

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

Thelma Teran,	)	
<b>Employee/Claimant,</b>	)	
	)	<b>OJCC Case No.:</b> 03-014280SLR
Vs.	)	
	)	<b>Accident Date:</b> 03/23/2003
Goodwill Industries of South Florida &	)	
United States Fire Insurance Co.	)	
<b>Employer/Carrier/Servicing Agent.)</b>	)	<b>Judge:</b> Stephen L. Rosen

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**FINAL ORDER**

**This Cause** came on for hearing before the undersigned Judge of Compensation Claims on March 23, 2010. The claimant, Thelma Teran, was present and was represented by Monica D. Cooper, Esq. The employer, Goodwill Industries of South Florida, and the servicing agent, United States Fire Insurance Company, 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 April 02, 2009 and November 24, 2009.

All issues in the pending petitions have been mediated making them ripe for determination in this final order.

All evidence was received and the record was closed on March 23, 2010.

**Claim was made for the following:**

1. Medical care for the claimant in her country of residence, Nicaragua.
2. Temporary total disability or temporary partial disability compensation for the maximum 104 weeks.

3. 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. The statute limitations has run barring any further benefits as a result of the industrial accident.
2. The industrial accident is no longer the major contributing cause of the claimant's need for medical care or indemnity benefits.
3. All indemnity benefits have been voluntarily paid timely.
4. The claimant has voluntarily limited her income.
5. Claimant has reached maximum medical improvement without permanent impairment and is not entitled to any temporary disability indemnity benefits.
6. Apportionment.
7. The claims in the pending petitions for benefits have been dismissed twice and, therefore, res judicata applies barring the current claims.
8. No entitlement to penalties, interest, costs of litigation or reasonable attorneys 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 Jacksonville, Duval County, Florida.
3. The claimant, Thelma Teran, was injured by accident arising out of and in the course and scope of her employment with the employer herein on March 23, 2003.

4. On that day, there was workers compensation coverage service through Crum and Forster. United States Fire Insurance Company is the current servicing agent to the employer.
5. There was timely notice of the accident and timely notice of this hearing given to the parties.
6. The injuries to the claimant's cervical spine and right shoulder were accepted as compensable.
7. On the date of accident, the average weekly wage was \$208.89 per week without fringe benefits, and with fringe benefits was \$228.65 per week.
8. The employer/carriers notice to controvert was filed June 22, 2009 with DOAH.

**The following documents were offered into evidence:**

**Judge's Exhibits:**

1. Petition for benefits filed April 02, 2009 and the response to that petition filed June 22, 2009.
2. Petition for benefits filed November 24, 2009.
3. The Uniform Statewide Pretrial Stipulation form completed and signed by the attorneys and dated no later than July 29, 2009.
4. Claimant's notice of objection filed March 03, 2010.
5. Amendment to pretrial stipulation filed February 22, 2000 and.
6. Claimants amendment to pretrial stipulation filed September 24, 2009.
7. Amendment to pretrial stipulation filed September 29, 2009.
8. Objection the claimant's amendment filed September 29, 2009.
9. Amendment to pretrial stipulation filed October 14, 2009.

10. Amendment to pretrial stipulation filed October 16, 2009.
11. Claimants amendment to pretrial stipulation filed February 10, 2010.
12. Amendment to pretrial stipulation filed February 19, 2010.
13. Motion to vacate filed November 11, 2009.
14. Claimant's trial memorandum (for argument only).
15. Employer/carriers trial memorandum (for argument only).
16. Amendment to pretrial stipulation filed October 08, 2009.

**Claimant's Exhibits:**

1. Deposition of Robert Moya, M.D., taken March 19, 2010.
2. Medical records of authorized physicians and claimants IME filed November 18, 2009.

