

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

EMPLOYEE:

Joaquin Alcazar
2329 SW 30th Court
Hallandale, FL 33009

ATTORNEY FOR EMPLOYEE:

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Miami, FL 33129

EMPLOYER:

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ATTORNEY FOR EMPLOYER/CARRIER:

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CARRIER:

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Post Office Box 1549
Tarpon Springs, FL 34688

OJCC No: 06-035571DAL

D/A: 10/13/2006

JUDGE: Daniel A. Lewis

FINAL COMPENSATION ORDER

AFTER DUE NOTICE to the parties, a Final Merits Hearing was conducted before the undersigned Judge of Compensation Claims on November 6, 2007 in Lauderdale Lakes, Broward County, Florida. The petition for benefits which came on for adjudication was filed on December 5, 2006. The parties stipulated as follows:

- A. The undersigned has jurisdiction of the parties and of the subject matter.
- B. Venue is properly in Broward County, Florida.
- C. Notice of hearing was timely afforded to the proper parties.
- D. The claimant's accident of October 13, 2006 was accepted by the employer/carrier as a compensable occurrence. However, the claimant's neck and back injuries have not been accepted.

E. Claim was made for:

1. A determination of the compensability of the claimant's neck and back injuries.
2. Temporary total and/or temporary partial disability benefits from the date of accident to date and continuing. However, since the claimant returned to work for a subsequent employer on February 5, 2007, working full time and earning more than his pre-accident wages, it would appear that this claim would be for temporary indemnity benefits from the date of accident through February 4, 2007.

3. A determination of the claimant's correct average weekly wage.
4. Authorization of transportation to all medical appointments.
5. Authorization of an orthopedic surgeon for evaluation and treatment.
6. Authorization of an IME with orthopedic surgeon Dr. Moya.
7. Also claimed were attorney's fees, costs, interest and penalties.

F. The employer/carrier asserted as defenses that:

1. There is no medical evidence of "disability."
2. There is no injury arising out of the accident which results in disability.
3. The industrial accident is not the major contributing cause of the claimant's disability and need for treatment, if any.
4. Orthopedic care is not reasonable and medically necessary nor causally related to the industrial accident.
5. There is no referral by an authorized treating physician for orthopedic care.
6. Under section 440.13(5), Fla. Stat., the claimant should have scheduled and paid for his own IME.

7. The employer/carrier also raised a general denial to the claim for attorney's fees, costs, interest and penalties.

After careful consideration and review of the testimony, documentary evidence, and argument presented, the following are my findings of ultimate facts and conclusions of law:

1. This claimant was employed as a day laborer for the employer herein, performing construction type work. The claimant had been so employed for a period of three or four days prior to the occurrence of the accident herein. On October 13, 2006, claimant was involved in a motor vehicle accident while riding in a van on his way to a job site. According to the claimant, the impact of the accident thrust him forward, injuring his neck and back.

2. Claimant testified that he completed work on the day of the accident but subsequently, he had to stop working due to neck and back pain. On February 5, 2007, claimant returned to work for a different employer, Maaco Auto Painting, working full time, 40 hours per week and earning in excess of his pre-accident wages. The claimant is still so employed. Claimant also testified that two or three years before this October 13, 2006 accident, he was involved in a prior motor vehicle accident, also sustaining injuries to his neck and back.

3. The employer/carrier contends that the claimant has not met his burden of proving by competent substantial evidence the requisite causal connection between the claimant's employment or compensable accident and his alleged injuries for which benefits are sought. I must agree. Section 440.09(1), Fla. Stat., provides, in pertinent part, that:

Establishment of the causal relationship between a compensable accident and injuries for conditions that are not readily observable must be by medical evidence only, as demonstrated by physical examination findings or diagnostic testing. Major contributing cause must be demonstrated by medical evidence only.

That subsection further provides that the injury, its occupational cause, and any resulting

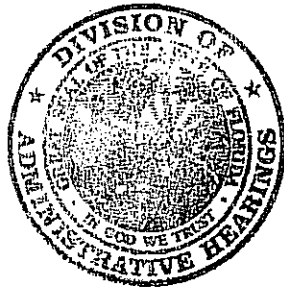
manifestation or disability must be established to a reasonable degree of medical certainty, based on objective relevant medical findings.

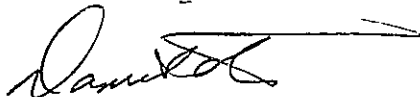
4. The case law is also well established that, where claimant's injuries are not readily observable, expert medical evidence is necessary to prove the requisite causal connection between claimant's employment and the injury as well as to establish major contributing cause. Peters vs. Armellini Express Lines, 527 So. 2d 266 (Fla. 1st DCA 1988)(soft tissue injuries are not readily observable and, therefore, expert medical evidence is necessary to establish a causal connection between the claimant's employment and such an injury), Wausau Insurance Co. vs. Tillman, 765 So. 2d 123 (Fla. 1st DCA 2000)(It was the claimant's burden to establish the existence of a causal connection between his employment and his alleged injuries. Because the medical conditions which the claimant alleged had resulted from the workplace incident were not readily observable, he was obliged to present expert medical evidence establishing that causal connection. The claimant having failed to present any medical evidence whatsoever, it was error for the JCC to conclude that the claim was compensable.), Thomas vs. Yoder Brothers, Inc., 882 So. 2d 442 (Fla. 1st DCA 2004)(Claimant failed to present the requisite medical evidence that his work accidents were the major contributing cause of his need for treatment and his current disability. Lay testimony alone is insufficient to establish a causal connection as to conditions and symptoms not readily observable.).

5. Here, the claimant's conditions and symptoms are not readily observable. Likewise, no medical evidence or testimony whatsoever was presented in support of causation or major contributing cause. Having failed to present the requisite medical

evidence as to causation or major contributing cause in accordance with the statutory and case law, claimant's injuries are not compensable and claimant's claims shall be, and same are hereby, denied and dismissed in their entirety. Wausau Insurance Co. vs. Tillman, 765 So. 2d at 124.

DONE AND ORDERED at Lauderdale Lakes, Broward County, Florida this 7th day of November, 2007.






Honorable Daniel A. Lewis
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Final Compensation Order was furnished by U.S. mail this 7th day of November, 2007, to the aforementioned parties and their counsel of record.



Secretary to Judge of Compensation Claims