

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FT. LAUDERDALE DISTRICT OFFICE

Leonardo Ernesto Gomez,
Employee/Claimant,

OJCC Case No. 12-025326JL

vs.

Accident date: 6/29/2012

Frank Crum, Inc./Broadspire,
Employer/Carrier/Servicing Agent.

Judge: John J. Lazzara

ABBREVIATED FINAL ORDER

THIS MATTER came on for a Final Hearing on November 19, 2015, before the Judge of Compensation Claims John J. Lazzara, in Ft. Lauderdale, Broward County, Florida and simultaneously in Tallahassee, Leon County, Florida, by way the Division of Administrative Hearings' Video Teleconferencing System. The parties were represented by counsel as indicated below. The undersigned judge has jurisdiction of the parties and the subject matter.

The undersigned judge determines that based on the parties' pretrial stipulation that there is no dispute as to the compensability of the captioned accident and; therefore, this Abbreviated Final Order is appropriately entered pursuant to section 440.25(4)(d), Florida Statutes.

The pending issues presented for determination as raised in Petitions for Benefits filed on May 5, 2015 and July 30, 2015 were as follows:

1. Temporary total/Temporary partial disability (TT/TPD) benefits from June 28, 2015 and continuing to the present;
2. Permanent total disability (PTD) benefits from June 4, 2015 and continuing to the present;
3. Reclassification to TT/TPD benefits to PTD benefits from June 4, 2015 to the date of the final hearing; and
4. Penalties, interest, costs and attorney's fees at the expense of the employer/carrier.

The Employer/Carrier raised the following defenses to the aforesaid issues or claims:

1. All TT/TPD benefits due and owing have been paid;

2. No TT/TPD benefits due as 104 weeks such benefits have been paid and thus eligibility has expired;
3. That claimant has not reached overall maximum medical improvement (MMI);
4. The claimant is not permanently and totally disabled;
5. That the claimant is reasonably anticipated to return to work at full duty in accordance with the opinion of Dr. Tosca Kinchelow, M.D.;
6. That the claimant is capable of returning to work within his restrictions and limitations; and
7. The employer/carrier denies claimant's entitlement to penalties, interest, costs and attorney's fees at their expense.

After due consideration of this matter and after having reviewed and considered the evidence presented at the final hearing and having heard, observed and considered the demeanor of the witnesses who appeared and testified, the undersigned judge of compensation claims orders as follows:

1. The undersigned judge has jurisdiction over the parties and the subject matter of this claim;
2. That the stipulations entered into by and between the parties are adopted and incorporated herein by reference;
3. There is no dispute as to the compensability of the accident;
4. In addition to the parties' pretrial stipulation, the parties' stipulations on the record at trial consisted of the following:
 - (a) The claimant's average weekly wage (AWW) on the date of accident was \$520.00 per week per contract of hire, yielding compensation rate (CR) of \$346.67 per week;
 - (b) That the claim for \$2,000.00 advance was previously resolved and the employer/carrier stipulates to entitlement to an attorney's fee at their expense with the amount to be determined at a later time; and

(c) Carrier paid some back indemnity benefits at temporary total rate rather than temporary partial rate and any entitlement to an attorney's fee at the expense of the employer/carrier and the amount thereof, if any, is hereby reserved for a later hearing.

5. The evidence presents or supports the defenses of the employer/carrier regarding the issues/claims presented for adjudication at the final hearing. Simply put, claimant has been paid 108 weeks of temporary indemnity benefits and released to return to full duty capacity by Dr. Steven Steinlauf, M.D., relative to his left foot injury and placed at MMI on 8/30/2013 with a 0% permanent impairment rating. Dr. Tosca Kinchelow, M.D., returned the claimant to full duty work on 2/11/2014. Moreover, employer/carrier paid temporary indemnity benefits after Dr. Kinchelow's surgery on or about 1/19/2015 until expiration of the claimant's temporary indemnity benefits eligibility period pursuant to section 440.15(4)(e), Fla. Stat.

In regard to the claim for PTD benefits claimant failed to present any evidence of a scheduled catastrophic injury under section 440.15(1)(b), Fla. Stat., and the claimant has not reached overall MMI. Moreover, there is no evidence that upon claimant reaching actual and overall MMI that he will be unable to engage in at least sedentary employment due to any physical limitations as required under the holding in City of Pensacola Fire Fighters v Oswald, 710 So. 2nd 95 (Fla. 1st DCA 1998). I also find that the claimant failed to present sufficient and credible evidence of an exhaustive job search.

6. Pursuant to Rule 60Q-6.119, Fla. Admin. Code, any party may file a request for specific findings of fact and conclusions of law within 10 days from the entry of this Abbreviated Final Order. In that event, this order will be vacated, and counsel for the employer/carrier shall submit a proposed Final Order, within 15 days of the request, consistent with the holdings herein and defense counsel's trial summary and closing argument. The proposed final order shall contain findings of facts, conclusions of law and the mandate in accordance with section 440.25(4)(e), Florida Statutes (Supp. 2002).

WHEREFORE, it is ORDERED that the claims of the Employee, Leonard Ernesto Gomez, based on his injury by accident on June 29, 2012 for the workers' compensation referenced in the aforementioned

petitions for benefits are hereby **DENIED**.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida.



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 mail on this 18 day of December, 2015 to counsel of record, and the parties by regular U.S. mail:

Secretary to Judge of Compensation Claims

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