

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS**

Telson Emilsaint)	
)	
Employee/Claimant,)	OJCC Case No. 09-015460SLR
)	
vs.)	Accident date: 04/02/2009
)	
Frank Crum /Frank William Crum Ins., Inc.)	
Employer/Carrier/Servicing Agent.)	Judge: Stephen L. Rosen

FINAL ORDER

This Cause came on for hearing before the undersigned Judge of Compensation Claims on June 8, 2010. The claimant, Telson Emilsaint, was present and was represented by William Hutchinson, Esq. The employer, Frank Crum, and the carrier, Frank William Crum Insurance, Inc., were represented by Sandra D. Wilkerson, Esq.

For purposes of this order, the employee will be referred to as "employee" or "claimant". The employer/carrier will be referred to as "employer" or "carrier" or "employer/carrier".

This Final Order resolves the petitions for benefits filed July 7, 2009 and July 13, 2009.

All evidence was received and the record was closed on June 8, 2009.

Claim was made for the following:

1. Temporary total were temporary partial disability benefits from April 17, 2009 July 29, 2009.
2. Payment of medical bills From Northwest Medical Center, United Radiology, Sheridan Emergency, and Dr. Lieberman.

3. Provide future medical care.
4. Penalties, interest, costs of litigation and reasonable attorneys fees at the expense of the employer/carrier.

The claim was defended on the following grounds:

1. No injury by accident arising out of or in the course and scope of employment.
2. No causal relationship between employment and the injury.
3. No notice of workers compensation compensable injury.
4. No objective medical evidence of causation.
5. No entitlement to penalties, interest, and costs of litigation or reasonable attorney's fees at the expense of the employer/carrier.

The parties entered in the following stipulations:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.
2. Venue lies in Fort Lauderdale, Broward County, Florida.
3. On the alleged date of accident, there existed an employer/employee relationship with compensation coverage to the carrier listed herein.
4. The parties received timely notice of the pretrial and final hearing.
5. If compensable, the average weekly wage in the date of injury was \$383.09 with a corresponding compensation rate of \$255.60.

The following documents were offered into evidence:

Judge's Exhibits:

1. Petition for benefits filed July 9, 2009.

2. Petition for benefits filed July 13, 2009.
3. The Uniform Statewide Pretrial Stipulation form completed and signed by the attorneys and dated no later than March 8, 2010.
4. Employer/carrier's amendment pretrial filed March 18, 2010.
5. Employer/carrier's amendment to pretrial filed November 11, 2009.
6. Employer/carrier's trial memorandum (for argument only).

Claimant's Exhibits:

1. Records of Dr. Lieberman as a factual exhibit only and not for the opinions contained therein through deposition taken June 3, 2010.
2. Records of Northwest Medical Center as a factual exhibit only and not for the opinions contained therein.
3. Bills from Northwest Medical. The employer/carrier rejected to these bills in the objection was sustained.

Employer/Carrier Exhibits:

1. Deposition of Amy Tobey, registrar for Northwest Medical taken May 17, 2010.
2. Deposition of Fredricka Silva, medical records custodian for Northwest Medical Center taken May 17, 2010.

Proffered exhibits:

1. Bills from Northwest Medical Center.

In making my findings of fact and the conclusions of law in this claim, I have carefully considered and weighed all the evidence presented. I have observed the candor and demeanor of the witnesses and have attempted to resolve all conflicts in the testimony and evidence presented. Although I may not reference every piece of evidence presented by the parties, I have fully considered all the factual evidence in arriving at my conclusions of law.

THEREFORE, undersigned Judge of Compensation Claims finds that:

1. I have jurisdiction of the subject matter and the parties of this claim.
2. The stipulations of the parties are adopted and shall become part of the findings of facts herein.
3. The documentary exhibits offered by the parties are admitted into evidence and shall become a part of the record herein. Proffered exhibits are clearly marked as such.
4. The claimant, Telson Emilsaint, testified that Creole is his native language but that he would testify without an interpreter to which counsel for both parties agreed.
5. This is a controverted accident with the employer/carrier taking the position that claimant was injured at home, admitted same to his supervisor, and then reported an industrial accident on the date alleged when he claims that he slipped at work. While he did not feel pain immediately, the pain worsened over a period of weeks.
6. I accept the testimony of the claimant's supervisor, Josh Henson that Mr. Henson observed the claimant limping on the job and the claimant told Mr. Henson he injured his leg and ankle while helping his son carry a television set up the stairs at home. Mr. Henson reported this to his supervisor and their stories are consistent. Therefore, I reject the testimony of the claimant that the accident happened on the job and find that the claim should be denied and dismissed with prejudice.

7. If the claim were found to be compensable, then the claimant has not established evidence of any lost wages or need for medical care through admissible objective medical evidence as to causal relationship between the alleged accident and the benefits claimed. Therefore, if compensable, benefits would be denied based on lack of competent substantial evidence to support claims for same.

8. Because the claim is found to be not compensable, claims for attorney's fees and costs of litigation are also denied and dismissed with prejudice.

Wherefore, it is Ordered that:

1. The claims found in the petitions for benefits listed in this order as well as those claims in the pretrial stipulation form exhibit in this order are denied and dismissed with prejudice.

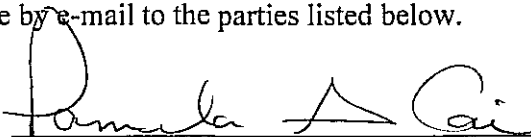
2. The claims for costs of litigation and reasonable attorney's fees at the expense of the employer/carrier are denied and dismissed with prejudice.

DONE AND ORDERED in chambers in Jacksonville, Duval County, Florida.



Stephen L. Rosen
Judge of Compensation Claims

I HEREBY CERTIFY that the foregoing Order was entered this 10th, day of June, 2010, and that a true copy thereof was sent on said date by e-mail to the parties listed below.


Secretary to Judge Stephen L. Rosen

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