

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
MIAMI DISTRICT OFFICE

Camilo Gomez,
Employee/Claimant,

vs.

OJCC Case No. 13-019386ERA

Southeast Personnel /Packard Claims
Administration,
Employer/ Carrier/ Servicing Agent.

Accident date: 7/10/2013

FINAL COMPENSATION ORDER

This matter came before me, the undersigned Judge of Compensation Claims, for a Merits Hearing held on the 13th day of January, 2014. The Claimant was represented by Toni Villaverde, Esquire, and the Employer/Carrier by Anthony Amelio, Esquire. On the evidence presented, this Order ensues.

CLAIMS/DEFENSES:

Claims:

1. Authorization of return appointment to Port of Miami.
2. Compensability of accident.
3. Fees and cost.
4. TTD or TPD from 7/10/13 ongoing at the correct rate.
5. Increase in AWW to \$649.15.
6. Authorization of a splint.
7. Penalties and interest.

Defenses:

1. Claimant is not entitled to any benefits based on his knowing violations of F.S.440.105 (4) (a) (9). Specifically the Claimant knowingly presented or caused to be presented false, fraudulent or misleading oral or written statements as evidence of identity for the purpose of obtaining employment and in supporting a claim for worker's compensation benefits by presenting a

false Social Security number to authorized medical providers in order to secure medical treatment related to the worker's compensation case.

2. The Claimant has presented no medical evidence to support compensability of a non-readily observable injury.
3. No medical evidence to support Claimant's claim for temporary indemnity benefits.
4. Claimant's AWW should be calculated at \$0.00 as the Claimant failed to report any income for Federal Income Tax purposes.
5. No entitlement to PICA.
6. E/C/SA seeks costs pursuant to F.S. 440.34.

EVIDENCE PRESENTED:

Claimant:

1. PFB's filed 8/22/13, 8/29/13 & 10/21/13 (Composite Claimant 1)

Joint:

1. Neil Potash deposition with exhibits dated 1/10/14 and 1/14/14 (Joint 1a).

Employer/Carrier:

1. AWW statement and pay records (EC 1).
2. Notice of Denial dated 7/22/13 (E/C 2).
3. Claimant deposition dated 11/13/13 (E/C 3).
4. Drug test report limited to "step 5" (E/C 4).

Judges Exhibits:

1. Pre-trial stipulation and order (J1).

For Identification only:

1. Personal identification form (E/C 1).

Live Testimony:

1. Claimant.
2. Rafael Morales.

CONCLUSIONS OF LAW AND FINDINGS OF FACT:

1. In making my findings of fact and conclusions of law in this claim, I have carefully considered

and weighed all of the evidence presented to me and I have resolved all of the conflicts in the evidence. I have personally observed the candor and demeanor of the witnesses who testified live before me and I have reviewed and accepted into evidence the depositions and exhibits noted above.

2. This case was basically defended on the basis of a misrepresentation of the Claimant's Social Security number at the time he went for initial treatment at the Port of Miami Clinic. At the conclusion of the hearing, in closing the Claimant's attorney objected to this defense on the basis that it did not specifically address the nature of the misrepresentation. No evidence or argument was made which would indicate a denial of due process. In fact the contrary is evident by the extent of the litigation in this case. The defenses set forth in the pre-trial are found to be very specific as to what misrepresentation was claimed by the E/C in support of this defense.

Therefore, the Claimant's objection is overruled.

3. As to the average weekly wage, the Employer's records clearly set forth the weeks which the Claimant worked and these are found to dovetail with the Average Weekly Wage Statement. The Claimant did not present any evidence of work during the week between 4/11/13 and 4/25/13, therefore the earnings as reported are found to be accurate and correct and the AWW is determined on total wages of \$7,770.00 or an AWW of \$597.69. The defense, based upon the non-reporting of income is denied as the income constituting the basis for this claim occurred in calendar year 2013 and as such a tax return setting forth any such income is yet to be due.
4. The records from Port of Miami Clinic are in evidence and they show that the Claimant was treated from 7/11/13 to 7/16/13 for an injury to the left index finger. The physician concluded that the injury was work related and the accident was the major contributing cause of the resulting medical treatment and functional limitations. The Claimant received sutures and was given a splint. He was placed on restrictions to the use of the left index finger, which restrictions continued during the pendency of the treatment. He was not at MMI during this period. The

undersigned accepts this medical opinion and finds that the Claimant suffered a work related injury by accident, medically documented and at least as of 7/16/13 was on limited duty status, and not at MMI.

