

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

Jonathan Santana,

Employee/Claimant,

OJCC Case No.: 14-009935IF

vs.

Accident date: 4/26/2014

Hubbell Enterprises, Inc. and
Protective Insurance Company,

Judge: Iliana Forte

Employer/Carrier.

_____/

S. Scott Gow, Esquire, Attorney for the Claimant
Scott B. Miller, Esquire, Attorney for the Employer/Carrier

**SUA SPONTE ORDER DENYING
CLAIMANT'S MOTION FOR SUMMARY FINAL ORDER**

This matter came before me, on the claimant's motion for summary final order pursuant to rule 60Q-6.120 filed on August 7, 2015. The Employer/Carrier responded to claimant's motion for summary final order on August 13, 2015.

After review of the pleadings filed by the parties and the arguments contained therein this order sua sponte ensues.

1. This matter was recently before me on the claimant's request for an expedited final hearing. The urgency for the hearing was based on the E/C's unexpected denial of all

benefits, in particular medical treatment with Dr. Roberto Moya, based on the defense of fraud and misrepresentation pursuant to Sections 440.09 and 440.105 Florida Statutes (2004)

2. Shortly before the E/C raised their fraud defense, the claimant filed a notice of resolution of issues which prompted the cancellation of a previously scheduled final hearing set for September 15, 2015.

3. Consequently, the claimant filed a new petition for benefits on 7/27/2015. The undersigned held a hearing on the claimant's motion for an expedited hearing to determine if same would be appropriate based on the E/C's defense. The undersigned determined that it would not be appropriate and the motion was denied. However, with the E/C's cooperation, the undersigned scheduled the mediation, pre-trial and final hearing on the 7/27/2015 petition for the earliest time reasonably possible.¹

4. The claimant has filed the instant motion for summary final order disputing the E/C's right to suspend the claimant's benefits based on their own unilateral determination of fraud or misrepresentation without first seeking judicial determination. The claimant relies on *Pavilion Apartments and Claims Center v. Wetherington*, 943 So.2d 226 (Fla. 1st DCA 2006) in support of his position.

5. The E/C relies on *Alvarez v. Unicco*, 958 So.2d 951 (Fla. 1st DCA 2007) in support of their position that while the Judge of Compensation Claims is the one to ultimately determine whether or not a claimant has violated sections 440.09 and 440.105, the Judge of Compensation Claims is not required to order payment of benefits for a period preceding the determination of a violation of section 440.09(4).

¹ The mediation is scheduled for 9/25/2015, pre-trial is scheduled for 10/01/2015 and the final hearing is scheduled for 11/18/2015.

LEGAL CONCLUSION

6. Summary Final Order pursuant to Rule 60Q-.6.120 is appropriate where there is no issue as to any material fact and the granting of the motion would be dispositive of the issues raised by the subject petition for benefits. The issues raised by the subject petition filed on 7/27/2015 are medical transportation and continued authorization with Dr. Roberto Moya.

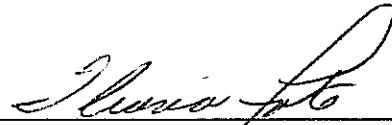
7. While the claimant's raises only a legal issue in his motion, the underlying remedy rests on issues of material facts, as the undersigned has to determine whether the claimant is entitled to continued treatment with Dr. Moya or has violated s. 440.09 and 440.105.

8. Nevertheless, *Alvarez v. Unicco*, 958 So.2d 981 (Fla. 1st DCA 2007) is indeed dispositive of the issue raised by the claimant. The court noted that noting in their prior decisions including *Pavilion Apartments v. Wetherington*, 943 So.2d 226 (Fla. 1st DCA 2006) mandated an order by the JCC before the E/C may terminate benefits under sections 440.09(4) and 440.105. Thus, the E/C may unilaterally terminate benefits without first seeking an order from the Judge of Compensation Claims.

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED that:

1. Claimant's Motion for Summary Final Order is DENIED.

DONE AND ORDERED in Chambers, on August 20, 2015 in Ft. Lauderdale, Broward County, Florida.



Iliana Forte
Judge of Compensation Claims
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above Order was entered by the Judge of Compensation Claims and a copy was served by electronic transmission on this 20th day of August, 2015 to the parties counsel or by mail if parties are unrepresented.



Secretary to the Judge of Compensation Claims

COPIES FURNISHED:

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