STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ORLANDO DISTRICT OFFICE

Richard Jackson, Employee/Claimant, vs. YRC/Gallagher Bassett Services, Inc., and Gallagher Bassett Services, Inc., Employer/ Carrier/Servicing Agent.	)	OJCC Case No. 10-009785NPP Accident date: 2/1/2010 Judge: Neal P. Pitts

FINAL COMPENSATION ORDER

This Cause came on for a merits' hearing before the undersigned Judge of Compensation Claims on January 14, 2011 in Orlando, Orange County, Florida, pursuant to claims raised in a petition for benefits filed on April 27, 2010. The claimant, Richard Jackson, was present and represented by John Russell, Esq. The employer/carrier, YRC, hereinafter referred to as the "Employer" was represented by Scott Miller, Esq. Live testimony was received from the claimant.

Prior to the commencement of the hearing, it was brought to the undersigned's attention the existence of an unmediated petition for benefits filed with DOAH on December 7, 2010. Thus, this petition is not ripe for adjudication. Jurisdiction is hereby reserved over this petition until such time as the parties have been able to mediate the petition.

Pursuant to the undersigned's Order On Status Conference

entered on January 6, 2011, the claims and affirmative defenses raised by the above petition for benefits have been bifurcated for this merits' hearing; leaving the sole issue to be determined at this merits' hearing is the EC's affirmative defense that the claimant violated §440.105 by misrepresenting his prior medical history, and therefore, all benefits should be terminated pursuant to §440.09. Should the EC not prevail on its affirmative defense, then a second merits' hearing will be scheduled to resolve the remaining claims and defenses.

The following stipulations were reached between the parties at the time of the merits' hearing:

1. The undersigned JCC has jurisdiction of the parties and the subject matter;
2. Venue properly lies in Orange County, Florida;
3. The date of accident is February 1, 2010;
4. There was an employer/employee relationship at the time of the accident;
5. Workers' compensation insurance coverage was in effect on the date of accident;
6. The accident or occupational disease was initially accepted as compensable and authorized care and treatment was provided to the claimant. All benefits have been denied based upon the defenses given below;

7. Timely notice of the accident, injury, or occupational disease was provided on February 1, 2010;
8. Timely notice of the final hearing has been given;
9. The claimant filed a petition for benefits with DOAH on April 27, 2010;
10. The AWW base pay is $542.34, with a corresponding compensation rate of $361.55;
11. If benefits under F.S.440.13 (medicals) are determined to be due or stipulated due herein, the parties agree that the exact amounts payable to health providers will be handled administratively and any medical bills need not be placed into evidence at trial; and
12. The pay ledger may be stipulated into evidence.

Affirmative defenses raised by the E/C:

1. Claimant violated §440.105 by misrepresenting medical history;

2. All benefits should be terminated pursuant to §440.09(4); and

3. No PICA due and owing.

The following documents were admitted into evidence:

Judge's Exhibits:

1. Pretrial Questionnaire completed by the parties;
2. Order Approving Pretrial Questionnaire and Order Governing

Trial entered on September 14, 2010;

3. Mediation Conference Report for August 23, 2010 mediation conference;
4. Order On Status Conference entered on January 6, 2011;
5. Petition for Benefits filed with DOAH on April 27, 2010;
6. Response to Petition For Benefits filed with DOAH on May 10, 2010;
7. Petition for Benefits filed with DOAH on December 7, 2010; and
8. Response to Petition for Benefits, filed with DOAH on December 9, 2010.

Claimant's Exhibit:

1. Claimant's Merit Hearing Memorandum, admitted for purposes of argument only and not as evidence.

Employer's Exhibits:

1. Employer/Carrier's Trial Summary, admitted for purposes of argument only and not as evidence;
2. Deposition of Dr. Steven Weber, with attachments taken on November 29, 2010;
3. Deposition of Dr. Gene R. Arangorin, with attachments taken on November 23, 2010;
4. Deposition of Dr. Michael D. McCleary, with attachments taken on November 10, 2010;

5. Deposition of Dr. Ann E. Klega, with attachments taken on October 1, 2010;
6. Deposition of Dr. Alan W. Christensen, with attachments taken on November 8, 2010;
7. Steno graphically transcribed unsworn statement made by the claimant on February 5, 2010;
8. Deposition of Richard Jackson taken on November 29, 2010; and
9. Deposition of Susan Huffine-Athanasopoulos taken on September 20, 2010.

