STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
MIAMI-DADE COUNTY DISTRICT

EMPLOYEE:
Henri Van Der Borg
17275 Collins Avenue, Apt. 1005
Sunny Isles, FL 33160

ATTORNEY FOR EMPLOYEE:
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95 Merrick Way, Suite 610
Coral Gables, FL 33134

EMPLOYER:
Duamex LLC
3301 NW 97th Ave.
Miami, FL 33172

ATTORNEY FOR EMPLOYER/CARRIER:
Rex A. Hurley, Esquire
1560 Orange Ave., Ste. 500
Winter Park, FL 32789

CARRIER:
Hortica
Post Office Box 326
Mims, FL 32754

OJCC CASE NO.: 08-030770SMS
D/A: 12/10/2007

COMPENSATION ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims for a final hearing on 6/11/09 regarding petitions for benefits (PFBs) filed 11/6/08 and 12/12/08.

Documentary Exhibits:

JCC-

1. 3/19/09 Pre-trial Stipulation.

Claimant-

1. Deposition of Dr. Mario Nanes (only admitted into evidence for fact purposes as explained below).

2. 11/6/08 and 12/12/08 PFBs.

3. 11/21/08 Response to PFB.

4. Interest Purchase Agreement, Assignment Separate from Certificate,

Written Consent of Sole Member of Duamex, LLC, Resignation and Closing Certificate.

E/C-

1. Deposition of the claimant taken 3/16/09 with attachments.

2. Deposition of Dr. Jeffrey Greiff.

3. Unemployment Compensation Records.

4. Deposition of Denise Graname.

5. Deposition of Dr. Philip Lozman.

6. Information as to Unemployment Compensation Entitlement, Emergency Unemployment Compensation Monetary Determination, Bills for Independent Consulting Services to Wells Fargo Bank and Employee Earnings Report.

7. CV of Edward Filpes, vocational rehabilitation expert.

8. 5/29/09 Vocational Rehabilitation Report of Mr. Filpes.

Claims:

1. TTD from December 10, 2007 to present.

2. Authorization of neurosurgeon.

3. PTD from December 10, 2007 and continuing.

4. Reimbursement to claimant of $7,248.21 in out-of-pocket payments.

5. Attendant care in part from December 26, 2007 to present.

6. Penalties, Interest, Costs, and Attorney's Fees (PICA).

7. The claims for authorization of orthopedic surgeon and chiropractor were voluntarily dismissed at the final hearing.

Defenses:

1. Claimant is not an employee under workers' compensation policy..
2. No injury or accident within the scope and course of employment.
3. Not compensable.
4. Alleged injury not timely reported.
5. Major contributing cause bars claim.
6. Claimant's condition is personal and/or preexisting.
7. All treatment requested is not causally related and not medically necessary.
8. No PICA due or owing.
9. Medical care was not authorized.
10. No PICA due or owing and no prior request for medical care was made.
11. Claimant is not PTD.

Finding of Fact and Conclusions of Law:

1. Claimant's son, Robert S. Van De Borg and the claimant, Henry Van De Borg testified in person at the final hearing. Mr. Robert Van De Borg is 22 years of age and worked for Duamex in inventory management and procurement. He explained that Duamex imports flowers throughout the world, re-sales in the U. S. to wholesale mass markets. Robert lives with his dad, the claimant.

2. On or about December of 2007, Duamex was winding down business. Duamex was clearing its facility and selling off its assets. Robert explained that the facilities consisted of a large warehouse, with an office in the front of the warehouse. The building also contained a dry and refrigerated rooms. In the refrigerated rooms,

three were coolers and large garbage cans full of water where bouquets were created.

3. On December 10, 2007, Robert and the claimant were walking through the different rooms in the warehouse to take note of the existing merchandise. Robert was in one room and the claimant was in another room (production room). Robert heard the claimant scream. Robert went to the room where the claimant was and found him on the floor, on his hands and knees. A garbage can was tilted over and water was on the floor. Robert helped his father (claimant) up and drove him home. On the following day, claimant went to work however, sat in his desk hunched over.

