

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

Raul Alcazar, Sr.,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 08-14381EDS
)	
National Employer Services, Inc,)	Date of Accident: 1/15/2008(alleged)
)	
Employer,)	
)	
and)	
)	
Southeast Services-WC Dept.,)	
)	
Carrier/Servicing Agent.)	
)	

ABBREVIATED COMPENSATION ORDER

This ABBREVIATED ORDER is entered into pursuant to Section 440.25(4)(d), Florida Statutes. Either party may request an Expanded Compensation Order with detailed Findings of Fact and Conclusions of Law by filing a motion pursuant to Rule 60Q-6.119, Florida Administrative Code.

This case came on for a Final Hearing before the undersigned on May 28, 2009, in Lakeland, Polk County, Florida. Claimant was represented by Nora Leto, Esquire. The Employer/Carrier was represented by Timothy Stanton, Esquire.

Based upon the testimony, stipulations and exhibits, it is FOUND and ORDERED that:

1. There is no dispute but that the Claimant alleged he sustained compensable injuries as a result of an accident that occurred and arose out of the course and scope of the Claimant's covered employment with the subject employer on approximately January 15, 2008.
2. Venue is proper in Polk County, Florida by stipulation.
3. The issues for determination were brought by a Petition for Benefits docketed on June 2, 2008 which requested temporary total/temporary partial disability benefits from March 1, 2008 based on a stipulated AWW and Compensation rate of \$896.50 and \$597.61 respectively, and penalties, interest, costs, and attorneys fees. These claims were mediated on October 2, 2008. These claims were defended on the arguments that there is no medical evidence of total disability; no entitlement to additional TPD; voluntary limitation of income; claimant returned to work; Claimant at MMI; disability not causally related to January 15, 2008 accident; PICA no due or owing.
4. Claimant alleges he injured his right shoulder on January 15, 2008 when he fell from a truck. There is no evidence claimant was ever totally disabled. However, the Employer/Servicing agent accepted the claim for temporary benefits and between the

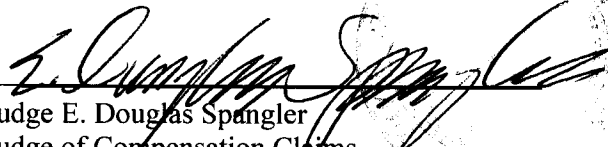
dates of May 6, 2008 and July 7, 2008 paid claimant three payments of \$1792.83 or a total of \$5678.49. Deposition testimony of Kathleen Brown, the present adjuster, verified that each check represented installments of three weeks of indemnity at the total disability rate. Another payment of \$1792.83 was sent to claimant in August but was returned, and not negotiated.

5. Following his injury claimant worked full duty in his job supervising a fruit picking crew until the fruit was picked out around March 1, 2008, despite being restricted by Dundee Medical Walk-in Clinic with lifting restrictions due to his right shoulder complaints. After the work ended claimant applied for Unemployment Compensation to become effective March 2, 2008, and received 13 weeks of unemployment benefits from March 8, 2008 through June 7, 2008 at the gross rate of \$260.00 per week. Following June 7, 2008, there is no evidence claimant was attempting to find suitable work, and testified to only one employment contact. During the month of June, the Employer also sent two potential job leads to claimant which claimant denied receiving. There is evidence claimant may have visited his family in Mexico in June.
6. By July 16, 2008 claimant had returned to his summer job in Williamson, New York, at Orbaker's Fruit Farm. Claimant had worked for this farm every summer since 1991. His present job was as a crew boss. His normal season with Orbaker's is mid July through the end of November, and he worked between July 16, 2008 and November 10, 2008. Claimant received wages and housing from Orbaker's. There is no evidence claimant's earnings were affected in any way by his right shoulder injury during this work period. Claimant then returned to Florida in November 2008 and worked for Services to Agriculture IV.
7. On referral from Dundee Medical Clinic, claimant was seen by Dr. Jose R. Thomas-Richard, M.D an orthopedist on May 9, 2008. He diagnosed a shoulder strain and provided additional restrictions limiting lifting in the right upper extremity to ten pounds. Those restrictions had increased to twenty pounds by May 30, 2008. On July 11, 2008 claimant was again seen in Dr. Thomas-Richard's office and care was recommended to be provided in New York while claimant was there. Claimant was cleared to do all normal duties in his job in New York based on claimant's assertion that the work was not strenuous. The November 24, 2008 office note from Dr. Thomas-Richard indicated that the work in New York did not cause claimant any difficulty. He was released to full duty work without restrictions at that time. Claimant was placed at maximum medical improvement on January 15, 2009 and based on representations to Dr. Thomas-Richard from the claimant that work was not strenuous, no restrictions were provided. However a 12% permanent rating was imposed which the employer has accepted.
8. Claimant is entitled to temporary partial benefits between the dates of March 2, 2008 through June 7, 2008. Claimant received Unemployment Benefits during this period and was required to verify his work status with a report every two weeks in order to continue to receive his benefits. The employer apparently accepted responsibility for those dates and made three payments of indemnity. Claimant presented no evidence of any attempt to find suitable work after June 7, 2008 until his return to full work at full compensation in New York from July 16, 2008. Thereafter, as recorded in Dr. Thomas-Richard's records in November 2008 claimant reported that the injuries had no effect on his ability to work. Claimant received 13 weeks of unemployment benefits at \$260.00 per week or \$3380 during the March 2, 2008 to June 7, 2008 period. Full TPD benefits during this same period would total \$7458.88. Applying the unemployment offset to this amount, the employer would be responsible for \$4078.88 of additional benefits. However, the employer had paid and claimant accepted three payments totaling \$5678.49 which results in an over payment of benefits to the claimant in the amount of \$1599.61.

Wherefore on the basis of the foregoing, it is ORDERED and ADJUDGED;

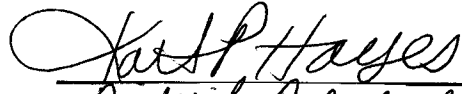
The Claimant's Petition for Benefits dated June 2, 2008 and the claim for temporary total/temporary partial disability from March 1, 2008 and forward is DENIED, with prejudice.

DONE AND ORDERED in Chambers of Lee County, Florida.



Judge E. Douglas Spangler
Judge of Compensation Claims

I certify that a true copy of the foregoing Order was served by mail on all parties and counsel this 24 day of July, 2009.



District Deputy Clerk