

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
FT. LAUDERDALE DISTRICT OFFICE

Jason Jaggon,  
Employee/Claimant,

OJCC Case No. 17-024971IF

vs.

Accident date: 10/10/2017

Affinity Resources, LLC./AmTrust North  
America of Florida, and Wesco Insurance  
Company,  
Employer/Carrier/Servicing Agent.

Judge: Iliana Forte

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Catherine F. Agacinski, Esq., Attorney for the Claimant  
Andrew R. Borah, Esq., Attorney for the Employ/Carrier/Servicing Agent

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**FINAL COMPENSATION ORDER**

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This matter came before me, the undersigned Judge of Compensation Claims, for a Final Hearing held on March 5, 2019. The adjudicated petitions for benefits were filed May 15, 2018, May 16, 2018 and May 23, 2018.

CLAIMS AND DEFENSES

Claims:

1. Temporary Partial Benefits from 3/22/2018 until present and continuing until Claimant is no longer eligible for that class of benefits.
2. Authorization, payment, provision and scheduling of return visit and continued care and treatment with Dr. Meli, as carrier has denied further care and treatment.
3. Penalties, interest, costs and attorney's fees.

Defenses:

1. All further benefits are denied based on the claimant violating the misrepresentation provisions.
2. Claimant is at MMI.

3. No further treatment is medically necessary.
4. Industrial accident is not the major contributing cause of continuing need for medical treatment – WITHDRAWN.
5. Penalties, interest, costs and attorney’s fees – not due or owing.

DOCUMENTS RECEIVED

Claimant:

1. Notice of Withdrawal of E/C’s Major Contributing Cause Defense – Joined by the E/C.
2. Composite of medical records from Dr. Paul Meli and Centra Care Medical Clinic – Docket ID #58-60.
3. Medical Records from University Hospital and Medical Center – Joined by the E/C – Docket ID #69.
4. Petition for Benefits filed 5/15/2018 – Docket ID #34.
5. Petition for Benefits filed 5/16/2018 – Docket ID #36.
6. Response to Petition for Benefits filed 5/21/2018 – Docket ID #37.
7. Petition for Benefits filed 5/23/2018 – Docket ID #38.
8. Response to Petition for Benefits filed 5/29/2018 – Docket ID #40.

Employer/Carrier/Servicing Agent:

1. Claimant’s deposition taken 12/27/2017 – Docket ID #63.
2. Claimant’s deposition taken 12/20/2018 – Docket ID #64.
3. Deposition of Dr. Paul Meli – Joined by the Claimant – Docket ID #65.
4. Notice of Defense under §440.105(4) and §440.09(4) – Docket ID #33.

Judges Exhibits and/or for Identification Only:

1. Uniform Pre-trial Stipulation filed August 22, 2018; Claimant’s Amendment filed on February 1, 2019.
2. Claimant Trial Memorandum - ID only.
3. Employer/Carrier’s Trial Memorandum - ID only.

Live witness testimony:

1. Claimant
2. Antonette Jaggon

## FINDINGS OF FACTS

1. The claimant is a 38 year old machine operator who was working at a company named CKS through Affinity Resources, LLC. At CKS, he worked on a machine that produces gallon and half gallon plastic containers. He had been employed for approximately two months when he sustained this industrial accident. The claimant was attempting to clean resin from the machine to get it to operate, when his right arm got caught in the machine. The claimant testified that he felt his arm was about to get “snatched off.”

2. He received initial medical attention at Florida Memorial Hospital and he was later referred to Concentra Medical Center. He described being in extreme shoulder pain and was unable to do anything with his right arm. An MRI of the right shoulder was prescribed by the physicians at Concentra, after which he was referred to Dr. Pual Meli who recommended surgery of the right shoulder.

3. The claimant first saw Dr. Meli on 12/14/2017. Dr. Meli examined the claimant took x-rays of the right shoulder and reviewed the MRI report. He diagnosed the claimant with chronic pre-existing mild AC arthrosis and with a full-thickness tear of the rotator cuff as a result of the industrial accident. Dr. Meli recommended the claimant undergo right shoulder arthroscopic rotator cuff repair. The claimant underwent the procedure on 1/26/2018.

4. On 12/27/2017 the claimant was deposed on this matter, at which time he was represented by former counsel, Jesus Eloy Ravelo. At said deposition the claimant was questioned about prior accidents, injuries, medical treatment and specifically about prior treatment or complaints related to the right shoulder. The claimant reported being involved in an

automobile accident with his wife in 2009 where he injured his lower back; he reported dislocating his right hip when he was a child while playing baseball that required surgery; he reported surgery to the left hand due to developing an infection from a cut that was performed at University Hospital; and, he reported having undergone a kidney biopsy at Florida Medical. However, the claimant specifically denied injuring his right shoulder, having pain in the right shoulder, seeing a doctor for the right shoulder or having had an x-ray, CT scan or an MRI of the right shoulder before his 10/10/2017 industrial accident.

5. After the claimant's deposition, the E/C subpoenaed the records from University Hospital (where the claimant reported having surgery for the left hand infection). Those records revealed that on 8/5/2016 the claimant reported to the emergency room of this facility complaining of right arm pain and right shoulder pain. He reported that the symptoms had been present for over two weeks caused by trying to hold on to something to avoid falling. An x-ray of the right shoulder was in fact taken. The x-ray revealed calcified bursitis tendonitis of the shoulder. The records report the intensity of his pain to be a 10. He was given oxycodone during his stay at the E/R; and, he was prescribed Percocet with instructed to follow up with an orthopedic surgeon upon discharge. Incidentally, during this ER visit to University Hospital the claimant's blood pressure was dangerously elevated, as the claimant admitted to not taking his blood pressure medications for over a year. In fact, the claimant left the hospital against the advice of the physicians as it related to the elevated blood pressure.

