

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

William Wise,
Employee/Claimant,

OJCC Case No. 16-022327NSW

vs.

Accident date: 8/14/2016

TFR Paving & Grading Inc/Sunz Insurance,
Employer/Carrier/Servicing Agent.

Judge: Nolan S. Winn

FINAL COMPENSATION ORDER

THIS CAUSE came on to be heard in Pensacola, Escambia County, Florida on 02-13-17 upon Claimant's claims for compensability; adjustment of the average weekly wage (AWW); temporary total disability (TTD) benefits from the date of accident and continuing; temporary partial disability (TPD) from the date of accident and continuing; authorization of medical care and treatment; authorization of a surgeon; penalties, interest, costs and attorney's fees. The initial Petition for Benefits was filed 09-13-16. Final Hearing occurred one hundred fifty-three (153) days after the Petition was filed and this Order was entered one (1) day thereafter. J. Rod Cameron, Esq. was present in Pensacola on behalf of the Claimant. Gregory White, Esq. was present in Pensacola on behalf of the Employer/Carrier (hereafter "E/C").

Submitted into evidence at the Final Hearing were the following documents, each accepted, identified and placed into evidence without objection except where noted, as Judge's Exhibits, Joint Exhibits, Claimant's Exhibits, or E/C Exhibits, as follows:

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

- #1. The parties' Pre-Trial Stipulation filed 01-18-17.
- #2. Amended Petition for Benefits filed 09-15-16.
- #3. E/C's Response to Petition for Benefits filed 10-25-16.

JOINT EXHIBITS:

None.

CLAIMANT'S EXHIBITS:

None.

E/C's EXHIBITS:

- #1. Deposition of Angela Allen taken 01-18-17.
- #2. Deposition of Cori Hicks taken 01-12-17.
- #3. Deposition of William Wise taken 11-14-16.
- #4. Deposition of Dr. Stephen Kracht taken 01-10-17.
- #5. Deposition of Dr. David Green taken 01-18-17.
- #6. Deposition of Vickie Burke taken 02-06-17.
- #7. Employee's Report of Accident dated 08-16-16.
- #8. Notice of Denial dated 11-29-16.

In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

Based upon the parties' stipulations and the evidence and testimony presented, I find:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.
2. The parties' stipulations and agreements, set forth in the pretrial compliance questionnaire are accepted, adopted and made an order of the Office of the Judge of Compensation Claims.
3. Any and all issues raised by way of the Petitions for Benefits ("PFB"), but which issues were not dismissed or tried at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the Claimant and, therefore, are Denied and Dismissed with prejudice. See, *Scotty's Hardware v. Northcutt*, 883 So.2d 859 (Fla. 1st DCA 2004).
4. Claimant testified on 08-14-16 he was climbing into the bed of a dump truck when he fell landing on his right

hip. He felt immediate pain in his groin – “burning and hurting and a big ole knot come up down there (in the right groin area).” He immediately climbed out of the bed of the dump truck and told his supervisor, Ed Wasson, he was hurting. He did little work thereafter and by the end of the work day the knot in his abdomen was about the size of a golf ball. When he returned to the office that afternoon, he told the company owner, Terry Rowell, what had happened. Claimant stated that Mr. Rowell gave him a telephone number to call (the leasing company), he did so, and two days later Mr. Rowell picked him up at his home and took him to Sacred Heart Urgent Care.

5. At Sacred Heart Claimant reported he does a lot of heavy lifting at work and first noticed a lump in his right abdomen on 07-26-16 which has gradually increased in size since. He complained of constant pain since 07-26-16 exacerbated by lifting at work with pain being relieved when he is not working. He made no mention of having fallen into a dump truck bed. As he did in deposition and at Final Hearing, Claimant denied ever having a hernia before; denied ever receiving treatment for a hernia before; and denied ever having had a lump, bulge, pain or discomfort in the right groin area before.

6. Ed Wasson denies seeing Claimant fall into the dump truck. He admits Claimant did tell him he had fallen into the truck and that Claimant showed him a bulge on the right side of his abdomen. He also testified Claimant had shown him such bulge years before.

7. Terry Rowell testified Claimant has worked for his company several times over the years. He testified Claimant came into his office on 08-14-16 asking to see a doctor for a hernia. Mr. Rowell asked why now as he has had the hernia for years to which Claimant replied “nope, it just happened”. Mr. Rowell gave him the telephone number of the leasing company to call and several days later picked him up and took him to Sacred Heart Urgent Care. Mr. Rowell claims to have seen the bulge in Claimant’s right abdomen years prior to the alleged accident though he remembers it being somewhat higher up than it appeared at Final Hearing.¹

8. Charles Lurvey testified he first met Claimant at TFR Paving in 2009. He testified Claimant showed him the bulge n his abdomen prior to 08-14-16 he believes in early 2016.

9. Carlin Fritchey is owner of Panhandle Clearing and Hauling and employed Claimant in the past. Mr. Fritchey testified when first employed, Claimant was complaining of a hernia that was hurting so he sent him to Santa Rosa Medical Center.

10. Medical records of Santa Rosa Medical Center indicate Claimant, employed by Panhandle Clearing, was seen on 05-08-12 complaining of a one month history of a right sided bulge and pain. A CT scan was obtained and

¹ At Final Hearing Claimant stood and showed through his pants to the JCC, Mr. Wasson, Mr. Rowell, Mr. Lurvey and Mr. Fritchey, a bulge which appeared to protrude approximately ½” and which appeared to be approximately 2” wide by 4” in length.

