

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FT. LAUDERDALE DISTRICT OFFICE

Fabian Bridgewater,)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 10-026153JJL
)	
Southeast Personnel Leasing, Inc.,)	Accident Date: 8/12/2010
Moment's Notice /Packard Claims)	
Administration, Inc.,)	Judge John J. Lazzara
Employer/Carrier/Servicing Agent.)	

FINAL ORDER

AFTER DUE NOTICE to the parties, a Final Hearing on this matter was held on February 21, 2012 in Ft. Lauderdale, Broward County, Florida and simultaneously in Tallahassee, Leon County, Florida, by way of the Division of Administrative Hearing's video teleconferencing system. The claimant, Fabian Bridgewater, who is pro se, did not appear at the final hearing while the employer/carrier was represented their attorney of record, Anthony M. Amelio, Esquire. The undersigned Judge of Compensation Claims has jurisdiction of the parties and the subject matter.

The litigation history of this matter reflects that a Petition for Benefits (PFBs) was filed on July 22, 2011 by Richard B. Berman, Esquire, employee's former counsel of record. On December 19, 2011, Mr. Berman filed a Motion to Withdraw as Counsel of Record for the employee. An Order granting the motion was entered on December 20, 2011. On January 12, 2012 this office received correspondence from Mr. Bridgewater stating that he objected to Mr. Berman's withdrawal. The motion was then scheduled and noticed for hearing on January 24, 2012 at 1:30 p.m. and the parties and their counsel were allowed to appear telephonically. Mr. Bridgewater did not attend the hearing and based on representation of counsel an Order was entered on January 24, 2012 reaffirming the previous order granting Mr. Berman's Motion to Withdraw. The Order also provided notice of the final hearing scheduled for February 21, 2012 at 1:30 p.m. and copies were furnished to counsel and the

employee. The pretrial hearing scheduled for December 23, 2011 also did not take place since the employee did not appear telephonically. Nevertheless, counsel for the employer/carrier filed their portion of the pretrial statement.

According to the Petition for Benefits, the claimant sought the following benefits:

1. A determination of compensability of the alleged work accident of August 12, 2010;
2. Compensation for temporary total/temporary partial disability (TT/TPD) benefits from beginning August 27,2010 to the present and continuing;
3. Authorization for an evaluation and treatment, if necessary, with an orthopedic surgeon;
4. Payment of interest and penalties on any indemnity benefits awarded; and
5. Cost and attorney's fees at the expense of the employer/carrier.

The employer/carrier defended on the following grounds:

1. Claimant's alleged knee condition is bilaterally preexisting, personal in nature and not causally related to work performed;
2. The work performed is not the major contributing cause of any disability and need for treatment of the claimant's bilateral knees;
3. Pursuant to §440.09(1), Florida Statutes, the claimant has the burden in a repetitive exposure claim to prove both causation and subsequent exposure to support causation by clear and convincing evidence and claimant would not be able to do so;
4. No medical evidence to support indemnity benefits from August 27, 2010 in connection with any compensable injury;
5. Employer/carrier denies claimant's entitlement to penalties, interest, costs and attorney's fees; and
6. The employer/carrier seeks reimbursement of costs pursuant to §440.34(3),

Florida Statutes; and

7. The employer/carrier requests reimbursement of the prior advance on compensation paid to the employee.

The parties did not enter into any pretrial stipulations.

At the trial of this cause, the following exhibits were admitted into evidence.

Claimant's Exhibits

1. Petition for Benefits filed on 7/22/2011.

Employer/Carrier's Exhibits

1. Notice of Denial dated 9/10/2010.

Joint Exhibits

1. None.

No witnesses testified at trial.

