

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

Pavel Chipi Gattorno,	)	
Employee/Claimant,	)	
	)	Judge Gerardo Castiello
vs.	)	
	)	OJCC Case No. 10-009340GCC
Alpha Staff Group, Inc., Alphastaff Group,	)	
Inc./Tower Group Companies, and SUA	)	Accident date: 2/1/2010
Insurance,	)	
Employer/ Carrier/Servicing Agent.	)	
_____	)	

**FINAL COMPENSATION ORDER**

**(I) PROCEDURAL HISTORY:**

After due notice, the above styled matter came before the undersigned Judge of Compensation Claims for Final Hearing on April 16, 2013. Claimant Pavel Chipi Gattorno was represented by William Haro, Esquire of The Law Offices of Richard Zaldivar, P.A. Alpha Staff Group, Inc., and servicing agent Tower Group Companies, and SUA Insurance, respectively (hereinafter: E/SA) were represented by Andrew Borah, Esquire of Hurley, Rogner, Miller, Cox, Waranch, & Westcott, P.A.. This Order ensues.

**(II) EVIDENTIARY EXHIBITS:**

Except where otherwise indicated the following exhibits were admitted into evidence:  
Exhibit 1: Order Approving Pre Trial Stipulation;  
Exhibit 2: Order Granting Motion to Admit Medical Records of Dr. Gary Kelman, Occupational Medical Center, and Health Care Center of Miami entered on June 20, 2011;  
Exhibit 3: Executed DWC-19 form  
Exhibit 4: Deposition of Kenneth Osborn, D.C. taken on May 30, 2012;  
Exhibit 5: Deposition of Lisa Sabatinni taken on August 30, 2011;  
Exhibit 6: Deposition of Mariano Carballosa taken on July 19, 2011;  
Exhibit 7: Medical Records from Orthopaedic Associates;  
Exhibit 8 (for identification only): Claimant's Trial Memorandum;  
Exhibit 9 (for identification only): Employer/Carrier's Trial Memorandum;  
Exhibit 10 A: Order Denying E/C's Motion to Reconsider Preliminary Decision to Appoint EMA/ Motion for Rehearing;  
Exhibit 10 B: Order Appointing Expert Medical Advisor;  
Exhibit 11 (Proffer Only): E-Mail Correspondence dated June 12, 2012;  
Exhibit 12-A (Proffer Only): Claimant's Motion for Lump Sum Advance of \$2,000 dated

August 7, 2012;  
Exhibit 12-B (Proffer Only): Order Denying Claimant's Motion for Advance;  
Exhibit 12-C (Proffer Only): Claimant's Renewed Motion for Lump Sum Advance of \$2,000 dated August 17, 2012;  
Exhibit 12-D (Proffer Only): Order Denying Claimant's Renewed Motion for Lump Sum Advance;  
Exhibit 13: Payroll Voucher Report;  
Exhibit 14: Deposition of Pavel Gattorno taken on June 9, 2010;  
Exhibit 15: Supplemental Deposition of Pavel Gattorno taken on April 11, 2011;  
Exhibit 16: Deposition of Dr. Gary Kelman taken on August 1, 2011;  
Exhibit 17: Deposition of Winifred Williams taken on August 29, 2011;

### **(III) CLAIMS AND DEFENSES:**

#### *A. Claims:*

1. Payment of TT/TP from DOA forward;
2. PICA;
3. Compensability of cervical spine condition.

#### *B. Defenses:*

1. Claimant MMI.
2. Loss of income is not causally related to industrial injuries.
3. Claimant has not returned DWC-19's
4. Unemployment offset
5. Industrial accident is not major contributing cause of cervical spine condition.
6. Cervical spine is not causally related.
7. Claimant has voluntarily dismissed compensability of cervical spine/upper back claim twice before, therefore, claim has been dismissed with prejudice
8. No PICA due or owing.

### **(IV) FINDINGS OF FACT:**

(1) Claimant Pavel Chipi Gattorno is a native of Havana, Cuba. (Exhibit 14, p. 6) He came to the United States from Cuba in October or November of 2008. (Exhibit 14, p. 6, 21)

(2) On February 23, 2009, he began employment with employer Martino Tire as a tire tech. (Exhibit 14, p. 20, 21) (Exhibit 6, p.6) His job duties were to remove tires from vehicles, mount new tires, patch tires and various other tire oriented services.

(3) He was paid \$11.00 an hour and typically worked 40 hours a week up until February 1, 2010. The parties have stipulated to an AWW of \$440.00.

(4) On February 1, 2010, Mr. Gattorno sustained an injury to the thoracic region of his back while mounting a rim weighing 50 to 70 pounds on a Land Rover. (Exhibit 14, p. 22, 23, 25. ) The undersigned notes that claimant testified at Final Hearing that the vehicle he was working on was a BMW. This was one of several inconsistencies in the statements made by the claimant that were brought to light.

