

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

**EMPLOYEE:**

Delinia Cenatus Perinon Edmond  
5016 Sanibel Avenue  
Ft. Pierce, FL 34951

**ATTORNEY FOR EMPLOYEE:**

unrepresented

**EMPLOYER:**

Oslo Citrus Growers Association  
P.O. Box 1208  
Vero Beach, FL 32968

**ATTORNEY FOR  
EMPLOYER/CARRIER/SERVICING  
AGENT:**

Anthony M. Amelio, Esquire  
Hurley, Rogner, Miller, Cox, Waranch &  
Westcott, P.A.  
603 North Indian River Drive, Suite 102  
Fort Pierce, FL 34950

**CARRIER/SERVICING AGENT:**

FFVA Mutual Insurance Company  
Post Office Box 945927  
Maitland, FL 32794-5927

**OJCC NO.:** 08-032954PTT  
D/A: 11/14/2008

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**ORDER ON THE MERITS**

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**THIS MATTER** came on to be heard before me, the undersigned Judge of Compensation Claims, on June 5, 2009 on the Petitions filed December 5, 2008; December 5, 2008; December 31, 2008; January 23, 2009; and the Employer/Carrier's Motion to Terminate Benefits, filed March 26, 2009 and April 17, 2009. The employee/claimant, Delinia Edmond, was present for the hearing. Ms. Edmond was not represented by counsel having previously been represented by Attorney Yolando Hewling with the firm of Rosenthal, Levy & Simon, P.A. The employer/carrier, Oslo Citrus Growers Association and FFVA Mutual Insurance Company, were represented by their attorney, Anthony M. Amelio, Esquire. The case was tried in its entirety on June 5, 2009 before the Honorable Paul T. Terlizzese, and immediately thereafter on June 5, 2009, Judge Terlizzese gave verbal finding of fact and conclusions of law which are directly incorporated herein. The parties stipulate and agree that the venue is proper in Brevard County and that the trial was properly held in Melbourne, Florida.

The following documentary items were admitted into evidence:

Joint Exhibit No. 1, the Pre-Trial Stipulation dated March 4, 2009 and approved by this Court on March 4, 2009.

Employer/Carrier Number 1: a composite of the Motion for Determination of Violation of Florida Statutes §440.105(4)(b) and Motion to Terminate Benefits Pursuant to Florida Statutes §440.09(4) filed March 26, 2009, and the Amended Motion for Determination of Violation of Florida Statutes §440.105(4)(b) filed April 17, 2009 with attachments.

Employer/Carrier Number 2: the Pre-Trial Checklist, which was marked for identification purposes only and for argument purposes only.

Employer/Carrier Number 3: the employer/carrier's Notice of Amendment to Pre-Trial Stipulation filed March 10, 2009.

Employer/Carrier Number 4: Response to Petition for Benefits filed February 2, 2009.

Employer/Carrier Number 5: Response to Petition for Benefits filed January 6, 2009.

Employer/Carrier Number 6: Response to Petition for Benefits filed December 17, 2008.

Employer/Carrier Number 7: Trial Memorandum prepared by employer/carrier, for identification and argument purposes only.

Employer/Carrier Number 8: Notice of Filing filed April 17, 2009 with attachments consisting of the following subparts:

- A. Medical records of Dr. Humayan Shareef
- B. Medical records of Lawnwood Regional Medical Center and Heart Institute for dates of service July 15 through July 18, 2008.
- C. Vero Beach Police Department Offense Incident Report dated May 14, 2000 with attachments including correspondence from the Office of the State Attorney of the 19<sup>th</sup> Judicial Circuit of Florida.
- D. Police Report authored by Indian River County Sheriff's Deputy Graig Hayes dated November 14, 2008.
- E. Deposition of Delinia Edmond dated February 2, 2009.
- F. Deposition of Richard McFague, M.D. dated March 29, 2009.

- G. Deposition of Kim Bosco, insurance adjuster, dated February 16, 2009.
- H. Deposition of Deputy Graig Hayes.

It is noted that this composite exhibit (Employer/Carrier Number 8), was admitted for the limited and sole purpose of impeachment and rebuttal, in addition to the limited purposes of the affirmative defenses asserted by the employer/carrier with respect to the Florida Statutes §440.105 and §440.09(4) defenses.

Employer/Carrier Number 9: Deposition of Lorri Cross dated May 12, 2009.