4. On 12/12/07, when claimant awoke, he advised his son and girlfriend that he could not move his legs. The claimant was crying. Robert gathered a bellhop trolley and wheeled the claimant to the car. The claimant wanted to go to work however, Robert and his girlfriend took him to the hospital. industrial accident. On cross-examination, Robert admitted that his father was taking Vicodin and visiting Dr. Greiff for back problems prior to the alleged 12/12/07 accident. Robert secured other employment in April of 2008.

5. The claimant, Henri Van De Berg, testified in person at the final hearing. He is from the Netherlands and immigrated to the U.S. in 1982. He became a U.S. citizen in 1996. The claimant achieved a Bachelor in Marketing while in the Netherlands. His past work experience is in the flower import business.

6. In 1984, Duamex was created. In 1988, claimant was hired by Duamex with the idea that he would become part-owner. Duamex then moved location. Claimant also owned the company (Excelsea) that owned the building that Duamex was located in. Claimant was the CEO of Duamex in 2007. On 8/29/07, claimant sold his interest in

Duamex. In return, claimant received $500,000.00 and 20% ownership in holding company. Claimant continued to receive monies even after the sale. He received $205,000.00 in 26 weeks and his health insurance was also paid. Claimant was never involved in purchasing or handling any workers' compensation claims.

7. Claimant admitted to his undergoing back surgeries in either the late 1980's or early 1990's while living in Connecticut. He continued to work and received care from family doctor, Dr. Greiff. Claimant further admitted to complaining of back pain to Dr. Greiff in 10/07 and 12/07. In fact, claimant was taking Vicodin and muscle relaxants. Approximately, one week prior to the alleged 12/10/07 accident, claimant experienced back pain.

8. According to the claimant, on 12/10/07, he was walking through the warehouse. In the production room, there were large garbage cans (4 feet in height) filled with water, which was utilized to keep ice in to make flower arrangements. The ice had melted. As claimant sold the garbage cans, he desired to empty them. He bend down and placed his and under the grip. Upon tilting the garbage can, claimant felt a knife-like pain in his lower back. The pain was an excruciating pain as he never felt like before. He rated the pain a 9 or 10 in severity. Claimant then yelled out for his son. His son helped him up and drove him home. At night, claimant took Vicodin as he was in a lot of pain.

9. On the following day (12/11/07), claimant worked in his office. He did not undertake any physical work. However, claimant's back pain continued with radiation into his legs. On 12/12/07, claimant's pain reverted to a 9 or 10 in severity. He could not walk. Notwithstanding same, claimant still wanted to work. On the way to work,

claimant's son and girlfriend took the claimant to the emergency room at Mt. Sinai Hospital. The claimant was admitted to Mount Sinai Medical Center and diagnosed with cauda equina syndrome. Claimant underwent L3-4 laminectomies, removal of a large extruded disc fragment and discectomy at L3-4. He was discharged from Mount Sinai Medical Center on December 26, 2007. He was referred to in-patient physical therapy at HealthSouth Sunrise Rehabilitation Center where he was admitted on December 26, 2007. Claimant remained in-patient until 1/8/07. Thereafter, he attended approximately 40 sessions of rehabilitation on an out-patient basis at Aventura Hospital. Claimant utilized his health insurance paying a deductable of $7,248.00.

10. Presently, claimant utilizes short braces on his legs. He uses a cane to walk. He works out in a gym. He is able to drive his vehicle. Claimant takes medication for nerve pain. He is not able to sit for long periods of time. He walks very slowly. He has problems sleeping. He has pain everyday. He has become short tempered and irritable.