(5) An hour and a half after the above described incident, Mr. Gattorno injured the same body part - his thoracic region - but also experienced abdominal pain in an area where he had previously suffered a hernia. (Exhibit 14, p. 25).

(6) He was immediately sent to Mt. Sinai hospital for authorized care. (Exhibit 14, p. 27.) Within 2 days after that receipt of initial care, he was authorized to treat at the Health Care Center of Miami. (Exhibit 14, p. 27 - 28)

(7) He subsequently - on May 14, 2010 - began receiving his authorized care through the Occupational Medical Center Clinic, where they injected his back. (Exhibit 2); (Exhibit 14, p. 35, 36) There, the claimant was diagnosed with "thoracic dysfunction." (Exhibit 2) A May 17, 2010 DWC-25 executed at Health Care Center of Miami provides a diagnosis of "acute lumbosacrothoracic sprain." (Exhibit 2, DWC 25)

(8) Dr. Rina Vollmer, M.D. of Occupational Medical Center recommended on July 16, 2010 that claimant undergo (1) an MRI and (2) an orthopedic evaluation. (Exhibit 2, 7/16/2010 report and prescription) Authorized orthopedic care with Dr. Gary Kelman, an orthopedic specialist was then provided.

(9) Dr. Kelman's September 1, 2010 initial evaluation documents that the claimant was referred to him for lumbar spine issues, "but his complaints are in the cervical and thoracic region." (Exhibit 2) He notes: "His symptoms are entirely in the neck and thoracic region." (Id.) Shortly thereafter, on September 1, 2010, he received authorization via fax from the carrier to treat the "neck and thoracic spine." (Exhibit 7)

(10) Dr. Kelman placed the claimant at MMI for the lumbar region as of September 1, 2010, but deferred any diagnosis as to thoracic and neck regions. (Id.)

(11) A July 21, 2010 note from Dr. Mark A. LaPorta, M.D. notes "there are significant internal contradictions in the claimant's statement about his work capacity." (Id.)

(12) The claimant saw Dr. Kenneth Osborn, D.C. as an IME. Based on the claimant's subjective representations, Dr. Osborn concluded that Mr. Gattorno had "never received any treatment for his neck and for thoracic spine to any great degree other than what Doctor Kelman has done for him, which I am not sure, other than the MRI scan." (Exhibit 4, p. 21) Dr. Osborn based this and other opinions - including major contributing cause, MMI and other material issues - on his absolute faith in the claimant's sincerity and veracity. (Exhibit 4, p. 24)

(13) In formulating his opinions, Dr. Osborn had reviewed none of Dr. Kelman's records - although he did have a copy of the MRI report prepared by the interpreting radiologist. (Exhibit 4, p. 27)

(14) Upon access to further information, Dr. Osborn acknowledged inconsistencies between the claimant's representations to him and medical records. For example: contrary to what the claimant represented to Dr. Osborn, medical records from Health Care Center of Miami do not indicate any complaints of neck pain. (Exhibit 4, p. 36)

(15) Mr. Gattorno represented to Dr. Osborn that he had not worked since his termination from Martino. This was absolutely not accurate. (Exhibit 4, p. 37) Mr. Gattorno embellished that he had been collecting unemployment to the point of creating a false impression with Dr. Osborn. (Exhibit 4, p. 38)

(16) Dr. Osborn had opined the claimant to still be temporarily totally disabled. (Exhibit 4, p. 19) This is rejected because the claimant is in fact employed. The latter is consistent with Dr. Kelman's more credible assessment of MMI with 0% for the compensable injuries suffered.

(17) Dr. Osborn opined that the claimant had not yet reached MMI. (Exhibit 4, p. 21) Same is rejected in favor of the opinions expressed by Dr. Kelman that the claimant reached MMI on September 10, 2010 with 0% impairment with respect to the lumbar spine. With regards to the neck and the thoracic region, MMI was reached on October 22, 2010 with 0% P.I.R., per Dr. Kelman.

(18) Dr. Osborn's opinions rely heavily on the claimant's subjective complaints. (Exhibit 4, p. 40) Those subjective complaints are found lacking in credibility. Additionally, it is clear that Dr. Kelman did not have the claimant's complete medical records from Dr. Kelman or from Health Care Center of Miami - the two health care providers who provided the overwhelming majority of the claimant's care - when he formulated his opinions. The weak factual predicate erodes at the credibility of Dr. Osborne's opinion.