After due consideration of this matter and after having the opportunity to review and consider the aforesaid exhibits which were admitted into evidence and having endeavored to resolve all conflicts of facts in the evidence presented herein, I hereby make the following findings of fact and conclusions of law:

1. The undersigned Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim;

2. The stipulations entered into by and between the parties herein are hereby approved and adopted as findings of fact and are incorporated herein by reference;

3. In my determination herein I have attempted to distill all the testimony and salient facts together with the findings and conclusions necessary to the resolution of this matter. I have not necessarily attempted to summarize the substance of the claimant's testimony or the testimony of any live or deposition witness, nor have I attempted to state nonessential facts. Because I have not done so should not be construed that I have failed to consider all of the evidence.

4. Any and all issues raised in the petition or petitions for benefits described above which was the subject matter of the final hearing, but which issues were not tried at the hearing are presumed resolved or, in the alternative, deemed abandoned by the employee/claimant and therefore **denied**. See Betancourt v. Sears Roebuck & Co., 693 So.2d 253 (Fla. 1st DCA 1997).

5. The PFB of 7/22/2011 filed in this cause alleges that the claimant, Fabian Bridgewater, was employed by the captioned employer and on 8/12/2010 suffered bilateral knee injury as a result of unloading cases of food and walking up and down a 350-400 lbs. ramp. Claimant also alleges that he was a delivery driver for and employee of Moment's Notice through Southeast Personnel Leasing, Inc. Prior claims were filed in this cause on 11/04/2010 and 11/10/2010, which claims the employer/carrier denied and no compensation benefits had been paid or provided.

6. Since the final hearing was properly noticed and scheduled, the final hearing was conducted in the absence of the claimant. The judge of compensation claims may proceed with a properly noticed hearing even though a party has failed to appear at the final hearing. Chittick v. Eastern Airlines, Inc., 410 So. 2d 598, 600 (Fla. 1st DCA 1982).

7. I find the claims here were denied in their entirety and compensability of the alleged accident was disputed. That claimant, Fabian Bridgewater, failed to introduce any evidence in support of his claims. It is the injured worker's responsibility to establish by competent substantial evidence that he/she has sustained an accident by injury arising out of and in the scope of employment. Specifically, section 440.09(1), Florida Statutes, requires the "establishment of the causal relationship between a compensable accident and injuries or conditions that are not readily observable must be by medical evidence only, and demonstrated by physical examination, findings or diagnostic testing." Moreover, that work accident is the major contributing cause of the alleged injury must be demonstrated by medical evidence only.

8. The claimant presented no medical evidence establishing the necessary casual relationship between his employment and his alleged subsequent condition or injury. Wintz v. Goodwill, 898 So. 2d 1089 (Fla. 1st DCA 2005). Moreover, Mr. Bridgewater, failed to present any competent substantial evidence to support his claim for indemnity benefits or any medical evidence to support his claim of physical restrictions and limitations which resulted in loss of earning or earning capacity. Since it is the employee's burden to prove all elements of his workers' compensation claims, as held in Nowicki v. St. Petersburg Kennel Club, 558 So. 2d 181 (Fla. 1st DCA 1990), and since Mr. Bridgewater has not done so, his claims for workers' compensation benefits presented for adjudication must be denied.

WHEREFORE, it is **ORDERED** that the claims of the employee/claimant, Fabian Bridgewater, based on his claimed injury by accident arising out of and within the course and scope of employment on August 12, 2010, are hereby **DENIED**.

IT IS FURTHER ORDERED that the employer/carrier's request for reimbursement of taxable cost is hereby **GRANTED** since the employer/carrier here is the prevailing party. Jurisdiction as to the amount of said taxable costs is hereby reserved for hearing for a period of one (1) year from the date hereof.

IT IS FURTHER ORDERED that jurisdiction of the employer/carrier's request for reimbursement of its advance of compensation to the claimant is hereby reserved for hearing for a period of one (1) year from the date hereof.

DONE AND ORDERED at Tallahassee, Leon County, Florida.





John J. Lazzara
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered and a true copy was furnished by electronic transmission on this 22nd day of February, 2012 to counsel of record and to the parties by U.S. mail.


Assistant to Judge of Compensation Claims

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