

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
DAYTONA BEACH DISTRICT OFFICE

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| Carlos Vences,                        | ) |                            |
|                                       | ) |                            |
| Employee/Claimant,                    | ) |                            |
|                                       | ) |                            |
| vs.                                   | ) | OJCC Case No. 08-019712TGP |
|                                       | ) |                            |
| Employer Leasing Solutions, Inc.,     | ) | Accident date: 7/1/2008    |
| Employer,                             | ) |                            |
|                                       | ) |                            |
| and                                   | ) |                            |
|                                       | ) |                            |
| Old Republic Insurance, and EastGuard | ) |                            |
| Insurance Company/AmeriChase Services | ) |                            |
| Company,                              | ) |                            |
|                                       | ) |                            |
| Carrier/Servicing Agent.              | ) |                            |
|                                       | ) |                            |
|                                       | ) |                            |
|                                       | ) |                            |

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**ORDER DENYING MEDICAL BENEFITS AND DISABILITY BENEFITS PURSUANT  
TO FLORIDA STATUTES §440.09(4)(a) AND §440.105(4)(b)(9)**

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After proper notice to all the parties, this cause came to be heard before the undersigned Judge of Compensation Claims in Daytona Beach, Volusia County Florida, on March 30, 2009. The Petitions for Benefits at issues were filed on July 22, 2008, August 25, 2008, and August 28, 2008. The Claimant, Carlos Vences, was represented by Attorney Nora Leto. The Employer/Carrier was represented by Attorney Gregory White.

The issues to be determined by the undersigned were set forth by the parties in the contents of the Pretrial Stipulation Questionnaire. The issues to be decided include the following: adjudication of the accident of July 1, 2008, as compensable; temporary total disability and/or temporary partial disability benefits from July 1, 2008, and continuing; medical expenses incurred for treatment of employee's injuries; medical care under the supervision of Winter Haven Hospital, follow-up care; reimbursement of prescription bills; authorization of medical care; payment of past medical care; and penalties, interest, costs, and attorney's fees.

These issues were defended by the Employer/Carrier on the grounds that: Claimant not entitled to any benefits because he violated Florida Statute §440.09(4)(a) and §440.105(4)(b)(9), specifically, Claimant used a false means of identity, false social security number to support his claim; no penalties, interest, costs, and attorney's fees are due; Employer/Carrier seeks costs from Claimant; requested medical care not medically necessary or causally related; any loss of earnings not related to the industrial accident; and bills not related.

At the Merit Hearing, the Claimant reiterated their position that any Petitions for Benefits filed against Wilburn Pointer, Jr. d/b/a Wilburn Pointer Stucco and Stone, have been withdrawn. Further, the Claimant indicated that any issues raised by outstanding Petitions for Benefits not specifically identified on the Pretrial Stipulations are withdrawn. Additionally, at the Final Merit Hearing, the parties agreed to administratively handle the determination of the average weekly wage.

This case involves a twenty-four year old man who suffered an accident on July 1, 2008, while performing stucco work. He was employed by Employee Leasing Solutions at the time of the accident. At the time of the accident, the Claimant was on scaffolding which moved and the Claimant fell to the ground, injuring multiple body parts, including his back, middle finger/right

hand, right wrist, right wrist, and right hip. After the accident, the Claimant received medical care at Winter Haven Hospital and was treated for a lumbar strain. The Claimant also attempted to receive treatment at First Help Urgent Care Clinic. Mr. Vences presented the opinion of Dr. Robert Martinez, board certified neurologist as an independent medical examiner. Dr. Martinez stated that the Claimant is suffering from a herniated disk in both cervical and lumbar spine causally related to the industrial accident.

The Employer/Carrier has denied this claim pursuant to §440.09(4)(a) and §440.105(4)(b)(9). The Employer/Carrier alleged the Claimant knowingly presented false oral and written statements as evidence of identity for the purposes of supporting a claim for Workers' Compensation benefits. The Employer/Carrier assert that the Claimant knowingly used a false social security number when he sought medical care for his injuries at the emergency room of Winter Haven Hospital and also when the Claimant sought medical care at the First Health Urgent Care Clinic. Additionally, the Employer/Carrier alleged that the Claimant knowingly used a false social security number as a means of identity when he gave a recorded statement to Mr. Roveshin Avila of the Carrier.

