

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT

ISAURO ANTONIO GUARDADO,	OJCC#:	10-008003 KSP
Employee/Claimant,	D/A:	7/28/08
v.	JUDGE:	KATHRYN S. PECKO

PALLET CONSULTANTS
ENTERPRISES and CRUM &
FORSTER,

Employer/Carrier.

_____/

Albert Marroquin, Esquire, Counsel for Employee/Claimant

Andrew R. Borah, Esquire, Counsel for Employer/Carrier

**ABBREVIATED FINAL ORDER PURSUANT TO
SECTION 440.24(4)(d), FLA. STAT.**

THIS CAUSE came before the undersigned Judge of Compensation Claims on February 23, 2012 in Broward County, Florida for a duly noticed final hearing. The hearing record closed on July 26, 2012 upon conclusion of a final hearing reconvene wherein the deposition of James Sullivan was admitted into evidence as E/C Exhibit O and counsel presented oral closing arguments. The instant Compensation Order adjudicates unresolved claims in the Petition for Benefits [PFB] filed on January 23, 2012.¹ The Employee/Claimant will be referred to by name

¹ Claimant filed a second PFB on July 18, 2012, five (5) days before final hearing commenced. The undersigned reserves jurisdiction to address at a subsequent proceeding any unresolved claims in said PFB.

or as "Claimant." The Employer and the Carrier will be referred to in their respective individual capacities or collectively as "E/C."

Claimant seeks the payment of temporary partial disability benefits [TPD] for the period of March 8, 2010 through the expiration of 104 weeks or MMI and if at MMI, impairment income benefits [IIB] based on a 7% permanent impairment rating assessed by Dr. Lagone. As an alternative to IIB benefits, Claimant seeks permanent total disability benefits [PTD] from the date of MMI and continuing. Claimant also seeks a follow up appointment with Dr. Marin, an FCE as recommended by Dr. Marin, penalties, interest, costs, and attorney's fees.

E/C asserts the defense under Sections 440.09(4) and 440.105(4), Fla. Stat. (the "fraud" defense) to deny entitlement to all benefits claimed. In regard to the TPD claim, E/C contends that Claimant has been at MMI since October 18, 2008, voluntary limitation of income, the two dismissal rule precludes TPD for the period of March 10, 2010 to August 16, 2010, and the industrial accident is no longer the major contributing cause of the disability and need for treatment. E/C denies that any IIB benefits are due because Dr. Windram assessed a 0% impairment rating. As to PTD benefits, E/C asserts voluntary limitation of income, the industrial accident is not the major contributing cause of the disability and need for treatment, and Claimant is capable of doing at least sedentary work within a 50 mile radius of his residence. E/C further contends that the industrial accident is not the major contributing cause of the need to return to Dr. Marin or for the FCE. E/C also contests the medical necessity of the FCE. Finally, E/C denies that any penalties, interest, costs or attorney's fees are due and owing as related to this proceeding.

At final hearing, the parties stipulated that the offset concerning unemployment benefits would be determined administratively. The parties stipulated that in the event TPD benefits were

found due and owing, the amount thereof also would be determined administratively. The parties stipulated that the AWW is \$746.96 with a corresponding compensation rate of \$498.00. Finally, the parties agreed that any outstanding issues regarding attorney's fees and costs for past benefits obtained would be addressed in a separate proceeding.

Upon due consideration of the testimonial and documentary evidence, it is hereby

ORDERED AND ADJUDGED as follows:

1. E/C's defense based on violation of Sections 440.09(4) and 440.105(4) is rejected.
2. Claimant's request for PTD benefits is denied.
3. Claimant's request for IIB benefits is denied.
4. Claimant's request for TPD benefits is granted, plus penalties and interest thereon, commencing as of August 17, 2010, not to exceed the expiration of the statutory maximum of 104 weeks.
5. Claimant's request for an FCE is denied.
6. Claimant's request for a follow up visit to Dr. Marin is granted.
7. Entitlement to E/C paid attorney's fees and costs as related to the instant proceeding is established. Jurisdiction is reserved over all issues relating to attorney's fees and costs.
8. The PFB filed on January 23, 2012 is dismissed with prejudice, subject to the reservation of jurisdiction over attorney's fees and costs.

DONE AND ORDERED in Chambers, Lauderdale Lakes, Broward County, Florida.



Kathryn S. Pecko

KATHRYN S. PECKO
JUDGE OF COMPENSATION CLAIMS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was entered by the Judge of Compensation Claims and a copy was served by electronic transmission on August 23, 2012 to the parties' counsel of record or by mail if parties are unrepresented.

Marta M. Maloney
Secretary to the Judge of Compensation Claims