Claimant was diagnosed with a right inguinal hernia. Claimant was advised he needed to follow-up with Dr. McKissack for surgery. He was discharged with groin pain.

FRAUD/MISREPRESENTATION

11. In *Citrus Pest Control v. Brown*, 913 So.2d 754, 755-56 (Fla. 1st DCA 2005) the First District stated:

“Section 440.09(4), Florida Statutes (2002), provides:

An employee shall not be entitled to compensation or benefits under this chapter if any judge of compensation claims, administrative law judge, court, or jury convened in this state determines that the employee knowingly or intentionally engaged in any of the acts described in section 440.105 for the purpose of securing workers' compensation benefits.

Section 440.105(4)(b), Florida Statutes (2002), provides in part that it is unlawful for any person:

1. To knowingly make, or cause to be made, any false, fraudulent, or misleading oral or written statement for the purpose of obtaining or denying any benefit or payment under this chapter.
2. To present or cause to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to any provision of this chapter, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim.

As we have explained:

Under most circumstances, accurate medical histories, evidence of prior accidents, and statements regarding the extent of current injuries are relevant and material to a workers' compensation claim. These statements are relevant and material whether made to health care providers, or during testimony given at depositions or the merits hearing. In a workers' compensation case, a claimant's responses to inquiries regarding his prior accidents, current injuries, or medical history are made in support of his claim for benefits. *Village Apartments v. Hernandez*, 856 So.2d 1140, 1141 (Fla. 1st DCA 2003).

If, at the time a claimant makes any of the foregoing types of statements, he or she knew that they were false, incomplete, or misleading, the statements fall within the scope of section 440.105(4)(b)(2) and result in the loss of workers' compensation benefits pursuant to section 440.109. *Id.*; see also *Lee v. Volusia County Sch. Bd.*, 890 So.2d 397, 399 (Fla. 1st DCA 2004)(holding that workers' compensation benefits ‘must be denied’ if

statements of medical history, prior accidents, or the extent of current injuries are knowingly false, fraudulent, incomplete, or misleading); *CDL v. Corea*, 867 So.2d 639, 640 (Fla. 1st DCA 2004)(holding that knowingly false, incomplete, or misleading statements of material fact made by a claimant during workers' compensation proceedings regarding the claimant's current state of health or post-accident employment are deemed to be made in support of the claimant's claim for benefits.

In the instant case, the JCC expressly found that claimant intended to mislead by making false or misleading statements about his symptoms that were designed to advance his claims. Once this finding was made, section 440.09(4) precluded claimant from receiving workers' compensation benefits. See *Lee*, 890 So.2d at 399; *Corea*, 867 So.2d at 640; *Hernandez*, 856 So.2d at 1142. This is so regardless of whether the IME later opined that the statements at issue had no effect on his determination of a causal connection.”

12. "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. 1st 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). The parties have a right to expect that all statements, whether written or oral, are truthful, responsive, and complete. If the JCC finds the claimant knew she had been involved in prior accidents when he testified he had not, that would constitute a false statement involving a material fact. *Village Apts. v. Hernandez*, 856 So.2d 1140 (Fla. 1st DCA 2003)

13. Whether a claimant has knowingly or intentionally engaged in any acts or omissions which would trigger the defense of misrepresentation is a question of fact. See *Medina v. Gulf Coast Linen Servs.*, 825 So.2d 1018, 1021 (Fla. 1st DCA 2002).

14. At Final Hearing Claimant had no difficulty remembering a back injury in 2003; a spider bite in 2006; a dental abscess in 2012; being stung by several bees in 2011; a foot injury in 2015; neck pain in 2016; and a lacerated thigh in 2016. He testified he has no recollection however, of being advised he needed to see a surgeon for a hernia in 2012. This despite testimony from Mr. Wasson, Mr. Rowell, Mr. Lurvey that he had told them of his hernia and showed them his hernia long before the alleged industrial accident of 08-14-16 and the testimony of Mr. Fritchey that he sent him to Sacred Heart Urgent Care in 2012 where he was diagnosed with a hernia and advised to see a surgeon.

15. I find it clear Claimant knowingly and intentionally made false, incomplete and misleading statements concerning material facts regarding his past injuries, his past complaints, his past symptoms and his past treatment. I further find such statements were designed and intended to advance his claim for workers compensation benefits, that the same fall within the scope of section 440.105(4)(b)1, F.S. and pursuant to Ch. 440.09(4), F.S., Claimant is precluded from receiving any workers' compensation benefits in this matter. It is,

ORDERED AND ADJUDGED that:

1. Having determined Claimant knowingly and intentionally engaged in acts described in Ch. 440.105(4)(b)1, F.S. for the purpose of securing workers' compensation benefits, Claimant is barred from receiving workers' compensation benefits.

2. Any and all claims asserted as arising out of the alleged industrial accident are **DENIED**.

DONE AND SERVED this 14th day of February, 2017, in Pensacola, Escambia County, Florida.



Nolan S. Winn
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Pensacola District Office
700 South Palafox Street, Suite 305
Pensacola, Florida 32502
(850)595-6310
www.fljcc.org

J. Rod Cameron, Esquire
jrod@jrodcameron.com,liz@jrodcameron.com

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