

A STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
PORT ST. LUCIE DISTRICT OFFICE

Terry Hunt,
Employee/Claimant,

OJCC Case No. 14-008790RDM

vs.

Accident date: 1/17/2014

Rivergold Citrus/Amerisure Mutual,
Employer/Carrier/Service Agent.

Judge: Robert D. McAliley

ORDER DENYING MOTION FOR ADVANCE

I find that even though no pleadings have ever been filed in this case other than the motion under consideration, the judge of compensation claims (JCC) has subject matter jurisdiction to determine claimant's eligibility for an advance. However, I find claimant fails to demonstrate that an advance payment in any particular amount would be in his best interest and deny the motion. This decision is explained below.

PROCEDURAL HISTORY

This case was initially assigned an OJCC number at claimant's instigation for the purpose of filing a motion for advance payment. No petition for benefits (PFB) has ever been filed. The present motion is the only matter pending before the JCC.

JURISDICTION AND NOTICE

The employer/carrier (E/C) concedes notice is proper. However, E/C contends that because no PFB is pending the JCC does not have subject matter jurisdiction. I disagree.

That portion of the Workers' Compensation Law dealing with advance payments, section 440.20 (12), applies to a "claimant", a term not otherwise defined in section 440.20 or the general definition section, 440.02.

The *Rules of Procedure for Workers' Compensation Adjudications*, usually given deference by the district court, defines "claimant" as being "the person asserting a claim." A "claim" is defined as "...each assertion of a legal right or benefit under chapter 440 F. S." *Fla. Admin. Code R. 60Q – 6.102 (1)*. To be a "claimant" the employee involved in those instances where the "claimant" is an employee is not defined as the party with a pending PFB.

A JCC is authorized to exercise limited quasi-judicial authority pertaining to compensation benefits payable under the Workers' Compensation Law. See, *Smith v. Piezo Tech. & Prof'l Adm'rs*, 420 So.2d 182, 184 (Fla. 1983). Usually this authority is initiated by the filing of a PFB. See, *Florida DOT v. Rippy*, 67 So. 3rd 1122 (Fla. 1st DCA 2011) (noting the limitations on a JCC's jurisdiction absent a pending PFB).

A PFB may be filed "... for any benefit that is ripe, due, and owing...." Although the term "benefit" is not defined by statute or rule, the plain context of section 440.192 (1) is that "benefits" are those items payable pursuant to section 440.13, 440.15 and 440.16. See also, Sec. 440.20 (1) (a). In my estimation where E/C is timely paying all benefits due under the law, as is the case here, the filing of a PFB is not warranted.

The statute also provides that an agreed advance may be obtained informally by letter to the JCC. Sec. 440.20 (12) (c) 1. In practice this voluntary payment is often made near the inception of an industrial accident where the injured employee is attempting to adjust the financial displacement incurred with an industrial injury and litigation is not on the horizon.

In summation I find that neither the statutory language of the advance payment section nor its common sense application requires there to be a pending PFB in order for the JCC to have jurisdiction.

In reaching this conclusion I am mindful of a seemingly different assessment appearing

in *ESIS/Ace American Insur. Co. v. Kuhn*, 104 So. 3rd 1111, 1113 (Fla. 1st DCA 2012) (fn. 3).

The footnoted dictum, in my opinion, reflects the court's concern that advance payments had recently been overdone to the detriment to that employer/carrier in particular and the workers' compensation system in general.

Ms. Kuhn was a flight attendant who reached maximum medical improvement and worked steadily for over 5 years when she filed a PFB only seeking an advance. The JCC awarded same on the sole basis that receiving \$2,000 would provide her with a "cushion." (Ms. Kuhn had a permanent impairment, one of three different types of injury that must also be shown.) In observing Ms. Kuhn's "claimant's status is doubtful" in my estimation the district court is holding the statute requires a genuine connection between an existing workers' compensation injury and the need for the advance payment. The court would not have decided the case differently if Ms. Kuhn also had, say, a pending PFB for a prescription reimbursement.