11. Since the alleged 12/10/07 accident, claimant continued to collect receivables of Duamex. Wells Fargo had a lien and they hired the claimant collect the receivables. Claimant was paid $10,000.00 over 3 months. Claimant applied for and was initially denied unemployment compensation benefits. He appealed and was awarded the benefits. He collected unemployment compensation benefits until two weeks prior to the final hearing. Additionally, claimant was accepted by SSA as disabled retroactive to June of 2008. Claimant receives $2,286.00 per month in SSD benefits.

12. Notwithstanding the fact that claimant has been accepted as disabled by the SSA, he has looked for work as of 1/08. Claimant wants to work. He has looked for

work in the marketing, sales, and consulting. He has had 10 in person interviews with no success. Claimant also hired a head hunter.

13. On cross-examination, claimant admitted that he was aware that Duamex carried workers' compensation insurance. Claimant knew that the wc carrier paid benefits for other employees. He did not inform Hortica, workers' compensation carrier for Duamex that he had sold the business. Likewise, claimant did not advise Hortica of the alleged industrial accident nor inquire regarding completion of report of accident/injury.

14. Further, claimant admitted to providing the history of the alleged 12/10/07 accident to the doctors at the hospital. Moreover, claimant did not inform the Unemployment Agency of the alleged work accident nor the fact that he filed a workers' compensation claim.

A. Claimant not an employee under workers' compensation policy

15. The claimant, as the managing member of Duamex, LLC, was not a covered employee under the Duamex, LLC workers' compensation policy. Whether an LLC member is included as a covered employee under a workers' compensation policy depends on whether they file with the State as an Officer or Manager. Dependent on that, the individual is either considered a Corporate Officer or a Sole Proprietor or Partner. Once it is determined which category the individual lies, Florida Statute 440.02(15) provides rules in which an individual maybe included or excluded from coverage under the chapter. The evidence is clear that the claimant was not a covered individual under the Duamex, LLC in effect at the time of the alleged industrial accident.

16. The claimant took the deposition of Hortica Insurance and Employee

Benefits ("Hortica") Sr. Underwriter, Denise Grandame, on January 21, 2009. According to Denise, the claimant was excluded from the Duamex, LLC workers' compensation policy in place at the time of the alleged industrial accident. (Denise depo, Page 19). Whether LLC Members are excluded or included in a workers' compensation policy depends on how the individual files with the State. (Denise depo at page 11 & 13). If an individual files with the State as an Officer, he/she is treated as a Corporate Officer. (Ed.) Pursuant to Florida Statute 440.02(15)(b)(3), an officer of a corporation may elect to be exempt from the chapter by filing a written notice of election with the department. If an individual files with the State as a Manager, he/she is treated as a sole proprietor or partner and is automatically excluded. (Id.) According to 440.02(15)(c)(I), non-construction sole proprietors or partners may elect to be included in the definition of employee by filing proper notice.

17. The claimant was registered with the Florida Dept. of State, Division of Corporations as a Manager/Member. (Denise depo, Page 17). Since the claimant fell under the classification of partner or sole proprietor and failed to elect to be included, he was excluded from coverage under the policy in effect on the alleged industrial accident. (Denise depo, Page 11 & 19).

18. Additionally, there were no premium dollars collected on behalf of the claimant's salary to be included in the calculation of the workers' compensation policy premium. (Denise depo, Page 14). If the claimant had elected to be included in the policy, Hortica would have calculated the premium to include the salary in excess of $200,000.00 that the claimant alleges. (Denise depo, Page 21). He was therefore not a covered employee under the existing workers' compensation policy at the time of the

alleged industrial accident.

19. Both the workers' compensation policy in place at the time of the industrial accident and the testimony of Sr. Underwriter, Denise Grandame, substantiate that the claimant was not covered under the policy as an LLC member whose payroll was not included in premium calculations and who did not properly elect to be included under the policy pursuant to Florida Statute.

