

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

EMPLOYEE:

Martin Garcia
2500 NW 13th Street
Apt. 118
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:

American Reprographics Co., LLC 998 West Flagler Street
Miami, FL 33130

CARRIER:

U.S. Fire Insurance Company Post Office Box 958426
Lake Mary, FL 32795-8426

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

OJCC NO.: 08-020420AMK D/A: 10/16/2006

FINAL COMPENSATION ORDER

~~_____ This cause came before the undersigned Judge of Compensation Claims on April 5,~~
2010, for a Bifurcated Final Hearing to adjudicate the Employer/Carrier's Statute of
Limitations defense. Present representing the Employee/Claimant was Jesus Ravelo, Esquire
and present representing the Employer/Carrier was Dominic C. Locigno, Esquire. A ruling
letter was entered on April 5, 2010.

Claimant filed a Petition for Benefit on June 30, 2009 seeking authorization for an
appointment with Dr. Blinn, attorney's fees, and costs. The Employer/Carrier defended on the
grounds that the Statute of Limitations applied to bar further Workers' Compensation
benefits.

By my order dated December 29, 2009, which I incorporate herein, by reference as if
fully set forth, I deemed it appropriate to Bifurcate the issues so that the Employer/Carrier's

defense of Statute of Limitations could be heard before the parties were required to go through the expense and the consuming medical discovery pursuant to Florida Rules of Appellant Procedure 9.180 (b) (1) (c). Thus, the only issue left for determination was whether the Petition for Benefits was filed outside the limits of the Statute of Limitations. The Bifurcated Expedited Final Hearing regarding the Statute of Limitations Defense was held in my chambers on April 5, 2010, with due and proper notice to the parties. At the hearing, I accepted the evidence as follows:

I. EVIDENCE:

Documentary Evidence:

Judge's Exhibits:

- Order Granting Employer/Carrier's Motion to Bifurcate Statute of Limitations and Employer/Carrier's Motion for Expedited Final Hearing dated December 29, 2009.

- Order Approving Uniform Pretrial Stipulation of January 13, 2010

- Employer/Carrier's Amended Pretrial Stipulation of February 15, 2010

Joint Exhibits:

1. Deposition transcript of Martin Garcia of December 3, 2009 with exhibits to include a letter dated October 18, 2006, letter of November 20, 2006, T-Square Employee Handbook Acknowledgment, and Policy Receipt and Acknowledgment.

2. Deposition transcript of Rose Powell of December 3, 2009 with exhibits to include a computer print out of date letters were sent, letter dated October 16, 2006, signed forms and releases, and the MMI letter dated August 10, 2007.

Live Testimony:

None

In making the determinations set forth below, I have carefully considered the arguments of counsel and weighed all of the evidence presented to me. I resolved all conflicts in the testimony and evidence. If I fail to specifically mention an item of evidence that does not mean that I did not consider it, I have considered all the evidence that was properly introduced. I have attempted to distill the issues together with findings and

conclusions necessary to their resolution. After careful consideration of all the evidence presented, and after resolving any conflict therein, I hereby find as follows:

1. The Judge of Compensation Claims has jurisdiction over the subject matter and the parties herein.
2. Proper venue over this matter lies with the Miami District Office of the Office of the Judge of Compensation Claims.
3. The parties stipulated that on the date of accident, 10/16/2006, Claimant, Martin Garcia, was employed by American Reprographics Co., LLC and that U.S. Fire Insurance Company provided worker's compensation insurance coverage.

II. BRIEF SUMMARY OF FACTS AND TESTIMONY

1. On October 16, 2006, the Claimant sustained a compensable work related injury to his right wrist, and the Claimant filed Petitions for Benefits on July 29, 2008, September 4, 2008, and January 12, 2009. The Claimant failed to appear for state mediation on November 12, 2008 and January 21, 2009. A Show Cause Hearing was held on February 12, 2009, and I entered an Order compelling the Claimant to attend state mediation set for March 12, 2009.
2. After the Claimant failed to appear for three state mediation conferences, I signed an Order on April 16, 2009, Dismissing all Petitions for Benefits without Prejudice. The Claimant filed another Petitions for Benefits on June 30, 2009 seeking authorization for an appointment with Dr. Blinn, attorney's fees, and costs, and the Employer/Carrier responded on June 30, 2009 asserting that the claims were barred by the Statute of Limitations defense.
3. The Claimant, Martin Garcia, Jr., testified in deposition that his date of birth is July 17, 1989, and he resided at 2500 N.W. 13⁰¹ Street, Apartment 118, Miami, FL 33125. The Claimant was hired by T-Square in August 2006, as a production employee to print architectural blue prints. On October 16, 2006, the Claimant sustained a compensable work related injury to his right wrist.
4. After the accident, the Claimant received authorized medical treatment at Occupational Medical Center, and with Dr. Orestes Roibal. The Claimant was last furnished with medical treatment on July 23, 2007. Rose Powell, Claims Adjuster, testified that the Employer/Carrier last paid indemnity benefits on March 30, 2007.
5. Claims adjuster Rose Powell also testified that the Employer/Carrier sent notices in writing to the Claimant of the Statute of Limitations. Ms. Powell testified that on October 18, 2006, the Employer/Carrier mailed a Division provided brochure to the Claimant along with a letter stating that, "Your eligibility for benefits may be eliminated one year from the date of your last wage replacement check or proved medical/care or two years from the date of injury." Several forms were included in the October 18, 2006 letter to include a release, fraud

acknowledgment form, and mileage reimbursement forms, which the Claimant signed and returned to the Claims Adjuster, which is evidence of the Claimant receiving the October 18, 2006 letter.

