

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

John Washington,
Employee/Claimant,

OJCC Case No. 18-030857TAH

vs.

Accident date: 12/5/2018

brakben, inc, Fed Ex Ground Package
System, Inc./Protective Insurance
Company, and Indemnity Insurance Co. of
North America,
Employer/Carrier/Service Agent.

Judge: Thomas A. Hedler

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EVIDENTIARY ORDER ON MOTION FOR ADVANCE

THIS CAUSE came before the undersigned Judge of Compensation Claims on February 25, 2019 for an evidentiary hearing on Claimant's Motion for Advance of \$2,000.00 filed on February 8, 2019. The Employer/Carrier did not file Response. The Claimant was represented by Colin Richards, Esq. The Employer/Carrier was represented by Evan Heffner, Esq. The Claimant appeared and testified. The following exhibits were submitted:

Claimant

1. Motion for advance with attached affidavit, filed on February 22, 2019 [Docket#13].
2. Composite of bills and lease agreement, filed on February 25, 2019 [Docket#16].

Employer/Carrier

None

Factual Findings & Conclusions of Law

1. The claimant is alleging an industrial accident occurred on December 5, 2018 while delivering packages. Specifically, the claimant testified that he felt a pop in his back and fell to the ground. He testified that he attempted to contact his supervisor on numerous occasions on the date of accident, to no avail. The claimant testified he went to Boca Regional Hospital on December 5, 2018 and was diagnosed with sciatica. He confirmed that he reported the industrial accident to the hospital.
2. The claimant testified that he reported the claim to his supervisor, Robert, the following

day. He asserted that the employer did not report the incident to the insurer. The claimant has not been given any authorized medical care. He has followed-up with a provider in Deerfield Beach and underwent an MRI on February 13, 2019. He testified that the MRI revealed a herniated disc and that he has been referred to a specialist for possible surgery.

3. The claimant alleges that at the time of the industrial accident, he was earning \$600.00 per week, and anticipated earning \$800.00 after completing his training. He last received a check from the insured on or about December 16, 2018. He was out of work, without earnings, from then until last Friday, when he started working for Lyft.
4. The claimant testified that his monthly expenses total approximately \$1,437.00, which does not include payment of medical bills or re-payment of a loan.
5. Compensability of the claim is controverted. However, establishing compensability of the claim is not requisite to the request for a \$2,000 advance. See Lopez v. Air Canada, 136 So.3d 786 (Fla. 1st DCA 2010).
6. Claimant moves this Office for an order awarding a \$2,000.00 advance pursuant to Florida Statutes 440.20(12)(c). The claimant bears the burden to prove entitlement to the advance. For an advance to be awarded, a JCC must perform a two-step inquiry. See ESIS / Ace American Insurance v. Kuhn, 104 So. 3d 1111 (Fla. 1st DCA 2012). First the JCC must determine if the claimant is a “proper claimant”, i.e., whether he falls under one of the three statutory categories: a claimant has not returned to the same or equivalent employment with no substantial reduction in wages; or has suffered a substantial loss of earning capacity; or a physical impairment, actual or apparent. *Id.*
7. I find the claimant has established the first prong in that he presented undisputed testimony that he had not returned to the same or equivalent employment from December 16, 2018 to February 22, 2019.
8. If the claimant satisfies the first element, the next inquiry is whether the claimant has provided adequate justification for the request. *Id.* With regard to the 2nd inquiry, the burden on the claimant is lighter because the financial burden on the E/C is lighter. See Bonner v. Miami Dade Public Schools, 148 So. 3d 152 (Fla. 1st DCA 2014). The 2nd inquiry involves only a consideration of the claimant’s interests. *Id.*
9. With respect to the 2nd prong, I find the claimant has provided adequate justification for the request. The claimant testified he has been without wages since December 16, 2018 with significant monthly expenses. Again, the claimant has alleged an industrial accident; has claimed payment of lost wages; and testified without dispute that he was without wages for over two months. Accordingly, I find the claimant has produced sufficient evidence that the request for \$2,000.00 is adequately justified.

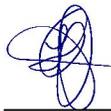
10. In that I find he is a proper claimant and that he has established a nexus between the *claimed* industrial accident and the resulting lost wages and need for advance, I conclude the claimant has met his burden the \$2,000.00 advance is in his best interests. Accordingly, the request for a \$2,000.00 advance complies with F.S. 440.20(12)(c) and relevant case law both cited herein and not expressly cited.

Based on the foregoing, it is hereby:

ORDERED and ADJUDGED THAT:

1. The Claimant's motion for advance is **GRANTED**. The Employer/Carrier shall pay to the Claimant \$2,000.00 as an advance under the statute. The Claimant is hereby noticed the Employer/Carrier is entitled to be reimbursed out of any unpaid installment or installments of compensation due pursuant to F.S. 440.20(13).

DONE AND SERVED this 25th day of February, 2019, in West Palm Beach, Palm Beach County, Florida.



Thomas A. Hedler
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