In making my findings of fact, I have carefully considered and weighed all of the evidence presented to me. Although I may not reference each piece of evidence presented by the parties, I have carefully considered all the evidence and the exhibits in making my findings of fact.

Based upon the evidence, I make the following findings of fact and conclusions of law:

1. I have jurisdiction of the parties and the subject matter.
2. The stipulations of the parties are accepted and adopted by me as findings of fact.
3. The evidence closed in this matter on January 14, 2011, after which closing arguments were made by the parties.
4. The claimant suffered a compensable accident on February

1, 2010. The accident occurred during the course and scope of his employment when the claimant slipped and fell on a wet dock while pushing the skid of a pallet, loaded with heavy freight, over a temporary dock plate, causing him to fall onto his left side. This fall resulted in alleged injuries to his left shoulder, left hip, left leg, and low back.

5. The accident was reported immediately to Greg Posten and accepted as compensable. The claimant completed and signed on February 1, 2010 an Employee Notice Of Injury form in which he indicated that the body part involved was "soreness left shoulder and left hip." In this form, he checked "no," to the question that inquired whether the employee had medical attention to this body part prior to the incident.

6. Within an hour of the accident, the claimant was seen at the ER at Health Central Hospital. During this visit, he received a prescription for Lortab and underwent x-rays. The claimant was taken off work for 3 days by the ER physician and informed that if he remained symptomatic after such 3 day rest to go to an orthopedic surgeon. The referral was to the Orlando Orthopaedic Clinic.

7. In his deposition, the claimant testified that the ER

personnel did not inquire about prior injuries and he did not report his prior low back or left hip problems. This was because "there wasn't any pain."

8. On February 5, 2010, the claimant provided an unsworn statement to the adjuster, Susan Huffine-Athanasopoulos. In this statement, the claimant was asked whether he had ever experienced pain in his low back, left shoulder, left leg, left hip, or head before. He responded by referencing an incident three weeks prior when he hurt the middle of his back while pushing a crate. No other history for these body parts was disclosed. He further provided a history of a surgical procedure on his shoulder; but he couldn't recall whether it was his right or left shoulder. Finally, he denied any motor vehicle accidents within the last 10 years.

9. At the end of the recorded statement, he indicated that all of his answers were true and correct to the best of his ability. He further indicated that he understood all of her questions.

10. After the ER visit, treatment for the left shoulder was authorized with Dr. Alan Christensen, an orthopedic surgeon. The first appointment with Dr. Christensen occurred on February 8, 2010. During this evaluation, the

claimant provided a history to Dr. Christensen that was "noncontributory." According to the report for this office visit, he denied prior injuries. He disclosed his medications as including Tylenol and Hydrocodone.

11. During this office visit, he did not disclose to Dr. Christensen that he had been involved in two prior motor vehicle accidents. He did not disclose to Dr. Christensen that he had suffered a 6 foot fall from a ladder in May, 2009, or that he had prior orthopedic treatment for bilateral shoulder pain, left hip, left leg pain, or low back pain. According to the claimant in his deposition testimony, he did not tell Dr. Christensen about the low back, hip, or left leg pain because Dr. Christensen did not ask him and "because he [was just] a shoulder doctor."

12. Dr. Christensen's diagnosis was left shoulder sprain. He was placed on light duty and instructed on a pendulum program and passive range of motion with a pulley.

13. Following the appointment, the claimant called the adjuster and demanded treatment for his low back because, according to the claimant, Dr. Christensen would not treat his low back condition. The claimant testified at the merits' hearing that the adjuster would not authorize care for his low back during this call. Rather, it was not

until the employer called the adjuster the next day at the claimant's request that an appointment with Centra Care was authorized for a low back evaluation.

14. The authorized Centra Care visit occurred on February 9, 2010, during which he was examined by Dr. Ann E. Klega. At this visit, the claimant reported low back, leg, and hip pain of moderate severity, with the low back pain radiating down into his left thigh. He denied any previous surgeries. For past medical history, the claimant checked "no." Based upon that answer, Dr. Klega impression was that this was a new injury.

