

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
MIAMI DISTRICT OFFICE**

EMPLOYEE:

Luis Leon
P.O. Box 510373
Miami, FL 33138

ATTORNEY FOR EMPLOYEE:

Unrepresented

EMPLOYER:

Leath Furniture, LLC/Miami
DBA Modernage
1200 N.W. 167th Street
Miami, FL 33169

**ATTORNEY FOR EMPLOYER/
CARRIER/SERVICING AGENT:**

Robert S. Gluckman, Esquire
Hurley, Rogner, Miller, Cox,
Waranch & Westcott, P.A.
1280 SW 36th Avenue, Suite 100
Pompano Beach, FL 33069

CARRIER/SERVICING AGENT:

United States Fire Insurance Company
P.O. Box 958426
Lake Mary, FL 32795

OJCC NO.: 07-018709AMK

D/A: 6/7/2007

JUDGE: ALAN M. KUKER

FINAL MERITS ORDER DENYING BENEFITS PURSUANT TO 440.105 AND 440.09

THIS CAUSE came before the undersigned Judge of Compensation Claims for final hearing on December 7, 2009, regarding the Petition for Benefits filed on 8/14/08. The Court requested that Counsel for the Employer/Carrier prepare the present Order, which I find to be in substantial compliance with my ruling. At the hearing I accepted the evidence as follows:

I. EVIDENCE:

Documentary Evidence:

Claimant Exhibits:

1. Claimant's Letter to The Court of 12/2/09.

Employer/Carrier Exhibits:

A.

1. Pretrial Stipulation, Pretrial Amendments, E/C Trial Summary and Memorandum of Law, and Cited Case Law.
 2. Case Law of Prior Trial Orders, Claimant's Deposition Transcript of 2/2/09.
 3. Adjuster Deposition Transcript of 5/22/09.
 4. Dr. Christopher Brown Deposition Transcript of 6/15/09.
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5. Salvatore Vincent Belardo Deposition Transcript of 8/26/09.
6. Record Custodian for Dr. Christopher Brown Deposition Transcript of 12/1/09.

The Claimant made no objections to any of the exhibits entered by the E/C.

B. Pay Stubs from Esther's Restaurant.

Live Testimony:

1. Tony Suarez, Owner of Esther's Restaurant.

II. CLAIMS

1. Whether the Claimant has violated Fla. Stat. § 440.105.
2. Permanent Total Disability ("PTD") benefits.
3. Penalties, interests, costs, and attorney's fees.

III. DEFENSES

1. The Claimant is not permanently and totally disabled as a result of the June 7, 2007 accident, and has failed to meet his burden of proving PTD under Fla. Stat. § 440.15(1).
2. The Claimant violated Fla. Stat. § 440.105 which bars all benefits.
3. Payment of penalties, interests, costs, and attorney's fees are not due or owing as all appropriate benefits were timely provided, and additional benefits are not due because the Claimant violated Fla. Stat. 440.105.
4. Costs are due to the Employer/Carrier pursuant to Fla. Stat. § 440.34 (3).

IV. FACTS AND TESTIMONY

The Claimant appeared pro se. Robert Gluckman, Esquire, appeared on behalf of the Employer/Carrier. In making my findings of fact and conclusions of law, I have carefully considered the arguments of counsel and weighed all of the evidence presented to me. I observed the candor and demeanor of the witnesses and resolved all conflicts in the testimony and evidence. I have attempted to distill the issues together with findings and conclusions necessary to their resolution. After careful consideration of all the evidence presented, and after resolving any conflict therein, I hereby find as follows:

1. The Claimant, Luis Leon, is a Hispanic male born in Columbia. He testified live at final hearing in Spanish with the use of a Spanish interpreter.
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2. The Claimant was employed with Leath Furniture, LLC doing business as ModernAge as a forklift driver.
 3. On June 7, 2007, the Claimant was involved in a compensable accident. He was working on a forklift approximately 8-10 feet high where the front forklift was actually a platform. He would ride up on the platform and then move the box off of the shelves. He pulled an old box and the carton broke and he fell from the platform onto the concrete below. As a result of this accident, the claimant reported injuries to his right shoulder, back, and head.
 4. The Judge of Compensation Claims has jurisdiction over the subject matter and the parties herein. Proper venue over this matter lies with the Miami District Office of the Office of the Judge of Compensation Claims.
 5. After the accident, the claimant received authorized medical treatment with Dr. Brown. The Claimant was diagnosed with a cervical strain and lumbar disc herniation.
 6. I accept the uncontradicted medical opinions of Dr. Christopher Brown. As such, the claimant reached MMI with a 6% Permanent Impairment Rating effective December 4, 2007. The claimant is able to work full duty with no permanent work restrictions. (Employer/Carrier Exhibit "A4").
 7. I accept the deposition testimony of the adjuster Michael Rumberger that the Carrier received Employee's Earnings Reports completed by the Claimant in which the Claimant denied any post accident employment or wages. (Employer/Carrier Exhibit "A3"). The claimant viewed these reports in open Court and acknowledged he understood and could read Spanish. The reports were in Spanish. The claimant inquired why he was viewing those forms as he did not receive money during those periods of time.
 8. The Claimant acknowledged in deposition that he had not worked since the accident. (Employer/Carrier Exhibit "A2"). I find the claimant's testimony not credible in this regard and not consistent with the overwhelming evidence to the contrary.
 9. Tony Suarez, the owner of Esther's Restaurant testified live. He testified that he hired the claimant to work in his restaurant as a cook and cleaning type work for the period 11/6/08 through 1/6/09. He testified he paid the claimant cash and after two weeks of work wanted to hire him full time. When he hires his employees for full time work, he then puts them on payroll and takes taxes out. He found Mr. Leon to be a good worker and did not notice any problems with the claimant's work. The claimant asked Mr. Suarez for additional time to provide him with Social Security information. As it was around Christmas time, he decided to give Mr. Leon an additional week. The claimant then asked Mr. Suarez' manager for
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all of the copies he had provided to them including a copy of his license. I find that he did so for the purpose of attempting to conceal any evidence of his employment at Esther's.

10. I find Mr. Suarez to be credible and accept his testimony. I found the wage records regarding cash payments made to the claimant for 11/6/08 through 1/6/09 to be credible and consistent with Mr. Suarez testimony. (Employer/Carrier Exhibit "B"). Further the claimant admitted to working at Esther's when asked on cross examination.
11. I did not reach the issue regarding the surveillance showing the Claimant at Esther's Restaurant as the evidence was clear that he worked there. However, the deposition transcript of Salvatore Vincent Belardo of 8/26/09, which attaches the surveillance video, was accepted as evidence without an objection by the Claimant. (Employer/Carrier Exhibit "A5").
12. The Claimant admitted into evidence without objection a letter he wrote in Spanish. (Claimant Exhibit "1.") In that letter, the Claimant asserts "I had to obligate myself to go to work without being able to move for my family and children" and "But the boss and owner were not satisfied with my work and they fired me because I was no good. I did not have any strength to do things." I find these statements inconsistent with the testimony of Mr. Suarez and to the extent they are inconsistent I find Mr. Suarez credible and Mr. Leon not credible.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Determination of Whether the Claimant Violated Fla. Stat. 440.105.

1. I find that the Claimant has violated sections 440.105 (4) (b) (1), (2), and (3). He made false statements on the Employee Earnings reports as well as in his deposition. The Claimant completed Employee Earnings Reports (DWC-19 Forms) which he signed on 01/23/09, denying any employment or income for period 11/01/08 through 01/15/09. (E/C Exhibit "A3"). The Claimant testified in deposition on February 2, 2009 and denied working anywhere since the accident of 06/07/07, denied looking for work at all since the accident, and testified that he is not able to clean his own house.
 2. I find that the claimant is not entitled to any past, present, or future indemnity or medical benefits pursuant to section 440.09 (4) (a) as the Claimant violated Fla. 440.105 (4)(b).
 3. The statute is clear that it is unlawful to commit insurance fraud. According to Fla. Stat. 440.105(4)(b):
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It shall be unlawful for any person: (1) to knowingly make, or cause to be made, any false, fraudulent, or misleading oral or written statement for the purpose of obtaining...any benefit or payment under this chapter; (2) to present or cause to be presented any written or oral statement... (3) to prepare or cause to be prepared any written or oral statement that is intended to be presented to any employer, insurance company, or self insured program in connection with or in support of any claim for payment or other benefit...knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim."