Judicial notice was taken of employer/carrier's Motion to Amend Pre-Trial Stipulation and Order dated April 13, 2009, employer/carrier's Motion to Amend Pre-Trial Stipulation dated March 31, 2009 with an Order entered April 10, 2009, and employer/carrier's Motion to Amend the Pre-Trial Stipulation dated March 25, 2009 with the Order entered March 26, 2009 in which the employer/carrier timely and appropriately amended the Pre-Trial Stipulation to add the affirmative defenses of violation of §440.105(4)(b) and §440.09(4). Judicial notice was further taken of the Petitions for Benefits filed by the claimant dated December 5, 2008; December 5, 2008; December 31, 2008; and January 23, 2009. Judicial notice was also taken of the Amended Notice of Final Hearing dated March 26, 2009.

The Notice of Final Hearing for the June 5, 2009 final hearing, dated April 13, 2009 was admitted as Judge of Compensation Claims exhibit Number 1.

The issues claimed by the claimant that were the subject of this hearing are as follows:

1. Compensability of the claimant's injuries to her left wrist and right hip.
2. Authorization and payment for an evaluation and treatment with PCP.

Specifically with Dr. Kenneth Palestrant and/or any comparable workers' compensation doctor offering similar services located in claimant's geographical area.

3. Authorization and payment for an MRI of left lower arm and wrist, in the claimant's geographical area of the Treasure Coast per Fort Pierce Walk In Clinic Dr. Gottfried.

4. Authorization and payment of chiropractic rehab evaluation and treatment three times a week, and/or any comparable workers' compensation doctor/facility offering similar services located in the same geographic area per Dr. Gottfried.

5. Continued authorization and payment of Dr. Jeffrey Gottfried and/or any comparable workers' compensation doctor/facility offering similar services, located in the same geographic area.

6. Temporary total disability benefits from November 15, 2008 to the present, and continuing, at a compensation rate of \$193.33 per week.

7. Interest and penalties.

The employer/carrier defended on the following grounds:

1. No accident or injury arising out of or in the course and scope of employment.  
2. The industrial accident is not the major contributing cause of any disability and need for treatment pursuant to Florida Statutes §440.09(1).

3. The employer/carrier seeks apportionment pursuant to Florida Statutes §440.15(5)(b).

4. No entitlement to PICA.

5. The employer/carrier seeks costs pursuant to Florida Statutes §440.34.

In addition, the employer/carrier has asserted the following affirmative defense:

1. The claimant is not entitled to any benefits based on her violation of Florida Statutes §440.105(4)(b), and §440.09(4).

As previously indicated, no live witnesses testified at the final hearing, and the claimant failed to present any documentary evidence or any live witnesses in support of her claims. In

making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the evidence presented to me by deposition testimony, and documentary evidence, presented at the final hearing. I have resolved all of the conflicts, if any, in the evidence. Based upon the foregoing, the evidence and the applicable law, I make the following determinations:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.

2. In making the determination set forth below I have attempted to distill the evidence, exhibits and facts, together with the findings and conclusions necessary to the resolution of this claim. I have not attempted to painstakingly summarize the substance of the testimony of deposition witnesses, nor have I attempted to state non-essential facts. Because I have not done so does not mean that I have failed to consider all the evidence, and as I have, in fact, considered all the facts presented.

3. Based upon the totality of the evidence, I find that the claimant has not presented any evidence and certainly no competent substantial evidence to support compensability of her claim. Specifically, the claimant makes claim of complex internal medical issues which were not readily observable, which requires expert medical evidence pursuant to Florida Statutes §440.09(4). It is noted that the claimant has the burden of proof to support compensability of her alleged workers' compensation accident and injury, as well as any benefits being requested. The claimant presented no competent substantial evidence in the form of any witnesses, expert testimony or any factual or historical evidence to support her claims.

4. As such, all the claims presented in the Petitions for Benefits filed December 5, 2008, December 5, 2008, December 31, 2008 and January 23, 2009 are denied and dismissed

with prejudice. I find the claimant has not presented any competent substantial evidence to support an accident or injury arising out of or in the course and scope of her employment, nor has she established any evidence supporting medical causation of any of her alleged injuries, or any related disability.

5. With respect to the employer/carrier's affirmative defenses under Florida Statutes §440.105(4)(b) and Florida Statutes §440.09(4), I find that the employer/carrier has met its burden to establish the necessary elements considering the totality of the evidence.

6. In reviewing the claimant's deposition admitted in this case, the claimant gave the following testimony:

Answer: ... since I fell I've been bleeding still up to now.

Question: When did that start?

Answer: I fell on the 14th and up to the 16th I started bleeding, and I'm still bleeding now.

Question: Where are you bleeding at?

Answer: My vagina.

Question: Is that because of the accident?

Answer: Yes. I have never had this thing with bleeding like that before. I was anemic, but I never used to bleed like this.

Deposition Transcript, page 45, line 23 through page 46, line 8. Exhibit E.