20. The claimant alleges that he was no longer a member of Duamex, LLC at the time of the alleged injury. However, it is undisputed that Hortica was not placed on notice of the sale of Duamex and claimant's change of employment status and election of workers' compensation coverage at the time of the alleged 12/12/07 industrial accident.

B. No injury of accident in the course and scope of employment

21. Notwithstanding the above finding regarding workers' compensation coverage, I find that claimant did not suffer an accident and injuries within the course and scope of his employment. The claimant alleges a December 10, 2007 traumatic event at work. However, he did not seek treatment until December 12, 2007 at Mount Sinai Medical Center. Dr. Mario Nanes is the surgeon who performed the operative procedures at Mount Sinai Medical Center. The claimant continued to treat with Dr. Mario Nanes for his injury after he was discharged on December 26, 2007. The claimant took the deposition of Dr. Nanes on April 2, 2009 whom provided the following fact testimony. Dr. Nanes and the records show that the claimant never reported an on the job injury or accident as alleged.

22. Upon admission at Mt. Sinai Medical Center on December 12, 2007

claimant indicated a "history of back pain since 1990, with lumbar herniated disc. Operated on 1994-1998." (ER Dept. Physician Record and Dr. Nanes Depo, Page 42-44). The claimant also "complained of increasing severe low back pain for 3-4 weeks with radiation down both legs...." (ER Record and Dr. Nanes depo, Page 44). Dr. Nanes confirmed that there was no history provided of an on the job accident. (Dr. Nanes, Page 45). Additionally, on the Nurse's Department Record, the claimant specifically denied trauma. (Ed.). Next, the claimant was cleared for surgery by Dr. Andre Tamayo-Chelala and indicated a history of lower back pain for 3-4 weeks, also with radiation to both legs. (Consultation report & Dr. Nanes, Page 54). The Emergency Department Nurses Record indicates that the claimant ambulated and was complaining of severe back pain increasing in severity and that since the night before he developed tingling and numbness, but again, no indication of on the job injury (Dr. Nanes depo, Page 56-57).

23. Finally, during Dr. Nanes' initial consultation of the claimant on December 12, 2007, the claimant never indicated an on the job injury. (Dr. Nanes depo, Page 40). In fact, Dr. Nanes testified that the claimant reported that for the past month there has been an increase in the persistence and increase in the severity and frequency of symptoms (Dr. Nanes, Page 33). Furthermore, Dr. Nanes asked the claimant specifically if he had the history of any trauma or accident, which he denied (Dr. Nanes, Page 36-3 7). Also, the claimant had the opportunity to tell Dr. Nanes regarding treating twice for back pain in the last 30 days with his PCP, Dr. Greiff, but did not (Dr. Nanes, Page 37-38).

24. After viewing the demeanor of the claimant and his son, Robert Van De

Borg in conjunction with their testimony and the evidence, I find them not credible. Claimant's son did not witness the accident. More importantly, I find that Robert has a personal interest in the outcome of the instant case as the claimant is his father.

25. As to the claimant, I find that the totality of the evidence does not support his testimony. Claimant testified that while he had prior back pain, the pain he felt on 12/10/07 was like no other. Yet, he failed to advise Dr. Nanes of the precipitating event (alleged industrial accident) of the back pain. I find claimant had ample opportunity, during his hospitalization and thereafter in follow-up visits, to inform his physicians regarding the alleged industrial accident and did not do so. On the other hand, claimant was able to provide very detailed information to Dr. Nanes while in the hospital.

26. To that extent, I find the history claimant gave to Dr. Nanes and other physicians/nurses at the hospital regarding the etiology of his pain to be more accurate as the claimant's main concern at that time was to provide the doctors and nurses with an accurate history in order to secure the appropriate medical treatment. I find claimant's history to the physicians and nurses on 12/12/07, two days after the alleged 12/10/07 industrial accident, is more reliable than a history provided 3 months thereafter, in 2/08.

