

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
Orlando District**

**EMPLOYEE:**

Daniel Thompson  
4055 Palm Avenue  
Micco, FL 32976

**ATTORNEY FOR EMPLOYEE:**

Paul White-Davis, Esquire  
Morgan, Hires & Boynton  
1099 West Morse Blvd.  
Winter Park, FL 32789

**EMPLOYER:**

First Financial Employee Leasing  
3745 Tamiami Trail  
Port Charlotte, FL 33952

**ATTORNEY FOR EMPLOYER/CARRIER:**

Gregory D. White, Esquire  
Hurley, Rogner, Miller, Cox, Waranch &  
Westcott, P.A.

**CARRIER:**

Unisource Administrators  
PO Box 19559  
Sarasota, FL 34276

1560 Orange Avenue, Suite 500  
Winter Park, FL 32789

**OJCC CASE NO.:** 06-035324WJC  
**D/A:** 2/17/2006

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**FINAL COMPENSATION ORDER**

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After due notice to all parties the Final Hearing on the Merits of this claim came on for hearing before the undersigned Judge of Compensation Claims on July 29, 2008, in Orlando, Orange County, Florida. The Court conducted and concluded a Merits Hearing on all outstanding Petitions for Benefits more specifically that filed with DOAH on 4/22/08.

The claimant, a masonry foreman, maintains he sustained a low back injury from a fall from scaffolding in the course and scope of his employment with First

Financial Employee Leasing. The case was bifurcated by agreed stipulation and order signed by this court. The only issue that was tried at the 7/29/08 trial was whether or not the claimant did in fact have an incident that occurred at work.

**The following documentary evidence was received into evidence at the request of the Judge of Compensation Claims:**

1. A Pretrial Stipulation including all amendments;
2. A composite exhibit consisting of the claimant's Trial Memorandum and the E/C's Hearing Information Sheet.

**The following documentary evidence was received into evidence at the request of both the claimant and the employer/carrier:**

1. A composite exhibit consisting of the claimant's wage records, medical records of Florida Hospital Winter Park, medical records of Dr. Mark Beckner, all petitions for benefits filed on the claim, and the medical records of Indian River Hospital. It should be pointed out that the medical records were considered for historical purposes only.

At the hearing, four witnesses appeared and testified live. The claimant testified on his own behalf and in addition, his girlfriend, Renee Rankin, also testified live. Testifying live on behalf of the employer/carrier was Mr. John Astrologo and Brian Stinchcomb. Mr. Astrologo was the owner of the employer and Mr.

Stinchcomb was the direct supervisor of the claimant. These were the only witnesses that testified live.

In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented. I have observed and assessed the candor and demeanor of the witnesses that testified live before me, and I have resolved all of the conflicts in the live testimony and documentary evidence. Although I may not have commented on or summated each and every piece of evidence that was admitted into evidence, it does not mean that I have not carefully considered it. Additionally, I have not interpreted the facts in this case liberally in favor of either the rights of the injured worker or the rights of the employer. The law has been construed in accordance with the basic principles of statutory construction. Based on the foregoing, the evidence, and applicable law, I make the following determinations:

I find that to the extent that the live witnesses' testimony conflicts, I accept the testimony of Mr. Stinchcomb and Mr. Astrologo over the testimony of the claimant and Renee Ranking. In observing the demeanor of the witnesses, Mr. Stinchcomb was perceptively more believable than both the claimant and Ms. Ranking. I believe and accept as true Mr. Stinchcomb's testimony that the claimant did not tell him about an on the job accident involving a fall from scaffolding nor did the claimant request treatment for such an accident. I accept as true Mr. Stinchcomb's testimony that he was not aware that such a claim for an industrial accident had been made until he heard about it from the company president and

his uncle, John Astrologo. I also accept as true Mr. Astrologo's testimony that he was not aware of any accident until he received information in the mail from the claimant's attorney. I accept as true and more reliable Mr. Stinchcomb's testimony to the extent that it conflicts with that of Mr. Thompson and Ms. Ranking, finding that Mr. Stinchcomb's testimony appears to be more consistent with the record evidence before me as a whole and the totality of the circumstances.

