

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARING
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
Orlando District**

EMPLOYEE:
Jose Mejia
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Mascotte, FL 34753

ATTORNEY FOR EMPLOYEE:
Jose M. Carrion, Esquire
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Orlando, FL 32804

EMPLOYER:
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Palmetto, FL 34221

ATTORNEY FOR EMPLOYER/CARRIER:
William H. Rogner, Esquire
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Waranch & Westcott, P.A.
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CARRIER:
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OJCC CASE NO.: 06-011359TWS
D/A: 11/8/2005

COMPENSATION ORDER

AFTER PROPER NOTICE to all parties a hearing was held on May 8, 2007 at 9:00 a.m. before the undersigned Judge of Compensation Claims. The claimant was represented by Jose Carrion, Esquire. The employer/carrier was represented by William H. Rogner, Esquire. The claimant was the only live witness. All other witnesses testified by deposition. Via correspondence written by the undersigned on May 16, 2007 the Court issued a ruling and asked the attorney for the employer/carrier to draft this Order.

THE CLAIMANT AND THE EMPLOYER/CARRIER STIPULATED TO THE FOLLOWING:

1. The date of accident was November 8, 2005.
2. The appropriate venue is in Orange County, Florida.
3. There was an employer/employee relationship on the date of the accident.
4. Workers' compensation coverage was in effect on the date of the accident.
5. There was timely notice of the accident and injury.
6. The parties received timely notice of both the pre-trial and final hearings.

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7. The Judge of Compensation Claims had jurisdiction over the subject matter and the parties.
8. The average weekly wage was \$615.46 with a compensation rate of \$410.33.

THE BENEFITS CLAIMED WERE:

1. Compensability of the claimant's accident and injury.
2. Temporary partial disability benefits from November 8, 2005 through the date of the hearing.
3. Temporary total disability benefits from November 8, 2005 through the date of the hearing.
4. Authorization of orthopedist Dr. Richard Smith or another suitable physician.
5. Penalties, interest, costs, and attorney's fees.

THE DEFENSES OF THE EMPLOYER/CARRIER WERE AS FOLLOWS:

1. Benefits were barred under section 440.105 and section 440.09, Florida Statutes.
2. The claimant was paid full earnings through March, 2006.
3. The claimant's loss of earnings was unrelated to the injury.
4. The claimant worked for at least two post-termination employers.
5. The claimant was terminated from the employer for reasons unrelated to his injury.
6. The employer/carrier was not responsible for the payment of penalties, interest, costs, or attorney's fees.
7. The employer/carrier moved for an award of costs.

THE FOLLOWING EXHIBITS WERE ADMITTED INTO EVIDENCE:

1. The pre-trial stipulation. (JCC Exhibit #1).
2. The claimant's Hearing Information Sheet. (Claimant Exhibit #1).
3. The claimant's deposition transcript. (Claimant Exhibit #2).
4. The deposition of Dr. Stephen Goll. (Claimant Exhibit #3).

5. The deposition of Bob Fields. (Claimant Exhibit #4).
6. The employer/carrier's Trial Memorandum. (Employer/Carrier Exhibit #1).
7. The employer/carrier's Notice of Defense pleading. (Employer/Carrier Exhibit #2).
8. The employer/carrier's Supplemental Trial Memorandum. (Employer/Carrier Exhibit #3).
9. The employer/carrier's Witness List dated November 10, 2006. (Employer/Carrier Exhibit #5).
10. The employer/carrier's Supplemental Witness List dated December 21, 2006. (Employer/Carrier Exhibit #5).
11. The deposition of Susan Talladira. (Employer/Carrier Exhibit #6).

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

I have carefully considered all of the evidence submitted to me for consideration in making my findings of fact and conclusions of law. I have resolved the conflicts in the evidence and I have rejected all evidence and inferences that may be inconsistent with my findings of fact and conclusions of law. Although I have not painstakingly summarized all of the evidence offered I have reviewed and considered all of the evidence in reaching my ultimate conclusions.

1. I find that the stipulations of the parties are appropriate and I accept them in total.
2. For the following reasons I find that the claimant knowingly made false or misleading statements with the intent of securing workers' compensation benefits and I therefore deny all benefits relating to the claimant's November 8, 2005 accident.
3. The claimant was injured in what was initially considered a compensable injury on November 8, 2005 while working for the instant employer. The employer/carrier voluntarily provided workers' compensation benefits following the injury.
4. According to the deposition testimony of the adjuster, Susan Talladira, and the attachments to her deposition, the employer/carrier controverted the claim in its entirety on March 3, 2006. An investigation revealed that the claimant was an illegal alien who purchased and

used a false social security card and a false resident alien card. The employer/carrier took the position that the claimant used these false methods of establishing identity for the purpose of obtaining workers' compensation benefits.