(19) Another glaring conflict in the medical evidence relates to the role of temporal proximity of symptom manifestation to the time of the accident. Dr. Osborne took no issue with the notion that symptoms could manifest themselves several months after an accident. (Exhibit 4, p. 43) Dr. Kelman expressed the opposite view expecting there to be a temporal nexus between incident and manifestation. (Exhibit 16, p. 16) Given the facts of the case and Dr. Osborne's noted weak factual predicate, the undersigned finds Dr. Kelman's opinion more credible than that of Dr. Osborne. The undersigned finds Dr. LaPorta's assessment that two different, unrelated injuries are manifesting themselves to be highly credible. (Exhibit 2, July 21, 2010 report)

(20) The claimant was terminated from Martino on August 15, 2011 for reasons unrelated to his work injuries. Specifically, he ordered tires for personal use through the company account - though he did pay for them cash and has the invoice to demonstrate same. (Exhibit 15, p. 12-13) The claimant and another employee named Edwin were using the employer's vehicle to store tires they were purchasing cash at wholesale for personal gain. (Exhibit 6, p. 13) Both the claimant and Edwin were terminated as a result of their scheme. (Exhibit 6, p. 14)

(21) The claimant was obviously able to perform his job duties while also taking it upon himself to engage in these extra-activities. Viewing this information consistent with Dr. LaPorta's opinions and those expressed by Dr. Kelman as to the claimant's MMI and lack of restrictions, it is abundantly clear that claimant's subsequent, post-termination reduction in income was the direct result of inappropriate conduct. See, *Vencor Hospital v. Ahles*, 727 So. 2d 968 (Fla. 1st DCA 1998)

(22) Furthermore, by Mr. Gattorno's own admission, other non-injury related factors primarily contributed to his lack of post-termination employment. He is experienced as a waiter, a bartender and as a security officer. (Exhibit 14, p. 17) (Exhibit 15, p. 27) Nevertheless, he was unable to find work for a significant period of time and candidly attributed this inability to find work as a bartender or a waiter - fields in which he is experienced - to his being "old and overweight." (Exhibit 15, line 23.)

(23) No additional indemnity is being awarded. Accordingly, no penalties and interest awards are called for.

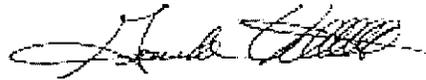
(24) The employer/carrier has successfully defended against the claims presented. Accordingly, there is no entitlement to employer/carrier paid attorneys fees or costs.

**(V) DECREE:**

Accordingly, it is hereby Ordered that:

1. the claim for payment of "TT/TP from DOA forward" is DENIED;
2. the claims for penalties, interest, employer/carrier paid costs and attorneys fees, respectively, DENIED;
3. the claim for compensability of claimant's alleged cervical spine condition is DENIED.

Done and Ordered in chambers in Miami, Dade County, Florida this 15th day of May, 2013.



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Gerardo Castiello  
Judge of Compensation Claims

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copies of the foregoing Final Compensation Order have been mailed to each of the parties listed below via U.S. mail this 15th day of May, 2013.

**Pavel Chipi Gattorno**  
2326 Northwest 23 Court  
Miami, Florida 33142

**Alphastaff Group, Inc.**  
800 Corporate Drive, #600  
Fort Lauderdale, Florida 33334

**Tower Group Companies**  
PO Box 948154  
Maitland, Florida 32794  
jbeason@twrgroup.com

**SUA Insurance**  
PO Box 948154  
Maitland, Florida 32794  
jbeason@twrgroup.com

I **HEREBY CERTIFY** that a true and correct copies of the foregoing Final Compensation Order have been mailed to each of the parties listed below via E-mail this 15th day of May, 2013.

**William Haro**  
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Assistant to the Judge of Compensation Claims

Final Hearing Statistics Worksheet

Please complete this form at the time of Order upload for any of the following:

Evidentiary Motion Hearing  
Expedited Final Hearing  
Fee Amount Hearing  
Fee Entitlement Hearing

\*\*\*\* Final Hearing \*\*\*\*

Fund Hearing  
Remand Hearing  
Appellate Fee Hearing

OJCC Number(s) 10-009340GCC

Date Order Mailed/Emailed 05/15/2013

Trial/Hearing dates opened 04/16/2013 concluded 04/16/2013

For Final Hearing or Expedited Final Hearing:

Dates of all pending petitions heard 12/12/2011; 06/01/2012

OR

For Evidentiary Motion Hearing:

Type of Motion \_\_\_\_\_

Filing Date of Motion Heard \_\_\_\_\_

OR

For Fee Amount Hearing or Fee Entitlement Hearing

Date motion or verified petition filed \_\_\_\_\_

OR

For Appellate Fee or Remand Hearing

Date of Mandate \_\_\_\_\_

AND

If abbreviated final/fee order was issued and later vacated:

Date Abbreviated Order Entered: \_\_\_\_\_

Date Abbreviated Order Vacated: \_\_\_\_\_