

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

<b>DEXTER BLACK,</b>	)	
	)	
Employee/Claimant	)	
	)	
vs.	)	OJCC Case No. 09-017500TWS
	)	
<b>TRAFFIC CONTROL DEVICES, INC.</b>	)	Accident date: 12/01/2008
	)	
Employer	)	
	)	
and	)	
	)	
<b>AMERISURE MUTUAL INSURANCE</b>	)	
<b>COMPANY</b>	)	
	)	<b>Judge: Thomas W. Sculco</b>
Carrier	)	

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COMPENSATION ORDER

After proper notice to all parties, a hearing was held and concluded on this claim in Orlando, Orange County, Florida on December 9, 2009. Present at the hearing was Attorney David Mallen for the claimant/employee and Attorney William Rogner for the employer/carrier, hereinafter referred to as the E/C.

This order addresses the Petition(s) for Benefits filed with DOAH on February 27, 2009, May 19, 2009 and July 6, 2009.

At hearing the evidence consisted of the testimony of: Dexter

Black and Hermada Daniels.

**DOCUMENTARY EVIDENCE:**

- #1 Claimant's: Hearing Information Sheet
- #2 E/C's: Memorandum of Law
- #3 Judge's: Pretrial Stipulation/attachments  
July 27, 2009
- #4 E/C's: Two Surveillance CD's
- #5 Joint: Medical Composite

After hearing all of the testimony and evidence presented, and after having resolved any and all conflicts therein, the undersigned Judge of Compensation Claims makes the following findings of fact and conclusions of law:

The issues for determination are claimant's claims for: TT/TP benefits from 3/20/08 to present; authorization of physical therapy and work conditioning per Dr. Goll; authorization of an osteopathic physician; authorization of an FCE per Dr. Goll; entitlement to ongoing benefits based on E/C's assertion of "misrepresentation" defense; and penalties, interest, costs, and attorneys' fees.

The E/C raised the defenses of: misrepresentation pursuant to sections 440.09(4) and 440.105, Florida Statutes; lost wages not related to compensable injury; claimant voluntarily limited his income; claimant reached MMI on 6/15/09 per Dr. Goll; no

penalties, interest, costs, and attorneys' fees due; and the E/C seeks costs as the prevailing party.

## **FINDINGS, ANALYSIS, AND CONCLUSIONS**

### *1. BACKGROUND*

Claimant was hired in February 2008 as a laborer by Traffic Control Devices. One of his supervisors was Hermada Daniels, who was a concrete foreman for the employer. According to Mr. Daniels, on several occasions claimant talked about his financial concerns because his work hours had been reduced in 2008 from 55 hours per week to 40 hours per week or less. Mr. Daniels also testified that claimant often talked about faking a work injury, but that he thought claimant was joking.

At the final hearing, claimant testified that on 12/1/08 he lifted up a mower and injured his low back. He reported the claimed injury the next day to the employer, who sent him to a Centra Care facility for treatment. According to the 12/2/08 Centra Care Record, "Trauma occurred due to [twisted] while at work, one day ago [and] on 12/1/08." The Centra Care record also indicated that claimant's diagnosis was a lumbar strain.

The E/C accepted the claim as compensable, and claimant next came under the care of Dr. Stephen Goll. Claimant first saw Dr.

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Goll on 2/26/09, and Dr. Goll's record of that date indicates "His pain began on December 1, 2008, following shoveling while on the job throughout the day." Dr. Goll reviewed an MRI scan dated 2/9/09, and indicated that the scan showed "minimal central annular protrusion L5-S1. Other levels are unremarkable." Dr. Goll diagnosed claimant with a thoracolumber strain, and eventually placed him at MMI on 6/15/09.

On April 20, 2009, the E/C filed a notice of denial of ongoing benefits based on claimant's alleged violation of the misrepresentation provisions contained in sections 440.09(4) and 440.105, Florida Statutes. Specifically, the E/C alleges that claimant misrepresented the occurrence of the alleged injury itself, and made several misrepresentations regarding his condition at his 6/11/09 deposition.