5. I find that the claimant is not entitled to compensation or benefits as a result of violating sections 440.105(4)(b)(9) and section 440.09(4), Fla. Stat. (2005). Specifically, the claimant knowingly and intentionally made false statements about his identity to both the adjuster and to medical providers for the express purpose of obtaining workers' compensation benefits.
6. The evidence before me indicated that the claimant signed a Notice of Injury form with a false social security number on it. The claimant gave a recorded statement with an interpreter to the adjuster, Susan Talladira. In that recorded statement the claimant provided a false social security number. I find that the claimant provided a false social security number with the intent of securing workers' compensation benefits. He knew the social security number was false at the time he provided it to his employer and to the insurance adjuster.
7. The claimant thereafter received medical treatment with the Poinciana Family Medical Care Center and with orthopedist Dr. Stephen Goll. The claimant testified that he provided his false social security number to both medical providers. Under cross examination the claimant testified that he provided the false social security number with the express purpose of obtaining medical benefits.
8. The Court is sympathetic to the claimant's plight. He was in a difficult situation. Nonetheless, he frankly admitted the use of a false method of establishing identity for the express purpose of securing workers' compensation benefits. Under the plain language of the statutes in question his claim must be denied.

9. At trial, for the very first time, the claimant asserted that the employer/carrier should be estopped from raising its defense under sections 440.105 and 440.09. The claimant alleged that his employer knew about his illegal status. As a result, the claimant asserted that the employer/carrier could not thereafter deny workers' compensation benefits when the claimant provided a false social security number to the insurance adjuster and medical providers.
10. I reject the claimant's estoppel argument. First, I find that it was not timely raised. The estoppel argument was not raised in the pre-trial stipulation. It was not raised in the Hearing Information Sheet. There is no evidence that it was raised at any time prior to the merits hearing. I find that the estoppel argument should have been pleaded prior to the merits hearing. Since it was not, I find that the claimant is not permitted to rely on estoppel. See *Issac v. Green Iguana, Inc.*, 871 So. 2d 1004 (Fla. 1st DCA 2004).
11. Even if I permitted the claimant to assert estoppel, I would reject the claimant's contention that the employer/carrier should be estopped from raising a defense under sections 440.105 and 440.09. Unlike the employer/carrier in *Cenvill Dev. Corp. v. Candelo*, 478 So. 2d 1168 (Fla. 1st DCA 1985), the employer/carrier is not using the claimant's status as an illegal alien as a basis for denying benefits. Instead, it was the claimant's misrepresentations about his status to obtain benefits, not the status itself, that violate the statute. The employer/carrier stipulated that the claimant was entitled to workers' compensation benefits as an illegal alien. It was the employer/carrier's position that the claimant subsequently forfeited those benefits by making false or misleading statements with the intent of securing workers' compensation benefits. I accept the employer/carrier's argument.
12. The claimant also raised a constitutional challenge to sections 440.105(4)(b)(9) and 440.09(4). The claimant asserts that these provisions impermissibly discriminate against

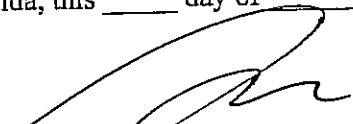
him on account of his alien status in violation of Federal Law and the United States Constitution. As a Judge in the executive branch of state government I do not have the authority to find a statute unconstitutional or contrary to Federal Law. The claimant must address that issue to a higher Court.

13. In the pre-trial stipulation the employer/carrier sought an award of costs. Under section 440.34(3), Fla. Stat. (2005) a prevailing party is entitled to an award of taxable costs. I find that the employer/carrier is the prevailing party in this case. The employer/carrier is therefore entitled to an award of taxable costs at the expense of the claimant. This Court reserves jurisdiction to address the amount of the costs in a subsequent proceeding.

WHEREFORE it is ORDERED and ADJUDGED as follows:

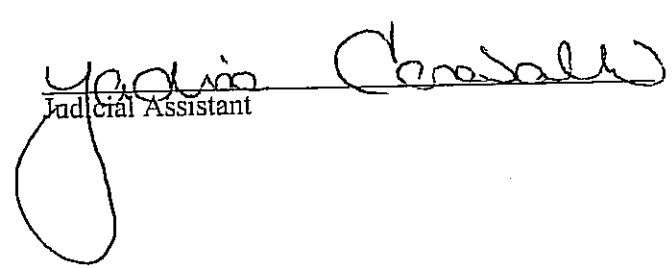
1. The claimant knowingly made false or misleading statements with the intent of securing workers' compensation benefits and his entire claim is denied.
2. All Petitions for Benefits are denied and dismissed with prejudice.

DONE and ORDERED in Orlando, Florida, this _____ day of MAY 25 2007, 2007.



Honorable Thomas W. Sculco
Judge of Compensation Claims

THIS IS TO CERTIFY that the foregoing Order was entered on the _____ day of MAY 25 2007, 2007, and that a copy thereof was sent by regular U.S. Mail to all parties noted previously at their last known address.



Judicial Assistant