ENTITLEMENT ANALYSIS

Claimant is a likable fellow who lives on the margins of society and apparently has done so for some time. He dropped out of school in the eighth grade. According to claimant, at some point well before this industrial accident he was shot in the head and began receiving some form of social security disability benefits (SSI or SSDI) in the amount of \$639 monthly. The employer picked claimant up at a street corner and put him to work operating farm equipment. Claimant explained to the employer that he was "disabled" so that while he was able to work, in effect, he could not be shown to earn any income.

With that the employer carried claimant "off the books" earning \$243 weekly if E/C has correctly calculated the average weekly wage. When he was injured the employer promptly placed him on the payroll. Subsequently, the Social Security Administration reduced claimant's

monthly benefit to \$20.

Claimant's injury stems from striking a sinkhole while operating some type of farm vehicle. He was thrown around the cab of the vehicle catching his arm in the steering wheel, apparently sustaining distal fractures to one or both bones of the forearm at the wrist.

Dr. Forrester, known to me as a board-certified orthopedic surgeon specializing in injuries to the hand and wrist, was authorized to treat claimant. He performed surgery fixing the fractures with pins and plates. Surgery was followed by an extensive course of physical therapy. Dr. Forrester released claimant to return to work but has not placed him at maximum medical improvement.

Claimant received temporary total disability benefits in the amount of \$162 weekly (\$696.60 monthly) and then temporary partial disability benefits in the amount of \$155.52 weekly which equates to \$668.74 monthly in addition to his negligible social security payment. To state the obvious, although this is far from certain, claimant is making more now than shortly before he was hired, unless it is requested that there are ill-gotten gains of unreported income as it relates to social security benefits to be taken into account.

Much goes unexplained. Claimant now lives his brother and sister-in-law. Apparently this is essentially for minimal or no money. There is no testimony to the effect this housing relationship was different before the industrial accident. Claimant reports that he received financial aid from time to time from his daughter to assist him with injuries stemming from a urinary tract problem. Again it is unknown whether this arrangement is different than that pre-existing the January 2014 accident.

I find that while claimant satisfactorily demonstrates at a minimum an apparent physical impairment, he fails to show that an advance of any particular amount of money, much less

2,000 in particular, would be in his best interest. See, *Worthy v. Jimmie Crowder Excavating*, 100 So. 3rd 727 (Fla. 1st DCA 2012).

TIME FRAME CONSIDERED

In claimant's motion filed April 17, 2014, it is asserted he had "undergone unexpected family expenses." Apparently this references an email between counsel providing, "There have been 3 deaths in his family and he needs money to get to the funerals. He is looking for an emergency 2K advance."

Claimant argues his financial needs at the time his motion was filed should control. No case law is cited for this novel proposition and I find this argument contrary to *Worthy* and every other case touching on this question. Only claimant's present and future needs in addition to other statutory criteria warrant consideration.

CONCLUSION

The evidence presented is insufficient to determine if an advance is in claimant's best interest and if so in what amount. Consequently, I find claimant's motion for advance be and the same is hereby

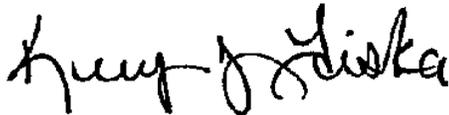
DENIED

DONE AND ORDERED this 13th day of June, 2014, in Port St. Lucie, St. Lucie County, Florida.



Robert D. McAilley
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Port St. Lucie District Office
WestPark Professional Center, 544 NW University Blvd., Suite
102
Port St. Lucie, Florida 34986
(772)873-6585
www.fljcc.org

I HEREBY certify that a true and correct copy of the foregoing has been e-mailed to Counsel on June 13th, 2014.



Assistant to Robert D. McAilley

Kelly A. Cambron
A Law Firm of Goldstein, Schmitt, Cambron & Reynolds, PL
1330 S. Federal Highway
Stuart, Florida 34994
kcambron@femaleinjurylawyer.com, claims108@femaleinjurylawyer.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