6. Additionally, Ms. Powell testified that an MMI Letter was sent to the Claimant on August 10, 2007, stating that, "if there is no remedial care rendered within a one year time period you will no longer be eligible for further workers' compensation benefits payable by Crum & Forster."

7. The Claimant confirmed in his testimony that, at the time the October 18, 2006 and August 10, 2007 letters were sent, the Claimant resided at 2500 N.W. 13' Street, Apartment 118, Miami, Florida 33125, where the Claimant also received his indemnity checks, and appointment letters.

8. At the time the June 30, 2009 Petition for Benefits was filed, there were no outstanding/pending Petition for Benefits.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

All employee petitions for benefits shall be barred unless the petition is filed within 2 years after the date of injury, or within 1 year from the last payment of indemnity benefits or furnishing of medical treatment. F.S. § 440.19. The Employer/Carrier has the burden of raising this affirmative defense, and proving the Petition for Benefits was untimely. Palmer v. McKesson Corp., 7 So.3d 561, 563 (Fla. 1st DCA 2009). Once demonstrated, the Employer/Carrier has established a prima facie case that the petition was untimely and therefore barred. *Id.* Here the parties stipulated that the date of accident is October 16, 2006. I have

accepted the testimony of Adjuster Rose Powell that indemnity benefits were last paid on March 30, 2007 and that medical treatment was last furnished on July 23, 2007. The Petition for Benefits filed on June 30, 2009, was not timely because it was filed more than two years after the date of accident, and more than one year since the last payment of indemnity benefits or furnished medical treatment, which conclusively establishes a prima facie case that the Statute of Limitations expired. I accept the testimony of Claims Adjuster, Rose Powell and I find that the Employer/Carrier issued a Response to the Petition on June 30, 2009 raising the Statute of Limitations defense. I find that this initial response to the Petition was a timely advancement of the Statute of Limitations defense by the Employer/Carrier.

Additionally, there is competent substantial evidence that the Employer/Carrier gave the Claimant proper notice of the restrictions under the Statute of Limitations as required by F.S. § 440.19(4). When the Employer/Carrier sends an informational brochure to the Claimant that contains the required statutory language, the court will find that the claimant was sufficiently informed, and the Employer/Carrier will not be estopped from raising a statute of limitations defense. Hanson v. Fla. Hosp., 946 So. 2d 601 (Fla. 1st DCA 2006). Evidence of an insurer's routine practice of mailing notice information to an insured was sufficient to create a presumption that the insured received notice. Progressive American Ins. Co. v. Kurtz, 518 So.2d 1339 (Fla. 5th DCA 1987). By mailing the brochure to the claimant, this places

the burden on the claimant to prove by a preponderance of the evidence, that he did not receive proper notice of his rights, and if proven the burden then shifts to the E/C to establish that despite the failed notice, the claimant otherwise has actual knowledge by the employer or other source. Fontanills v. Hillsborough County Sch. Bd., 913 So. 2d 28 (Fla. 1st DCA 2005). I accept the testimony of Claims Adjuster Rose Powell that the brochure was mailed to the Claimant on October 18, 2006 and I therefore find that the Employer/Carrier has demonstrated proper notice under Hanson v. Fla. Hosp.

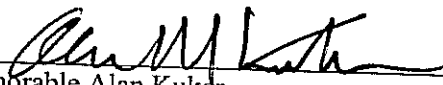
According to Fontanills v. Hillsborough County Sch. Bd., the burden then shifts to the Claimant to prove he did not receive notice. The evidence demonstrates that the Claimant returned the forms generated by the Employer/Carrier which accompanied the informational brochure and notice letter. I do not find the Claimant's testimony credible that he did not receive any of the letters sent by the Employer/Carrier, and I therefore find that the Claimant failed to meet his burden. I reject the Claimant's testimony and do not find it to be reliable that the Claimant did not receive the informational material or that the Claimant had no actual knowledge of the application Statute of Limitations period. The record is completely devoid of competent substantial evidence that the Claimant did not receive the notice letters.

Therefore, based on the foregoing the Petitions for Benefits of June 30, 2009 is barred by the Statute of Limitations under F.S. §440.19, and all claims are dismissed.

WHEREFORE, IT IS ORDERED AND ADJUDGED:

1. The Statute of Limitations bars all claims asserted by Martin Garcia and same have been Denied.
2. The claim for authorization of an appointment with Dr. Blinn is Denied.
3. The claim for Attorney's fees and costs to be paid by the Employer/Carrier is Denied.
4. Jurisdiction is reserved as to Prevailing Party costs to the Employer/Carrier under F.S. §440.34(3).

DONE and ORDERED in Chambers, Miami-Dade County, Florida this day of April, 2010.


Honorable Alan Kuker
Judge of Compensation Claims

THIS IS TO CERTIFY that the foregoing Order was entered on the 15 day of April ,
2010, and that a copy thereof was electronically transmitted on April 15 2010.



Assistant to JCC