

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-927

PRAXAIR, INC., and BROADSPIRE
SERVICES, INC.,

Appellants/Cross-Appellees,

v.

CHRISTINE CELENTANO,

Appellee/Cross-Appellant.

On appeal from an order of the Judge of Compensation Claims.
Margaret Sojourner, Judge.

Date of Accident: September 2, 2014.

November 16, 2020

B.L. THOMAS, J.

In this workers' compensation case, the Employer/Carrier appeals, and Claimant cross-appeals a final order awarding attorney's fees. We affirm. We provide no further comment in respect to the amount of fees awarded and write only to address the cross-appeal.

Claimant sustained a compensable injury in 2014. A 2017 final order denied the Employer's misrepresentation defense and awarded Claimant authorization for lumbar surgery, payment of temporary partial disability benefits and impairment benefits, and

entitlement to attorney's fees and costs. Claimant did not undergo the requested surgery.

Five months after the prior order, Claimant filed another petition for benefits, seeking permanent total disability benefits and associated penalties, interest, costs, and attorney's fees. The Employer timely voluntarily accepted Claimant as permanently disabled, but maintained that no penalties, interest, costs, or attorney's fees were due.

In 2019, Claimant filed an amended verified petition for attorney's fees and costs. The Employer objected, and the Judge of Compensation Claims issued a nonfinal order ruling that no attorney's fees were due on the payment of permanent total disability benefits. The subsequent final order stated:

The issues raised at the merit hearing [during which misrepresentation was litigated] included authorization of surgery, temporary benefits and impairment benefits. The EC defended the impairment benefits on the basis that if surgery was awarded claimant would not be at MMI and impairment benefits would not be due. In fact because surgery was awarded claimant was found not to be at MMI and temporary benefits were awarded. It was not reasonably predictable that claimant would be permanently and totally disabled following the surgery which was being done to alleviate her back condition. The claimant's limitations and restrictions, if any, could not be determined until she reached MMI after the surgery. The fact that claimant never underwent the requested surgery does not change the predictability of the benefits that would flow from the issues litigated.

Claimant argues that the award of permanent disability benefits flowed from her attorney's work in defeating the Employer's misrepresentation defense to her original claim for temporary disability benefits. *See, e.g., Carrillo v. Case Eng'g*, 53 So. 3d 1214, 1214 (Fla. 1st DCA 2011) (awarding attorney's fees where the claimant prevailed on an issue of compensability in defeating a misrepresentation defense). But, given the facts of this case, we agree with the final order that it was not reasonably predictable that permanent disability benefits would flow from the

defeat of the Employer's misrepresentation defense where Claimant intended to undergo a surgery to alleviate her back condition.

Fee entitlement and amount are tied to both specific work done and the specific benefits secured by that work. *See Valdes v. Galco Constr.*, 922 So. 2d 252, 254-57 (Fla. 1st DCA 2006) (quoting *Trans World Tire Co. v. Hagness*, 651 So. 2d 124, 125 (Fla. 1st DCA 1995)). A court must consider both the scope of the issues actually litigated and the reasonable predictability, from that legal work, of the benefits on which entitlement is to be based and amount is to be calculated. *See Samurai of the Falls, Inc. v. Sul*, 509 So. 2d 359, 363 (Fla. 1st DCA 1987) (“[B]efore the ‘reasonably predictable’ issue can be determined, it must be shown that the benefits on which the fee is desired to be based resulted from the attorney’s efforts on behalf of his client and from the scope of the issues already litigated.”).

Here, Claimant’s attorney’s efforts to defeat the misrepresentation defense and address the scope of the issues already litigated did not result in permanent disability benefits. *See id.* Claimant’s counsel defeated the misrepresentation defense in the context of securing surgery to alleviate Claimant’s condition, so permanent disability benefits were not implicated in the scope of litigation. And, even though counsel completed legal work to secure temporary disability benefits, future entitlement to permanent disability benefits was not reasonably predictable where Claimant was previously awarded benefits that were intended to improve her condition. Thus, Claimant’s permanent disability benefits were not the result of her attorney’s efforts in defeating the Employer’s misrepresentation defense.

For the foregoing reasons, the final order is AFFIRMED.

ROWE, and M.K. THOMAS, JJ., concur.

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

Lauren M. Levy and Adam Levy of Levy & Levy, LLC, Tampa, for Appellants/Cross-Appellees.

Nicolette E. Tsambis and Bradley G. Smith of Smith, Feddeler, Smith, P.A., Lakeland, for Appellee/Cross-Appellant.