6. Consequently, after receiving the records from University Hospital the E/C stopped all temporary partial disability benefits being paid to the claimant and denied authorization of Dr. Meli. The claimant was last seen by Dr. Meli on 4/30/2018. On 5/14/2018

the E/C filed a Notice of Defense under §440.105(4) and 440.09(4) alleging the claimant had made false or misleading statements resulting in the forfeiture of his entitlement to all workers' compensation benefits.

#### ANALYSIS

7. It is prohibited by §440.105(4)(b), Fla. Stat. (2006), for any person to “make, or cause to be made,” any false, fraudulent, or misleading statements for the purpose of obtaining workers' compensation benefits. An employee found to have knowingly or intentionally committed one of these prohibited acts is not entitled to compensation or benefits under the workers' compensation statute pursuant to §440.09(4)(a), Fla. Stat. (2006); otherwise known as the fraud/misrepresentation defense. To establish a misrepresentation defense, the burden is on the E/C to prove by a preponderance of the evidence that the claimant knowingly or intentionally committed one of the prohibited acts.

8. Determining whether a claimant has violated §440.105 is a factual determination to be made by the JCC. In deciding this issue, the JCC has to answer two questions: (1) whether the claimant made or caused to be made, false, fraudulent misleading statements; and, (2) whether the statement was intended by claimant to be for the purpose of obtaining workers' compensation benefits. It is not necessary that the misrepresentation be material in actuality; rather, the relevant inquiry is whether the claimant's misrepresentation is a misrepresentation the claimant thought would have a material impact on his case. *Arreola v. Administrative Concepts*, 17 So.3d 792 (Fla. First DCA 2009).

9. As to the first question, I find that the claimant did make false statements during his deposition and to Dr. Meli regarding prior injury and treatment involving the right shoulder.

Dr. Meli testified that he specifically asked the claimant if he had any prior injuries to his right shoulder and the claimant did not identify any history of antecedent trauma or focal events. In his deposition testimony taken on 12/27/2017 the claimant specifically denied prior injury, treatment or having undergone an x-ray of the right shoulder. Unquestionably, 14 months before, the claimant presented to the emergency room at University Hospital complaining of severe pain to the right shoulder, was diagnosed with bursitis, was prescribed pain medication and was referred to an orthopedic surgeon.

10. As to the second question, I find that the claimant's failure to disclose his emergency room visit at University Hospital on 8/5/2016 and denial of any previous injury, treatment or examination of the right shoulder was intended for the purpose of obtaining workers' compensation benefits. I reject the claimant's explanation that he forgot about this ER visit, that he wasn't injured or that it was simply inconsequential wear and tear pain. At his deposition the claimant recalled injuries that took place during childhood and an automobile accident that occurred in 2009 where he injured his lower back. I simply do not find it credible that he can recall an injury as far back as 2009 but not an emergency room visit that occurred 14 months before. One does not readily forget a visit to an emergency room. In fact, I would venture to say, that one does not visit an emergency room unless one is in severe pain; which appears to be clearly documented in the ER records. Moreover, while the claimant's blood pressure was very high when he visited the ER on 8/5/2016, his main reason for going to the ER was due to right arm and right shoulder pain, not due to the hypertension - that was an incidental finding. Likewise, it seems highly improbable that the claimant would forget this eventful visit to the ER, as he admitted that he had to sign papers assuming responsibility for his medical

condition upon discharge, as the physicians would not release him due to his elevated blood pressure. The claimant was diagnosed with bursitis, was given a prescription for Percocet and was referred to an orthopedic surgeon.

11. I reject the claimant's premise that he was the one who offered the information that he treated at University Hospital as evidence of any lack of intent to deceive the E/C. The E/C correctly points out that the claimant mentioned University Hospital because he had treated there for a hand injury and it is unlikely that the claimant appreciated the E/C's ability to subpoena those records.

12. I certainly felt empathy for Mrs. Jaggon who testified before me that she felt responsible for her husband's predicament, taking blame for having forced him to go to the emergency room on 8/5/2016 at University Hospital. However, it was not the visit at University Hospital that led to the denial by the E/C of the claimant's workers' compensation benefits, but the claimant's failure to report it. The claimant may have thought that admitting to having had some prior injury or treatment to the right shoulder 14 months before his accident may have called into question his legitimate injury; but in fact, the opposite is true. It was evident to me in observing the claimant during these proceedings that he was remorseful for his poor judgment. Unfortunately, the claimant's knowing decision to conceal the E/R visit at University Hospital (which evidently would have had no bearing to his injury) is detrimental to his case, as the parties have a right to expect that all statements, whether written or oral, are truthful, responsive and complete.

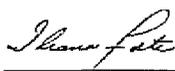
13. I find that the E/C has established by a preponderance of the evidence that the claimant provided false statements for the purpose of obtaining workers' compensation benefits

in violation of Fla. Stat. §440.09(4) and Fla. Stat. §440.105(4)(b).

**WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:**

1. All claims contained in the adjudicated PFBs filed on May 15, 2018, May 16, 2018 and May 23, 2018 are DENIED and DISMISSED WITH PREJUDICE.
2. All future workers' compensation benefits are barred pursuant to §440.09(4) and §440.105(4)(b) Florida Statutes.

DONE AND SERVED this 8th day of March, 2019, in Lauderdale Lakes, Broward County, Florida.



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