

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF JUDGE OF COMPENSATION CLAIMS  
PORT SAINT LUCIE DISTRICT

**EMPLOYEE:**

Juan Antonio Ruiz  
Post Office Box 506  
Canal Point, FL 33438

**ATTORNEY FOR EMPLOYEE:**

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1201 US Highway One  
Suite 315  
North Palm Beach, FL 33408

**EMPLOYER:**

Camayen Cattle Company, Inc.  
Post Office Box 6216  
West Palm Beach, FL 33405

**ATTORNEY FOR**

**EMPLOYER/CARRIER:**

Anthony Amelio  
603 North Indian River Drive  
Suite 102  
Fort Pierce, FL 34950

**CARRIER:**

Crum & Forster  
Post Office Box 958425  
Lake Mary, FL 32795

**OJCC#:** 07-031573RDM  
**VENUE:** Martin County  
**D/A:** 5/2/2007

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ORDER ON THE MERITS

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A MERITS HEARING was conducted in this matter. The parties enter into stipulations and frame the issues as follows:

- A. The Judge of Compensation Claims (JCC) has jurisdiction over the parties and subject matter.
- B. The parties were properly notified of the merits hearing.
- C. As to the particulars of this case the parties

agree:

1. Although employer/carrier (E/C) deny an industrial accident occurred, the location of any accident would properly be Martin County, Florida.
2. There is no objection to this matter being heard in Saint Lucie County, Florida.
3. There was an employer/employee relationship on the date of alleged accident.
4. The average weekly wage (AWW) is \$632.23.
5. Medical care sought is prospective only.
6. Indemnity benefits payable under this order, if any, will be handled administratively with the JCC retaining jurisdiction to determine specific amounts due, if necessary.
7. All issues pertaining to attorney's fees and costs may be reserved for subsequent hearing.

D. Claimant seeks the following:

1. A determination he sustained a compensable industrial accident on the date indicated.
2. Temporary total disability benefits (TTD) or temporary partial disability benefits (TPD) from May 2, 2007, to the present and continuing.
3. Penalties and interest on overdue indemnity benefits.
4. Provision of an orthopedic surgeon to treat claimant's injuries.
5. Provision of an MRI of the low back.
6. Provision of a Spanish interpreter to attend all medical appointments.
7. Attorney's fees and costs.

E. E/C responds stating:

1. No injury or accident occurred arising out of and in the course of employment.
2. The work performed by claimant is not the major contributing cause of any alleged injury, disability or need for treatment.
3. Claimant did not timely notify the employer of the alleged accident.
4. Claimant's condition is preexisting and personal in nature.
5. To the extent the claim is for a repetitive trauma or exposure, claimant fails to meet the clear and convincing evidence standard required by section 440.09(1).
6. Claimant's loss of earnings, if any, are not related to an industrial accident, but are due to a layoff resulting from economic conditions.
7. No medical evidence supports claimant's claim for disability or need for treatment.
8. General denial of all remaining claims.
9. Recoupment of costs pursuant to section 440.34.

F. This order is dispositive of all Petitions for Benefits (PFB) pending as of the date of hearing, October 2, 2008, including those filed November 5, 2007, and May 29, 2008.

HAVING CONSIDERED the evidence presented, together with argument of counsel, I make the following determinations:

1. The JCC has jurisdiction over the parties and

subject matter.

2. The parties were properly notified of the merits hearing.

3. The stipulations of the parties are accepted and incorporated by reference.

4. Claimant is a 47 year old Mexican national who immigrated to the United States at age 17. Claimant reached the tenth grade in Mexico. He can read and write in Spanish, but is essentially illiterate in English.

He worked for Camayen Cattle Company, Inc., for approximately twenty eight years. At the time of the accident he was primarily employed as a tractor driver.

Claimant sustained a knee injury as a result of an industrial accident occurring in May 2004. He was treated conservatively and released to return to work on a light duty basis on May 27, 2004. The residuals of this accident, if any, appear to have no impact on this case.

However, of considerable importance is that claimant sustained polio as an infant. This resulted in a significantly atrophied right calf. He denies any postural impact until the past several years. He now appears hunched over at the waist.

The employer previously used the land in question both to grow sugar cane and, as the name suggests, raise cattle.

In recent years and up to May 2007, the employer has used the property entirely to plant, cultivate and harvest sugar cane.

Claimant operated a larger Case tractor during the planting aspect of this endeavor. The tractor has a air cushioned seat and a air conditioned cab large enough to allow the driver to operate the tractor while standing, if necessary. Depending on the testimony, the tractor can travel somewhere in the neighborhood of five to seven miles per hour.

The process of tilling the soil occurs over a time span of several months involving operating the tractor for long hours, six days a week.

Three witnesses give varying versions of the physical aspects of this work. Allowing for some hyperbole, I find claimant was not subjected to prolonged, repetitive trauma cumulatively resulting in injury or an aggravation of preexisting condition. See, *Festa v. Teleflex, Inc.*, 382 So. 2d 122, 124 (Fla. 1st DCA), rev. denied, 388 So. 2d 1119 (Fla. 1980).

