

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
WEST PALM BEACH DISTRICT OFFICE

Javier Vidal-Casimiro,  
Employee/Claimant,

OJCC Case No. 14-014164SHP

vs.

Accident date: 5/21/2014

Howard Leasing Services/North American  
Risk Services, Inc., and Sunz Insurance,  
Employer/Carrier/Service Agent.

Judge: Shelley H. Punancy

MERIT ORDER

AFTER DUE AND PROPER NOTICE, this cause came on to be heard at final hearing on 3/11/15, in Palm Beach County, Florida. Due to illness of the undersigned from 3/18/15, requiring hospitalization and surgery, this order is untimely. On 5/12/15, the parties agreed to the undersigned's request for an extension of time in entering the order. The undersigned returned to work 6/8/15. At the final hearing the Claimant was represented by Victor Arias, Esquire. The E/C was represented by Matthew J. Troy, Esquire. This order resolves the issues raised in the Petition for Benefits filed 8/13/14, 8/19/14, and 11/19/14.

A. Claims:

1. Temporary Total/Temporary Partial (TT/TP) disability benefits.
2. Penalties and interest.
3. PCP, Hernia Surgery.
4. Medical Bills in the amount of \$4,109.00, \$962.00, and \$731.00.
5. Attorney's fees and costs.

B. Defenses:

1. No medical records to support disability.
2. Claimant violated sections 440.105 and 440.09(4).
3. Penalties, interest, costs, and attorney's fees are not due or owing.

C. Documentary Exhibits:

Court:

1. Pretrial Stipulation/Order/E/C's Notice of Defense under Sections 440.105(4) and 440.09(4).

Claimant:

1. Carrier Payout Ledger.
2. Petition for Benefits 6/23/14 and 6/24/14-Dismissed. Petition for Benefits 8/13/14, 8/19/14, and 11/19/14-Composite.
3. Deposition-Dr. Arias-2/20/15-Proffer.

Employer/Carrier (E/C):

1. Deposition-Javier Vidal-Casimiro-11/6/14.
2. Deposition-Melissa Randall-2/18/15.
3. Deposition-Sarah Zeigler-2/19/15.
4. Deposition-Sondra Kelley-2/18/15.
5. Transcript/CD-Claimant's Recorded Statement.
6. E/C Motion In Limine And To Strike Dr. Arias as Claimant's IME filed 2/20/15/Order 2/24/15/Order 3/2/15/Claimant's Motion To Set Aside/Vacate Order of 3/2/15.

Alternatively, Motion For Continuance filed 3/10/15/Response To Claimant's Motion To Set Aside/Vacate or Continue filed 3/10/15/and E/C's Motion To Strike Trial

Memorandum And Second Motion To Strike Dr. Arias filed 3/10/15.

D. Stipulations:

1. I have jurisdiction of the parties and subject matter of the claim.
2. Compensability of the claimed accident/injury is at issue.
3. Petitions for Benefits filed 6/23/14 and 6/24/14 have been dismissed.

E. Testifying before me was the Claimant, Mr. Vidal-Casimiro, with the aid of a Spanish language interpreter.

F. Preliminary Matters:

The parties' Pretrial Stipulation was filed on 1/9/15. Claimant listed Dr. Arias-ER physician as a witness to testify via deposition. Dr. Arias saw the Claimant one time on 6/20/14 in the ER at Hendry Hospital in Clewiston, Florida. Claimant deposed Dr. Arias on 2/20/15 at which time he indicated his intention to designate Dr. Arias as his IME. On the record the E/C objected to the designation as not comporting with section 440.13(5)(a), Fla. Stat. (2014). On 2/20/15, the E/C filed a Motion In Limine And To Strike Dr. Arias As Claimant's IME. By Order of 2/24/15, ruling on the Motion was Reserved and Claimant was instructed to provide the Response to the Motion before 5:00 p.m. 2/27/15. In that Claimant did not comply, the Order granting the E/C's Motion was entered on 3/2/15. On 3/10/15, Claimant moved to set aside/vacate the 3/2/15 Order or alternatively, to continue the Merits Hearing set for 3/11/15. The E/C filed a Response to Claimant's Motion on 3/10/15.

