

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

Jessica Centeno,  
Employee/Claimant,

OJCC Case No. 13-026545WJC

vs.

Accident date: 05/15/2013

MCJ Auto Sales/Castlepoint Florida,  
Employer/ Carrier/ Servicing Agent.

Judge: W. James Condry, II

**ORDER ON MOTION FOR ADVANCE**

After proper notice to all parties, an evidentiary hearing was held on this claim in Orlando, Orange County, Florida on the morning of Thursday, February 20, 2014. Present was Attorney David E. Mallen, who represented the claimant. Appearing on behalf of the employer/carrier, hereinafter referred to as the E/C, was Attorney Matthew J. Troy. At trial, testimony was received from the claimant Jessica Centeno.

**OVERVIEW**

Ms. Centeno, a former sales inventory manager for MCJ Auto Sales, claims injuries to her neck and back in a compensable motor vehicle accident. There is a pending petition for benefits filed on November 13, 2013 and seeking among other things the payment of temporary indemnity benefits and the authorization and reimbursement of medical care. The matter is scheduled for mediation conference on March 3, 2014 and final hearing on April 15, 2014.

Ms. Centeno seeks a \$4,000.00 advance due to financial hardship she attributes to a substantial reduction in wages, loss of earning capacity, and physical impairment.

In addition to Ms. Centeno's testimony the following documents were presented for my consideration:

- The Claimant's motion for advance payment filed on November 15, 2013.
- The Employer/Carrier's written response to the claimant's motion for advance filed on November 25, 2013.
- The February 7, 2014 record of Dr. Steven Weber.
- Proffered but not received into evidence was a purported letter from the landlord regarding the claimant being behind in rent payments.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After considering the testimony of the claimant, entertaining the arguments of counsel, and considering the applicable case, and statutory provisions, I find that Ms. Centeno is eligible for an advance payment as permitted by law because she has suffered a substantial loss in earning capacity as well as a physical impairment.

*Section 440.20(12)(c)* provides, "In the event the claimant has not returned to the same or equivalent employment with no substantial reduction in wages or has suffered a substantial loss of earning capacity or a physical impairment, actual or apparent: an advance payment of compensation may be had."

*Section 440.20(12)(d)* provides, "When an application for an advance payment in excess of \$2,000 is opposed by the employer or carrier, it shall be heard by a judge of compensation claims after giving the interested parties not less than 10 days' notice of such hearing.... If the judge of compensation claims finds that such advance payment is for the best interests of the person entitled to compensation, will not materially prejudice the rights of the employer and carrier, and is reasonable under the circumstances of the case, she or he may order the same paid."

I find the motion for advance was pled in the alternative and allows me to determine the reasonableness of an advance under the Section (c) as well as the Section (d) standards.

In requests for advances up to \$2,000.00 under *subsection (c) (2)* a JCC must perform a two-step inquiry.

First, the JCC must determine whether the claimant falls into one of the three specified statutory categories:

- a. Claimants who have not “returned to the same or equivalent employment with no substantial reduction in wages.”
- b. Claimants who have “suffered a substantial loss of earning capacity.”; or
- c. Claimants who have suffered a “physical impairment.”

Secondly, a JCC must determine that the claimant:

- a. Is a proper claimant; and
- b. Has provided adequate justification for his or her request.

In requests of advances over \$2,000.00 under *subsection (d)* a JCC must also consider if the advance would materially prejudice the rights of the employer and carrier, and is reasonable under the circumstances of the case

In the case of *Delta Airlines, Inc. v. Kuhn, 104 So.3d 1111 (Fla. 1<sup>st</sup> DCA 2012)* in determining whether there is adequate justification the appellate court noted that advances are typically sought prior to or in conjunction with related benefits the claimant seeks under a pending petition to which the advance would attach or apply. At the time of the filing of the claimant’s petition for advance in the *Kuhn* case Ms. Kuhn had no pending claim for benefits before the JCC. As such her claim status was thought to be doubtful. Moreover the court noted that *claimant’s that are eligible for advances are not automatically entitled to them*. JCC’s have broad discretion to award advances but are limited by the statutory framework. Awarding an advance to simply provide a claimant a financial “cushion” is not by itself a justifiable basis for an award. The court in *Kuhn* held that the type of interest that is furthered by an advance under *Section 440.20(12)(c)(2)* must at least have some plausible nexus to Chapter 440’s purpose to address medical and related financial needs arising from workplace injuries. In citing to *Court of Flags’ v. Outland, 382 So.2d 443 (Fla. 1<sup>st</sup> DCA 1980)* the court reiterated that “workers’ compensation benefits are not intended as life insurance” and that a claimant seeking an advance

must demonstrate some plausible nexus to a pending workers' compensation claim.