During the course of tilling the soil, the first pass was smooth. Adjustment passes with a tractor that came later would subject claimant to a rougher ride because the ground had been disrupted. This was for a relatively short

period of time, occurred at a slow speed and not particularly stressful. *Compare, Winn Dixie Stores v. Morgan*, 533 So. 2d 783 (Fla. 1st DCA 1988). After tilling the soil was done, claimant operated a smaller tractor as part of the harvesting effort. Similarly, there is no showing claimant underwent a series of occurrences cumulatively resulting in his present injury.

5. None of the appellate decisions dealing with repetitive trauma cases have applied the present version of the statute reading, "In cases involving occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be proved by clear and convincing evidence." § 440.09(1), *Fla. Stat.* (2007). I interpret "repetitive exposure" as being equivalent to "repetitive trauma" as outlined in *Festa*.

This factor aside, however, I find claimant fails to meet his burden of proof even applying competent and substantial evidence test.

6. Claimant last worked for Camayen on May 2, 2007, when he and most of his coworkers were laid off for the season. He collected unemployment until November 2007 advising the Department of Employment Security that he is ready, willing and able to return to work.

After the May 2007 routine lay off, because of soaring

fuel prices, Camayen contracted with U.S. Sugar to harvest the cane.

Claimant reported back to Camayen to resume his job only to be advised that he and essentially all of his fellow workers were being discharged. Claimant expresses displeasure at the manner in which this was done.

Claimant never returned to work after that date. He has not looked for employment. Instead, claimant has now applied for Social Security Disability Insurance.

7. The medical opinion testimony in this case is presented through Jeffrey Katzell, M.D., the independent medical examiner for claimant, and Mark Waeltz, M.D., the independent medical examiner for E/C. Both physicians are board certified and their opinions are closely considered.

I find the testimony of Dr. Waeltz persuasive. He explains the polio virus attacks the motor nerves but spares the sensory nerves. Over time, as is natural, some motor nerves die off. Absent having contracted polio, the remaining nerves would otherwise take up the slack. As a result, many polio victims, including claimant, become weaker with age on an accelerated basis. This is defined as "post-polio syndrome."

An additional aggravating factor is the disparity in bone length and muscle development stemming from the acute

stage of polio. Over time, this too has an adverse impact on the body.

Dr. Waeltz concludes that the combination of post-polio syndrome and the normal deterioration with age result in claimant's present health status.

That status is limping, weakness and stiffness particularly from the hips down. This condition is "irrelevant of any work activities or really any other activities. That's just the nature of the polio."

Dr. Waeltz can not find a discrete injury. Hence, this physician can not provide a maximum medical improvement date. "Whether he is working or not, he's aging."

8. Although not specifically asked this question, I find from the overall testimony of Dr. Waeltz that whatever injury the claimant might even theoretically have from jostling about on a tractor is not the major contributing cause of his present physical status and any work restrictions attaching to his current residual physical limitations.

9. Based on the foregoing findings, I find claimant is not entitled to TTD or TPD for any period of time between May 2, 2007, to date.

10. Based on the foregoing findings, I deny



claimant's request that E/C provide him with an orthopedic specialist, MRI or Spanish interpreter to attend medical appointments.

11. Based on the foregoing findings, the claim for interest and penalties is denied.

12. Because of the foregoing findings, I decline to address the section 440.185 notice defense.

13. Based on the stipulation of the parties, all issues pertaining to attorney's fees and costs which survive the foregoing findings are reserved for subsequent hearing.

WHEREFORE, it is

ORDERED AND ADJUDGED as follows:

a. The claim for temporary total disability benefits from May 2, 2007 is denied.

b. The claim for temporary partial disability benefits from May 2, 2007, is denied.

c. The claim for interest and penalties on indemnity benefits is denied.

d. The claim for the provision of an orthopedic specialist to treat claimant's low back, hips, legs, feet, elbows and wrist is denied.

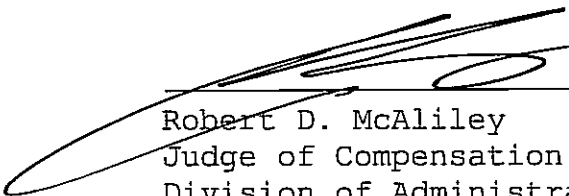
e. The claim for the provision of an MRI is denied.

f. The claim for the provision of a Spanish

interpreter is denied.

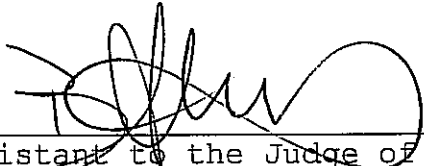
g. All issues pertaining to attorney's fees and costs which survive the foregoing findings are reserved for subsequent hearing.

DONE AND ORDERED in chambers, in Fort Pierce, Saint Lucie County, Florida, this 14 day of October, 2008.

  
Robert D. McAliley  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of  
Compensation Claims  
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I HEREBY certify that a true and correct copy of the foregoing has been mailed via U.S. Mail to all of the parties on this 14 day of October, 2008.

  
Assistant to the Judge of  
Compensation Claims