

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
Tampa District**

EMPLOYEE:

Amable J. Moya-Perguero
1702 DeRosa Road
Polk City, FL 33868

EMPLOYER:

Trucks & Parts of Tampa, Inc.
1015 S. 50th Street
Tampa, FL 33619

CARRIER:

Ameritrust Ins. Corp.
Florida Preferred Administrators
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Sarasota, FL 34232

ATTORNEY FOR EMPLOYEE:

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ATTORNEY FOR EMPLOYER/CARRIER:

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OJCC CASE NO.: 06-022730DEJ

D/A: 9/15/2005
Judge: Doris E. Jenkins

ORDER ON MOTION FOR SUMMARY FINAL ORDER

THIS CAUSE was submitted on the Employer/Carrier's Motion for Summary Final Order.

Upon consideration of said Motion, the undersigned Judge of Compensation Claims finds the facts to be as stated:

1. Previously, on June 22, 2010, the claimant filed a Petition for Benefits seeking authorization of re-employment services pursuant to Florida Statute §440.491.
2. This Honorable Court entered an Order on January 11, 2011 denying the relief requested in the June 22, 2010 Petition. (attached as Exhibit A)
3. This Order became final and was never appealed.
4. The claimant is attempting to re-litigate an issue that has already been determined.
5. Specifically, the claimant has now filed a Petition for Benefits on June 20, 2011 again seeking re-employment services pursuant to Florida Statute §440.491. (attached as Exhibit B)
6. This issue should be denied because the claim has already been litigated and an Order

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entered.

7. The Final Order previously denying the requested benefits was never appealed.

8. It is well settled that workers' compensation orders are subject to the same principles of Res Judicata as are applied to judgments of court. See *Nelson & Company v. Holtzclaw*, 566 So. 2d 307 (Fla. 1st DCA 1990).

9. Accordingly, the claimant cannot simply re-ask for the same benefit that was already denied absent a showing of a change in condition or mistake of fact.

10. There has been no change in condition or mistake of fact.

11. Accordingly, the Petition for Benefits filed on June 20, 2011 seeking re-employment services pursuant to Florida Statute §440.491 should be denied and dismissed.

12. Even if this issue was not governed by Res Judicata, the requested benefits should be dismissed because this Court has already ruled that the Judge of Compensation Claims has no authority to order that the claimant be provided with training and education under §440.491.

In light of the foregoing, the petition filed on June 20, 2011 is dismissed.

Done and ordered in Tampa, Hillsborough County, Florida this 12th day of August, 2011.

Judge of Compensation Claims