

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

Donna L. Everly,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 04-001525WJC
)	
Florida Wildlife Conservation)	Accident date: 03/02/2003
Commission,)	
)	Judge: W. James Condry, II
Employer,)	
)	
and)	
)	
Division of Risk Management,)	
)	
Servicing Agent.)	

ORDER ON MOTION FOR ADVANCE PAYMENT

After proper notice to all parties, an evidentiary hearing was held on this claim in Orlando, Orange County, Florida on the morning of Tuesday, August 9, 2011. Present was Attorney Melissa A. Logan, who represented the claimant. Appearing on behalf of the self insured employer, hereinafter referred to as the E/SA, was Attorney William H. Rogner. The only at trial testimony was received from Ms. Donna L. Everly.

OVERVIEW

Ms. Donna Louise Grant Everly was a volunteer instructor for the Florida Wildlife Conservation Commission when she sustained multiple injuries in a motor vehicle accident that occurred on March 2, 2003. Her accident was accepted as compensable in light of the provisions

of Section 440.02(15)(d) 6, Florida Statutes (2002) that provides for the acceptance, as employees, *volunteer* workers for state, county, municipality, or other governmental entities. Because of her *volunteer* status benefits were furnished in this case in the form of medical benefits only. There are no pending petitions for benefits on the claim.

Ms. Everly seeks a \$2,000.00 advance due to:

- 1) Financial hardship she attributes to her inability to secure gainful employment in part because of physical impairments attributable to her industrial injuries; and,
- 2) Medical bills she claims she is unable to pay in light thereof.

The E/SA contends that an advance payment can only be had on compensation or indemnity benefits and not on medical benefits. Because of Ms. Everly's status as a volunteer worker where she had no employment earnings and was not entitled to the payment of indemnity benefits, the E/SA argues that Ms. Everly is precluded as a matter of law from the payment of an advance.

This is a matter of first impression.

In addition to Ms. Everly's sworn testimony, the following documents were presented for my consideration:

- The 04/15/11 motion for advance and attached mediation agreement contingent upon CMS approval marked and received as exhibit #1.
- The E/SA's 04/20/11 response to the claimant's motion for advance marked and received as exhibit #2.
- Copies of the cases of *Workers of Florida v. Williams*, 743 So.2d. 609 (Fla. 1st DCA 1999) and *Lopez v. Allied Aerofoam*, 48 So.3d 888 (Fla. 1st DCA 2010).
- The case of *Osceola County School Board v. Boos*, 912 so.2d 667 (Fla. 1st DCA 2005).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering the testimony of the claimant, entertaining the arguments of counsel and considering the applicable case and statutory provisions I find that Ms. Everly is not entitled to

an advance because she as a matter of law has no entitlement to monetary or compensation benefits.

I accept Ms. Everly's uncontroverted testimony that she was employed as a volunteer with the employer and involved in a compensable motor vehicle accident on 03/02/03. From that accident she sustained a close head injury and injuries to her cervical and lumbar spine. She has undergone a lumbar laminectomy and has physical restrictions that include limitations on lifting, bending, stooping, prolonged sitting and standing.

Ms. Everly was a student at the University of Central Florida at the time of her compensable motor vehicle accident with Florida Wildlife Conservation. There was no testimony that she was employed or was receiving any employment income whatsoever at the time of her 03/02/03 accident. She is currently unemployed and is receiving social security income benefits. She has a financial hardship because of emergency medical bills she has incurred which in total approach \$2,000.00. These bills are from Radiologist Specialist of Florida, Florida Emergency Physicians, Orlando Neurosurgery and ACCB. Ms. Everly testified that she believes an advance would be in her best interest and that she would use the advance money to pay her outstanding medical bills and get her car repaired.

Ms. Everly and her counsel argue support for her claim to an advance relying on the fact that she has not returned to work and that she suffers a physical impairment.

Section 440.20(12) (c) 2 provides, "In the event the claimant has not returned to the same or equivalent employment with no substantial reduction in wages or has suffered a substantial loss of earning capacity or a physical impairment, actual or apparent: an advance payment of compensation not in excess of \$2,000 may be ordered by any judge of compensation claims after giving the interested parties an opportunity for a hearing thereon pursuant to not less than 10 days' notice by mail, unless such notice is waived, and after giving due consideration to the interests of the person entitled thereto."

I accept Ms. Everly's testimony that she has financial obligations that are difficult for her to meet. That she also has an actual physical impairment. I note that she was not questioned on cross-examination to indicate otherwise and therefore I accept accordingly her testimony regarding physical impairment. I also find that under such circumstances it would be in her best

interest to receive an advance if legally available. However, the fundamental question before me is whether an advance can be awarded when only medical benefits can be available?

Although it has been held that the presence of justiciable controversy as to compensability of a claim does not prohibit an advance from being awarded by requiring proof that the injured worker will actually receive any benefits in the future from which the employer can recover the sum advanced, it appears to me that the availability of an advance requires (no matter how remote) at least some potential prospect of entitlement to compensation benefits. *Section 440.20(12) (a)* provides that, "Liability of an employer for future payments of compensation (*emphasis added*) may not be discharged by advance payment unless prior approval of a judge of compensations or the department has been obtained as hereinafter provided."

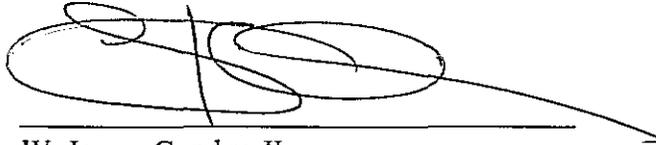
The term "compensation" is defined by *Section 440.02(7)* as, "the money allowance payable to an employee or to his or her dependents as provided for in this chapter." I find that in light of the testimony presented at this evidentiary hearing and the arguments of counsel, that Ms. Everly in her volunteer status was not entitled to any compensation benefits whatsoever, either in the past, present or future. I specifically find that the provisions of *Section 440.20(12)* regarding advance payments pertain to an employer's potential liability for future payments of compensation benefits only and not medical benefits.

Here based on the evidence presented the claimant did not dispute that she was a volunteer and did not testify that she had any employment or employment income at the time of her 03/02/03 accident. Under such circumstances the case law provides that a volunteer is not entitled to compensations benefits. See *Osceola County School Board v. Boos*, 912 so.2d 667 (Fla. 1st DCA 2005). Consequently I find the essential underpinnings of an advance award, i.e. compensation benefits, do not and cannot exist in this case. The claimant on her claim is only entitled to the payment of medical benefits and I am unaware of any case opinions that have awarded an advance payment on medical benefits. Consequently I find the E/SA's arguments on these points more persuasive and conclude that the requested advance under the facts of this case must respectfully be denied.

WHEREFORE it is hereby ORDERED and ADJUDGED that:

The claimant's request for a \$2,000.00 advance is denied.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida.



W. James Condry, II
Judge of Compensation Claims
400 West Robinson Street, Suite 608-North
Orlando, Florida 32801-1701

I HEREBY CERTIFY that the Judge of Compensation Claims entered the foregoing Order. A true and accurate copy of the Order has been served via e-mail on the parties' attorneys of record on this the 10th day of August 2011.



Susan Berman
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