15. Based upon this evaluation, the claimant was referred to an orthopedic surgeon for a low back evaluation. The evaluation occurred with Dr. Michael D. McCleary on February 10, 2010. Dr. McCleary is associated with the Orlando Orthpaedic Center.

16. The claimant's chief complaint at this visit was lumbar and left lower extremity pain. In the report, Dr. McCleary noted that the claimant reported a history of lumbar pain in the past with an MRI. In his deposition, Dr. McCleary testified that the claimant did not offer him a history of treating with Dr. Weber for his low back, left leg, or left hip. Nor did he report an injection by Dr. Weber to

his left hip on June 16, 2009. Rather, the claimant only reported having physical therapy and an MRI. All the other information was obtained by Dr. McCleary from his review of the chart.

17. Dr. McCleary further testified that the claimant did not provide him with:

    i. a prior medical history involving several motor vehicle accidents;

    ii. a history of having treated with the Jewett Orthopaedic Clinic for low back complaints some 9 to 10 years before the accident; or

    iii. a history of the claimant's ongoing treatment for his low back, left leg, and left hip symptoms with Dr. Arangorin which treatment was continuing up to as recently as January 14, 2010 following the last recorded office visit with Dr. Weber.

18. Dr. Arangorin's office records attached to his deposition established that he is a primary physician whose initial evaluation with the claimant occurred on January 25, 2008. The last office appointment occurred on November 12, 2010.

19. During a March 20, 2009 office visit, the claimant reported lower back pain radiating down into the legs or thighs with associated muscle spasms. The claimant

provided no trauma history to explain the back pain. Dr. Arangorin prescribed Hydrocodone at this visit.

20. The claimant returned for a follow up office visit on April 17, 2009. On this visit, he again complained of low back pain, radiating into the buttocks and thighs; characterized as constant, moderate in intensity, sharp, throbbing, and tearing. He reported that the current episode started several weeks ago due to a fall. Associated symptoms included stiffness, paravertebral muscle spasm, and radicular leg pain.

21. At the April 17, 2009 office visit, the claimant also reported bilateral shoulder pain radiating to his arm and elbow; characterized as moderate in severity, intermittent, and sharp. He was referred by Dr. Arangorin to an orthopedist and to physical therapy.

22. On May 18, 2009, the claimant saw Dr. Arangorin. At this visit, he reported a fall occurring 2 days prior to the visit. (This appears to be the second fall recorded in the medical records during the last month). This fall occurred when the claimant was trying to get something from his attic when he missed a step on the ladder and fell; landing on his back. The following day, he reported gradually noting low back pain described as sharp shooting

pains over his lower back with radiating into his hips, thighs, and legs. The record comments that, "Lately he was noting weakness of the lower extremities." He reported being in severe pain (9/10). He again was referred to an orthopedist and to physical therapy.

23. The claimant was examined on May 20, 2009 and June 11, 2009 by Dr. Weber, an orthopedic spine surgeon. At the May 20, 2009 office visit, the claimant complained of back pain radiating into his bilateral lower extremities and left hip pain. He provided a history of having fallen 6 feet off of a ladder.

24. Dr. Weber ordered MRIs of the low back performed on May 28, 2009 and the left hip performed on May 26, 2009. The MRI of the left hip demonstrated mild to moderate hip arthritis and tearing of the labrum. The MRI of the low back demonstrated a four-millimeter left disc herniation, contacting and displacing the L5-S1 nerve root, and an annular bulging with mild biforaminal stenosis at the L4-5 interspace.

25. During the June 11, 2009 office visit, the claimant complained of hip pain and pain radiating down his left leg. He had positive straight leg raising test. He had pain with internal rotation on the left side and hip. His

diagnosis was left hip acetabular tear, left hip degenerative joint disease, left herniated nucleus pulposus, L5-S1.

26. At this office visit, Dr. Weber recommended a left hip joint injection which the claimant received. On June 22, 2009, the claimant called Dr. Weber's office reported that he had obtained the injection and wanted to be released back to work full duty as of July 13, 2009. He was released on that date and never returned to Dr. Weber.

