

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
MIAMI DISTRICT OFFICE**

EMPLOYEE:

Juan Carlos Garcia
1720 N.W. 18th Street, Apt. 4
Miami, FL 33125

ATTORNEY FOR EMPLOYEE:

Richard E. Zaldivar, Esquire
Richard E. Zaldivar, P.A.
2600 S.W. 3rd Avenue, Ste. 300
Miami, FL 33129

EMPLOYER:

FrankCrum
100 South Missouri Avenue
Clearwater, FL 33756

ATTORNEY FOR EMPLOYER/CARRIER:

Dominic C. Locigno, Esquire
Hurley, Rogner, Miller, Cox, Waranch &
Westcott, P.A.
1280 SW 36th Avenue, Suite 100
Pompano Beach, FL 33069

CARRIER:

Frank Winston Crum Insurance, Inc.
Serviced by: Broadspire
Post Office Box 30539
Tampa, FL 33630-3539

OJCC NO.: 1/7/2007

D/A: 07-020208CMH

FINAL COMPENSATION ORDER

THIS MATTER came before the undersigned for final hearing in two sessions in accord with order entries of July 20, 2009 and July 2, 2009 (nunc pro tunc), the first on July 1, 2009 and the second on July 10, 2009, upon the bifurcated defensive issue of lack of notice under F.S. 440.185(1).

The Claimant proceeded on the grounds that notice was timely and effectively given regarding a fixed date of accident, referenced in the pleadings as January 7, 2007, as well as repetitive traumas which also generated the subject injuries to the Claimant's back. Personal testimony was provided (in sequence) by Errol Portuando, general manager underlying employer Sunshine Roofing, the Claimant, Lourdes Rodriguez, office manager Sunshine Roofing, and Baltazar Carrasco, foreman Sunshine Roofing.

Documentation was marked and admitted into evidence or otherwise marked for ID purposes. An appendix thereof is attached.

AFTER THOUGHTFUL CONSIDERATION given to all of the evidence presented, memoranda of law and argument of counsel I have determined that the Claimant did not provide notice to the employer in accordance with the provisions of FS 440.185(1). The pending petitions for benefits are therefore barred and must be dismissed with prejudice by reason thereof. In so ruling, I have deliberated as follows:

Credibility

1. The Witnesses

The Claimant testified that his work duties caused pain and discomfort in his lower back. He testified that he reported these physical problems to Errol Portuando, general manager, and his foreman, Baltazar Carrasco. His testimony however was inconsistent, measured, insincere and unjustifiably at odds with the executed documentation (Exhibit 3 employer letter dated July 19, 2007 and weekly employee non-injury sign sheets). I therefore find the Claimant's testimony not sufficiently trustworthy to be relied upon in this proceeding as credible.

Errol Portuando, Lourdes Rodriguez and Baltazar Carasco testified that the Claimant did not report an accident or injury at any time. The testimony of Errol Portunado, Lourdes Rodriguez and Baltazar Carasco was internally consistent, open and sincere. I find their testimony to be sufficiently trustworthy to be fully relied upon as credible. I therefore accept their collective testimony in this cause and reject the testimony of the Claimant which may be considered inconsistent therewith.

2. FS 440.185(1)

Additionally, I find that the Claimant failed to advise his employer within 30 days of the manifestation of his injuries, that the employer had no knowledge of the injuries, that no medical evidence was required to identify the cause of the injuries, that the Claimant personally knew he needed to promptly notify the employer of work-place injuries, that the employer advised their employees to inform them of work-place injuries and that no exceptional circumstances existed to excuse the Claimant's failure to notify.

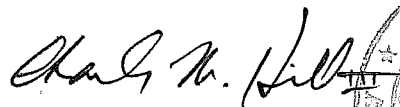
Conclusion

Based on the foregoing, I find and conclude that the Claimant did not provide notice to the employer in compliance with the provisions of FS 440.185(1). Further Deliberation concerning the additional defenses asserted in this cause is therefore not necessary to fully adjudicate this matter. All of the compensation and medical benefits sought are hereby DENIED. The claim for attorney's fees and costs for the benefits sought herein are likewise DENIED.

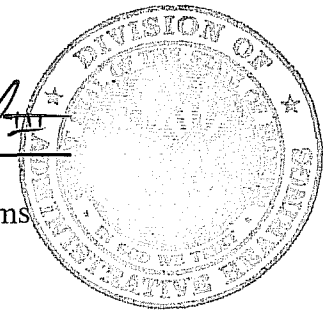
WHEREFORE, it is ADJUDGED that

1. All pending petitions for benefits are hereby dismissed with prejudice.

ORDERED in Chambers this 17th day of September, 2009.



Charles M. Hill, III
Judge of Compensation Claims



THIS IS TO CERTIFY that the above Order was entered by the Judge of Compensation Claims and a copy was served by U. S. Mail delivery on each party and counsel at the addresses listed above, on the 17th day of September, 2009.


Administrative Secretary

APPENDIX

1. Pre-trial stipulation dated November 26, 2008 marked Judge's exh (1).
2. Orders bifurcating hearing dated June 30, 2009 and July 2, 2009 (nunc pro tunc) marked Judge's exh (2).
3. Employer letter dated July 19, 2007 and attached weekly employee non-injury sign sheets marked E/C exh (3).
4. Trial memo dated July 1, 2009 marked item (4) for ID on behalf of the claimant.
5. Trial memo delivered July 1, 2009 marked item (5) for ID on behalf of the E/C.