical candidate and, in any event, attributed her chondromalacia and meniscus tear to preexisting conditions, not the industrial accident.

On August 30, 2018, Claimant obtained an independent medical examination (IME) with Dr. Dewey, who opined that she needed surgery and that the meniscal tear, as well as aggravation of the chondromalacia, was caused by the industrial accident. These medical opinions were admissible in workers’ compensation proceedings by virtue of section 440.13(5)(e), Florida Statutes (2018), and they were admitted here; moreover, the JCC accepted the IME’s opinion on causation.

The JCC ruled that the claim for surgery was premature because no authorized treating provider had recommended surgery. This was error, not only because the Employer/Carrier waived objections on grounds of ripeness and specificity by not asserting that defense or moving to dismiss the claim, but also because IME opinions are admissible and can support claims for specific medical benefits. *Panzer Law, P.A. v. Palm Beach Cnty. Sch. Dist.*, 150 So. 3d 823, 825–26 (Fla. 1st DCA 2014) (holding that failure to object on specificity grounds where specificity would also demonstrate ripeness waives challenge to ripeness); *Trevino v. Dep’t of Revenue & Div. of Risk Mgmt.*, 82 So. 3d 930, 932 (Fla. 1st DCA 2011) (awarding specific medical benefit recommended by IME and expert medical advisor, but not authorized treating provider); *see generally* § 440.13(5)(a), Fla. Stat. (2017) (contemplating provision of treatment based on “examiner’s findings”).

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings in accordance with this opinion.

LEWIS, ROBERTS, and MAKAR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Michael J. Winer of Winer Law Group, Tampa, for Appellant.

Joseph L. Hammons of The Hammons Law Firm, P.A., Pensacola, for Appellees.