

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

EMPLOYEE:

Oscar L. Green
830 Lincoln Street
Lakeland, FL 33815

ATTORNEY FOR EMPLOYEE:

Bradley G. Smith, Esquire
P.O. Drawer 1089
Lakeland, FL 33802

EMPLOYER:

Modern Business Associates
P.O. Box 677010
Orlando, FL 32867

ATTORNEY FOR

EMPLOYER/CARRIER:

Gregory D. White, Esquire
1560 Orange Ave., Ste. 500
Winter Park, FL 32789

CARRIER:

Insurance Company of the Americas
P.O. Box 770
Bradenton, FL 34206

OJCC #: 06-021140 MHH

D/Accident: 12/04/05

FINAL COMPENSATION ORDER

A final hearing was previously held in this matter before Mark H. Hofstad, Judge of Compensation Claims, in Lakeland, Polk County, Florida. The Claimant was represented by Bradley G. Smith, Esquire. The Employer/Carrier was represented by Gregory D. White, Esquire. An abbreviated final order was entered. The order was subsequently vacated based on the Claimant's request for a complete order requesting factual findings. The following are the court's findings:

1. Lakeland District is the proper venue and this court has jurisdiction over the parties and the subject matter.
2. All exhibits were marked for identification, were read into the record and were accepted into evidence at the final hearing. The Claimant, Oscar L. Green, testified on his own behalf. The Employer/Carrier presented the testimony of Bruce Dunbar.

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3. The Claimant petitioned for temporary total/temporary partial disability benefits from 12/4/05 through pretrial and continuing in the manner and for the period of time provided by law. In addition, the Claimant petitioned for medical care and treatment as the nature of the injury and process of recovery require including authorization of a hand therapy program as recommended by Dr. Robert Belsole in his report dated March 29, 2007. The final claim was for penalties, interest, attorney fees and costs.
4. The Employer/Carrier filed defenses contending that the Claimant was at maximum medical improvement, that the Claimant voluntarily limited his income, that the Claimant's loss of income was not causally related to the industrial accident, the Claimant was not due temporary total or temporary partial disability benefits, all medically necessary and causally related care and treatment has been provided and that penalties, interest, costs and attorney fees are not due or owing.
5. Dr. Paul Maluso performed an expert medical evaluation on the Claimant. On page fourteen (14) of his July 2, 2008 deposition, Dr. Maluso was asked if he would relate the Claimant's left wrist and elbow complaints to the industrial accident. The doctor responded:

Yes. I would relate all the complaints of the left arm, all the findings noted on the nerve test, the need for Dr. Jurbala's surgery, the rehab program afterwards, the second EMG test, all that to the incident. I would not relate the cervical spine, however.

Dr. Jurbala restricted the Claimant to lifting of no more than ten to fifteen (10 – 15) pounds and no repetitive use of the left arm until the Claimant had undergone a work hardening program. It is clear that the EMA physician is of the opinion that the Claimant requires rehabilitation of his left wrist and elbow. Dr. Maluso never retreated from this opinion. Based upon the competent and substantial evidence referenced above, the Claimant's petition for a hand therapy program, as recommended by the expert medical advisor is granted.

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6. The petition for temporary indemnity benefits is denied. The Claimant was paid indemnity benefits until his incarceration. He was released from incarceration on December 18, 2006. The Claimant agrees that no temporary indemnity benefits are due prior to December 18, 2006. The Claimant was incarcerated for a confrontation with law enforcement officers. The Claimant testified at trial to numerous previous convictions including drug abuse and burglary however he has no idea how many times he has been convicted. He speculated that he had probably been convicted for more than ten (10) crimes.

After his release from prison, the Claimant secured employment with the Terrace Hotel. A copy of his employment application with the Terrace Hotel was attached as an exhibit to the deposition of Bruce William Dunbar, taken September 19, 2007. The application is dated January 10, 2007. Within the application documents, the Claimant responded that he was capable of lifting appropriate weight based on the job description, denied having any medical condition that would impact his ability to do his job and denied that he had ever sustained any worker's compensation injury or accident that might affect his ability to perform his job.

