

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

Humberto Lopez,  
Employee/Claimant,

OJCC Case No. 14-000014RDM

vs.

Accident date: 12/16/2013

Southeast Personnel Leasing, Inc./Packard  
Claims Administration,  
Employer/Carrier/Service Agent.

Judge: Robert D. McAliley

ORDER DENYING MOTION FOR ADVANCE

This order denies claimant's motion for advance because insufficient evidence is presented as to why the amount requested, \$2,000.00, is warranted as opposed to some other figure. In this case claimant sufficiently demonstrates a loss of earnings as well as at least an apparent impairment. He also is persuasive as to assistance he has received from family and friends since the industrial accident. However, the vagueness or absence of testimony as to the proposed use of an advance does not allow for a determination as to what amount, if any, would be in claimant's best interest. In reaching this decision, I disregard the employer/carrier's (E/C) bare-bones assertion that claimant should not recover based on a pending fraud defense. An explanation follows.

JURISDICTION AND NOTICE

I find the judge of compensation claims (JCC) has jurisdiction over the parties and subject matter. The parties were properly notified of the hearing.

EVIDENTIARY RULINGS

As to evidentiary rulings taken under advisement, claimant's objection on relevancy

grounds as it pertains to his depositions taken in case number 10 – 004248 RDM is sustained. Claimant's deposition taken in the present case is considered. The medical report dated March 20, 2014, a DWC – 25 form, is accepted into evidence over the employer/carrier's (E/C) objection.

#### BACKGROUND OF CLAIMANT

Claimant is a 38-year-old Guatemalan national who has lived the United States for 8 years. Although claimant is married, his wife and children still reside in Guatemala.

To the extent I could follow claimant's trial testimony, he resides in a home which he shares with 3 other men. He does not own a motor vehicle. Claimant obtained a minimal education in Guatemala. He does not read, write or speak English. Claimant is literate in Spanish.

His injury, described on deposition, occurred upon he was working as an assembler at a metal table. Someone pressed another table against him injuring his leg and back. He was treated at Fort Pierce Immediate Family Care, a walk-in clinic. The parties agreed at mediation that claimant was earning \$324.64 weekly at the time of this accident.

As a result of this injury claimant has been unable to work. As of March 3, 2014, claimant's physical activities were limited to lifting, pushing or pulling no more than 20 pounds and no repetitive bending or twisting due to a low back injury. Claimant has recently undergone an independent medical examination, performed at claimant's behest.

E/C has raised a sections 440.09 and 440.105 fraud defense in the underlying matter and assert this defense applies to the present motion for advance. But E/C presents no evidence of "fraud" and there are no specific pleadings on point. This defense is disregarded in reaching a decision.

## FINANCIAL PROBLEMS

Claimant has received no earned income following the present industrial accident. The specific impact of this, however, is hard to assess. Claimant is a taciturn individual to say the least. And that is reflected in the vagueness of claimant's answers reluctantly pulled out of him by his own attorney's questions.

Following the accident claimant's housemates have been picking up the rent in what appears to be a communal arrangement. He has received various loans from otherwise unidentified sources such as \$150 from friends of pay utility bills. He received the loan of \$200 from another source to eat. Claimant contends he owes his mother-in-law also in Guatemala \$500 for assisting with his children but gives no date as to when this expense was incurred.

In all, claimant reports receiving a variety of payments either directly or on his behalf to pay living expenses but provides minimal specifics. Claimant testifies he has to pay these unidentified parties back but does not maintain that he is being pressed for the money. Claimant does not contend this assistance is coming to an end.

I recognize that from claimant's perspective at the hearing on his motion he likely found himself in what to him was an alien, intimidating environment. Nonetheless, it is up to claimant to meet his burden of presenting sufficient evidence for an appropriate order to be entered.

## ANALYSIS

Determining claimant's eligibility for an advance requires a two-step inquiry. The first step deals with the immediate impact of an industrial accident on claimant's earnings, earning capacity or physical condition. Obviously claimant has not returned to the same or equivalent employment, has incurred a substantial reduction in wages, and has at least an apparent physical impairment. See, Sec. 440.20 (12) (b) *Fla. Stat.* (2013).

Plainly claimant can use the money. But this fact standing alone is not a sufficient basis for awarding an advance. See, *ESIS/Ace American Insur. Co. v. Kuhn*, 104 So. 3<sup>rd</sup> 1111 (Fla. 1<sup>st</sup> DCA 2012). It is also necessary for claimant to demonstrate why the particular amount sought, \$2,000.00, is in his best interest.

From that standpoint the present case is quite similar to the facts presented in *Worthy V. Jimmie Crowder Excavating*, 100 So. 3<sup>rd</sup> 727 (Fla. 1<sup>st</sup> DCA 2012). Mr. Worthy was behind on his bills including his rent and car payment. Not surprisingly, he answered the question as to whether a \$2,000 advance would be in his best interest affirmatively. There was no further evidence elaborating as to why this particular amount was appropriate.

The court notes that this type of evidence, without more, is insufficient. “Without Claimant presenting sufficient evidence as to why \$2,000 advance was appropriate, the JCC was unable to adequately consider claimant’s interest, as required under the statute.” *Id* at 729. Consequently the order denying claimant’s motion for an advance was affirmed.

#### CONCLUSION

Based on the foregoing analysis, claimant’s motion for an advance pursuant to Florida Statute 440.20 (12) be and the same is hereby

**DENIED**

DONE AND ORDERED this 16th day of June, 2014, in Port St. Lucie, St. Lucie County, Florida.



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I HEREBY certify that a true and correct copy of the foregoing has been e-mailed to Counsel on June 16th, 2014.



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