

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2266

ST. LUCIE PUBLIC SCHOOLS/
RELATION INSURANCE SERVICES
OF FLORIDA,

Appellants,

v.

DIANNE ALEXANDER,

Appellee.

On appeal from an order of the Office of the Judges of
Compensation Claims.
Keef F. Owens, Judge.

Date of Accident: December 11, 2018.

June 16, 2021

PER CURIAM.

In this workers' compensation case, the Employer/Servicing Agent (E/SA) appeal the order of the Judge of Compensation Claims (JCC) ruling that Claimant has the right to select the one-time change physician under section 440.13(2)(f), Florida Statutes (2018). We affirm based solely on the JCC's alternative basis for the ruling.

The JCC noted in the final order that although the E/SA timely provided the name of Dr. Rivera to Claimant two days after Claimant’s request for a one-time change, the E/SA did not engage in any follow-up for sixteen days after providing Dr. Rivera with Claimant’s medical records for review and they did not make actual contact with Dr. Rivera’s office until twenty-one days later, at which time he declined to treat Claimant and another physician was located. We agree with Claimant that competent, substantial evidence supports the JCC’s finding that the E/SA forfeited the right of selection because they unreasonably delayed setting an appointment with an alternative physician. *See City of Bartow v. Flores*, 301 So. 3d 1091, 1099 (Fla. 1st DCA 2020) (“[An] E/C forfeits the right of selection if it subsequently fails to provide the alternate physician by unreasonable delay in acquisition of an appointment date.”).

AFFIRMED.

LEWIS and ROBERTS, JJ., concur; NORDBY, J., concurs with opinion.

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

NORDBY, J., concurring.

Bound by the recent decision in *City of Bartow v. Flores*, I join the court’s opinion in this case. I write only to note my agreement with Judge Winokur’s dissent in that earlier case. *See City of Bartow v. Flores*, 301 So. 3d 1091, 1102 (Fla. 1st DCA 2020), *reh’g denied* (July 28, 2020), *review granted*, No. SC20-1126, 2021 WL 1593270 (Fla. Apr. 23, 2021) (Winokur, J. dissenting) (“The majority states that [our earlier cases] merely set out the carrier’s obligation to ‘authorize’ a change of physician for the employee, whereas the requirement it discusses is a separate obligation to ‘provide’ a change of physician. I disagree for two reasons. First, as stated above, I find that this interpretation is inconsistent with the

statute. Second, I believe that each of the cases noted above sets forth the entirety of a carrier's obligations under [section 440.13(2)(f)]. No case implies that the fourth sentence of the paragraph imposes requirements additional to the ones they set out. As such, I believe the majority opinion is inconsistent with this prior case law.”).

Gary M. Schloss of Hayes, Schloss & Alcocer, P.A., Palm Beach, for Appellants.

Michael J. Winer of Winer Law Group, P.A., Tampa, for Appellee.