

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ST. PETERSBURG DISTRICT OFFICE

Doug Wable,
Employee/Claimant,

OJCC Case No. 14-029386SLR

vs.

Accident date: 4/21/2014

Progressive Employer Management
Services, Inc d/b/a J & D Concrete and
Masonry Inc.,
Employer,

Judge: Stephen L. Rosen

Patriot Risk Services,
Carrier/Servicing Agent.

**EVIDENTIARY ORDER ON EMPLOYER/CARRIER'S AMENDED MOTION TO
COMPEL ANSWERS TO CERTIFIED QUESTIONS**

This Cause came on for hearing before the undersigned Judge of Compensation Claims on May 17, 2016. The subject of the hearing was the employer/carrier's amended motion to compel answers to certified questions. Nicolette Tsambis, Esq. was present on behalf of the Claimant and Timothy Stanton, Esq. was present on behalf of the Employer/Carrier.

Judge's Exhibits:

1. Petition for benefits, filed April 18, 2016.
2. Response to petition for benefits, filed April 29, 2016.
3. Order granting motion to compel answers to certified questions, filed September 17, 2015 (on previously pending petitions for benefits).

Claimant's Exhibits:

1. Response to motion to compel, filed May 5, 2016.

Employer/Carrier's Exhibits:

1. Amended motion to compel answers to certified questions, filed May 2, 2016.
2. Deposition the claimant, taken October 26, 2015.
3. Amended motion to compel answers to certified questions, filed August 5, 2015 (on previously pending petitions for benefits).
4. Deposition of the claimant, taken December 16, 2014.
5. Deposition the claimant, taken June 10, 2015.

After hearing arguments of the parties and otherwise being fully apprised of the facts and applicable law herein, I find that:

1. I have jurisdiction of the subject matter and the parties for this motion.
2. Previously, motions were filed and an order was entered compelling the claimant to answer certified questions on previously pending petitions for benefits. Thereafter, those petitions were resolved.
3. The claimant filed a petition for benefits on April 18, 2016 to which the employer/carrier responded with a denial based on F. S. 44.105 regarding misrepresentation.
4. In the 3rd deposition of the claimant, taken October 26, 2015, the claimant was questioned regarding illicit drug use and cocaine use prior to the date of accident of April 21, 2015. While the claimant answered questions regarding drug use after the date of accident in prior depositions, claimant's counsel instructed him not to answer based on the need to protect the claimant from self-incrimination as well as relevance of the questions.
5. A case speaking directly to the issue of whether or not the claimant may use the shield of United States 5th Amendment right against self-incrimination is that of Village Inn v. Aridi, 543 So. 2d 778 (Fla. 1st DCA, 1989). That case clearly states that the claimant may not invoke the 5th Amendment in a Workers' Compensation claim.

6. Additionally, the employer/carrier should be entitled to inquire of the claimant's drug use prior to the date of accident as it may yield admissible evidence towards the employer/carrier's defense of misrepresentation for the purpose of obtaining workers' compensation benefits.

7. It should be noted that there is wide latitude given in the discovery process which may lead to admissible evidence, but it does not automatically make the evidence obtained admissible. Therefore, the objection as to relevancy is denied, without prejudice, to raise that objection again if evidence obtained in discovery is offered at any final hearing.

WHEREFORE, it is ordered that the claimant shall respond to questions regarding his use of illicit drugs including cocaine prior to the date of accident of April 21, 2015. This order compels the claimant to answer those questions to the best of his ability at the time they are asked again in any deposition or trial testimony subsequent to this order.

DONE AND ORDERED this 17th day of May, 2016, in St. Petersburg, Pinellas County, Florida.



Stephen L Rosen

Stephen L. Rosen
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
St. Petersburg District Office
501 1st Avenue, North, Suite 300
St. Petersburg, Florida 33701
(727)893-2321
www.fljcc.org

COPIES FURNISHED:

Bradley G. Smith, Esquire
bsmith@all-injuries.com
bsmithjccmail@all-injuries.com

Gregory D. White, Esquire
GWhite@hrmcw.com
Apeters@hrmcw.com