

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

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OJCC NO.: 13-001944CMH

D/A: 12/28/12

Judge: Charles M. Hill, III

FINAL COMPENSATION ORDER

THIS CAUSE came before me on Aug. 14, 2013 for final hearing. The matter had been bifurcated by order entry of June 12, 2013 to first adjudicate the validity of the affirmative defense of misrepresentation/fraud set forth in the pretrial stipulation approved on June 6, 2013, wherein the claimant was alleged to have presented false oral and written statements of identity for the purpose of filing or supporting claims for workers' compensation benefits. The claimant acknowledged that the social security card and the number thereon was invalid, but that he never knowingly or intentionally used that false information for the explicit purpose of obtaining workers' compensation. The information was supplied only for identification purposes, independent of any purposeful procurement of benefits under the Act.

Documentation was marked and admitted into evidence or otherwise marked for ID purposes. An appendix thereof is attached. The claimant's authentication and hearsay objections

to the admissibility of the transcription of the claimant's telephonic statements, resulting from the interview conducted by Fran Lesick, adjuster on Jan. 3, 2013, attached to the deposition Sherrie Munger comprising joint exhibit (1), are sustained and the transcription shall not be considered during these deliberations for the truth of the matters contained therein. Neither the testimony of Fran Lesick, nor Cristian Garcia, the carrier's interpreter, was tendered by the E/C. Furthermore, the transcript itself is replete with instances of the interpreter summarizing and paraphrasing the claimant's commentary, e.g. he said, he's paid in cash, he was working on a roof, he pulled his body, he felt pain in his back, he doesn't know the names of, maybe an ID from his country, he likes to work, and so on. This methodology cannot be considered direct interpretation. Lastly, there was no assurance of this interpreter's fluency in the Spanish language; no assurance presented of his impartiality. On the other hand, there was no dispute that the claimant participated in a telephonic interview on that date with a carrier representative. Next, consideration of the deposition of Josephine Reed, MRC for PHC and the attached medical records comprising E/C exhibit (1) was limited to their factual contents. The claimant testified at the hearing with the assistance of a Spanish interpreter; the client employer project manager, Rafael Morales, also testified thereat.

AFTER DUE CONSIDERATION given to the evidence admitted, memoranda of law and argument of counsel the following findings of ultimate fact and conclusions of law shall be applicable.

1. Witness credibility. The claimant openly acknowledged the invalidity of the social security number he utilized to obtain employment and his participation in a telephonic interview. He had given a number to the telephonic interviewer, but could not recall the number given. He did recall however being accompanied by Rafael Morales to

the Physicians Health Center, completing their Patient Information/Health History form (intake form) with Morales' assistance and advising Morales in advance regarding the invalidity of his social security number. The claimant expressed his belief he would not be medically "attended to" without a social security number. Morales testified that at no time was the validity of the claimant's number discussed and that he had filled in the form solely with the information given him by the claimant in the physician's reception area. He had not accompanied the claimant into the examining room.

I find the testimony of Morales to have been open, frank and sincere. I accept as trustworthy and credible his account that he was unaware of the invalidity of claimant's social security number, that no conversation took place with the claimant regarding its invalidity and that he filled in the intake form with the information provided by the claimant. I reject the claimant's contradictory testimony as not credible.

2. F.S.440.105(4)(b)9. No evidence was presented concerning a chain of custody form for required drug testing as alluded to in the E/C trial memorandum; the transcription narrative of the telephonically recorded statement taken from the claimant on Jan. 3, 2013 was ruled inadmissible as above discussed. The undersigned will therefore examine the circumstances surrounding the completion of the intake form dated Dec 28, 2012.

In this respect, I find that the intake form containing the invalid social security number was filled in by Morales at the behest of the claimant, that the claimant's actions in supplying an invalid number were not induced by Morales and that the claimant's voluntary provision of the invalid number to Morales was made with the specific intent of supporting his claim for medical care to be obtained at the Physicians Health Center.

While the claimant may not have been aware of the consequences of his actions, I find that he knowingly caused to be presented a false written statement within the intake form, with the intent to support a claim for worker's compensation benefits. This intentional act violated the tenet of F.S.440.105(4)(b)9. [This act was also violative of F.S.440.105(4)(b)1 regarding purposeful obtainment of any benefit under the Act.]

3. F.S.440.09(4)(a). Moreover, I find that the violative act by the claimant of F.S.440.105(4)(b)9, was intentionally engaged in for the purpose of securing worker's compensation benefits. As a result thereof, the claimant has forfeited his entitlement to worker's compensation benefits for the above industrial accident.

4. Evidentiary standard - preponderance of the evidence. The undersigned has found that the E/C has met this elevated burden of proof by having supplied more convincing evidence to support this affirmative defense of misrepresentation/fraud, than that supplied by the claimant to defeat it.

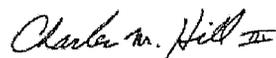
WHEREFORE premises considered, it is

ADJUDGED that:

5. The pending petition for benefits filed on Jan. 24, 2013 is hereby dismissed with prejudice.

6. Jurisdiction is reserved to later determine any and all issues involving attorney's fees and costs.

ORDERED in Chambers this 29th day of August , 2013.



Charles M. Hill, III

Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been emailed to counsel this 29th day of August, 2013.



Secretary to Judge of Compensation Claims

Appendix

Judge's Exhibits:

1. Order on claimant's motion to bifurcate issues for final hearing dated June 12, 2013 marked Judge's exhibit (1).
2. Pre-trial stipulation dated June 6, 2013 marked Judge's exhibit (2).

Joint Exhibits:

1. Deposition of Sherrie Munger, claims specialist, dated April 24, 2013 with attachments marked joint exhibit (1).
2. Deposition of Rafael Morales, HH Const Group project mgr, dated June 12, 2013 marked joint exhibit (2).

Claimant's Items for ID:

1. Trial summary dated Aug. 12, 2013 marked item (1) for ID on behalf of the claimant.

E/C's Exhibits and Item for ID:

1. Deposition of Josephine Reed, PHC/MRC, dated July 23, 2013 with attachments marked E/C exhibit (1).
2. Deposition of Lisa Garcia, HH Const Corp/Controller, dated June 12th, 2013 with attachments marked E/C exhibit (2).
3. Deposition of claimant dated April 18, 2013 marked E/C exhibit (3).
4. Trial memorandum dated Aug 9, 2013 marked item (4) for ID on behalf of the E/C.