

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT OFFICE

Nelson Trujillo,)	
Employee/Claimant,)	
)	OJCC Case No. 12-007692MAD
vs.)	
)	Accident date: 1/20/2012
Baker Concrete Construction, Inc./Gallagher)	
Bassett Services/,)	Judge: Mary A. D'Ambrosio
Employer/ Carrier/Servicing Agent.)	
_____)	

FINAL EVIDENTIARY ORDER

THIS CAUSE came before me on September 14, 2012 on the Claimant's Motion for a \$2,000.00 Advance filed on August 3, 2012. Originally, the only defense of the Employer/Carrier was the Claimant's noncompliance with medical care. On the day of the hearing, the Employer/Carrier filed additional proposed exhibits including a Notice of Denial dated September 13, 2012 on the basis of F.S. 440.09(4)(a) and 440.105(4)(b). The Claimant's counsel was given an opportunity for a continuance of the evidentiary hearing, but declined.

Counsel for the parties and the Claimant were present by telephone.

EXHIBITS

1. Motion for Advance with attached bills – Claimant's Exhibit # 1;
2. Financial Affidavit- Claimant's Exhibit #2;
3. Notice of Office Visit - MD Now- Employer/Carrier Exhibit # 1;
4. Notice of Denial 9/13/12 – Employer/Carrier Exhibit # 2;

Settlement documents regarding Claimant's wrongful termination claim were marked as Employer /Carrier "A" for identification. The Employer/Carrier's Response filed on August 14, 2012 was accepted as argument.

FINDINGS OF FACT

1. The claimant, Nelson Trujillo, testified by telephone. He was employed as a laborer

for Baker Concrete. On January 20, 2012 he was up twenty feet taking out heavy wood forms when he felt a cramp or pain in his low back. He reported the injury and was taken by "Gina" to the Miami Urgent Care Center. He was given restrictions of no lifting over 20 pounds. He saw Dr. Sanchez or Dr. Harris Mones on his own and was restricted to light duty with no prolonged standing or sitting.

2. The Claimant testified he returned to work for the Employer for five hours. He told them he had back pain and he testified he was "let go". He testified he has not had any employment since leaving Baker Concrete.
3. The Employer/Carrier has recently denied the claim alleging violation of F.S. 440.09 and 440.105. Much of their questioning of the Claimant on cross examination pertained to the use of a social security number and whether the Claimant gave it to his Employer to obtain employment or to his physicians to obtain medical care.
4. The Motion for Advance contains bills regarding electricity and car insurance. The Claimant gave no independent testimony regarding these bills or any other outstanding financial obligations that he may have.
5. The Claimant testified that he received \$2,600.00 shortly prior to filling out his Financial Affidavit, from a settlement of his wrongful termination suit. He filled out his Financial Affidavit with the assistance of his Spanish speaking counsel, but did not list the settlement funds on his Affidavit as an asset.
6. The Claimant's deposition, taken September 13, 2012, was marked for impeachment. In deposition, the Claimant testified he pays one half of his monthly rent of \$650.00 and his cousin pays the other half. The Financial Affidavit in evidence lists a monthly rent obligation of \$650.00.

7. The Claimant's deposition testimony indicates that the physician at the Urgent Care Center released him to return to work in March, 2012 and it was at that time that the Employer told him he was no longer needed.

CONCLUSIONS OF LAW

1. F.S. 440.20(12)(c) addresses the burden of proof for receiving an advance of \$2,000.00 or less. Additionally, pursuant to F.S. 440.20(12)(c)2, an advance payment may be ordered by a judge of compensation claims after giving the parties an opportunity for a hearing, and after giving due consideration to the interests of the person entitled thereto. Further on in this section, the statute states that the advance must be found to be for the best interests of the person entitled thereto.
2. I find that a \$2000.00 advance is not in the best interests of the Claimant after giving due consideration to his interests. I find that the Claimant misled me and the Employer/Carrier in his sworn financial affidavit by not listing the \$2,600.00 settlement payment received shortly before he completed the affidavit. If defense counsel had not been diligent in his investigation, this information would not have been voluntarily revealed by the Claimant, at least during the evidentiary hearing. The evidence is silent as to whether the Claimant receives assistance from family or friends with payment of his bills, whether he is delinquent on his bills or whether he has searched for employment. The evidence is silent as to the Claimant's current work restrictions and is conflicting as to how long the Claimant continued to work after the accident and what his true restrictions were as of March, 2012. The Claimant's affidavit conflicts with his deposition testimony as to the monthly rent obligation (being either \$325.00 or \$650.00).

3. The recently raised defense of fraud was not considered by me in reaching these conclusions. I am strictly limiting my finding to the credibility of the Claimant, the inconsistencies or holes in the evidence, and a determination of his best interests.

WHEREFORE, it is

ORDERED AND ADJUDGED:

1. The Motion for Advance is hereby denied.
2. Counsel shall be responsible for providing a copy of this Order to their respective clients.

DONE AND ORDERED this 19 day of September, 2012, in West Palm Beach, Palm Beach County, Florida.



Mary A. D'Ambrosio
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Evidentiary Order was entered on the 19th day of September, 2012, and that a copy thereof was electronically furnished to counsel.



Secretary to Judge of Compensation Claims

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