

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

Daniel A. Whitt,  
Employee/Claimant,

OJCC Case No. 14-013541LAR

vs.

Accident date: 9/23/2012

Satellite Unlimited/Amerisure Insurance,  
Employer/Carrier/Servicing Agent.

Judge: Laura Roesch

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FINAL COMPENSATION ORDER

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Upon proper notice, a final merits hearing was held before the undersigned Judge of Compensation Claims on February 2, 2015, in Panama City, Bay County, Florida. The issue for determination is whether the motor vehicle accident and resulting injuries sustained by Claimant on September 23, 2012 is a compensable injury under Florida's Workers' Compensation law.<sup>1</sup> Attorney Christopher Cumberland represented the Claimant. Attorney Matthew Bennett represented the Employer/Carrier.

**I. Claims and Defenses:**

**Claimant sought the following benefits:**

1. Compensability of claim.
2. Attorney fees and costs.

**The Employer/Carrier defended on the following grounds:**

1. Entire claim denied based upon Section 440.092(2), F.S.
2. Accident did not arise out of work.
3. Claimant was not in course and scope of employment.
4. No costs or fees due.
5. Employer/Carrier seeks costs.

**II. Documentary Evidence.<sup>2</sup>**

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<sup>1</sup> The Claimant filed a Petition for Benefits on July 8, 2014 seeking various benefits, including compensability. Mediation occurred on October 9, 2014, resulting in an impasse. A motion to bifurcate the issue of compensability was granted by Order entered on December 2, 2014.

<sup>2</sup> Exhibits are identified by an asterisk (\*) followed by a number, representing the docket number.

**Joint Exhibits:**

1. Deposition of Rhonda Smith (\*47), taken September 25, 2014.
2. Deposition of Jeremy Nelson (\*48), taken December 10, 2014.
3. Deposition of Greg Maddox (\*49), taken December 6, 2014.
4. Deposition of Alexandria Shields (\*50), taken October 6, 2014.
5. Deposition of Teresa Lawley (\*62), taken January 19, 2015.

**Court Exhibits:**

1. Trial Summaries (\*51 and \*56, respectively), for argument purposes only.
2. Petition for Benefits filed July 8, 2014 (\*14) and Response to Petition for Benefits filed August 8, 2014 (\*21).
3. Pretrial (\*35), filed November 7, 2014 and Supplemental Pretrial (\*40), filed December 5, 2015.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In making my findings of fact and conclusions of law, I have considered and weighed all the evidence presented to me. I have resolved all of the conflicts in the testimony. I have not written a detailed summary of all the facts and evidence presented. See, Section 440.25(4) (e), Fla. Stat.; Garcia v. Fence Masters, Inc., 16 So. 3d 200 (Fla. 1st DCA 2009)(compensation order need only contain findings of ultimate material fact necessary to support mandate, rather than a recitation of all evidence presented). Although I may not reference or detail each item of evidence presented by the parties, I have carefully considered all the evidence and exhibits in the context of the arguments of counsel and appropriate statutory authority and case law in making 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 as noted herein or in the pretrial stipulation(s) filed herein or announced on the record and noted herein are hereby approved and adopted as findings of fact and are incorporated herein by reference.
3. Certain facts are not in dispute. The Claimant lived with his girlfriend, Alexandria O'Shields, in Florala, Alabama. The Claimant was hired by the Employer in Dothan, Alabama on August 17, 2012. He received one day of training in Dothan. Thereafter, every work day he drove to the home of Jeremy Nelson, his supervisor, who lived in Greenwood, Florida. The daily drive was 162 miles roundtrip. Upon arrival at Mr. Nelson's home each work day, Claimant and Mr. Nelson would then get in the company-

owned van and proceed to various places where they performed satellite installation work. The Claimant was involved in a motor vehicle accident early on the morning of September 23, 2012 while in route to Mr. Nelson's home. The Claimant suffered a traumatic brain injury in that accident. The issue for determination is whether that accident and resulting injuries he sustained on that date are compensable under Florida's workers' compensation law.

4. Rhonda Smith is the Claimant's mother and legal guardian. She had little information to offer. The Claimant now resides in Kendallville, Indiana in a nursing facility where he has resided since February 2014. His residency there is paid for by Medicaid and Social Security. Ms. Smith's understanding of how the motor vehicle accident occurred came from reading the police report which indicated Claimant was on his way to work when he fell asleep and lost control of the vehicle. The vehicle flipped and hit a tree at approximately 6:14 a.m.

5. Ms. O'Shields, the Claimant's girlfriend at the time, testified Claimant dropped her off at her job at a local nursing home in Florala, Alabama, at approximately 5:45 a.m. He then headed to Mr. Nelson's home near Marianna, Florida. The Claimant routinely would leave early in the morning and return late in the day or evening. She testified Claimant would be paid from the time he got in the work van with his supervisor. The Claimant and Ms. O'Shields resided continuously together from about January 2012 until his accident in September 2012. Prior to living with her in Florala, the Claimant lived in Opp, Alabama. She said they were not engaged at the time of the accident.