Answer: ... This week I really don't feel well at all because the blood is flowing so much on me.

Question: I don't understand.

Answer: I'm still bleeding.

Question: Vaginal bleeding?

Answer: It doesn't stop.

Question: And you never had a similar problem before?

Answer: No.

Deposition Transcript, page 47, line 20 through page 48, line 3. Exhibit E.

7. Contrary to this deposition testimony, the Court reviewed the documentary evidence including the records from Lawnwood Regional Medical Center in which the claimant presented on January 15, 2008 with complaints of vaginal bleeding. The claimant had a gynecological examination and was diagnosed with a fibroid uterus. The claimant had also presented to Indian River Memorial Hospital and diagnosed with a fibroid uterus around September 24, 2005. In addition, on January 4, 1999 the claimant presented to Lawnwood Regional Medical Center complaining of heavy vaginal bleeding and had described a history of bleeding since the first week of December of 1998. It is clear from the Court's review of the records that the claimant made false, misleading and fraudulent statements in connection with a prior medical history of vaginal bleeding, which is a condition which the claimant attempted to connect to her industrial accident. As such, I find that the claimant's statements made during her worker's compensation deposition, with respect to her prior medical history, regarding this condition violates the provisions of Florida Statutes §440.105(4)(b), and as a result the claimant forfeits all benefits under Chapter 440 for this date of accident pursuant to §440.09(4), of the Florida Statutes.

8. In addition to the above, the claimant underwent an independent medical evaluation with Dr. Richard McFague. Dr. McFague was deposed in this matter, and testified in various portions of his deposition that the claimant had indicated that she had a complete resolution of symptoms in connection with a 2003 neck and back injury and was asymptomatic prior to the industrial accident. In review of the records, it appears that the claimant had ongoing

and persistent pain management care for chronic neck and back pain through September of 2008 with Dr. Humayan Shareef and had been on narcotic pain medications prescribed by Dr. Shareef. The claimant's statements made to her own IME physician were inconsistent with this history and I find that the statements made to her IME physician were false, misleading and in furtherance, and for purposes of securing workers' compensation benefits. It should be noted that accurate medical histories, and evidence of prior treatment, and statements regarding the extent of current injuries are relevant and materials to a workers' compensation claim. Village Apartments vs. Hernandez, 852 So.2d 1140 (Fla. 1st DCA 2003). The parties have a right to expect all statements written or oral are truthful, responsive and complete. *Id.* at 1142. In addition, a claimant's responses to inquiries regarding prior accidents, current injuries, or medical history are deemed to be made in support of the claim for benefits. Citrus Pest Control vs. Brown, 913 So.2d 754 (Fla. 1st DCA 2005).

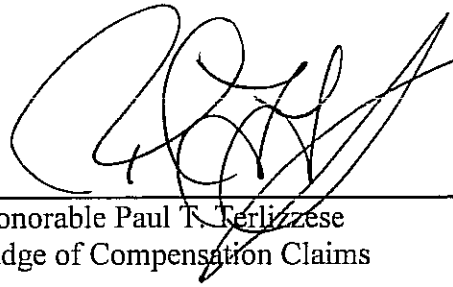
9. Therefore, although I have found that the claimant did not meet her burden of proof in establishing compensability and establishing the requisite evidence to support her Petitions for Benefits, I also find that the claimant has permanently forfeited her right to any benefits for this date of accident pursuant to the provisions of Florida Statute §440.105(4)(b) and §440.09(4).

**WHEREFORE, it is ORDER AND ADJUDGED:**

That all claims contained within the December 5, 2008, December 5, 2008, December 31, 2008 and January 23, 2009 Petitions for Benefits are denied and dismissed with prejudice, and the claimant has forever forfeited her rights to any benefits for this date of accident, with this employer/carrier, based on the provisions of Florida Statutes §440.105(4)(b) and §440.09(4).



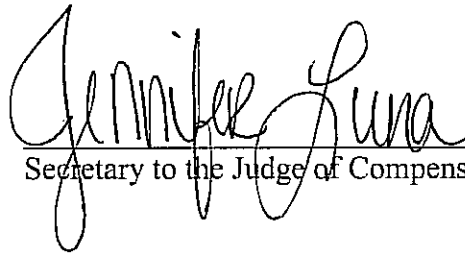
**DONE and ORDERED** in Chambers, Melbourne, Brevard County, Florida, this 10 day  
of June, 2009.



Honorable Paul T. Terlizzese  
Judge of Compensation Claims



**THIS IS TO CERTIFY** that the foregoing Order was entered on the 10 day of June  
2009, and that a copy thereof was sent by regular U.S. Mail to all parties noted previously at their  
last known address.



Secretary to the Judge of Compensation Claims