

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

**EMPLOYEE:**

Keith Bray  
1851 Northwest 47<sup>th</sup> Avenue  
Lauderhill, FL 33313

**ATTORNEY FOR EMPLOYEE:**

Douglas L. Bates, Esquire  
817 South University Drive, Suite 100  
Plantation, FL 33324

**EMPLOYER:**

City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, FL 33063

**ATTORNEY FOR EMPLOYER/CARRIER:**

Geoffrey C. Curreri, Esquire  
1280 SW 36<sup>th</sup> Avenue, Suite 100  
Pompano Beach, FL 33069

**CARRIER:**

Employer's Mutual Inc.  
P.O. Box 1019  
Stuart, FL 34995

**OJCC No:** 08-004943DAL

**D/A:** 01/29/2008

**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 February 12, 2009 in Lauderdale Lakes, Broward County, Florida. The petition for benefits which came on for adjudication was filed on February 20, 2008. The parties stipulated as follows:

- A. The undersigned has jurisdiction of the parties and of the subject matter.
- B. Notice of hearing was timely given to the proper parties.
- C. Venue lies in Broward County, Florida.
- D. The claimant's alleged accident of January 29, 2008 was not accepted as a compensable occurrence. By Joint Motion to Bifurcate and Agreed Order dated January 14, 2009, this cause was bifurcated and only the issue of the compensability of the accident was tried

at this Final Hearing, with jurisdiction reserved as to all other pending issues in the event compensability is found.

E. The parties stipulated that notice of the alleged accident was timely given.

F. Claim was made for:

1. A determination of the compensability of the accident of January 29, 2008.
2. Also claimed were attorney's fees and costs.

G. The employer/carrier asserted as defenses that:

1. Compensability is denied for the entire claim.
2. The claimant did not sustain an injury by accident in the course and scope of his employment.

3. Fraud defense pursuant to section 440.09(4) and 440.105, Fla. Stat.

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 is a 30-year-old male, date of birth March 16, 1978, who worked for the employer herein in the Streets and Stormwater Division for the City of Coconut Creek. Claimant testified he had been so employed for approximately 5 months before the occurrence of the alleged accident. Claimant's job included such duties as painting, cleaning drains and picking up trash. On the date of the alleged accident of January 29, 2008, claimant was pressure cleaning sidewalks with a co-employee, Matthew Kinzer.

2. According to the claimant, the accident occurred as he and Mr. Kinzer were refilling the bucket or tank of the pressure cleaner with water using a hose connected to a fire hydrant. The water tank was situated on a trailer, and claimant was standing on the trailer holding the hose while Mr. Kinzer turned on the water at the hydrant. Claimant testified that the water

pressure shot through the hose "like a cannon," knocking him off of the trailer. According to the claimant, due to the water pressure in the hose, he struck his left shoulder on the trailer and also fell to the ground. Claimant testified he injured his left shoulder from the accident.

3. Claimant testified that in the morning of the following day, on January 30, 2008, he attended an event sponsored by the employer herein at a local park, which event involved some training, a luncheon, and other activities. Claimant testified that at the conclusion of that event, he approached another employee, Jessie Scott, and told him he had been injured while working the day before. Mr. Scott was not the claimant's supervisor but instead worked in another Division for the employer herein. The evidence reveals that Mr. Scott told the claimant they should find a supervisor. Consequently, the two located the claimant's supervisor, John Lukaszewicz, who was in his truck in the utilities department parking lot. The claimant and Jessie Scott went over to Mr. Lukaszewicz and the claimant told him about the occurrence of the accident. Mr. Scott was present when the claimant notified John Lukaszewicz of the accident.

4. At this Final Hearing, live testimony was taken from the claimant, from Jessie Scott, from the claimant's supervisor, John Lukaszewicz, from co-employee Matthew Kinzer, and from the Assistant Utilities Operations Manager, Michael Heimbach. I have carefully considered all of the testimony and evidence presented. I find the claimant's testimony to be not only contrary to the testimony of all of the other witnesses in this cause but also inconsistent. For the reasons outlined hereinbelow, I reject the claimant's testimony as not credible. The below listed reasons are not meant to be exhaustive but merely representative.

A. The claimant specifically testified that when he reported the accident to his supervisor, John Lukaszewicz, he was never offered any medical care. However, this is directly contrary to the testimony of Mr. Lukaszewicz, who testified he advised the claimant when

notified of the accident on January 30, 2008 that claimant could go to the workers' compensation doctor. According to Mr. Lukaszewicz, the claimant responded that he had his own doctor. Claimant's testimony in this regard was also contrary to the testimony of Jessie Scott, who stated that while in his presence, he heard John Lukaszewicz offer medical care to the claimant but claimant refused.

B. Claimant testified he was "severely injured" as the result of the January 29, 2008 accident. However, when asked to describe his injuries in his sworn deposition testimony taken on August 29, 2008, claimant testified he was experiencing "just a little numbness sometimes" in his left shoulder.

C. Contrary to the claimant's description of the accident as having struck his shoulder on the trailer and fallen to the ground due to the sudden explosion of water pressure, the claimant's co-worker, Michael Kinzer, testified that the hose merely slipped out of the water tank and dropped to the ground. Mr. Kinzer testified the claimant then jumped down off the trailer and said he was wet. Mr. Kinzer testified the water pressure at the hydrant was only slightly turned on and the hose did not cause the claimant to be knocked about on the trailer or knocked to the ground. Mr. Kinzer further testified the claimant never complained to him of any pain or injury and, in fact, the two continued to work that day, filled the tank and pressure cleaned for several more hours after the alleged accident.