6. Greg Maddox is employed with Satellite Unlimited as the manager of tech development, a position he has held for approximately five years. The company has offices scattered throughout Alabama and provides satellite dish installation. He oversees the entire training process for the company's technicians. He never met the Claimant, although he was aware Claimant was a tech assistant and had completed one day of training in Dothan. He testified the company brings in technician assistants to ride with specific technicians in order to get a boost in the number of units the technicians are able to complete daily during the busy season. The Claimant was assigned to work with technician Jeremy Nelson. He noted that when a technician assistant works with a technician, the technician and the technician assistant work out the details of how to travel from the technician assistant's house to the technician's house to begin the work day. This is where and when the work day begins. Technicians who are remote technicians are considered to work from their home. Jeremy Nelson is a remote technician and was Claimant's direct supervisor. Mr. Nelson is provided a company van as well as a fuel card for gas. Mr. Nelson's official place of starting work every day is his home. Mr. Maddox described a technician assistant's job as a "*grunt work type position*," someone who would be digging holes to put poles in or someone who would be trenching cable to the house or putting on connectors on the outside of the house.

Technician assistants are not reimbursed for mileage.

7. Jeremy Nelson is a technician employed by Satellite Unlimited. At the time of Claimant's motor vehicle accident, Mr. Nelson lived in Greenwood, Florida, which is one mile outside of Marianna. As a technician, he installs satellite systems in customer homes, repairs damaged satellite systems and removes satellite systems. He knew the Claimant well as they had been friends since 2007 and he was instrumental in helping the Claimant get a job at Satellite Unlimited. After the Claimant completed a one-day training session in the home office in Dothan, the Claimant would travel from his home in Florala, Alabama to Mr. Nelson's home in Greenwood. They would then get in Mr. Nelson's van to travel to job sites. Mr. Nelson noted that he would usually come out of his home each morning and find Claimant outside waiting on him. On the morning of September 23, 2012 the Claimant did not appear. Mr. Nelson waited as long as he could, noting that he needed to be at the job site by 8 a.m. Since he still had not heard from the Claimant by 10 a.m., he called Claimant's cell phone. He did not receive an answer so he called Claimant's girlfriend. She returned his call within 45 minutes and stated she had talked to the Claimant's father who advised the Claimant had been in a car accident at about 10:30 that morning.

8. Theresa Lawley is the Employer's accounting manager. She works in the company's main office in Birmingham, Alabama. She described how time sheets were completed, noting the process differed depending on whether the employee was a technician assistant such as Claimant, and a technician such as Mr. Nelson. As a technician assistant, Claimant completed his timesheet manually, tracking time from when he reached the first job. Claimant was required to turn his time sheet into the office where it was approved and then turned in to payroll. Technicians, such as Mr. Nelson, clocked in and out on a tablet whenever they arrived at their first job. She noted that a technician assistant would log in their time when they reached the first job. She testified that a technician clocks in when he gets to his first appointment, not when he starts his day. The clock starts whenever the technician arrives at his first job, even if the first job, for example is an hour away from his home. She noted it was also the policy for the technician's assistant not to be paid until they reached the first job site.

9. It is undisputed that it was Claimant's custom to travel daily to and from his home to Mr. Nelson's home, where he and Mr. Nelson would get into the company-provided van in which they then travelled to assigned job sites to repair satellite systems. Generally, employees traveling to and from work are not in the course and scope of employment. See, Martinez v. A&D Electrical Contractors, 510 So.2d 1042 (Fla. 1<sup>st</sup> DCA 1987); George v. Woodville Lumber Co., 382 So.2d 802 (Fla. 1<sup>st</sup> DCA 1980). This general rule has become known as the "*going and coming*" rule, all as more particularly codified in Section 440.092. As noted in Section 440.092(2), "*...an injury suffered while going to or coming from work is not an injury arising out of and in the course of employment whether or not the employer*

*provided transportation if such means of transportation was available for the exclusive personal use of the employee, unless the employee was engaged in a special errand or mission for the employer.”* I find the record in this case devoid of any evidence that would suggest, much less support, a finding that the Claimant was engaged in a special errand or mission for the Employer herein, thereby creating an exception to the “*going and coming*” rule. Nor is there any evidence to support a finding the Claimant was a traveling employee. I conclude and therefore find the motor vehicle accident of September 23, 2012 is not compensable under Florida law.

10. The Petition for Benefits filed on July 8, 2014 is denied and dismissed with prejudice.

**DONE** and **ORDERED** in Chambers at Panama City, Bay County, Florida.



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Laura Roesch  
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THIS IS TO CERTIFY that the foregoing order was entered herein and electronically served to counsel for the parties and the Carrier, this 5th day of February 2015.

/s/ L. Hickman  
Commission Deputy Clerk II

COPIES FURNISHED:

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