5. The Claimant testified with the aid of an interpreter and the undersigned had the opportunity of observing his candor and demeanor. The Claimant resides in Miami, Florida. He started to work for the employer on July 2013 as a carpenter's helper. He suffered an accident while employed there when while lowering tables one of his fellow workers let one and of the tables down crushing his finger. The Claimant did not receive medical attention on the date of the accident. On the next day his pain was so severe that a supervisor Rafael Morales took him to the Port of Miami clinic. At that time, the Claimant described his pain as a 10 on a scale of 1 to 10.
6. At the Port of Miami the Claimant filled out a form which on top is called "personal information". This form is the basis of the E/C's misrepresentation defense. The Claimant testified that he recognized his writing as to his name, wife's name and address. He denied filling out his date of birth, personal phone number or employers telephone. He admitted that he filled out the first 3 numbers of his Social Security but not the remaining numbers. According to the Claimant, Rafael Morales filled out the rest of the personal information.
7. At the time of this initial visit the Claimant was in severe pain because his finger was broken. He understood that he had to fill out the form at the Port of Miami Clinic in order to receive medical treatment. This treatment was in fact a furnished and the Claimant received stitches which he still had in place at the time of the trial. The Claimant denies any employment since the accident with any employer or with the Employer herein.
8. On cross examination the Claimant clarified that he had been employed by HH construction for a period of four months. He was required to fill out documents as part of the application process. The Claimant was well aware that he was required by the Clinic to fill out the form in order to receive treatment. He admitted that in this "personal information" form his handwriting is

reflected in the boxes which have his name, date of birth, age, sex. He denied that his handwriting is reflected in the wife's name. He admitted that his handwriting is that as found in the address and the first three digits of the Social Security number. He also admitted that he executed this form.

9. The Claimant does not know who filled out the remaining digits in the Social Security number box and suggests that someone invented those as he never gave them to Mr. Morales. The Claimant invoked his privilege against self incrimination when asked if he had ever used that Social Security before. There is a suggestion that the handwriting on these remaining Social Security digits is not the Claimant's. However, no expert evidence from a handwriting expert was presented.
10. When asked whether his Social Security number was 582-02-3216 the Claimant again invoked his privilege against self incrimination.
11. In response to cross examination inquiry as to his non-employment since the accident the Claimant admitted that he currently could not work without proper papers and he would only be able to work "off the book". A separate form was shown to the Claimant involving the drug testing. With reference to "step 5" only the Claimant testified that he filled out some of the information contained in that section but not in the other sections.
12. Rafael Morales served as the Employer's representative witness. He has worked with HH construction over one year and various capacity including safety manager, project manager and quality control manager. One of his duties is to address accidents and to take an injured worker to the Port of Miami Clinic. He also must report any accident to the Employee Leasing Company, Southeast Personnel. After the first visit to a physician the remaining visits are through transportation provided by Southeast Personnel.
13. After becoming aware of the Claimant's injury he transported the Claimant to the Port of Miami Clinic. On the form described as "personal information" only he and the Claimant filled

out entries above the insurance company address. Mr. Morales personally filled out information concerning the employer's name, address and work phone. He did not fill out the information of the occupation, Social Security, the name of the Claimant's wife, the Claimant's age and date of birth. Mr. Morales testified that it was the Claimant who filled out the Social Security number box and the Claimant signed this form.