27. Moreover, Carlos Cabrera, Hortica agent on the Duamex, LLC policy in effect on the date of the alleged industrial accident testified in person at the final hearing. Claimant exchanged emails with Mr. Cabrera while in the hospital and after the alleged 12/10/07 injury. Specifically, on December 15, 2007, the claimant emailed Mr. Cabrera indicating that he was in the hospital with a herniated disc, but made no

mention or report of an on the job accident. On December 17, 2009 the claimant emailed Carlos again advising of the emergency back operation due to an erupted disc. Again, the claimant made no mention or report of an on the job injury while in direct contact with his workers' compensation policy agent. After claimant was discharged from the hospital, claimant discussed with Mr. Cabrera two matters: payment of past due amounts for multiple insurance policies and insurance policy for building under new entity name of Excelsea. Claimant recalled this conversation and admitted not reporting the alleged 12/10/07 industrial accident to Mr. Cabrera at any time.

28. Further, claimant did not report his alleged accident to Hortica until February of 2008. On 2/20/08, E/C denied the claims on various grounds. Moreover, although claimant obviously had knowledge of the alleged industrial accident of 12/10/07 on same date and reported same to Hortica in 2/08, he nonetheless denied on several occasions suffering an injury to the State of Florida Unemployment office. Claimant simply provided a history of back problems which required surgery on 12/12/08. It is clear that claimant carefully selects to report only information beneficial to him depending on the benefits being sought. While applying for unemployment compensation benefits, claimant denied an injury. While seeking workers' compensation benefits, claimant testifies to an industrial accident. I find claimant's testimony and actions to be inconsistent and implausible. Accordingly, claimant is not entitled to any indemnity or medical treatment paid by E/C.

C. Claimant's condition as personal and/preexisting

29. The claimant admits to two prior disc surgeries. Although the surgeries are alleged to have taken place in the 1990's, the claimant continued to treat for back pain

with his primary care physician, Dr. Jeffrey Grieff.

30. Although Dr. Greiff is not an authorized treating physician, IME or EMA, the Employer/Carrier offered his records and testimony for factual and historical purposes to establish preexisting back pain and treatment. In *Office Depot v. Sweikata, 737 So.2d 1189* (Fla. 1st DCA 1999), the First DCA found error in the JCC's exclusion of factual reports of information contained within records regarding the claimant's prior back pain. *Id. at 1191*. In that case, the doctor enumerated the claimant's complaints, his diagnosis and the treatment that had been prescribed, but he offered no medical opinion. *Id.* The First DCA indicated that the exclusion of this evidence "was not harmless, because the existence of a pre-existing back condition may affect the compensability of a current back condition" and therefore remanded the case to the JCC to reevaluate the evidence. *Id.*

31. Dr. Greiff began treating the claimant in 2003 (Dr. Greiff depo, Page 5). The first complaint of back pain was made on March 3, 2003 when he reported low back pain which started on the Saturday before after moving a chair, which he felt was the cause of his pain. (Dr. Greiff, page 6-7). On August 2, 2004 the claimant returned with a chief complaint of low back pain. (Dr. Grieff, Page 8). He reported a history of low back pain which started 3 days prior. (Id) He said he has had several episodes like that since his prior low back disc surgery (Id.) He admitted to numbness and tingling in the legs in the past (Id). On September 28, 2005 he told Dr. Greiff that he gets back pain when stressed. (Dr. Greiff, Page 10).

32. During the year of the alleged industrial accident, the claimant complained

of low back pain to Dr. Greiff on two occasions. The first occasion that year was only a few months prior to the industrial accident. Particularly, on October 2, 2007 he reported low back pain which bothers him chronically, with pain radiating down to his legs and at times numbness in his legs. (Dr. Greiff, page 10-11). More importantly, less than one week before the alleged industrial accident on December 4,2007, claimant complained of back pain in the bilateral upper legs, which would sometime run down to his left leg (Dr. Greiff, Page 11). He said that he was under a lot of stress as his company was closing down. (Id). Additionally, he complained of abdominal pain when he would urinate (Id.).

