

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

Casey Gooding,)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 11-007395JLL
)	
HCH2, LLC, WorkLife Financial,)	Accident date: 3/3/2010
Inc./Tower Group Companies,)	
Employer/ Carrier/ Servicing Agent.)	Judge John J. Lazzara
_____)	

FINAL ORDER

AFTER DUE NOTICE to the parties, a Final Hearing on this matter was held on June 18, 2013 in Tallahassee, Leon County, Florida. The claimant, Casey Gooding, appeared along with his attorney of record, Paul M. Anderson, Esquire. The employer/carrier was represented by their attorney of record, Matthew W. Bennett, Esquire. The undersigned Judge of Compensation Claims has jurisdiction of the parties and the subject matter.

The litigation history of this matter reflects that unresolved pending Petition for Benefits (PFB) was filed on December 12, 2013. The matter was mediated on February 14, 2013; wherein, only other PFBs were resolved leaving the only PFB with the remaining issue of a \$2,000.00 advance for the claimant. The Uniform Statewide Pretrial Stipulation was filed on February 14, 2013 and the matter proceeded to trial on the above date.

At the hearing, the claimant sought the following benefits:

1. An award of an advance on compensation not to exceed \$2,000.00 per F.S. 440.20(12)(c); and
2. Interest and penalties on all past due payments of compensation;
3. An award of attorney's fee for claimant's counsel of record; and
4. Reimbursement for the cost of these proceedings.

The claim was defended on the following grounds:

1. Claimant unable to satisfy burden of proof for advance;
2. Claimant not entitled to advance when only pending claim is for an advance;

3. Employer/Carrier denies claimant's entitlement to penalties, interest, costs and attorney's fees at their expense; and

4. Should the employer/carrier prevail in these proceedings, they seek an award of costs.

The parties have entered into the following stipulations:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.

2. Venue properly lies in Leon County, Florida.

3. Notice of Hearing and Notice of Injury were properly furnished and received as required by the Workers' Compensation Law.

At the trial of this cause, the following Exhibits were admitted into evidence.

Claimant's Exhibits

1. Petition for Benefits filed 12/5/2012.
2. Medical records composite filed 5/9/2011.
3. Medical records composite filed 9/13/2011.

Employer/Carrier's Exhibits

1. None

Joint Exhibits

1. Response to PFB filed 12/31/2012.
2. Deposition of Lisa Sabattini taken on 6/11/2013, together with attached exhibits.
3. Pretrial stipulation and order entered on 2/14/2013.

The following individual(s) testified live before me:

1. Casey Gooding, the claimant.

After due consideration of this matter and after having the opportunity to review and consider the aforesaid exhibits which were admitted into evidence, and having observed and considered the candor and demeanor of the witnesses who appeared and testified before me, and having endeavored to resolve all conflicts of facts in the evidence presented herein, I hereby make the following findings of fact and conclusions of law:

1. The undersigned Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim;

2. The stipulations entered into by and between the parties herein are hereby approved and adopted as findings of fact and are incorporated herein by reference;

3. In my determination herein I have attempted to distill all the testimony and salient facts together with the findings and conclusions necessary to the resolution of this matter. I have not necessarily attempted to summarize the substance of the claimant's testimony or the testimony of any live or deposition witness, nor have I attempted to state nonessential facts. Because I have not done so should not be construed that I have failed to consider all of the evidence.

4. Any and all issues raised in the petition or petitions for benefits described above which were the subject matter of the final hearing, but which issues were not tried at the hearing are presumed resolved or, in the alternative, deemed abandoned by the employee/claimant and therefore **denied**. See Betancourt v. Sears Roebuck & Co., 693 So.2d 253 (Fla. 1st DCA 1997).

5. On March 3, 2010, the captioned claimant, Casey Marshall Gooding, who is 35 years of age with a B.A. Degree in Music from the University of South Carolina. He and his family currently reside in Lexington, Kentucky. On said date he was employed by the captioned employer as a cabinet and furniture maker and on that date sustained and suffered a compensable injury by accident arising out of and within the course and scope of the claimant's employment with said employer when while standing on a chair varnishing a door, he fell and fractured his left elbow and humerus.