27. According to Dr. Weber's deposition testimony, at the last office appointment of June 11, 2009, they were trying to determine which was the greatest source of the pain; the low back or the hip. The plan was to start with an injection to the hip because this was the easiest and quickest thing to do.

28. Between the fall of the ladder and the compensable accident of February 1, 2010, the claimant followed up with Dr. Arangorin on June 8, 2009, July 10, 2009, July 24, 2009, August 26, 2009, September 29, 2009, November 19, 2009, and January 14, 2010.

29. At the November 19, 2009 office visit, the claimant reported lumbar spine pain radiating to the buttocks and thighs; characterized as constant, moderate in intensity,

sharp, throbbing, and tearing. Associated symptoms include stiffness, spasms, and radicular leg pain. He also reported bilateral shoulder pain; characterized as moderate in severity, intermittent, and sharp. Associated symptoms include shoulder stiffness.

30. On physical examination, Dr. Arangorin noted normal gait, decreased range of motion in back flexion and extension, pain with motion, tender lumbar muscles, low back spasms, but a negative straight leg raising test. His relevant diagnosis was HNP-lumbar and joint pain, shoulder region.

31. At the January 14, 2010 office visit, his chief complaint was lumbar spine pain radiating to the buttocks and thighs; characterized as constant, moderate in intensity, sharp, throbbing, and tearing. Associated symptoms include stiffness, spasms, and radicular leg pain. The diagnosis was chronic pain affecting the low back. No mention was made of shoulder complaints.

32. On physical examination, Dr. Arangorin noted normal gait, decreased range of motion in back flexion and extension, pain with motion, tenderness in lumbar muscles, low back spasms, but a negative straight leg raising test.

33. In his deposition, the claimant testified that he was not having any problems with his left hip and low back when he

saw Dr. Arangorin during the office visit prior to being released to work in January, 2010. In his words, the low back complaints had not gone away completely but "I wasn't hurting." "Just soreness," in the low back and hip.

34. In his deposition, the claimant also denied any problems with his left shoulder prior to 2/1/2010. He specifically denied that he was having any problems with his left shoulder as a result of the fall in the garage at the time of the 2/1/2010 accident at work. According to his deposition testimony, the left shoulder problems from the fall in the garage had completely gone away as of 2/1/2010.

35. During the merits' hearing, the claimant testified that he was still in pain during this time, but due to the pain medication that he was taking, he was able to perform his job duties. He further testified that his back had never completely healed prior to 2/1/2010 and that he also had bilateral shoulder pain.

36. The Employer contends that all further benefits should be denied to the claimant because claimant has violated the provisions of §440.105(4)(b)1, Fla. Stat., by making false, fraudulent, misleading, and/or incomplete statements under oath and to medical providers in the

pursuit of workers' compensation benefits.

37. The provisions of §440.105(4)(b)1 state: 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 or denying any benefit or payment under this chapter.
>
> 2. To present or cause to be presented any written or oral statement as support of, or in support of, a claim for payment or other benefit pursuant to any provision of the chapter, knowing that such statement contains any false, incomplete, or misleading information concerning any fact of thing material to such claim.

38. To establish a violation of §440.105(4)(b), so as to justify the ultimate sanction of denial of any further benefits under Chapter 440, the Employer has the burden to prove by a preponderance of the evidence that a claimant knowingly or intentionally engaged in one of the acts prohibited by the statue for the purpose of securing workers' compensation benefits.

See Matrix Employee Leasing v. Hernandez, 975 So.2d 1217 (Fla. 1st DCA 2008); *Village of N. Palm Beach v. McKale*, 911 So.2d 1282 (Fla. 1st DCA 2005); and *Pavilion Apts. v. Wetherington*, 943 So.2d 226 (Fla. 1st DCA 2006).

39. Workers' compensation benefits must be denied if statements of medical history, prior accidents, or the extent of current injuries are knowingly false, fraudulent, incomplete, or misleading. *Village Apts. v. Hernandez*, 856 So. 2d 1140 (Fla. 1st DCA 2003); *Lee v. Volusia County Sch. Bd.*, 890 So.2d 397, (Fla. 1st DCA 2004; *Citrus Pest Control v. Brown*, 913 So. 2d 754 (Fla. 1st DCA 2005).

