

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FT. MYERS DISTRICT OFFICE

Catherine George,)	
Employee/Claimant,)	OJCC Case No. 11-009671EDS
)	
vs.)	Accident date: 4/3/2011
)	
Imperial Health Care Center/Premier)	
Group Insurance,)	Judge: E. Douglas Spangler
Employer/ Carrier/ Servicing Agent.)	

FINAL COMPENSATION ORDER

A Final Merit Hearing concerning a Petition for Benefits docketed on April 28, 2011 was scheduled for October 28, 2011 in Fort Myers, Lee County, Florida. Attorney Jonathan L. Cooley appeared on behalf of the Employer/Carrier. The Claimant failed to appear. Counsel of record for the Claimant withdrew by Order on August 11, 2011. A Pre-Trial Order and Notice of Final Hearing was provided to the parties on August 26, 2011. The Claimant was provided notice via Certified and regular mail. The Certified copy was returned unclaimed. The copy sent via regular mail was not returned. The Employer/Carrier filed a Request for Status Conference and Motion for Telephonic Appearance on October 19, 2011 referencing the date and time of the Merit Hearing. This was sent by the Employer/Carrier to the Claimant via regular and Certified Mail. The Certified Mail receipt was returned showing a delivery date of October 21, 2011.

The undersigned finds that the Claimant had proper notice of the Merit Hearing and failed to appear. The Claimant, therefore, failed to introduce any evidence in support of her claims and, therefore, all requested benefits are denied.

Issues and Defenses

The parties stipulated that the Claimant had a compensable accident on April 3, 2011.

Per the Pre-Trial Stipulation, the Claimant sought the following benefits:

- 1) Temporary Total Disability (TTD) and/or Temporary Partial Disability (TPD) benefits from the date of the accident to the present and continuing.
- 2) Penalties, interest, costs, and attorney's fees.

Per the Pre-Trial Stipulation, the Employer/Carrier defended as follows:

- 1) TTD/TPD are not due and owing.
- 2) No objective medical evidence to support TTD/TPD.
- 3) Alleged need for TTD/TPD is not causally related to the industrial accident.
- 4) The industrial accident is not the major contributing cause of the alleged need for TTD/TPD.
- 5) Voluntary limitation of income/deemed earnings.
- 6) No penalties, interest, costs or attorney's fees are due and owing.

Conclusions of Law

The Claimant has the burden to prove she is entitled to the benefits she has demanded. *Florida Retail Federation SIF and Claims Center v. Nofal*, 18 So. 3d 721 (Fla. 1st DCA 2009); *Mitchell v. XO Communications, etc.*, 966 So. 2d 489 (Fla. 1st DCA 2007). The Claimant must present evidence that the finder of fact determines is not only competent, but is persuasive. There is no burden on the party opposing the demand to present any evidence.

Pursuant to Section 440.15(2), Florida Statutes (2010), in order to demonstrate entitlement to Temporary Total Disability benefits, the Claimant must introduce medical evidence demonstrating disability total in character and temporary in duration. Likewise, to establish entitlement to Temporary Partial Disability benefits pursuant to Section 440.15(4), Florida Statutes (2010), the Claimant must demonstrate the industrial accident is the major contributing cause of any disability. Pursuant to Section 440.09(1), Florida Statutes (2010), an employer's obligation to pay compensation or provide benefits is predicated on the industrial accident being the major contributing cause of any injuries.

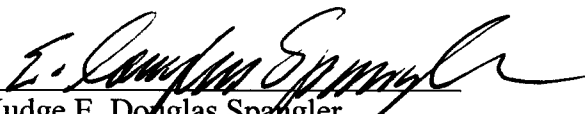
The Claimant failed to introduce any evidence in support of her claims. The Claimant has not met her burden of establishing either total or partial disability resulting from the industrial accident.

WHEREFORE it is Ordered and Adjudged:

The Petition for Benefits docketed on April 28, 2011 is denied and dismissed with prejudice.

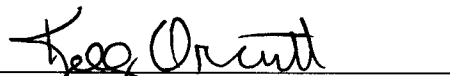
DONE AND ENTERED in Fort Myers, Lee County Florida.




Judge E. Douglas Spangler
Judge of Compensation Claims

Certificate of Service

I certify that the foregoing Order was entered and a true copy furnished to the parties and to counsel of record on this 9th day of November, 2011.


District Deputy Clerk

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