

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

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|------------------------------------|---|---------------------------------------|
| Fabian Bridgewater, |) | |
| Employee/Claimant, |) | |
| |) | |
| vs. |) | OJCC Case No. 10-026153JJL |
| |) | |
| Southeast Personnel Leasing, Inc., |) | Accident Dates: 8/12/2010 & 8/27/2010 |
| Moment's Notice /Packard Claims |) | |
| Administration, Inc., |) | Judge John J. Lazzara |
| Employer/Carrier/Servicing Agent. |) | |

SECOND FINAL ORDER

AFTER DUE NOTICE to the parties, a subsequent Final Hearing on this matter was held on May 29, 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, appeared pro se 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. The initial final hearing was held on February 21, 2012. Mr. Bridgewater did not appear for the hearing. Final Order was entered on February 22, 2012. By correspondence of March 21, 2012, the claimant requested that an additional hearing be set since he had not received notice of the final hearing due to a change of address. The final order was vacated by Order Vacating Final Compensation Order entered on March 21, 2012 to allow the claimant the opportunity to be heard on his claims and retain legal counsel. The matter was rescheduled and re-noticed for May 29, 2012. At the final hearing, Mr. Bridgewater stated that he had consult with an attorney about his claim, but that the attorney would only attempt to negotiate a settlement of his workers' compensation case. The negotiations did not result in settlement, and the trial proceeded accordingly.

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. Petitions for Benefits filed on 7/22/2011.

Employer/Carrier's Exhibits

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

Joint Exhibits

1. None.

Only the claimant, Fabian Bridgewater, testified at trial.

After due consideration of this matter and after having the opportunity to review and consider the testimony presented at trial and 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 PFBs of 7/22/2011 filed in this cause alleges and the claimant, Fabian Bridgewater, who is 52 years of age with a 12th grade education, testified that he was employed by the captioned employer for a few weeks as a truck driver where he was required to off-load his cargo. He said that on or about 8/12/2010 or 8/27/2010 (*there was only one incident alluded to here*) while pushing a dolly. with a load of approximately 300 lbs., down a ramp he felt his right knee give out¹. The petition for benefits alleges that he suffered bilateral knee injury, although at the hearing the claimant testified that his left knee was O.K, as a result of unloading cases of food and walking up and down a ramp. Mr. Bridgewater says that he contacted the employer that day and advised them that his "knees

¹ The claims were consolidated by Order Granting Motion to Consolidate entered on August 2, 2011.

were going bad.” In other words, he couldn’t do the off-loading he was required to do in his job. The claimant testified that he subsequently saw a doctor and was informed that he had a Baker’s Cyst behind his right knee that required surgery. No medical evidence was introduced at the hearing. He has not received any further medical care since the initial evaluation he sought on his own, and has not been paid any compensation benefits². He last worked for this employer on or about August 25, 2010. He attended vocational training classes from September 2010 to July 2011 while working part-time, and he received a certificate in refrigeration mechanics. He has worked part-time at various times as a truck driver, and since March of 2011 has been employed for Best Drivers Agency regularly working approximately 25 hours per week earning \$12.00 per/hour.

6. I find the claims here were denied in their entirety by the employer/carrier and compensability of the alleged accident is disputed. Except for his testimony and subjective belief, the claimant, Fabian Bridgewater, failed to introduce any medical evidence in support of his claim that his work activity resulted in a work-related injury. 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.” See Hunt v. Exxon Co. USA, 747 So.2d 966 (Fla. 1st DCA 1999).

7. The claimant presented no medical evidence establishing the necessary causal

² Question arose during cross-examination whether the claimant received a \$2,000.00 advance on compensation. Mr. Bridgewater testified that the only money he received regarding his claim was a \$40.00 check from the carrier for travel expenses. Yet he testified that when he received his file from his former attorney, Richard B. Berman, Esq., there were copies of two checks totaling \$3,500.00. He remembers one being for \$1,500.00, and another for \$2,000.00. The docket does reflect that a Motion for Advance of \$2,000.00 was filed March 2, 2011, however, the motion was not set for hearing nor was an order entered approving the motion. The employer/carrier offered no evidence whether such an advance was provided voluntarily, however, at the prior hearing Mr. Amelio did request recoupment or reimbursement for an advance. The undersigned judge will inquire of claimant’s former counsel for further clarification of this collateral matter.

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 any physical restrictions and limitations which would have impacted any 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 did not do so, his claims for workers' compensation benefits presented for adjudication must be denied.

WHEREFORE, it is **ORDERED** that the claims for workers' compensation benefits 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 or August 27, 2012, are hereby **DENIED**.

IT IS FURTHER ORDERED that the employer/carrier's prior request for reimbursement of taxable cost made at the hearing of February 21, 2012 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 made at the hearing of February 21, 2012 is hereby reserved for hearing for a period of one (1) year from the date hereof.

DONE AND ORDERED at Tallahassee, Leon County, Florida.



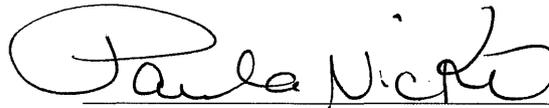


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered and a true copy was furnished by electronic transmission on this 30th day of May, 2012 to counsel of record and to the parties by U.S. mail.



Assistant to Judge of Compensation Claims

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