In reviewing the claimant's earnings records, I find no real appreciable difference in the claimant's earnings during the pertinent months in the year 2005 as contrasted with like months in the year 2006. To me, the record suggests that the claimant was continuing to work in 2006 about the same hours as he was during the same time frame in 2005. To me, this supports a conclusion that the claimant was not missing substantial time from work after his alleged accident in April 2006 due to the disabling effects of a claimed industrial injury.

I further find that the claimant has reported conflicting dates for the alleged accident that ranged from February 2006 through September 2006. The claimant's original Petitions for Benefits allege a 2/17/06 date of accident. On the Pre-Trial Stipulation, the claimant listed a 4/17/06 date of accident. At his deposition, the claimant listed a 4/26/06 date of accident. The records from Florida Hospital dated 12/5/06 note that the claimant's accident happened approximately six months prior. That would put the date of accident in June of 2006. The medical records from the Indian River Memorial Hospital note that the claimant had an on the job injury in September of 2006. The wide variances in the dates of the accident are troubling. I

would reasonably expect an employee to have a better handle on when the unexpected or unusual event occurred than what is evidenced here.

The claimant testified that he had worked as a foreman and that he was familiar with the workers' compensation procedures and need for reporting accidents. I find it troubling that as a foreman who would be familiar with the need to report workers' compensation accidents and the importance of getting injured worker's prompt medical attention for such accidents, that Mr. Thompson would wait so long to get medical care, especially if he had ongoing pain as he claims. Here Mr. Thompson waited almost eight months after the claimed accident before seeing a physician. It should also be noted that the claimant was terminated in September and still he did not seek medical care until sometime in December of 2006. That does not seem consistent with someone who is legitimately in pain and in need of medical treatment.

I also find it odd that Mr. Thompson did not go directly to Mr. Astrologo if he did not feel that Mr. Stinchcomb was being reasonably responsive to his medical authorization request. I accept the testimony of Mr. Astrologo that he did not even know about an accident until he received papers in the mail from the claimant's attorney. This scenario makes me question Mr. Stinchcomb ever being informed of an injury or being asked to furnish medical care.

The claimant testified at trial that there was a witness to his accident by the name of Herminio Manny Gonzalez. Furthermore, the claimant testified that he had

spoken to Mr. Gonzalez about coming to trial and testifying on his behalf. However, the claimant presented no such corroborative witnesses at trial.

I find that the claimant was also inconsistent in his testimony regarding his on the job marijuana use. When viewed in context with the other concerns expressed above, this inconsistency impacts negatively on the evaluation of the claimant's overall credibility as a whole and particularly as it relates to whether he indeed timely reported an industrial accident.

In observing the demeanor of the witnesses, both Mr. Stinchcomb and Mr. Astrologo perceptively seemed more believable than the claimant and Ms. Renee Ranking. In light of all the inconsistencies in the record, I conclude that Mr. Thompson did not sustain an accident in the course and scope of employment that was timely reported.

WHEREFORE it is ORDERED and ADJUDGED:

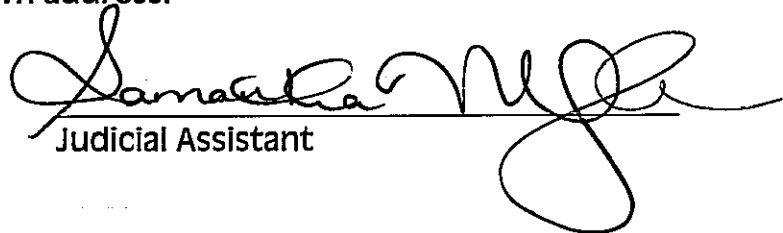
1. The claimant did not sustain an accident in the course and scope of employment that was timely reported.
2. All claims are denied and dismissed with prejudice.

DONE and ORDERED in Orlando, Florida, this 26<sup>th</sup> day of August, 2008.



Honorable W. James Gondry, II  
Judge of Compensation Claims

THIS IS TO CERTIFY that the foregoing Order was entered on the 20<sup>th</sup> day of August 2008, and that a copy thereof was sent by regular U.S. Mail to all parties noted previously at their last known address.

  
Judicial Assistant