I find that Claimant failed to address the E/C's Motion In Limine until 3/10/15, one (1) day before the 3/11/15 Merits Hearing. Moreover, Claimant failed to demonstrate that his reason

for requesting a continuance of the Merits Hearing arose from circumstances beyond his control. Accordingly, I find that the E/C's Motion was properly granted.

I have carefully considered and weighed all evidence presented. I observed the candor and demeanor of the witness who testified before me. I have resolved all conflicts in the evidence. I have considered the argument of counsel, statutory, and case law authority. I now make the following findings of fact and conclusions of law:

Findings of Fact:

1. The stipulations of the parties are approved and adopted.

2. Claimant was hired on 5/19/14 to harvest watermelons. He testified that he felt pain in his right lower stomach when he lifted a watermelon on 5/21/14. He reported the incident to his boss, "El Chino", according to the Claimant. He testified that he initially went to a hospital in Clewiston (Hendry Regional Medical Center) where he was examined in the Emergency Room. Claimant related that he also saw a doctor in Fort Myers, the appointment having been scheduled by the Employer. Lastly, he testified that he was seen by a doctor in Michigan who scheduled him for surgery, but same did not take place.

3. The Carrier Payout Ledger reflects payment to Hendry Regional Specialty Group-date of service 5/27/14-\$99.00, and to Surgical Specialists of SW Florida-date of service 6/11/14-\$252.00. No medical records from these providers was submitted in evidence. The Payout Ledger also reflects payment of TTD benefits on 5/28/14 and 5/29/14-\$426.69 each date.

Subsequent to the foregoing payments, based upon the results of an investigation of the case, the carrier denied Claimant's case in the entirety.

Conclusions of Law:

A. Whether the Claimant knowingly or intentionally violated section 440.105 in support of his claim for benefits so that as a result he forfeits all rights to compensation or benefits pursuant to section 440.09.

1. It shall be unlawful for any person: to make, or cause to be made, any false, fraudulent, or misleading oral or written statement for the purpose of obtaining workers' compensation benefits. See Section 440.105(4)(b)1. It shall be unlawful for any person: to knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits. See Section 440.105(4)(b)9. An employee found to have knowingly or intentionally committed any of these prohibited acts for the purpose of securing workers' compensation benefits shall not be entitled to compensation or benefits under Chapter 440. See 440.09(4).

2. Whether the Claimant has violated section 440.105 is a factual determination to be made by the JCC. In deciding the issue, the JCC has to answer two questions. The first is whether the Claimant made, or caused to be made, false, fraudulent or misleading statements. The second is whether the statement was intended by the Claimant to be for the purpose of obtaining benefits. Section 440.105 does not require that the misrepresentation be material in actuality; rather, the relevant inquiry is whether a Claimant's misrepresentation-a misrepresentation the Claimant thought would have a material impact on his case-was made with the intent to secure benefits. See Arreola v. Administration Concepts, 17 So.3d 792(Fla. 1<sup>st</sup> DCA 2009) citing Village of N.

Palm Beach v. McKale, 911 So.2d 1282(Fla. 1<sup>st</sup> DCA 2005).

3. As to the first question, as will be more fully discussed, the preponderance of the evidence in the instant case is that Claimant made or caused to be made multiple misrepresentations concerning a social security number (SS#).

4. Ms. Ziegler, previously an adjuster with Sunz Insurance Company (TPA Corvel), obtained Claimant's Recorded Statement on 6/5/14 as part of the investigation of Claimant's 5/21/14 accident. Contrary to Claimant's testimony, Claimant was made aware that his statement was being recorded. He voiced no objection to same.

5. Claimant's wife provided some of the information contained in the Recorded Statement. Claimant stated that he had a SS# and asked his wife to tell him the number. Claimant repeated the following number to Ms. Ziegler: 539-87-6598.