## 2. *E/C's MISREPRESENTATION DEFENSE*

Based on the evidence presented, I find that the E/C has proven, by a preponderance of the evidence, that claimant knowingly made false statements for the purpose of obtaining workers' compensation benefits. Hermada Daniels testified at the final hearing that on several occasions claimant talked about his financial concerns, and that claimant often talked about faking a work injury, but that he thought claimant was joking. Claimant

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denied that he ever said any such thing. Based on my assessment of the demeanor of claimant and Mr. Daniels, and considering the other evidence presented, I accept the testimony of Mr. Daniels as credible and truthful, and find that claimant's testimony on this point was knowingly false.

I recognize that claimant telling his supervisor that he was going to fake a work injury does not necessarily mean claimant did *not* suffer a work injury. However, my finding that claimant's trial testimony was knowingly false and in support of his workers' compensation claim, by itself, is sufficient to bar benefits pursuant to section 440.09(4), regardless of whether the injury occurred or not. Moreover, even though there is no evidence that directly contradicts claimant's testimony that he injured himself at work on 12/1/08, based on other evidence in the record and on my assessment of claimant's credibility and demeanor, I find, by a preponderance of the evidence, that claimant's testimony on this point is knowingly false as well.

Specifically, I note that claimant gave different descriptions of how the injury occurred to Centra Care (twisting), Dr. Goll (shoveling), and at the final hearing (lifting a mower). I have also considered the surveillance evidence offered by the E/C. The video shows claimant moving freely and without limping while washing cars - in stark contrast to his presentation at the final hearing.

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In addition, I find claimant's rebuttal testimony that Hermada Daniels told him to drop a phonebook on his back to help establish his injury to be simply unbelievable. While Mr. Daniels had already been dismissed from testifying and therefore could not rebut claimant's testimony, claimant's demeanor while testifying suggests to me that his testimony on this point is false as well. When the court asked claimant when this alleged conversation with Mr. Daniels occurred, claimant was unable to give even an approximate time-frame, which I find hard to believe given the nature of the alleged conversation. In sum, based on the evidence presented, I simply do not believe claimant's testimony regarding the occurrence of the injury and his conversations with Mr. Daniels.

While the E/C alleged misrepresentation with regard to claimant's deposition testimony, that deposition was not introduced into evidence. Consequently, based on the evidence presented I do not find that claimant made knowing misrepresentations in the 6/11/09 deposition. However, as discussed above, I do find that claimant's testimony at the final hearing regarding the occurrence of the injury and conversations with Hermada Daniels was knowingly false and for the purpose of obtaining workers' compensation benefits. As such, all claimant's petitions for benefits are denied and dismissed with prejudice, and claimant is not entitled to compensation or

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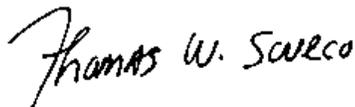
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benefits pursuant to section 440.09(4), Florida Statutes (2008). Given this determination, it is not necessary to address the other claims and defenses raised by the parties.

**WHEREFORE** it is hereby **ORDERED** and **ADJUDGED** that:

1. All pending petitions for benefits are DENIED AND DISMISSED WITH PREJUDICE.
2. Claimant violated section 440.09(4), Florida Statutes (2008) and is therefore not entitled to compensation or benefits.
3. The E/C is entitled to reasonable costs pursuant to section 440.34(3), Florida Statutes (2008) as the prevailing party in this proceeding. Jurisdiction is reserved to determine the amount of costs owed.

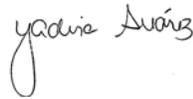
DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 8 day of January, 2010.



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Thomas W. Sculco  
Judge of Compensation Claims  
400 West Robinson Street, Suite 608N  
Orlando, Florida 32801-1701

This is to certify that a true and correct copy of the foregoing Order has been furnished by electronic or U.S. Mail to the parties and counsel listed below.



Digitally signed by Yadira  
Suarez  
Date: 2010.01.08 11:30:40  
-05'00'

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Yadira Suarez  
Assistant to Judge Sculco

Served by U.S. Mailed to:

Dexter Black  
915 Charles Street  
Orlando, FL 32808

Traffic Control Devices, Inc.  
980 Central Parkway  
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Amerisure Mutual Insurance Company  
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Served by Electronic Mail:

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