FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2943

B&A GOURMET FOODS, LLC, and
THE HARTFORD,

Appellants,

v.

YEIMY MORA-ABREU,

Appellee.

On appeal from an order of the Office of the Judges of Compensation Claims.
Margret G. Kerr, Judge.

Date of Accident: December 27, 2019.

November 30, 2022

RAY, J.

In this workers' compensation appeal, we address section 440.13(2)(f), Florida Statutes (also known as the "one-time change" provision), and its requirement that the new physician be in the "same specialty" as the original physician. After describing the facts leading to this appeal, we explain why the Judge of Compensation Claims erred by focusing exclusively on the physicians' board certifications without considering the nature of the claimant's injury, the authorized course of treatment, and the qualifications, training, and expertise of the physicians.

I

The claimant sustained a serious injury to her left index finger while working with a food press. After receiving emergency care at a local hospital, she was evaluated by Dr. Raul Cortes of the Miami Hand Center.

Dr. Cortes is board certified as a general surgeon and a plastic surgeon, with a certificate of added qualification in hand surgery. He testified that hand surgery is a "sub-specialization" within general, plastic, or orthopedic surgery. To become a credentialed hand surgeon, a doctor in one of those primary specialties must complete a one-year fellowship and then pass a specialized examination. Dr. Cortes devotes at least 70% of his practice to hand surgery.

Dr. Cortes described the claimant's injury as a "crush injury," characterized by "a fracture, a tendon injury, nerve injury, and soft-tissue injury." He recommended surgery for "exploration, repair of the radial digital nerve, wash out of fracture and repair of the extensor and treatment with a temporary arthrodesis [by placing a pin]." Dr. Cortes performed the recommended surgery and later performed a second surgery to remove the pin. He testified that he treated the claimant in his capacity as a hand surgeon.

About a week after the second surgery, the claimant requested a change of physician under the one-time change provision. The employer's insurance carrier authorized Dr. Kenneth Easterling of Orthopedic Specialists of South Florida. Dr. Easterling is board certified in orthopedic surgery and, like Dr. Cortes, has a certificate of added qualification in hand surgery. Dr. Easterling testified that he is a workers' compensation Expert Medical Advisor in the field of hand surgery—the only area of orthopedics he practices.

But the claimant refused to see Dr. Easterling, claiming she "need[s] a plastic surgeon." She argued that the "change in physician must be in exactly the same specialty as the initial treating physician," and Dr. Easterling was not board certified in the same primary specialty as Dr. Cortes. Still, she acknowledged

that both physicians had obtained a certificate of added qualification in hand surgery.

The JCC sided with the claimant and found that although both physicians are hand surgeons, hand surgery is a subspecialty rather than a specialty. The JCC explained, "The requirements of strict statutory construction results in my finding that the specialties of general and plastic surgery and orthopedic surgery are similar, not the same." Relying on this Court's opinion in *Myers v. Pasco County School Board*, 246 So. 3d 1278 (Fla. 1st DCA 2018), the JCC concluded that Dr. Easterling was "not an appropriate physician to serve as the one time change in treating doctor" and granted the claimant's request to name her own physician in the same specialty as Dr. Cortes.

II

A

Since this case turns on statutory interpretation, we begin our analysis with the relevant portion of the one-time change provision:

> Upon the written request of the employee, the carrier shall give the employee the opportunity for one change of physician during the course of treatment for any one accident. Upon the granting of a change of physician, the originally authorized physician in the same specialty as the changed physician shall become deauthorized upon written notification by the employer or carrier.

§ 440.13(2)(f), Fla. Stat. The key takeaway is that the change of physician must be made with a doctor who practices in the same specialty as the originally authorized physician. *Retailfirst Ins. Co. v. Davis*, 207 So. 3d 1035, 1037 (Fla. 1st DCA 2017).

Our focus here is on the meaning of the term "specialty." "Specialty" is not defined anywhere in chapter 440 or by case law. "When a contested term is undefined in statute or by our cases, we presume that the term bears its ordinary meaning at the time of enactment, taking into consideration the context in which the word appears." *Conage v. United States*, 346 So. 3d 594, 599 (Fla. 2022).

One method of determining the ordinary meaning of statutory language is to consult a dictionary. *Id*. *Specialty* is defined as "1. A special pursuit, occupation, aptitude, or skill. . . . 2. A branch of medicine or surgery, such as cardiology or neurosurgery, in which a physician specializes; the field of practice of a specialist." *The American Heritage Dictionary of the English Language* 1669 (4th ed. 2000). In turn, to *specialize* means "1. To pursue a special activity, occupation, or field of study." *Id*.

Even if the term bears a technical meaning, the result is essentially the same. *Specialist* is defined as "one who devotes professional attention to a particular specialty or subject area." *Stedman's Concise Medical Dictionary for the Health Professions* 917 (4th ed. 2001). And *specialty* means "the particular subject area or branch of medical science to which one devotes professional attention." *Id*. *Specialization* means "1. professional attention limited to a particular specialty or subject area for study, research, and/or treatment." *Id*.

