

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
MELBOURNE DISTRICT OFFICE  
JUDGE PAUL T. TERLIZZESE**

**EMPLOYEE:**

Juan Mercado  
514 Gardenia Avenue  
Ft. Pierce, FL 34982

**ATTORNEY FOR EMPLOYEE:**

unrepresented

**EMPLOYER:**

Drawdy Brothers Construction, Inc.  
2945 West Midway Road  
Ft. Pierce, FL 34945

**ATTORNEY FOR  
EMPLOYER/CARRIER/SERVICING  
AGENT:**

Anthony M. Amelio, Esquire  
Hurley, Rogner, Miller, Cox, Waranch &  
Westcott, P.A.  
603 North Indian River Drive, Suite 102  
Fort Pierce, FL 34950

**CARRIER/SERVICING AGENT:**

Amerisure Mutual Insurance Company  
Post Office Box 10790  
St. Petersburg, FL 33733

OJCC NO.: 09-029370PTT  
D/A: 9/19/2008

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**MERITS ORDER**

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**THIS MATTER** came on to be heard before me, the undersigned Judge of Compensation Claims, on May 10, 2010 on the November 17, 2009 and January 5, 2010 Petitions for Benefits. The Court awaited approximately twenty (20) minutes before commencing the Final Hearing, and nearly forty-five (45) minutes upon conclusion of the Merits Hearing, and the claimant did not appear for the Final Hearing. On May 10, 2010, on the record, the Court announced detailed verbal findings of fact, and conclusions of law, which are directly incorporated into this Order.

The parties, (through prior Counsel for the Claimant in the Joint Pretrial Stipulation), stipulate and agree that the venue is proper in Brevard County, and that this trial was properly set in Melbourne, Florida. This Court took judicial notice of the following items:

1. February 16, 2010, Notice of Amendment to Pretrial Stipulation.
2. March 11, 2010, Employer/Carrier's Notice of Amendment to Pretrial Stipulation.
3. Claimant's counsel's Motions to Withdraw, and Orders to Withdraw, from Attorney Adam Werner and Attorney Jason Robbins.
4. Motion for Determination of Violation of Florida Statutes §440.105 and Motion to Terminate Benefits pursuant to Florida Statutes §440.09(4), filed March 3, 2010.
5. The Court's Order of March 5, 2010 granting Motion, in part, of Motion to Terminate Benefits to be heard at the Final Hearing.
6. Motion filed March 5, 2010, on Employer/Carrier's Agreed Motion to reset the March 25, 2010 Final Hearing, due to the Motion to Terminate Benefits, and the Order approving this Motion dated March 5, 2010.
7. Mediation reports from January 28, 2010, and February 11, 2010, wherein the claimant failed to show for the initial mediation, the Order to Show Cause, Response to Order to Show Cause and the Show Cause Mediation Report.
8. All previous notices of the Final Hearing.
9. The employer/carrier's March 3, 2010 Motion to Amend Pretrial Stipulation.
10. An Order approving the Motion of March 5, 2010 indicating that additional witnesses,

defenses and documentary evidence would be admitted.

The issues claimed by the claimant, via the November 17, 2009 and January 5, 2010 Petitions for Benefits, are as follows:

1. Temporary total/temporary partial disability from September 25, 2009 to the present and continuing.
2. Impairment benefits based on impairment rating of 6% per Dr. Mondo.
3. Authorization of payment of medical care with a Board Certified orthopedist and/or comparable workers' compensation doctor offering similar services to treat the claimant's back, ribs, bilateral wrists, right knee and right foot.
4. Authorization and payment of a Spanish speaking translator.
5. Compensability of the claim, and back, ribs, bilateral wrists, bilateral knees and right foot injuries as a result of the industrial accident.
6. Penalties, interest, costs and attorney's fees.
7. Authorization of treatment to the claimant's stress fracture of the femoral condyle, per Dr. Frank Murphy.
8. Authorization and payment of a Bauerfeind brace, per the recommendations of Dr. Murphy.
9. Authorization and payment of an MRI to the left knee.
10. Authorization and payment of cortisone injections, per Dr. Frank Murphy.

11. Authorization and payment of Synvisc injections, per Dr. Frank Murphy.
12. Authorization and payment of physical therapy, per Dr. Murphy.
13. Authorization and payment of schooling and/or work hardening program.

As previously indicated, the claimant failed to appear for the properly noticed Final Hearing. The Claimant presented no form of evidence including depositions, witnesses, medical reports, nor any IME or authorized medical physicians reports, in support of his claim. Based upon the foregoing, the complete lack of evidence, and applicable law I make the following determinations:

1. The Judge of Compensation Claims has jurisdiction of the parties and subject matter of this claim.
2. Based on the complete lack of any evidence submitted by the claimant (the party with the burden of proof), I find that the claimant has not presented any evidence, and certainly no competent substantial evidence, to support compensability of his claim and the specific issues claimed in the various Petitions that were the subject of this timely noticed Merits Hearing. Specifically, the claimant makes a claim based on complex internal medical issues, which were not readily observable by a lay person, and which would require expert medical evidence pursuant to Florida Statutes §440.09(4). It is noted that the claimant has the burden of proof to support compensability of his alleged workers' compensation accident and injury, as well as any medical and indemnity benefits being requested. The claimant presented no competent substantial evidence, in the form of any witnesses, expert testimony, or of any factual or historical evidence to support his claims.
3. As such, all of the claims presented in the Petitions for Benefits filed November 17, 2009, and January 5, 2010, are denied and dismissed with prejudice. I find the claimant has not

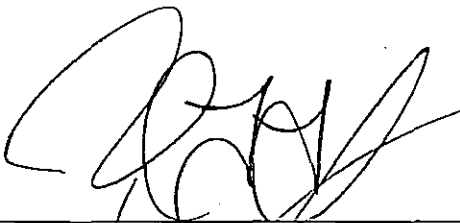
presented any competent substantial evidence to support medical causation, of any of his alleged injuries, or any related disability.

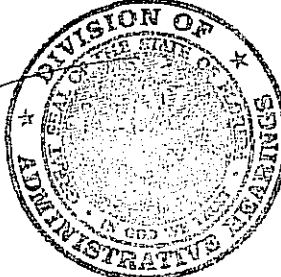
4. With respect to the Employer/Carrier's affirmative defenses under Florida Statutes §440.105(4)(b) and Florida Statutes §440.09(4), I specifically reserve jurisdiction as it relates to these affirmative defenses.

**WHEREFORE**, it is hereby **ORDERED AND ADJUDGED**:

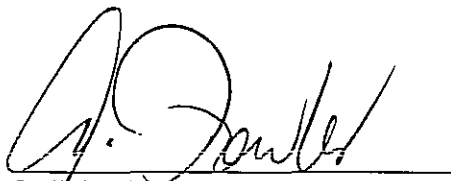
That all claims contained within the November 17, 2009, and January 5, 2010, Petitions for Benefits are denied and dismissed with prejudice. In addition, this Court specifically awards the Employer/Carrier taxable court costs pursuant to Florida Statutes §440.34. Jurisdiction is reserved to determine the amount of taxable court costs, for determination at a later proceeding.

**DONE and ORDERED** in Chambers, Melbourne, Brevard County, Florida this 11<sup>th</sup> day of May, 2010.

  
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Honorable Paul F. Terlizzese  
Judge of Compensation Claims



**THIS IS TO CERTIFY** that the foregoing Order was entered on this 11<sup>th</sup> day of May 2010, and that a copy thereof was sent by E-served to Counsel and served via U.S. mail to the Claimant.

  
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Judicial Assistant