

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Semei Galdamez Espinosa,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 12-024308DSR
Larson Dairy, Inc./Zenith Insurance Company,)	
Employer/ Carrier/ Servicing Agent.)	Accident date: 6/21/2012
_____)	

EVIDENTIARY ORDER ON
MOTION FOR ADVANCE

This cause was heard before the undersigned at Sebastian, Indian River County, Florida on May 28, 2013, upon the Claimant's Motion to For Advance filed on April 12, 2013. A Response was filed by the Employer/Carrier on May 24, 2013. Paul Westcott, Esq. was present on behalf of the Employer/Carrier. Allan Kalish, Esq. appeared on behalf of the Claimant.

The following documentary items were received into evidence:

1. All documents required by Rule 9.180 (Judge's Exhibit #1).
2. Claimant's Motion for Advance with financial exhibits filed on April 12, 2013 (Claimant's Exhibit 1).

At the hearing, the Claimant, Semei Galdamez Espinosa, appeared and testified before me through a Spanish Interpreter, Mr. Mike Hernandez. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the witness' testimony and may not refer to each piece of documentary evidence, I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. The parties stipulated that the Claimant suffered an industrial accident arising out of and in the course and scope of his employment on June 21, 2012. The Claimant initially received indemnity benefits and authorized medical treatment.

2. By Order dated December 28, 2012, the undersigned found that the Claimant was entitled to an Advance in the amount of \$2,000.00, which was paid to the Claimant by the Employer/Carrier.

3. Subsequent to that Advance, the Employer/Carrier has denied all benefits to the Claimant.

4. There are no Petitions for Benefits pending at this time.

5. The Employer/Carrier asserts that the Claimant has been placed at MMI and has no limitations or restrictions as a result of the industrial accident. The Employer/Carrier also asserts that the Employee is not an appropriate Claimant since he does not have a Social Security Number.

6. When questioned about having a Social Security Number the Claimant invoked his 5th Amendment Privilege and declined to answer.

7. While it is clear that the Claimant has a financial need for another Advance, he has not established that he is statutorily entitled to the Advance. Florida Statutes Section 440.20(12)(c)(1)(2) requires the Claimant to prove that he has not returned to the same or equivalent employment due to physical impairment, or has suffered a substantial loss of earning capacity to be entitled to the advance. The Claimant failed to produce any medical information as to his injuries or disabilities, and as such, he has not established that he has a disability, actual or apparent, that would entitle him to the Advance.

8. Based on the totality of the evidence before me I find that the Motion for Advance must be denied.

WHEREFORE, it is hereby ORDERED and ADJUDGED that:

The Motion for Advance is hereby denied.

DONE AND ORDERED IN CHAMBERS AND ELECTRONICALLY MAILED this 5th day of June, 2013, in Sebastian, Indian River County, Florida.



Donna S. Remsnyder
Judge of Compensation Claims
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