33. Dr. Greiff believed the claimant to have a urinary tract infection on December 4, 2007. Dr. Nanes testified that when he saw the claimant on 12/12/07, he was having difficulty emptying his bladder. (Dr. Nanes depo, Page 51) The employer/carrier's IME, Dr. Lozman, testified on April 30, 2009 that urinary retention can lead to a urinary tract infection. (Dr. Lozman depo, Page) Dr. Nanes testified that if you see urinary retention or incontinence it usually happens shortly after a herniation and it's progressive. (Dr. Nanes depo, Page 51). As such, this confirms Dr. Lozman's opinion that the claimant had impending cauda equina syndrome prior to the alleged December 10, 2007 event. (Dr. Lozman depo, Page).

E. Alleged injury not timely reported

34. The claimant alleges a December 10, 2007 industrial accident. The carrier did not receive a First Notice of Injury until February of 2008. Where the employee and employer are the same person, notice to the employer is not necessarily notice to the

carrier. *Vicki' s Styling Inc. v. Moberg, 489 So.2d l94 (Fla. 1st DCA 1986).* Although the JCC may exercise discretion to excuse noncompliance with the timely notice requirement "on the ground that for some satisfactory reason such notice could not be given", I find no satisfactory reason exists in this case. *Leonard Electric Company v. Erskine, 634 So.2d 289 (Fla. 1st DCA 1994).* As indicated above, the claimant did not report an on the job injury, even when he had the opportunity to do so within the reporting period.

D. Major contributing cause bars claim

Section 440.09(l)(b) states:

> "If an injury arising out of and in the course of employment combines with a pre-existing disease or condition to cause or prolong disability or need for treatment, the employer must pay compensation or benefits required by this Chapter only to the extent that the injury arising out of and in the course of employment is or remains more than 50% responsible for the injury as compared to all other causes combined and thereafter remains the major contributing cause of the disability or need for treatment. Major contributing cause must be demonstrated by medical evidence only."

35. The employer/carrier's IME, Dr. Lozman, has opined that the alleged traumatic event of December 10, 2007 was not the major contributing cause of the claimant's condition or need for treatment. (Dr. Lozman depo, Pages-6.) After reviewing the medical records of Dr. Greiff, Dr. Lozman testified that the claimant had signs of cauda equina syndrome as early as October 2, 2007. (Dr. Lozman, Page 5) Based on the complaints made to Dr. Greiff on both October 2, 2007 and December 4, 2007, Dr. Lozman has firmly opined that, even if the December 10, 2007 event took place as the claimant now alleges, the cauda equina syndrome was present before that event. (Dr. Lozman, Page 5-6) I therefore find that the alleged industrial accident is not the major

contributing cause of the claimant's condition or need for treatment.

36. Dr. Nanes was the claimant's treating physician under his health insurance. He conducted the 12/12/07 surgery and followed-up with the claimant. It would be logical for the opinions of Dr. Nanes to be admissible. However, based on F.S. 440.13(5)(a), Dr. Nanes' opinions are inadmissible. Specifically, the claimant failed to designate Dr. Nanes as his IME within 15 days after the date of the IME was to take place. Nonetheless, I find Dr. Nanes' opinions do not substantiate that the alleged industrial accident was the major contributing cause of claimant injuries. To that extent, Dr. Nanes' opinions regarding causal relationship/major contributing cause were based on claimant's attorney hypothetical that an actual accident took place on 12/10/07. As I find that an industrial accident did not occur on 12/10/07, I reject Dr. Nanes' opinions as to causal relationship/major contributing cause.