At the Final Merit Hearing, the following documentary evidence was admitted:

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|------------------|--|
| JCC's Exhibit #1 | Pretrial Questionnaire and Order by the undersigned dated December 31, 2008.                         |
| JCC's Exhibit #2 | Supplemental Pretrial and Witness List filed by the Claimant on February 27, 2009.                   |
| JCC's Exhibit #3 | Supplemental Stipulations and Final Witness List filed by the Employer/Carrier on February 27, 2009. |
| JCC's Exhibit #4 | Employee's Trial Memorandum, admitted solely for argument purposes.                                  |
| JCC's Exhibit #5 | Employer/Carrier's Hearing Information Sheet, admitted solely for argument purposes.                 |

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|-------------------------------|---|
| JCC's Exhibit #6              | Composite exhibit including Order on Employer/Carrier's Motion to Compel Answers to Certified Questions, dated November 17, 2008; Employer/Carrier's Motion to Compel Answers to Certified Questions dated October 14, 2008; Claimant's Memorandum of Law In Opposition to Motion to Compel, filed November 12, 2008; and Employer/Carrier's Response to Claimant's Memorandum of Law In Opposition to Motion to Compel, filed November 17, 2008. |
| Claimant's Exhibit #1         | Deposition of Khakie Maulden, taken February 19, 2009.  |
| Claimant's Exhibit #2         | Deposition of Robert Martinez, MD, taken February 24, 2009, with attachments.   |
| Claimant's Exhibit #3         | Composite exhibit including various Employee Earnings Reports from July 29, 2008, through February 23, 2009.  |
| Employer/Carrier's Exhibit #1 | Deposition of Carlos Vences-Maldonado taken October 3, 2008.  |
| Employer/Carrier's Exhibit #2 | Deposition of Wilburn Pointer, Jr., taken November 5, 2008, with attachments.   |
| Employer/Carrier's Exhibit #3 | Deposition of Jamie Morin, taken January 19, 2009, with attachments.  |
| Employer/Carrier's Exhibit #4 | Deposition of Connie Beberwyk, taken January 19, 2009, with attachments.  |
| Employer/Carrier's Exhibit #5 | Deposition of Colleen Clark, taken February 18, 2009, with attachments.   |
| Employer/Carrier's Exhibit #6 | Deposition of Linda Pointer, taken February 26, 2009.   |
| Employer/Carrier's Exhibit #7 | Deposition of Carlos Vences, taken February 27, 2009, with attachments.   |
| Employer/Carrier's Exhibit #8 | Deposition of Roveshin Avila, taken March 13, 2009, with attachments.   |

In making my findings of fact and conclusions of law in this matter, I have carefully considered and weighed all the testimony and evidence presented to me including all the live testimony as well as the documentary exhibits and I have resolved any and all conflicts therein. After having carefully considered the arguments of the parties and all evidence presented in this case, I make the following findings of fact and conclusions of law:

1. The stipulations of the parties as listed above and as identified in the Pretrial Questionnaire are approved and adopted by me.

2. This Court has jurisdiction over the subject matter and over the parties.

3. In making the determinations set forth below, I have attempted to distill the testimony and salient facts together with the findings and conclusions necessary for the resolution of this claim. I have not attempted to painstakingly summarize the substance of all the documentary evidence or the testimony of the witness nor have I attempted to state nonessential facts. Because I have not done so does not mean I have failed to consider all the evidence.

4. In making all findings herein, this Court acknowledges that there is no requirement that a person be a legal citizen of the United States of America or have a valid social security number in order to receive medical attention or Workers' Compensation benefits. I note that the Employer/Carrier does not dispute this premise.

5. I find that the Employer/Carrier has satisfied their burden of proof, by a preponderance of evidence, that the Claimant has violated Florida Statute §440.09 and §440.105(4)(b)(9) by knowingly presenting false oral and written statements as evidence of identity

for the purposes of supporting a claim for Workers' Compensation benefits. Based upon Florida Statute §440.09(4)(a), I find the Claimant is not entitled to compensation benefits because he knowingly and intentionally engaged in acts described in Florida Statute §440.105.

6. The Claimant testified in his supplemental deposition and live at Final Hearing that he knowingly used a false social security number at the time he sought medical treatment at Winter Haven Hospital as a result of the industrial accident and at the time he sought medical treatment at First Health Urgent Care Clinic also as a result of the industrial accident. Further, the Claimant testified in his supplemental deposition and live at Final Hearing that he knowingly used a false social security number at the time and provided a recorded statement to Roveshin Avila of the Employer/Carrier following the industrial accident while pursuing Workers' Compensation benefits. The Claimant's testimony in this regard is not contradicted by any evidence in the Record. I accept the Claimant's testimony on these facts as logical, reasonable, and consistent with the totality of evidence.