4. In enforcing this rule, when a defense of fraud has been raised, "the JCC is only required to determine whether the Claimant knowingly or intentionally made any false, fraudulent, incomplete, or misleading statement, whether oral or written, for the purpose of obtaining workers' compensation benefits, or in support of his claim for benefits." Village of N. Palm Bch. v. McKale, 911 So. 2d 1282, 1283 (Fla. 1st DCA 2005). The statement must have been made for the purpose of obtaining benefits. Id. The appropriate evidentiary standard only requires that the Employer/Carrier "prove that the Claimant committed one of the prohibits acts by a preponderance of the evidence." McKale, 911 So. 2d at 1283. Whether the Claimant violates Fla. Stat. 440.105(4)(b) is a factual determination to be made by the JCC, and in doing so the JCC must determine: (1) whether the claimant made or caused to be made false, fraudulent, or misleading statements; and (2) whether it was the Claimant's intent in making the statement, that it be made for the purpose of obtaining benefits. Arreola v. Admin. Concepts, 17 So. 3d 792, 794 (Fla. 1st DCA 2009). When it has been determined that the Claimant violated the statute, this results in a forfeiture/bar of all benefits. Arreola, 17 So. 3d at 795; See also CDL v. Corea, 867 So. 2d 639, 640 (Fla. 1st DCA 2004); Dieujuste v. J.

Dodd Plumbing, Inc., 3 So. 3d 1275, 1278 (Fla. 1st DCA 2009); Lee v. Volusia County Sch. Bd., 890 So. 2d 397, 399 (Fla. 1st DCA 2004); Citrus Pest Control & Claims Control, Inc. v. Brown, 913 So. 2d 754, 755 (Fla. 1st DCA 2005).

5. As the claimant has violated sections 440.105 and 440.09, no past, present, or future indemnity or medical benefits are due to the Claimant.

B. Permanent Total Disability Benefits

1. As I find that the claimant has violated sections 440.09 and 440.105, he is not entitled to any further benefits including permanent total disability benefits. However, I find that the claimant would still not be entitled to Permanent Total Disability Benefits as the claimant did not produce any admissible evidence to establish entitlement to Permanent Total Disability benefits. Dr. Brown released the claimant to full duty with no work restrictions as of 12/4/07. I find the claimant was capable of working and did work at Esther's restaurant.
2. In the absence of a catastrophic injury, the Claimant has the burden of establishing that he is not able to engage in at least sedentary duty employment within a 50-mile radius of the his residence, due to his physical limitations, in order to be entitled to permanent total disability benefits. Ferrell Gas & Gallagher Bassett Serv. v. Childers, 982 So. 2d 36, 37 (Fla. 1st DCA 2008); Fla. Stat. 440.15(1). No compensation shall be payable if the claimant is engaged in or physically capable of engaging in at least sedentary duty. Fla. Stat. 440.15(1)(a). Therefore the claim for Permanent Total Disability benefits is **DENIED**.

C. Penalties, Interests, Costs, and Attorney's fees

1. I find that the Claimant has forfeited his entitled to indemnity benefits, and therefore penalties and interest are not ripe, due, or owing, and the claim is therefore **DENIED**.

2. The Claimant failed to prevail on the issues presented to The Court and therefore, claimant's prior counsel Richard Zaldivar is not entitled to any Employer/Carrier paid attorney's fees, and the claim is therefore **DENIED**.

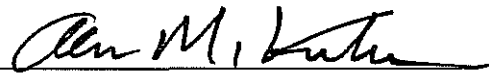
D. Costs to Employer/Carrier under 440.34(3), Fla. Stat. (2009).

1. I find that the Employer/Carrier is entitled to reasonable costs per Fla. Stat. 440.34(3).
2. Jurisdiction is reserved to address the quantum of the costs should the parties be unable to amicably resolve the issue.

WHEREFORE, IT IS ORDERED AND ADJUDGED:

1. The Claim for PTD from 12/4/07/2007 and continuing is **DENIED**
2. Penalties and Interest are **DENIED**
3. The claim for Carrier paid Claimant attorney's fees and costs is **DENIED**
4. All other claims not timely raised are dismissed with Prejudice.
5. Costs are awarded to the Employer/Carrier pursuant to 440.34(3), Fla. Stat. is **GRANTED**.

DONE and ORDERED in Chambers, Miami-Dade County, Florida this ____ day of December, 2009.


Honorable Alan Kuker
Judge of Compensation Claims

THIS IS TO CERTIFY that the foregoing Order was entered on the 21 day of Dec, 2009, and that a copy thereof was sent by regular U.S. Mail to all parties noted previously at their last known address.


Secretary to Judge of Compensation Claims