E. Medical care was not authorized and home attendant care

37. The claimant failed to seek authorization in advance of obtaining the treatment. The claimant cannot select his own medical providers. Medical providers are selected by the carrier. The carrier must be given an opportunity to provide appropriate care upon request. There was no request. Even if the care was emergency in nature, I find the providers failed to advise the carrier within the statutory time frames set forth in section 440.13(3)(b). Under that section a health care provider who renders emergency care must notify the carrier by the close of the third business day after it has rendered such care. There is no evidence that such notice occurred.

38. While Dr. Nanes opined that claimant needed home attendant care for 4

hours a day, 3 days a week for the first 60 days after surgery, and 2 hours per day , 3 times a week for a couple of months, for the reasons stated herein, his opinions are rejected.

F. Claimant is not permanently and totally disabled

39. Pursuant to 440.15(1)(b), in order to obtain permanent total disability benefits, the employee must establish that he or she is not able to engage in at least sedentary employment, within a 50-mile radius of the employee's residence, due to his or her physical limitation. F.S. 440.15 (2004). I find that the claimant has failed to meet his burden.

40. Additionally, where a claimant has not reached MMI and has presented no competent substantial evidence that he/she will be totally disabled when he/she does reach MMI, any claim for PTD is premature. *Palm Beach Dermatology v. Mikan, 936 So.2d 671 (Fla. 1st DCA 2006).* I find the claimant has failed to meet this burden as well. The employer/carrier's IME, Dr. Lozman, has testified that the claimant has not reached maximum medical improvement (Dr. Lozman depo, Page 4). Dr. Lozman believes that at least two years should transpire prior to placing someone at MMI because there is a potential for continuing improvement with regards of neurologic function even after two years. (Id). Accordingly, the claimant would not be at MMI until at least December 2009, two years post surgery. (Id).

41. Dr. Lozman opined that the claimant is capable of performing at least sedentary work. (Dr. Lozman depo, Page 5). The employer/carrier's vocational provider, Ed Filpes, whom testified in person at the final hearing, identified appropriate and

available jobs. He testified that the more skills an injured person had, the better chance of securing employment. Claimant is personable and articulate. Claimant can certainly undertake sales and customer service work. Mr. Filpes labor market survey yielded 7 different categories of jobs that the claimant can undertake within his restrictions. I accept the testimony of Mr. Filpes over that of claimant's vocational rehabilitation expert, Mr. Pedro Roman who also appeared in person at the final hearing. While Mr. Roman testified that claimant would not find sedentary work within a 50 mile radius, he admitted that there are sedentary jobs available within 50 mile radius of claimant's home.

42. Furthermore, I find claimant is not entitled to TTD or PTD benefits during the time that he collected unemployment compensation. Pursuant to F..S. 440.15(10)(a), no compensation shall be payable for TTD or PTD under the chapter for any week in which the injured employee has received, or is receiving, unemployment compensation. Florida Statute Section 440.15 (2004).

WHEREFORE, IT IS ORDERED:

1. Claim for TTD benefits from December 10, 2007 to present is denied.
2. Claim for authorization of neurosurgeon is denied.
3. Claim for PTD benefits from December 10, 2007 and continuing is denied.
4. Claim for reimbursement to claimant of $7,248.21 in out-of-pocket payments is denied.
5. Claim for attendant care in part from December 26, 2007 to present is denied.
6. Claims for E/C paid Penalties, Interest, Costs, and Attorney's Fees (PICA) are denied.

Sylvia Medina-Shore
Judge of Compensation Claims

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the instant Compensation Order was sent by regular mail this 30th day of June, 2009 to: Henri Van De Borg, 17275 Collins Ave., Apt. 1005, Sunny Isle Beach, FL 33160; Luis N. Perez, Esquire, 95 Merrick Way, Ste. 610, Coral Gables, FL 33134; Duamex LLC, 3301 NW 97th Ave., Miami, FL 33172; Hortica, PO Box 326, Mims, FL 32754; Rex A. Hurley, Esquire, 1560 Orange Ave., Ste. 500, Winter Park, FL 32789.

Secretary to Judge of Compensation Claims