We also consider the term in the context in which it is used in the statute and the broader context of the Workers' Compensation Law. Subsection (2) of section 440.13 deals with the duty of the employer to furnish medical treatment. It refers to "the nature of [the employee's] injury or the process of recovery" and "making appropriate progress in recuperation" or the employee's "course of treatment" when receiving medically necessary care. § 440.13(2)(a), (d)–(f), Fla. Stat. "Medically necessary" and "medical necessity" are statutorily defined as being "consistent with the location of service, the level of care provided, and applicable practice parameters." *Id*. at (1)(k). And subsection (15), describing the standards of care, requires a "short duration treatment approach that focuses on early activation and restoration of function" and on treatment of the employee's "specific clinical dysfunction" rather than "diagnostic labels." *Id*. at (15)(b)–(c) (requiring the provider to "act on the premise that returning to work is an integral part of the treatment plan"). The Legislature also tells us that the Workers' Compensation Law should be interpreted "to facilitate the worker's return to gainful reemployment." § 440.015, Fla. Stat.; *see also* § 440.13(15)(c)1., Fla. Stat. (requiring treatment to focus on restoring the employee to active status as early as possible).

In all, these provisions focus on the employer's duty to deliver a continuum of care that facilitates the employee's return to gainful employment. Informed by this context, the "specialty" for the one-time change physician must be one that furthers these goals. That determination necessarily requires consideration of the nature of the claimant's injury, the authorized course of treatment, and the qualifications, training, and expertise of the physician.

B

Against this backdrop, the claimant's insistence that she see a plastic surgeon misses the mark.* It is true that the carrier's one-time change physician does not possess the same board certification as the claimant's treating physician. But that is beside the point under these facts.

As mentioned earlier, the claimant was treated by Dr. Cortes after she suffered a crush injury to her hand. Dr. Cortes is board certified as a general and plastic surgeon with a certificate of added qualification in hand surgery. He identified his specialty as hand surgery on his DWC-25 reporting form, and he testified that he treated the claimant as a hand surgeon. When the claimant requested a one-time change of physician, the carrier authorized another hand surgeon, Dr. Easterling. Dr. Easterling is board certified in orthopedic surgery and has a certificate of added qualification in hand surgery. He devotes his entire practice to hand surgery, and he and Dr. Cortes have shared hand surgery patients.

Both doctors testified that hand surgery is a subspecialty within general, plastic, or orthopedic surgery. Although there is no board certification by the American Board of Medical Specialties (ABMS) in hand surgery, there is a credentialing process that requires an even higher level of skill and training to complete.

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* Under the claimant's logic, her request for a board-certified plastic surgeon would not meet the requirements of the one-time change provision. Only a physician board certified in both plastic and general surgery would fit the bill, even if the physician did not specialize in the treatment of hand injuries.

After a one-year fellowship, a physician must pass an examination before receiving a certificate of added qualification in hand surgery. Both Dr. Cortes and Dr. Easterling completed this process, which qualifies hand surgery as a specialized pursuit or field of practice in which they are experts after devoting much time and concentrated effort.

That the ABMS considers hand surgery to be a subspecialty, rather than a specialty, is not dispositive. Nothing in the one-time change provision limits the meaning of "specialty" to certificates in the primary medical specialties recognized by the ABMS. As Dr. Easterling put it, "[t]here's not a difference between orthopedic hand care and plastic hand care. Hand surgery is hand surgery."

Based on the nature of the claimant's injury and the carrier's original authorization of Dr. Cortes to provide the necessary treatment for that injury, the specialty for the one-time change physician is hand surgery. Thus, the carrier's selection of Dr. Easterling was "a one-for-one exchange of physicians within the same specialty" under the statute. *See Retailfirst*, 207 So. 3d at 1037 (reasoning that the statute must be read to avoid a situation where the chosen specialist "is wholly unsuitable for the 'course of treatment' that has been authorized").

As a parting note, we have not overlooked the JCC's reliance on our decision in *Myers. v. Pasco County School Board*, 246 So. 3d 1278 (Fla. 1st DCA 2018). There, the carrier authorized a neurosurgeon as a one-time change from the claimant's treating orthopedic surgeon. *Id.* at 1279. Although both doctors treated back injuries and the claimant had a compensable back problem, we held that those specialties were not the same, only similar. *Id.* We explained that "a physician who provides similar services in a *different* specialty does not qualify as a doctor in the 'same specialty' because—quite simply—'same' is different than 'similar.' " *Id.* By contrast, here, Dr. Cortes and Dr. Easterling are both hand surgeons who have the same level of expertise and training relative to the claimant's injury and her authorized course of treatment.

III

For these reasons, we hold that the carrier authorized an appropriate one-time change physician, and the JCC erred by awarding the claimant a physician of her choice. We therefore reverse and remand for entry of an order denying the claimant's request and her associated claim for attorney's fees and costs.

JAY and TANENBAUM, JJ., concur.

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

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