D. The claimant did not report the accident the day of its occurrence but reported it the following day, after the employer sponsored event. Claimant testified he first told Jessie Scott about the accident because he did not trust his supervisor, John Lukaszewicz. However, this is inconsistent, because claimant went on to testify that Mr. Scott continually harassed him at

work, telling co-employees claimant was a convicted felon<sup>1</sup> and calling claimant racial slurs such as the "n" word.<sup>2</sup> It seems inconsistent that if claimant was continually harassed by Mr. Scott, as he claims, he would choose to first approach Mr. Scott for advice about the alleged accident.

E. Claimant's testimony that he was severely injured as the result of the accident is also contradicted by the fact that he waited until February 8, 2008, ten days after the occurrence of the alleged accident, to seek any medical care. On that date, he went to the Florida Medical Center emergency room. When asked why he waited, claimant testified that it was either because of a holiday or because he had no transportation to go to the hospital.

F. Claimant testified that after he was seen at the Florida Medical Center, he saw orthopedic surgeon Dr. Hale. In his sworn deposition testimony taken on August 29, 2008, claimant testified he was sent to Dr. Hale by a friend. When asked at his deposition the name of the friend who had sent him to Dr. Hale, claimant testified that he forgot. When asked at deposition how long he had known that friend, claimant responded a couple of years.

At this Final Hearing, claimant testified that he was sent to Dr. Hale by his attorney. When asked why he had answered untruthfully at his deposition, claimant first responded that his lawyer is his friend. Claimant then testified he had not understood the question at the time of the deposition and that counsel for the employer/carrier had been trying to "confuse his mind." I note that counsel for the employer/carrier instructed the claimant at the commencement of his deposition that he was under an oath to tell the truth and that if he was not truthful in his responses, he could be prosecuted for perjury.

G. Michael Heimbach, the Assistant Utilities Operations Manager for the employer, testified that before the occurrence of the accident, the claimant verbally advised him

---

<sup>1</sup> Claimant admitted at this Final Hearing he has a felony conviction.

<sup>2</sup> Both the claimant and Jessie Scott are black males. Mr. Scott denied harassing the claimant or calling him racial slurs.

he was quitting and was giving three weeks notice. According to Mr. Heimbach, the claimant had some problems with unexplained absences. Mr. Heimbach told the claimant he needed to put his resignation in writing. However, contrary to this testimony, claimant testified he never told Mr. Heimbach that he was quitting or verbally gave him three weeks notice.

H. Mr. Lukaszewicz, the claimant supervisor, testified that a decision to terminate the claimant had been made before the alleged accident, based on claimant's failure to satisfactorily complete his probationary period. Contrary to the claimant's testimony, Mr. Lukaszewicz testified the claimant never complained to him about being harassed by Jessie Scott on the job. At this Final Hearing, claimant testified he was never given an incident/accident report form to fill out. However, contrary to this testimony, Mr. Lukaszewicz testified that on January 30, 2008, he gave incident/accident report forms to both the claimant and to Mr. Kinzer. I note that Mr. Kinzer did complete and sign such a report on January 30, 2008. Mr. Lucaszewicz testified the claimant never completed or returned the form to him.

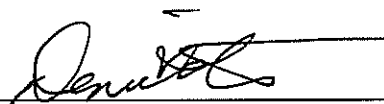
5. Case law instructs us that the Judge of Compensation Claims, as the trier of fact, has the right to determine the credibility of the witnesses, including the credibility of the claimant, weigh the evidence, and resolve any conflicts in the testimony of the witnesses. Prather vs. Process Systems, 867 So.2d 479 (Fla. 1st DCA 2004), Morgan vs. Cintas Corp., 959 So.2d 758 (Fla. 1st DCA 2007). Case law also instructs us that the question of whether an accident occurred, as contrasted with the issue of medical causation in the face of the undisputed occurrence of an accident, is a question of fact for the Judge of Compensation Claims, as the trier of fact, to decide.

6. Here, I find that the claimant's testimony is not credible. I further find that he did not sustain an injury by accident in the course and scope of his employment with the employer

herein and that no accident occurred. As such, claimant's claims for a determination of the compensability of the accident of January 29, 2008, plus attorney's fees and costs, shall be, and the same are hereby, denied and dismissed. Consequently, I find it unnecessary to address the employer/carrier's remaining defense of fraud.

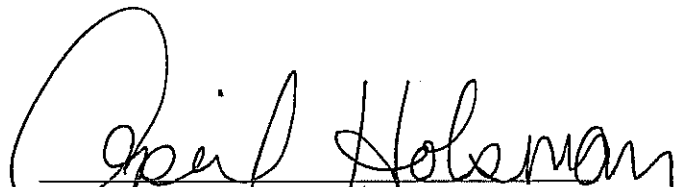
DONE AND ORDERED at Lauderdale Lakes, Broward County, Florida this  
16<sup>th</sup> day of February, 2009.



  
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 16<sup>th</sup> day of February, 2009, to the aforementioned parties and their counsel of record.

  
Secretary to Judge of Compensation Claims