The Claimant was initially employed as a dishwasher. The Claimant initially testified at trial that he was able to do that job but seemed to change his testimony later by stating he had some difficulty performing the tasks of a dishwasher.

The general manager of the Terrace Hotel, Bruce Dunbar, testified that the Claimant worked at the Terrace Hotel over two (2) months. Mr. Dunbar testified that the Claimant never reported that he was unable to do any aspect of any job he had with the Terrace Hotel. At trial, the Claimant confirmed that he never reported difficulty performing his job duties to any supervisor. The Claimant was initially employed as a dishwasher but asked Mr. Dunbar if he would be allowed to work more hours. The Claimant was

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transferred to housekeeping where he supplied housekeepers with towels and other items. Mr. Dunbar testified that the Claimant never advised him that he had any difficulty with either job. Mr. Dunbar testified that the Claimant was a good worker and that the Claimant would have been provided employment within his restrictions had Mr. Dunbar been advised of any difficulties the Claimant had performing his work responsibilities. Mr. Dunbar testified that the Claimant stopped showing up for work without notice. The Claimant did not provide Mr. Dunbar with any explanation for quitting the job; the Claimant simply stopped showing for work.

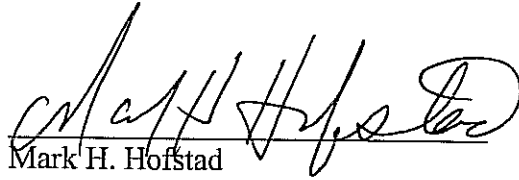
7. Based on the above, the court finds that the Claimant is not a credible witness. The Claimant's testimony is rejected as inconsistent and not credible.
8. There is no competent evidence that the Claimant performed a good faith job search after he quit his employment with the Terrace Hotel.
9. The EMA physician, Dr. Maluso, recommended an EMG and nerve conduction velocity test. There was confusion regarding the initial EMG/NCV testing and therefore a repeat exam was performed on January 19, 2009. This examination was normal.
10. The court finds that there is no competent evidence that the Claimant was incapable of working during the period of time at issue. After the Claimant's release from incarceration, he immediately secured employment. Pursuant to the testimony of his employer, the Claimant never reported any difficulty performing his job assignments. Of particular note is the fact that the Claimant was initially hired on a part time basis. The Claimant requested additional hours and was given full-time employment thereafter. On the medical portion of his job application, the Claimant indicated no physical malady which would restrict his ability to work. Ultimately, the Claimant quit his job without advising the employer of any difficulty in performing the job tasks. The Claimant simply quit the job without explanation. The Claimant's diagnostic testing was normal. The

EMA physician indicated that after a brief rehabilitation program the Claimant would be able to return to work without restrictions. The petition for further indemnity benefits is denied with prejudice.

Wherefore, it is ORDERED and AJUDGED that:

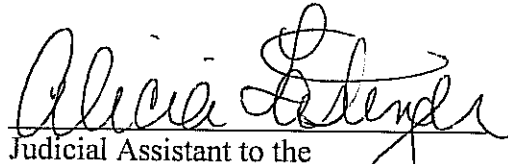
1. The Claimant's petition for a hand therapy program *i.e.* a work hardening program as recommended by his authorized treating physician and the expert medical examiner is granted.
2. The Claimant's petition for temporary indemnity benefits is denied with prejudice.
3. Counsel for the Claimant has established entitlement to a reasonable attorney fee and reimbursement of reasonable costs relative to the benefit secured. Jurisdiction is reserved should the parties be unable to reach agreement thereon.

DONE AND ORDERED in Chambers in Lakeland, Polk County, Florida on this day of JUN 29 2009, 2009.


Mark H. Hofstad
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered on this day of JUN 29 2009, 2009, by the Judge of Compensation Claims, and that a copy thereof was sent to the parties identified above.


Alicia L. Linder
Judicial Assistant to the
Judge of Compensation Claims