40. It is not necessary that the false, fraudulent or misleading statement be material to the claim; only that the statement is made for the purpose of obtaining benefits. See *Village Apts.* and *McKale.* In workers' compensation claims, a claimant's responses to inquires regarding his or her medical history, prior accident, and current condition are in support of the claim for benefits. *Village Apts. v. Hernandez*, 856 So.2d 1140 (Fla. 1st DCA 2003).

41. Regardless of whether the claimant is under oath, if

the claimant makes any statement which the claimant knew was false, incomplete, or misleading, the statements fall within the scope of §440.105(4)(b), Fla. Stat., and result in the loss of workers' compensation benefits.

42. With regards to oral and written statements made in the instant claim in the pursuit of workers' benefits, I find by the preponderance of the evidence that the claimant intentionally or knowingly made false and misleading statements which were made for the purpose of obtaining workers' compensation benefits in violation of §440.105(4)(b), Fla. Stat.

43. I find that when the compensable accident occurred on February 1, 2009, the claimant was suffering from chronic low back and left leg pain. I specifically find this condition was painful and required ongoing treatment with narcotic pain medication. The presence of lumbar muscle tenderness and spasms on physical examination on January 14, 2010 indicates that the condition had not resolved but remained symptomatic.

44. I find that these statements are too numerous to explain away, and reveal at worse a pattern of deceit, misrepresentation, incompleteness, and misleading

answers, and at best unacceptable indifference to integrity and truthfulness. These statements include when:

i. he checked "no," to the question on the Employee Notice Of Injury form whether he had ever had prior medical attention to the body parts (left shoulder and left hip) injured in this accident;

ii. in the unsworn statement to the adjuster when he failed to provide a complete and accurate history of his prior injury or symptoms to his low back, left leg, left hip, and bilateral shoulder injury, and treatment for same;

iii. in the unsworn statement to the adjuster when he denied a motor vehicle accident within 10 years of the 2/1/2010 compensable accident;

iv. in the history he provided to Dr. Christensen at the initial office visit when he denied prior injuries and a "noncontributory," prior medical history (which history included prior bilateral shoulder complaints to Dr. Arangorin;

v. in the history provided to Centra Care when he denied any past medical history leaving Dr. Klega with the impression that this was a new injury to his

low back; and

vi. during his August 5, 2010 deposition when he testified that he was not having any problems with his left hip and low back when he saw Dr. Arangorin during the office visit prior to being released to work in January, 2010.

45. I find the claimant's repeated false statements and omissions to medical providers, the adjuster, and to his employer, as outlined above show a conscious pattern of deceit and misrepresentation and is an intentional act in violation of §440.105 (4)(b) 1 & 2, Fla. Stat., and were done for the purpose of obtaining ongoing workers' compensation benefits for medical conditions for which he was actively treating when this compensable accident occurred. Having observed the demeanor of the claimant during his testimony at the merits' hearing, I simply do not find his explanation that these were just honest mistakes to be credible in light of the copious evidence of inaccurate, incomplete, false, and misleading statements detailed above.

46. While the claimant clearly sustained a compensable accident at work, which accident may well have

resulted in a compensable aggravation to his preexisting low back, left hip, and left shoulder conditions, it was still incumbent upon the claimant to be truthful and accurate in the histories he provided to his authorized providers and in the sworn and unsworn statements. Because of his failure to do so, he is barred from receiving any further benefits under Chapter 440 for this date of accident.

Wherefore, it is hereby

CONSIDERED, ORDERED, and ADJUDGED as follows:

1. Pursuant to §440.09(4)(a) and §440.105(4)(b), Fla. Stat., claimant is barred from receiving any further benefits under Chapter 440 for this date of accident.
2. All claims for TTD/TPD benefits and medical benefits under the instant date of accident are DENIED and DISMISSED with prejudice.
3. All claims for penalties, interest, and attorney's fees are denied with prejudice.
4. The April 27, 2010 and December 7, 2010 petitions for benefits are hereby dismissed with prejudice.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida.

Neal P. Pitts
Judge of Compensation Claims
Division of Administrative Hearings

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered and a true copy was furnished by electronic transmission on this 18th day of January, 2011 to the following.

Secretary to Judge Neal P. Pitts
Judge of Compensation Claims

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