

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

**ELLIOTT BLANEY**  
Employee/Claimant

vs.

OJCC Case: 17-014991-TWS

**SOUTHEAST PERSONNEL LEASING,  
INC.**  
Employer

Accident date: 11/2/2016; 01/23/2017

and

**Judge: Thomas W. Sculco**

**LION INS. CO. serviced by  
PACKARD CLAIMS  
ADMINISTRATION, INC.**

Carrier/Servicing Agent

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**ORDER ON CLAIMANT'S MOTION FOR ADVANCE**

After proper notice to all parties, a hearing was held on this claim in Orlando, Orange County, Florida on September 6, 2017. The claimant is represented by Charles H. Leo, Esquire. The Employer/Carrier is represented by William H. Rogner, Esquire.

*This order addresses the Claimant's Motion for Advance filed with the OJCC on*

*August 23, 2017.*

**LIVE TESTIMONY:** Elliott Blaney

**DOCUMENTARY EVIDENCE:**

#1 CI's: Motion for Advance  
Docket ID#18

#2 E/C's: Response to Motion for Advance  
Docket ID#21

#3 CI's: Payment Listing

#4 CI's: Medical Records-**EXCLUDED FROM EVIDENCE**, based on hearsay, authentication, and claimant's failure to comply with the pre-trial order.

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: To be entitled to an advance of \$2000.00 or less, claimant must establish either 1-he has not returned to the same or equivalent employment with no substantial reduction in wages; 2-he has suffered a substantial loss of earning capacity; or 3-he has suffered a physical impairment, actual or apparent. See Section 440.20(12)(c), Fla. Stat. (2016). If claimant satisfies any of the above three eligibility requirements, then the JCC may award the advance after giving "due consideration" to the interests of the claimant. The interest asserted as the basis for the advance must have a causal nexus to the work-related injury. Delta Air Lines v. Kuhn, 104 So.3d 1111 (Fla. 1<sup>st</sup> DCA 2012).

Here, the E/C does not contest that claimant has a need for an advance of \$2,000.00 that has a plausible causal nexus to the claimed injury. Rather, the E/C argues that claimant has not established any of the three alternative eligibility requirements contained in Section 440.20(12)(c). For the reasons discussed below, I find that based on the admissible evidence

presented that claimant has failed to establish his eligibility for the advance requested.

Consequently, the Motion for Advance must be denied.

Given my exclusion from evidence of the proffered medical report, claimant has presented no competent medical evidence establishing that he has physical limitations that preclude performance of his pre-injury job. Claimant's lay testimony is simply not sufficient to establish that he has suffered a substantial loss of earning capacity. Similarly, there is no medical evidence establishing that claimant has sustained an actual impairment, and his lay testimony did not establish an "apparent" impairment in this case either.

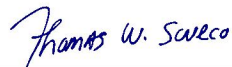
Claimant's primary argument for establishing entitlement to the requested advance is that he has "not returned to the same or equivalent employment with no substantial reduction in wages." Specifically, claimant testified that: 1-Before the claimed injury he would receive about \$2,500.00 every three months as a "bonus" based on the profitability of the jobs he supervised, which he would split among himself and the 3-4 workers that were on those jobs; 2-After the injury he has not been able to work as fast and as efficiently as before, and therefore he has not received any such profitability bonuses on larger jobs he has worked on; 3-he has not missed any time from work after his injury, and continues to work 40 hours per week plus 5 hours' drive time; and 4-he received a raise following his claimed injury from \$17.00 per hour to \$20.00 per hour.

I find this testimony insufficient to persuade me that claimant has suffered a "substantial reduction in wages" following his claimed injury. If claimant shared the \$2,500.00 bonus with just three workers, that would leave him with about \$834.00 for a three month period. Even if

the bonus was not shared equally (to which there was no testimony) and claimant received \$1,000.00 every three months, that loss of income appears to be more than counterbalanced by claimant's hourly increase from \$17.00 to \$20.00. Specifically, 45 hours multiplied by \$3.00 equals an increase of about \$585.00 per month, or about \$1,754.00 over three months. While it is possible this analysis is not an accurate reflection of claimant's true financial condition, claimant bears the burden of proof on the issue, and he has failed to persuade me that he has suffered a substantial loss of wages following the claimed injury. Consequently, he is not entitled to the requested advance of \$2,000.00 pursuant to the statute.

**WHEREFORE** it is hereby **ORDERED** and **ADJUDGED** that Claimant's Motion for Advance for \$2,000.00 is **DENIED**.

DONE AND SERVED this 6th day of September, 2017, in Orlando, Orange County, Florida.



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Thomas W. Sculco  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
Orlando District Office  
400 West Robinson Street, Suite 608-North  
Orlando, Florida 32801-1701  
(407)245-0844  
www.fljcc.org

Lion Insurance Company  
documents@packardclaims.com

Packard Claims Administration  
documents@packardclaims.com

Charles H. Leo  
Charles H. Leo, P. A.  
chickleo@bellsouth.net,ab\_leo@bellsouth.net

William H. Rogner, Esquire  
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.  
wrogner@hrmcw.com,jrodriguez@hrmcw.com