7. I find that the Claimant intentionally and knowingly presented false written statements with regard to his identity and particularly his social security number in an attempt to attain Workers' Compensation benefits. The uncontradicted testimony in the Record, including testimony from the Claimant himself, is that he knew that the social security number was false and fraudulent at the time he presented the social security number as a form of identification to Winter Haven Hospital and First Help Urgent Care Clinic in an attempt to receive Workers' Compensation benefits. Similarly, the evidence in the Record is uncontradicted that the Claimant knew that the social security number he provided to the insurance adjuster in a recorded statement while pursuing Workers' Compensation benefits was false and fraudulent. As such, I find that the Claimant

knowingly and intentionally presented false, fraudulent, written information as evidence of identity for purposes of supporting a claim for Workers' Compensation benefits in direct violation of Florida Statute §440.105(4)(b)(9).

8. I reject the Claimant's argument set forth in the Trial Memorandum that the Employer/Carrier's defense in this case is ambiguous or vague. Instead, I find that the defense raised by the Employer/Carrier, as identified in the pretrial pleadings, was set forth in a specific and sufficient manner to allow the Claimant to know precisely the issue to be litigated. I find that the defense set forth by the Employer/Carrier in the contents of the initial Pretrial Questionnaire, JCC's Exhibit #1, sufficiently identified the nature of the alleged fraud in this case. Additionally, I note that during the course of this Workers' Compensation claim, this Court heard various Motions, including a Motion to Compel Answers to Certified Questions, filed by the Employer/Carrier on October 16, 2008, which further identified the nature of the alleged fraud in this case. The Record reflects a composite exhibit, JCC's Exhibit #6, which includes various pleadings and orders of this Court concerning pretrial or discovery issues. I find that during the course of these pleadings, it became abundantly clear to the Claimant that the fraud asserted by the Employer/Carrier involved the Claimant's knowingly and intentional presentation to medical providers and the Carrier a false or fraudulent social security number. I cannot find that the Claimant has been unfairly prejudiced by the manner in which the defenses have been set forth in this case. I find that the Claimant had sufficient time to prepare for these allegations prior to Hearing. Further, I find that at Hearing, it was quite obvious to the undersigned that the Claimant and the Claimant's counsel had a clear understanding of precisely what issues were to be litigated and what defenses were claimed.

9. I reject the Claimant's argument that the Employer/Carrier in this case may have

induced the Claimant to provide a false or fraudulent social security number to the Employer/Carrier in a recorded statement. I find the Claimant's argument on this point is not logical, not reasonable, and not consistent with the totality of evidence presented in this case. Further, I note that even if the recorded statement did not take place in this case, the facts with regard to the Claimant's intentional presentation of a false or fraudulent social security number to Winter Haven Hospital and First Help Urgent Care Clinic would still be sufficient to deny benefits on the grounds alleged by the Employer/Carrier. Nevertheless, there is insufficient evidence to suggest that the Claimant did not voluntarily and knowingly provide the Employer/Carrier with a false social security number at the time of the recorded statement. Likewise, I find there is insufficient evidence in the Record to suggest that the Claimant was induced to provide a false or fraudulent social security number to either Winter Haven Hospital or First Help Urgent Care Clinic. Instead, I find the uncontradicted evidence in the Record, including the testimony of the Claimant himself, establishes that he knowingly and intentionally provided a fraudulent social security number to health care providers in this case. Even considering that the insurance company or insurance carrier knew or may have known that the social security number presented to various health care providers by the Claimant was false, I cannot find that those facts alone are evidence to suggest and prove that the Employer/Carrier induced continued fraudulent activity on behalf of the Claimant. I accept the Employer/Carrier's argument that, at all times, the Claimant had the ability to tell the truth.

10. I reject the Claimant's argument that the fraudulent social security number was presented for reasons other than the purpose of securing Workers' Compensation benefits. This argument is rejected as not logical, not reasonable, and not consistent with the totality of evidence presented in this case. Instead, I find the Claimant knowingly and intentionally provided the

fraudulent or false social security number in order to obtain specific medical benefits, including treatment with Winter Haven Hospital as a result of the industrial accident and treatment with First Help Urgent Care Clinic also as a result of the industrial accident. Similarly, I find the Claimant, in an attempt to further his Workers' Compensation claim, provided a fraudulent social security number to the adjuster during a recorded statement.

11. I reject the Claimant's argument that, assuming the Claimant's supervisor, Mr. Pointer, had knowledge that the Claimant was using a false or fraudulent social security number at the time employment was obtained, the defense under §440.09 and §440.105(4)(b)(9) must fail. Again, I find that the violation of F.S. §440.09 and §440.105(4)(b)(9) occurred in this case following the industrial accident, while the Claimant was in pursuit of Workers' Compensation benefits. I find that the Claimant provided false and fraudulent information to independent third parties, without relation with the Employer or Supervisor in this case, specifically Winter Haven Hospital and First Help Urgent Care Clinic, that gives rise to the denial of benefits under Florida Statute §440.09(4)(a) and Florida Statute §440.105(4)(b)(9).