**Employer/Carrier Exhibits:**

1. Response to Petition for Benefits dated June 22, 2009.
2. October 8, 2009 Amendment to Pretrial Stipulation.
3. Deposition of John Bailey, Florida Department of Financial Services Workers' Compensation Division, dated November 4, 2009 and attachments.
4. September 30, 2009 Amendment to Pretrial Stipulation.
5. October 14, 2009 Amendment to Pretrial Stipulation.
6. November 3, 2009 Notice of Employer/Carrier's Objection.
7. November 12, 2009 Employer/Carrier's Motion for Judicial Notice.
8. Order on Employer/Carrier Motion for Judicial Notice dated 12/4/09.
9. Deposition of Claimant dated November 9, 2009.
10. Deposition of Adjuster, Bethany Petutsky, dated September 2, 2009.

11. Deposition of Lori Campbell dated November 2, 2009 and attachments.
12. Deposition of Rhunette Lee dated October 28, 2009 and attachments.
13. Deposition of Aimee Davis dated November 6, 2009 and attachments.
14. Deposition of Dr. Blinn dated November 9, 2009 and attachments.
15. March 9, 2009 Order dismissing Petitions for Benefits without prejudice.
16. "Workers' Compensation Facts for Florida Injured Employees" revised 8/2002 Informational Benefits Brochure.
17. Notice of Injury.
18. 3/14/08 Order on Argument to Evidentiary Objections.
19. Employer/Carrier Pretrial Stipulation dated 2/19/10.
20. Employer/Carrier Amendment to Pretrial Stipulation dated 2/22/10.
21. Employer/Carrier Motion to Amend Pretrial Stipulation dated 3/3/10.
22. Order approving Motion to Amend Pretrial Stipulation.
23. Employer/Carrier Motion to Amend Pretrial Stipulation dated 3/12/10.
24. Employer/Carrier Motion to Admit Deposition testimony of lay witnesses dated 3/16/10.
25. Deposition of Dr. Ballweg dated January 20, 2010 with attachments.
26. Deposition of Janyce Whiteside, Records Custodian for Winn Dixie dated March 8, 2010 with attachments.
27. Composite Exhibit of Goodwill Industries Records (Letter dated 9/1 0/04 to Claimant from Margaret S. Williams, RN COHN, Administrator, Employee Health Service; Modified Duty Acknowledgment signed by claimant 3/24/03; 2003/2004 Absentee Calendar)
28. Deposition of Claimant dated June 3, 2005

29. Composite Exhibit of Return Receipt Card dated 10/15/04 and Letter dated 10/24/04 to claimant from Lori Campbell.

**Joint exhibits:**

1. Payout records of the employer/carrier.

**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.
4. The claimant, Thelma Teran, was born January 01, 1939. In her native country of Nicaragua, the claimant was a teacher. Her permanent residence is currently in Nicaragua.
5. She was hired as an assistant by the employer where she worked in a trailer taking in clothes and other donations. Prior to March 23, 2003, she denies any physical problems with her right shoulder and the upper right side of her neck or right arm. She is right hand dominant.
6. On March 23, 2003, the claimant was struck on her right arm and shoulder by the door. She went to Kendall Hospital and received authorized care by Dr. Blinn and Dr. Whittles thereafter. She also had an independent examination with Dr. Moya on June 19, 2003, a doctor of her choice.

7. Dr. Blinn placed some restrictions her activity which included no lifting over 10 pounds. She worked on light duty for several months after the accident at the same salary with the same hours. She then returned to work at the same store where she was injured putting price tags on clothing and hanging them on a rack. However, she testified that this repeated motion caused pain in her right arm.

8. She continued in her employment with the employer, and in 2004 her job was overseen by a new manager. The claimant was unable to work with this manager because the claimant was, as she testified, made to work beyond her physical limits. Specifically, she was unable to sweep the floors.

9. In 2007, the claimant began to work at Winn-Dixie stores in approximately April of 2007. She left Winn-Dixie in July of 2008 and her reasons for leaving are somewhat unclear.

