

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
Miami District**

Boanerges Quintero,

Employee/Claimant,

-vs-

OJCC CASE NO.: 11-015989AMK

D/A: 1/24/2010

Judge: Alan M. Kuker

FrankCrum and Broadspire,

Employer/Carrier.

FINAL COMPENSATION ORDER

After due and proper notice to the parties, this cause came before the undersigned Judge of Compensation Claims on December 18, 2012, for a Final Merits Hearing. The claimant, Boanerges Quintero, appeared in person and represented himself pro se. The Employer/Carrier was represented by Kate Albin, Esquire. After having considered the documentary evidence, live testimony, and arguments of counsel, the undersigned Judge of Compensation Claims makes the following ruling consistent with the findings of fact and the conclusions of law as follows:

I. Claims and Defenses

A. Claims. The following benefits were claimed:

1. Compensability of the claim.
2. Authorization for provision of initial medical care.
3. TTD/TPD from date of accident and continuing.
4. PICA.

B. Defenses. The Employer/Carrier raised the following defenses:

1. While the claimant was in the course and scope of employment, the Employer/Carrier

disputes that an accident occurred.

2. No medical documentation to support causation to a work related accident.
3. No timely notice of accident.
4. The alleged industrial accident is not the major contributing cause of the claimant's need for treatment.
5. No medical evidence of injury or disability.
6. No penalties, interest, costs or attorney's fees are due.

II. Evidence Presented

A. Documentary Evidence. The following exhibits were admitted into evidence.

1. Judge's Exhibit # A1. Pretrial stipulation and Order dated November 16, 2012.
2. Employer/Carrier's Exhibit 1. Claimant's deposition from November 11, 2011.

B. Proffered Evidence.

1. Claimant's composite proffer #1. Four CD's from South Florida Diagnostic Imaging.
2. Claimant's proffer # 2. A prescription from Coral Reef Medical Center for diagnostic testing.
3. Claimant's proffer # 3. Prescriptions from Walgreens and a Voltaren Gel Box.
4. Employer/Carrier's proffer # 1. Employer/Carrier's Trial Memorandum.

C. Live Testimony.

1. Claimant.
2. Sherwood Food Distribution representative Leo Gutierrez.
3. Best Driver representative Charlie Gutierrez.

III. Findings of Facts and Conclusions of Law

All of the evidence, including the testimony offered at the Merits Hearing, and all of the

deposition and documentary evidence admitted by the undersigned were carefully and completely reviewed and considered in arriving at the following decision. I have observed the candor and demeanor of the witnesses, particularly the claimant and the employer representatives, Leo Gutierrez and Charlie Gutierrez. I have resolved all of the conflicts in the testimony and the evidence. Based on the foregoing and the applicable law, I make the following findings of fact and conclusions of law as set forth more fully below.

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter.
2. Venue is properly in Miami Dade County, Florida.
3. Any and all issues raised by way of Petitions for Benefits that were not dismissed or tried at the hearing are deemed resolved or dismissed and therefore are denied and or dismissed with prejudice. See Betancourt v Sears Roebuck and Co., 693 So.2d 680, (Fla. 1st DCA 1997) : See also McLymont v A Temporary Solution, 738 So.2d. 447, (Fla. 1st DCA 1999).
4. On the date of the alleged accident, January 24, 2010, the claimant worked for Frank Crum, a PEO, who leased the claimant to Best Driver, who then leased the claimant to Sherwood Food Distribution.
5. The claimant, Boanerges Quintero, testified before me live at Final Hearing in his native Spanish with the assistance of an interpreter.
6. At the time of the claimant's live testimony, he testified that he reported his accident on January 25, 2010 to a Roberto Ferreira, and Leo Gutierrez. The claimant testified he also reported his accident around the time of injury to a Mr. Lopez.

7. The claimant's November 11, 2011 deposition transcript was entered into evidence. In reviewing the claimant's deposition testimony it is clear that the claimant's deposition testimony conflicts with the claimant's trial testimony as the claimant testified during deposition that he failed to report his accident to anyone because he forgot.
8. Leo Gutierrez, the employer representative for Sherwood Food Distribution, and Charlie Gutierrez, the employer representative for Best Driver, testified live before me at the Final Hearing. I found both men to be well spoken and credible witnesses. Leo Gutierrez testified that at no time did the claimant report any accident to him, and that if any accident had been reported to Mr. Lopez, who was under his supervision, that he would have been told. Additionally, he testified that Roberto Ferreira was the claimant's co-worker, and therefore would not have been someone to whom the claimant could have reported his accident. Further, that Mr. Ferreira was not working at the time of the accident. Mr. Charlie Gutierrez testified that if the accident had been reported to anyone at Sherwood, he would have been told. He testified that no accident was ever reported either directly to him or through anyone at Sherwood.
9. In light of the claimant's deposition testimony, and the testimony of Mr. Charlie Gutierrez and Mr. Leo Gutierrez, I find the claimant's testimony at the time of hearing that he reported the accident to be unbelievable. I accept the testimony of Mr. Charlie Gutierrez and Mr. Leo Gutierrez over the trial testimony of the claimant where such testimony conflicts. I find that the claimant did not report his accident until July 11, 2011, when the claimant first filed a Petition for Benefits.

Pursuant to Fl. Stat. 440.185(1), an employee who suffers an injury arising out of and in the course of employment shall advise his or her employer within 30 days after the date of or initial manifestation of the injury. I find that, based on all testimony before me, the claimant did not report his accident within 30 days, and thus his claims for benefits are denied.

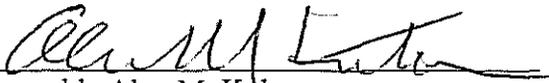
10. The claimant has the burden to prove his entitlement to workers compensation benefits. Fitzgerald v Osceola County School Board, 974 So. 2d 1161 (Fla. 1st DCA 2008). I find that the claimant did not present any medical evidence of injury. Pursuant to Florida Statute 440.09(1), "Injury, its occupational cause, and any resulting manifestations or disability must be established through a reasonable degree of medical certainty, based on objective relevant medical findings." No admissible medical documentation was provided to show causation to a work related accident. Therefore, I find that the claimant has failed in his burden to show causation, and benefits requested are denied.
11. Pursuant to the same statute, 440.09(1), major contributing cause must be demonstrated by medical evidence only. The claimant presented no admissible medical evidence in this matter, thus I find that the claimant failed to establish that the major contributing cause of the claimant's condition and need for treatment is the alleged industrial accident.
12. It is the claimant's burden to show any resulting manifestations of disability based on medical evidence. The claimant presented no medical evidence of injury; therefore, there was no medical evidence of disability. As such, the claimant is not entitled to TTD or TPD benefits for any time since the industrial accident.

13. In conclusion, while I find that the claimant was working for the Employer on January 24, 2010, there is no evidence that a compensable accident occurred on that day.

WHEREFORE, it is Ordered and adjudged that:

1. The claims for compensability of the claimant's injuries and provision of initial medical treatment are denied.
2. The claims for TTD/TPD benefits from the date of accident and continuing are denied.
3. The claims for penalties, interest, attorney's fees and costs are denied.

DONE and ORDERED this 21st day of December, 2012. In Miami, Miami-Dade County, Florida.


Honorable Alan M. Kuker
Judge of Compensation Claims

This certify that a true and correct copy were mailed to claimant's last known address and electronically transmitted to counsel on this 21st day of December, 2012.


Karina Velasquez
Executive Secretary to Judge Alan M. Kuker