12. I find the Claimant's presentation of a false and fraudulent social security number to the various health care providers while in pursuit of workers' compensation benefits was, in fact, "material" to the Claimant's claim for benefits in this case and his receipt of medical benefits. In making this finding I note that the Claimant's Social Security information was requested by both Winter Haven Hospital and First Help Urgent Care Clinic prior to the provision of medical care in this case. I reject the Claimant's argument that the Claimant's use of a fraudulent Social Security number in order to obtain medical benefits is immaterial to his receipt of workers' compensation benefits, particular medical benefits, under these circumstances. Nevertheless, even if it is

determined that a social security number is immaterial to the Claimant's receipt of workers' compensation benefits, a position I reject, I note the First District Court of Appeals' decision of Village of North Palm Beach and Employers Mutual, Inc., v. John McKale, 911 So. 2d 1282 (Fla. 1<sup>st</sup> DCA 2005), where it was held:

The JCC is only required to determine whether Claimant knowingly or intentionally made any false, fraudulent, incomplete, or misleading statement, whether oral or written, for the purpose of obtaining workers' compensation benefits, or in support of his claim for benefits...Significantly, it is not necessary that a false, fraudulent, or misleading statement be material to the claim; it only must be made for the purpose of obtaining benefits...

Further, I note the First DCA's opinion of Village Apartments and Protegrity Services, Inc., v. Santiago Hernandez, 856 S. 2d 1140 (Fla. 1<sup>st</sup> DCA 2003), where it was held that: "The parties have a right to expect that all statements, whether written or oral, are truthful, responsive, and complete".

13. Likewise, I reject the Claimant's argument that he was unaware of the complicated workers' compensation laws in Florida and cannot be expected to understand his duties under the Statute, so that the defense under Florida Statute §440.09(4)(a) and Florida Statute §440.105(4)(b)(9) must fail. Again, I note the decision of Village Apartments and Protegrity Services, Inc., where the First DCA held:

"Honesty is not a luxury to be invoked at the convenience of a litigant". Baker v. Myers Tractor Servs., Inc., 765 So. 2d 149,150 (Fla. 1<sup>st</sup> DCA 2000) (quoting trial court's order). The workers' compensation system is designed to be efficient and self-executing. See §440.015, Fla. Stat. (1997). It cannot depend on an adversary's ability to investigate and discover false testimony. The parties have a right to expect that all statements, whether written or oral, are truthful, responsive, and complete.

14. Further, I reject the Claimant's argument as set forth in the Claimant's Trial Memorandum, that the case of Cenvill v. Cantelo, 478 So. 2<sup>nd</sup> 1168 (Fla 1<sup>st</sup> DCA 1985), supports an

award of benefits in this case. I find the Cenvill case is distinguished from the case at bar for many reasons. First, I note that Cenvill is a 1985 decision that concerned an entirely different statutory provision than presently at issue. I also note that the Cenvill decision addressed the relationship between the Claimant's status as an illegal alien and his duty to perform a good faith job search. The issue in Cenvill is distinguished from the issue in the case at bar where the JCC must determine whether or not the Claimant knowingly presented false or fraudulent information in order to obtain workers' compensation benefits. And again, I find that the Claimant herein provided false and fraudulent information to independent third parties, without relation with the Employer or Supervisor in this case, specifically Winter Haven Hospital and First Help Urgent Care Clinic that gives rise to the denial of benefits under Florida Statute §440.09(4)(a) and Florida Statute §440.105(4)(b)(9).

15. I want to be clear that this Court's findings herein and denial of benefits in this case are not based upon the Claimant's residency status; instead, this Court's findings and denial of benefits are based upon the Claimant's false or fraudulent use of a Social Security number, notwithstanding his residency status, in direct violation of Florida Statute §440.09(4)(a) and Florida Statute §440.105(4)(b)(9).

16. I find that any and all issues and arguments not presented at the time of Hearing are considered waived.

**WHEREFORE it is ORDERED and ADJUDGED as follows:**

1. The Claimant has knowingly and intentionally violated Florida Statute §440.09 and Florida Statute §440.105(4)(b)(9).
2. All medical benefits and disability benefits as issue are **DENIED**.

3. The Claimant's request for penalties, interest, costs, and attorney's fees are **DENIED**.
4. The Employer/Carrier is entitled to the payment of taxable costs by the Claimant.

This Court reserves jurisdiction to determine the amount of taxable costs owed to the Employer/Carrier.

DONE AND MAILED this 6th day of April, 2009, in Daytona Beach, Volusia County, Florida.



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