10. The representative of the employer's health service, Ms. Williams, testified that the claimant was hired in November of 2002 and worked until October 21, 2004. She had extended absences during this period of employment. The claimant was officially terminated on November 07, 2005 due to job abandonment.

11. Ms. Williams testified that the employer honored all restrictions given by the doctor upon the claimant's return to employment after the accident. By letter of April 02, 2004 sent to her known address, the claimant was given new medical restrictions and the letter included a reminder of light duty.

12. The record reflects that the last treatment by an authorized provider was October 01, 2007 and the last payment of indemnity to the claimant was on January 31, 2005.

13. The employer/carrier contends that it has complied F. S. 440.185 and the statute of limitations had run on this claim prior to the filing of the petition on

April 02, 2009. The claimant contends that the record contains clear and convincing evidence that the employer/carrier did not comply with F. S. 440.185 which requires it to send a brochure to the claimant outlining the claimant's rights after industrial accident and is, therefore, estopped from relying on the statute of limitations.

14. I find that the record contains competent substantial evidence through the testimony of various claims adjusters that handled this file for the employer/carrier that the claimant was furnished with a brochure approved by the Division of Workers Compensation which outlined the claimant's rights including notification of the statute limitations and her obligations thereunder. The notation by Aimee Davis, one of the initial claims people on this case, is uncontradicted that she made a notation on the injury report that was the usual procedure of the employer/carrier. It confirms that she sent a brochure entitled "Workers Compensation Facts for Florida's Injured Employees" on March 24, 2003, the day after the accident.

15. The claimant does not deny living at the address to where the brochure was sent at the time of the accident. I find that the employer/carrier has documented its procedure in sending this brochure as a usual and customary process at the time of the industrial accident. The testimony of Mr. Bailey, a Division employee, shows the brochure was authenticated as the brochure promulgated and published by the Division of Workers Compensation as of the date of the claimants' accident.

16. Therefore, I find that, the claimant has not shown clear and convincing evidence to rebut the competent substantial evidence presented by the employer/carrier that the brochure was mailed in compliance with F. S. 440.185. I further find that the statute of limitations ran on this claim no later than October 02, 2008.



17. Assuming, arguendo, that the statute of limitations has not run, there is no competent substantial evidence to show that the industrial accident remains the major contributing cause of the claimant's complaints. Nor is there any current competent substantial evidence to show medical necessity of the need for treatment at the present time. The testimony of Dr. Moya shows that his last evaluation of the claimant was so remote in time from the date of his testimony on March 19, 2010 that his opinions cannot be considered more than speculative from his examination some 7 years prior. Therefore, the claims for medical care and indemnity benefits would be denied.

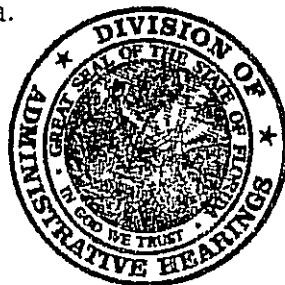
18. Claims for penalties, interest, costs of litigation and reasonable attorneys' fees at the expense of the employer/carrier are also denied.

19. Because of my findings and rulings in this order based on the evidence presented, I do not reached the issue of whether res judicata applies to the dismissal of petitions twice.

**Wherefore, it is Ordered that:**

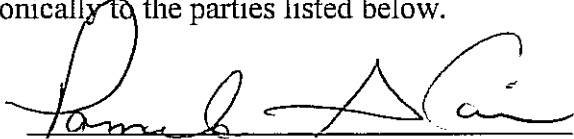
1. The claims for indemnity benefits, medical care, penalties and interest, costs of litigation, and reasonable attorney's fees at the expense of the employer/carrier herein are DENIED and dismissed with prejudice.

**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 31<sup>st</sup> day of March, 2010, and that a true copy thereof was sent electronically to the parties listed below.

  
Secretary to Judge Stephen L. Rosen

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