14. After this was accomplished the form was given to the Clinic and the Claimant proceeded to receive treatment.
15. H and H construction has a reemployment program however an individual could not return to work without a valid Social Security number. Even with the Claimant's hand injury they would have had work available for him, except for the other circumstances. Mr. Morales did not know if at the time of the hire the Claimant had a valid the Social Security number.
16. The Claimant's deposition was introduced by the E/C. There he refused to answer questions concerning his citizen and residence status, Social Security number, and whether he had ever driven in the United States. Additionally he refused to answer a question that asked whether he told "them" what to put in the application. Likewise he refused to answer whether he had a valid work permit or green card to work in the United States. He also refused to answer whether he was telling someone the information as they were filling out the sheet (at the Clinic) or whether he knew how they got this Social Security Number to put in the form at the Clinic.
17. The undersigned finds significant the Claimant's admission that he currently was not able to work as he did not have "documents" that would allow him to legally work in this Country, and that he could only work "off the books".
18. After considering the candor and demeanor of both the Claimant and Mr. Morales following their extensive testimony, the undersigned finds more credible Mr. Morales, particularly in his description of the events during the first visit to the Port of Miami Clinic and the fact that it was the Claimant who filled out the portion of the Clinic's intake involving the Social Security

number. There is no logic or reason for the Claimant only to fill out three out of the nine digits, and yet have someone else fill out the balance. The Claimant never presented any testimony to clear up why he allegedly only filled out three out of nine digits, or where he obtained the three digits that he admitted to filling out.

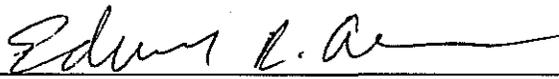
19. The Claimant has a right to invoke the Fifth Amendment privilege against self incrimination, but cannot use that shield as a sword when he is seeking benefits under Worker's Compensation to defeat the ability of the E/C to present their case. Therefore his non response to questions concerning his legal status and use of a Social Security number leads the undersigned to infer that the Claimant was aware that his Social Security number was false when completing the intake form at the Clinic as a necessary step to receive medical treatment as a worker's compensation patient. See, *Village Inn Restaurant v. Aridi*, 543 So2d 778 (Fla. 1st DCA, 1989). The undersigned further finds that the clear testimony from the Claimant demonstrated a state of mind that he intended to do what was necessary to obtain treatment, and as such knowingly and intentionally provided a false Social Security number to the Clinic. In invoking the Fifth Amendment in a blanket fashion, the Claimant through his attorney, did not demonstrate that it is reasonably possible that answers to questions at trial and deposition could form a link in the chain of evidence which would lead to criminal prosecution. *DeLisi v. Bankers Insurance Co.*, 436 So2d 1099(Fla. 4th DCA, 1983).
20. Thus the undersigned finds that the E/C has met their burden in proving that the Claimant knowingly and intentionally used a false Social Security number for the purpose of obtaining worker's compensation benefits, and as such violated 440.105(4)(a)(9). Having made such a conclusion, the claim for benefits must be denied and dismissed.

WHEREFORE IT IS ORDERED AND ADJUDGED THAT:

1. The Claim for Benefits by Camilo Gomez against Southeast Personnel Leasing, Inc. be and hereby is DENIED WITH PREJUDICE, and all petitions for benefits are as such dismissed

with prejudice.

DONE AND MAILED this 15th day of January, 2014, in Miami, Dade County, Florida.

S 

Edward Almeyda
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Miami District Office
401 Northwest 2nd Avenue, Suite N-918
Miami, Florida 33128-3902
(305)377-7465
www.jcc.state.fl.us

Camilo Gomez
438 SW 13 ST. APT. 2
Miami, Florida 33135

Packard Claims Administration
PO Box 1549
Tarpon Springs, Florida 34688
documents@packardclaims.com;

Southeast Personnel
2739 US Hwy., 19 North
Holiday, Florida 34691
;

Toni Lynne Villaverde
Toni L. Villaverde, PLLC
1430 South Dixie Hwy, Suite 319
Coral Gables, Florida 33146
tvillaverde@tlvlegal.com,asaetae@tlvlegal.com

Anthony M. Amelio
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.
603 North Indian River Drive, Suite 200
Fort Pierce, Florida 34950
AAmelio@HRMCW.com,dlamb@hrmcw.com