6. The only claim/issue raised in the subject PFB is a request for an advance of compensation not to exceed \$2,000.00 as permitted under section 440.20(12)(c)2, Fla. Stat. The PFB also requests penalties, interests, costs and attorney's fees at the expense of the employer/carrier. I find no interest and penalties would be due here even if an advance is in awarded since the carrier did not voluntarily agree to an advance, same would necessitate an order of the judge of compensation claims granting such request before it becomes due.

7. It is undisputed that Mr. Gooding suffered a severe injury requiring surgery and the insertion of surgical plate and screws. He currently receives authorized orthopedic care in Kentucky. His orthopedist has referred him to a neurologist and hand specialist, which at the time of the hearing he had not seen. The claimant testified that he has difficulty playing a musical instrument and cannot do what he did as a furniture/cabinet maker, his previous occupation. He claims that there is no employment which he is performing that equals the approximate average weekly wage (AWW) of

\$900.00 per week he was earning at the time of this accident. He testified that he works on occasion making small parts for musical instrument as well as part-time internet work with a home design and decorating business. He stated that he has also taken classes at the University of Kentucky, but he is not currently enrolled. Mr. Gooding claims that the purpose of the advance would be to reduce his debts which have increased since the accident.

8. On cross-examination, Mr. Gooding testified that his household income has doubled since he moved to Kentucky. His wife, who holds a PhD. from Florida State University, is a Professor at the University of Kentucky. He and his wife have one dependent, a minor son. Mr. Gooding testified that the increase to his debt stems from having to pay two (2) mortgages, one on his home in Tallahassee which has not sold but is renting for less than his mortgage payment, and his home in Kentucky. He has no auto loans and is not in arrears or behind in any of his current debts. The Gooding's have approximately \$4,000.00 in savings and the use \$2,000.00 would be to pay down his current debt and possibly for his education expenses.

9. Section 440.20(12)(c), Fla. Stat., provides that even if an injured worker has not returned...employment with no substantial reduction in wages, or has suffered a substantial loss of earning capacity, or a physical impairment actual or apparent the JCC *may* order the carrier to remit an *advance payment of compensation* not in excess of \$2,000.00 *after giving due consideration to the interest of the person entitled thereto.*

However, the fact that an injured worker may be eligible for an advance of compensation does not *automatically* entitle them to an advance. See *ESIS/Ace American Ins. Co. v Kuhn*, 104 So. 3rd 1111, 1113 (Fla. 1st DCA 2012)¹. As Mr. Gooding testified, he would like an advance to "help pay down (his) current debt" although the household is able to maintain his current monthly budget. As in *Kuhn*, I find that the purpose of the advance here does not have a "plausible nexus" that address "medical and related financial needs arising from workplace injuries." *Kuhn*, at p. 1114. Furthermore, like in *Kuhn* the purpose for the advance is essentially to have a "financial cushion", which the Court held is not a justifiable basis to award an advance. *Id* at 1114. For all the foregoing reason, the advance must be denied.

¹ "Claimants eligible for advances are not automatically entitled to them. Nothing in section 440.20(12)(c)2, Fla. Stat., suggests that requests for advances are entitlements that JCCs are required to approve perfunctorily".

10. I also address the issue raised by the employer/carrier regarding whether Mr. Gooding is a proper or true claimant in this matter. There are no pending claims for benefits here other than for an advance. The advance here was not sought in connection with any claim-related benefits or for the purpose of litigation involving claimed workers' compensation benefits due or owing. In Kuhn, the court eluded to the fact that Kuhn's status as a claimant in that case was "doubtful" because like here the only PFB in that case was a request for advance. Although, there appears to be sufficient evidence based on Mr. Gooding's credibility that he "suffered a substantial loss of earning capacity," and has an apparent physical impairment based on the medical evidence submitted, nevertheless an award of an advance of \$2,000.00 or less must be denied. It is

WHEREFORE, it is **ORDERED** that the claim of the employee herein for an advance not exceeding \$2,000.00 is hereby **DENIED**.

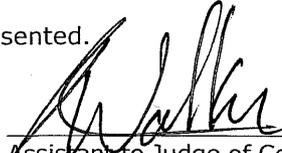
DONE AND ORDERED at Tallahassee, Leon County, Florida.



[Handwritten Signature]
John J. Lazzara
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered and a true copy was furnished by electronic transmission and by U.S. Mail on this ^{18th} day of July, 2013 to counsel of record and the parties by regular U.S. mail, if unrepresented.



Assistant to Judge of Compensation Claims

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