

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FORT MYERS DISTRICT OFFICE**

Mark Brownie)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 13-003648 EDS
)	
Charlotte County Sheriff's Office)	Accident Date: November 21, 2012
)	
Employer,)	
)	JUDGE: E. Douglas Spangler
and)	
)	
North American Risk Services)	
)	
Carrier/Servicing Agent.)	

ABBREVIATED COMPENSATION ORDER

This **ABBREVIATED ORDER** is entered into pursuant to Section 440.25(4)(d), Florida Statutes. Either party may request an Expanded Compensation Order with detailed Findings of Fact and Conclusions of Law by filing a Motion pursuant to Rule 60Q-6.119, Florida Administrative Code.

This case came on for a Final Hearing before the undersigned on September 9, 2014, in Fort Myers, Lee County, Florida to consider the merits of a Petition for Benefits filed by the Claimant on February 18, 2014.

Based upon the testimony, stipulations and exhibits, it is **FOUND AND ORDERED** that:

1. There is no dispute that the Claimant sustained compensable injuries which have been accepted by the Employer/ Servicing Agent (E/SA) as being the result of an industrial accident which arose out of and in the course and scope of the Employee/Claimant's employment on November 21, 2012.

2. Venue is proper in Charlotte County, Florida. The trial occurred at the Offices of Judges of Compensation Claims, Fort Myers, FL by consent.
3. The facts underlying the present issue are not in dispute. After the Claimant was placed at maximum medical improvement with a 23% permanent impairment rating (PIR) the E/SA began making payments of the impairment benefits to the claimant. Subsequently, the PIR increased to 27%. Impairment Benefits (IIB) were paid from December 12, 2012 through December 10, 2013.
4. The Claimant underwent a cochlear implant on January 6, 2014 and the E/SA began payment of temporary total disability benefits. The E/SA also reclassified all previously paid IIB benefits as temporary partial disability (TPD) benefits, and issued payments to the Claimant on March 18, 2014 representing the difference (as calculated by the E/SA) between the IIB payments received by the Claimant and the amounts the Claimant would have received if the payments had been based on TPD rates, plus penalties and interest on the differences.
5. The Claimant filed a PFB on February 18, 2014 demanding that the E/SA be required to make payment of all TPD from February 18, 2013 due and owing on a bi-weekly basis, together with penalties and interest on each late payment; and, pursuant to Section 440.15 (12) F.S.(2012) be limited to recovery of the overpayment that would result, due to the Claimant having already received IIB payments, in an adjustment of not more than 20% of all bi-weekly payments of temporary benefits made to the Claimant, together with additional penalties and interest on the amounts not properly paid.
6. The E/SA contends that the statute relied upon by the Claimant does not apply to this situation because the facts establish that the E/SA effected a reclassification of benefits paid to the Claimant from IIB to the correct TPD benefits; and, that reclassification resulted in an under payment and not an over payment. Accordingly, the E/SA paid the difference owed to the Claimant because of the reclassification, together with penalties and interest

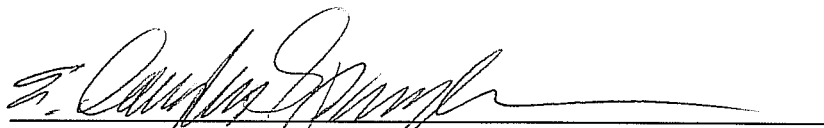
on the underpayments and argued that nothing further is owed to the Claimant.

7. The undersigned agrees with the E/SA's legal position. Based on the actions of the E/SA there has been no overpayment to the Claimant that needs to be repaid and Section 440. 15 (12) F.S does not apply. In fact, an overpayment would only occur in this case if the undersigned were to adopt the Claimant's arguments. This case is governed by *Swift & Co. v. Surrency*, 467 So.2d 740 (Fla. 1st DCA 1985). " Since the incorrect classification caused no economic detriment to claimant, the employer should have been permitted to credit the wage loss benefits against the PTD benefits in the same amount...Otherwise the claimant will receive double benefits during the period." id 742.
8. In this case, the Claimant has suffered no economic detriment having already received IIB benefits throughout the period at issue. The E/SA properly credited the IIB payments against the TPD benefits, preventing the double payment of benefits to the Claimant, and properly calculated and paid penalties and interest on the differences. All benefits due to the Claimant have therefore been paid.

WHEREFORE it is Ordered and Adjudged:

The Petition for Benefits filed on February 18, 2014 is denied and dismissed with prejudice.

DONE AND ELECTRONICALLY FILED in Fort Myers, Florida, this 10th
day of Sept., 2014.



E. Douglas Spangler, Jr.
Judge of Compensation Claims