6. As evidenced by the following, I found Claimant's testimony at deposition on 11/6/14 and at trial to be so inconsistent as to not be credible. At deposition he claimed not to know what a SS# is. At trial, he admitted that at his Recorded Statement he said his SS# was 539-87-6598. At deposition, Claimant testified that he provided a SS# at his recorded statement, but had no idea what the # is. He testified that he cannot read. At trial, Claimant testified that he does not have a SS#; never had one; to get one you have to live here. He further testified that he never gave a SS# to anyone; he was not asked for a SS#; he got a SS# from his wife; he does not know where she got the number from; he does not remember saying he provided a SS#. At deposition, Claimant testified that when trying to get a job, he never completed any paperwork that asked for a SS#; that he never had to fill out any documents or present anything to different employers, he

was just hired. He claimed he did not know if he had to complete any paperwork when he started the job with Howard Leasing Services. He could not remember if the employer asked him for any identification. He admitted that he can write his name and that he signed the 3 Petitions for Benefits. At trial, Claimant denied signing any paperwork for Howard Leasing Services.

7. Ms. Kelley, Director of Risk Management-Howard Leasing Services, produced the following at her deposition: a form titled Solicitud del Empleado on which Claimant's SS# is listed as 539-87-6598. The form bears Claimant's signature and the date 5/16/14. Ms. Kelley also produced a W-4 (SP) Certificado de Exencion de Retenclones del Empleado date 5/16/14 signed by the Claimant, and showing SS# 539-87-6598; a First Report of Injury showing the same SS# and signed by Jose Olvera; and a Workers' Compensation Questionnaire signed by Claimant, dated 5/21/14, showing SS# 539-87-6598. Ms. Kelley's testimony and documents produced at her deposition contradicts Claimant's testimony that Howard Leasing Services did not ask for any documents and he did not have to present any, they just put him to work.

8. In a workers' compensation case, a Claimant's responses to inquiries regarding his identity, his prior accidents, current injuries, or medical history are made in support of his claim. These statements are relevant and material whether made to health care providers, or during testimony given at depositions or the merits hearing. See Village Apartments v. Hernandez, 856 So.2d 1140(Fla. 1<sup>st</sup> DCA 2003). "Honesty is not a luxury to be invoked at the convenience of a litigant." The parties have a right to expect that all statements, whether written or oral , are truthful, responsive, and complete. Id.

9. As to the second question, Claimant testified at trial that he believed he had a workers'

compensation injury and wanted treatment. According to the Claimant, he gave the Recorded Statement so he could get treatment. Clearly, by his own admission, Claimant knowingly provided the adjuster with a social security number he knew to be false or invalid for the intentional purpose of obtaining workers' compensation benefits. It is not axiomatic that providing a false social security number will disqualify a Claimant from receiving workers' compensation benefits; however, any false, incomplete, or misleading information which the JCC concludes was provided to obtain benefits results in forfeiture of benefits. See Arreola v. Administrative Concepts, 17 So.3d 792(Fla. 1<sup>st</sup> DCA 2009).

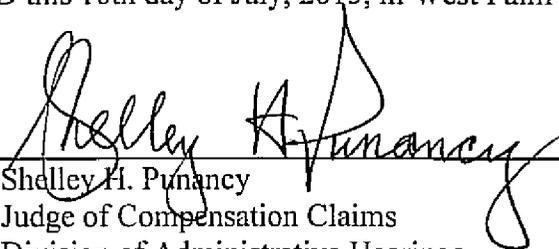
10. I find that the Claimant is not a credible witness. He sought to rely on his claimed inability to read and inability to remember in order to justify his false testimony. I reject his testimony that he did not know nor did he have a false social security number.

11. Based on the evidence presented, I find that Claimant knowingly or intentionally violated section 440.105 in support of his claim for benefits. As a result, I find that Claimant thus forfeits all rights to compensation or benefits pursuant to section 440.09. it is therefore,

ORDERED AND ADJUDGED:

1. Claimant's claims for indemnity, medical benefits, penalties, interest, costs and attorney's fees are DENIED.

DONE AND ORDERED this 10th day of July, 2015, in West Palm Beach, Palm Beach County, Florida.

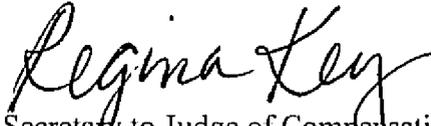
  
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Shelley H. Punancy  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished

VIA E-Mail to the following Counsel on July 10, 2015.

  
Secretary to Judge of Compensation Claims

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