

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
Miami District**

MARCOS FUENTES
Employee

FRANK CRUM
Employer
100 S Missouri Ave
Clearwater, FL 33756

FRANK WINSTON CRUM INS.
Carrier
Serviced by: Broadspire
P.O. Box 30539
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ATTORNEY FOR EMPLOYEE:
Mr. Mark A. Touby
Touby & Associates, P.A.
The Minorca Building
2030 South Douglas Road, Suite 217
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**ATTORNEY FOR
EMPLOYER/CARRIER:**
Mr. Andrew R. Borah
Hurley, Rogner, Miller, Cox,
Waranch & Westcott, P.A.
603 North Indian River Drive, Suite 102
Fort Pierce, FL 34950

OJCC CASE NO.: 10-019178HHH

D/A: 11/6/2007

JUDGE: HENRY H. HARNAGE

FINAL COMPENSATION ORDER

After due notice to the parties, the above-captioned matter came on for Final Hearing before me on May 25, 2011. Mr. Mark Touby, attorney with Touby & Associates, appeared on behalf of the claimant, Marcos Fuentes. Mr. Andrew Borah and Mr. Matthew Troy, attorneys with Hurley, Rogner et. al., appeared on behalf of the employer/carrier. I ruled by means of a May 26, 2011 letter ruling in a summary manner and this Order follows in conformance with that letter ruling.

From the totality of the trial evidence, I conclude that the claimant was not injured in a compensable accident which was alleged to have occurred on November 6, 2007.

STIPULATIONS, ISSUES/DEFENSES, AND EVIDENCE

The parties entered into a pretrial stipulation which I approved on 12/16/2010. By the trial's conclusion, the parties had agreed to an average weekly wage of \$314.00 with a corresponding compensation rate of \$209.92, so that the only remaining issues pertained to compensability, and, if appropriate, authorization of a primary care physician for treatment of proffered injuries to the upper, mid-and low back, and pain in both arms.

In the pretrial stipulation, the employer/carrier asserted the following defenses: the accident is not work-related; untimely notice; and, no consequential medical treatment necessary.

The claimant testified on his own behalf before me. Mr. Jose Vasquez, Mr. Osvaldo Rodas, and Mr. Henry Alexis Caballero, appeared on behalf of the employer/carrier. The exhibits submitted into evidence are within the ATTACHMENT to this Final Compensation Order.

FINDINGS

1. The claimant, Mr. Marcos Fuentes, had been employed by Mainland Construction for an unknown period of time prior to 11/16/2007. He was employed as a roofing mechanic on 11/6/2007 when he allegedly fell off of a ladder landing

on his back. He did not obtain medical treatment at that time.

2. I have noted the claimant's disadvantages as to his education, background and inability to communicate in English, and to a large extent, being illiterate in Spanish. At the same time I am cognizant of the fact that the three employer witnesses were Spanish-speaking, and the claimant did not suggest or prove that any communications were hindered by a language barrier. *See, e.g., Blanc v. Allen*, 499 So. 2d 900, 902 (Fla. 1st DCA 1987).

3. The claimant alleged that he reported his industrial accident to Osvaldo Rodas, his supervisor, between three days and three weeks following his alleged industrial accident. Despite the claimant's testimony of alleged accident and reporting same to Osvaldo Rodas, I find that the claimant lacks credibility and, indeed, exaggerated his testimony.

4. It was uncontroverted that no one saw the claimant's alleged fall. I accept as more credible, the testimony of Osvaldo Rodas, that the claimant did not report the injury to him, or even report a fall. Further I accept the testimony of Mr. Caballero that the claimant did not tell him of an accident at work. I also accept the testimony of Henry Caballero that the claimant referenced injuring his low back in a prior motor vehicle accident.

5. Even had I not rejected the claimant's testimony regarding an alleged accident, the medical evidence does not support the claimant's position - as I accept the testimony of Dr. Stein over that of Dr. Lang.

6. Surprisingly Dr. Lang testified that it was of no particular significance that the claimant waited more than three years before obtaining medical treatment. This is despite the fact that the claimant testified to pain on a scale of 8 out of 10 consistently since the alleged industrial accident. I reject this assertion.

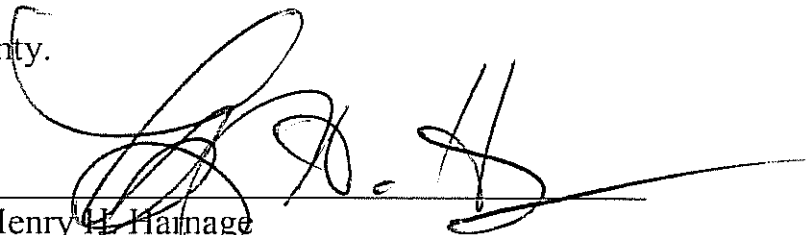
7. I accept Dr. Stein's testimony that the claimant did not have any objective medical findings to support an injury to any of his alleged body parts.

8. Moreover, I conclude that the claimant did not sustain an injury to his upper, mid-or-low back, either arm, or his body as a whole.

WHEREFORE it is **ORDERED** and **ADJUDGED** that:

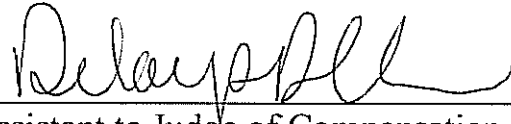
- A. The compensability of the alleged accident is **DENIED**;
- B. The Claimant's request for authorization of a primary care physician for evaluation and treatment is **DENIED**; and
- C. The Claimant's request for penalties, interest, costs and attorney fees is **DENIED**; and
- D. I reserve jurisdiction as to any costs' entitlement for the defense of this claim.

ORDERED in Miami-Dade County.


Henry H. Hainage
Judge of Compensation Claims

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the foregoing Order was entered on the 17th
day of June, 2011, and that a copy thereof was E-served to the
attorneys of record and sent by regular U.S. Mail to all parties listed below.



Assistant to Judge of Compensation Claims

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