In assessing the germane facts pertinent to this advance request using the two-step process addressed above the claimant in this case has first established at a minimum a physical impairment and substantial loss of earning capacity. She has shown that she is a proper claimant by having filed a petition in this case that is pending and she has provided adequate justification for her request by establishing sufficient financial need at least in part attributable to a lack of employment earnings for a period of time and certain medical expenses to which the parties debate are caused by her industrial injuries. Ms. Centeno has presented evidence as to why an advance would be appropriate, see *Worthy v. Jimmie Crowder Excavating*, 100 so.3d 727 (Fla. 1<sup>st</sup> DCA 2012) and she has in my estimation demonstrated a plausible nexus to her pending workers' compensation claim. She has at a minimum sustained the costs of emergency medical treatment directly incurred as a result of the industrial accident, she has sustained an existing impairment as a result of that injury and she has sustained an argued period of indemnity compensation entitled to be ultimately determined at final hearing in light of the pending petition.

The following findings are made for the purposes of this hearing only. I find that the claimant was terminated from her employer as they were unable to accommodate her restrictions. Based upon the claimant's testimony of earning a base salary of \$400.00 plus commissions, and that the base salary and commissions average \$2,000.00 weekly, I find that she has sustained a loss in earning capacity in light of her current earnings with AT&T. I also find that the claimant sustained a significant enough injury which required transportation via ambulance and treatment in an emergency room. I find that those bills remain outstanding based upon the claimant's testimony. Further, I find that due to the reduction in earnings the claimant is behind in her rent, car payment and child daycare service payments. She has received collection bills for medical care that she testified she cannot pay for. Finally, I find that the claimant has established her financial indebtedness is contributed to either in whole or in part to her compensable workers' compensation injury.

I am convinced that the claimant's financial situation is a difficult one and that an

advance of at least \$2,000.00 is in her best interest to assure that she can meet some of the rudimentary requirements of food, shelter, childcare and transportation until her claimed issues on the workers' compensation claim can be resolved.

As the claimant sought an advance of \$4,000.00, I find it is necessary for me to consider whether such an award in excess of \$2,000.00 would not materially prejudice the ability of the E/C to recoup payment on the advance. See *Workers of Florida v Williams*, 743 so.2d 609 (Fla. 1<sup>st</sup> DCA 1999) and Section 440.20(12) (d). I find that the claimant as the moving party has not sufficiently shown that such an advance would not materially prejudice the employer and therefore I deny awarding an advance over \$2,000.00 in this case. There is no available offset or recoupment against medical benefits if indeed the E/C is obligated to pay them and a determination as to the extent of the E/C's most likely indemnity benefit obligation if any and the ability to recoup monies in regard to same is questionable. The only clear period of indemnity exposure based on the record medical evidence before me is the assignment of physical restrictions as of the date Dr. Weber's February 7, 2014 report. No other medical evidence establishing disability *in this record* whether addressed contemporaneously or retroactively exists. These matters will ultimately be fleshed out at the time of the final hearing. Meanwhile, as stated before I find that an advance payment of \$2,000.00 to mitigate the financial hardship arguably imposed upon Ms. Centeno or aggravated by the accident is reasonable, appropriate, and in her best interest.

**WHEREFORE** it is hereby **ORDERED** and **ADJUDGED** that:

- 1. The claimant's request for a \$4,000.00 advance is denied. However, an award of an advance in the amount of \$2,000.00 is granted in that I find it is in the best interest of the claimant and reasonable under the circumstances of this case.*
- 2. The E/C is entitled to recoupment of this advance payment as otherwise provided by law.*

DONE AND ORDERED in chambers at Orlando, Orange County, Florida.

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W. James Condry, II  
Judge of Compensation Claims  
400 West Robinson Street, Suite 608-North  
Orlando, Florida 32801-1701

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the Judge of Compensation Claims entered the foregoing Order. A true and accurate copy of the Order has been served by electronic filing on the parties' attorneys of record on this the 21<sup>st</sup> day of February 2014.

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Susan Berman  
Assistant to Judge of Compensation Claims

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