

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

FRANK WINSTON CRUM
INSURANCE, INC.,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D09-5657

LEANDRO MONTES DE OCA ,

Appellee.

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Opinion filed June 22, 2010.

An appeal from an order of the Judge of Compensation Claims.
Gerardo Castiello, Judge.

Date of Accident: June 10, 2008.

William H. Rogner and Geoffrey Curreri of Hurley, Rogner, Miller, Cox,
Waranch & Wescott, P.A., Winter Park, for Appellant.

Jeffrey E. Appel of the Appel Law Group, Lakeland, for Appellee.

PER CURIAM.

The Employer/Carrier (“E/C”) appeals a final compensation order,
arguing that the Judge of Compensation Claims (“JCC”) erred in awarding

Claimant, Leandro Montes De Oca, temporary total disability (“TTD”) benefits from February 5, 2009, through October 7, 2009, the date of the final hearing. As the E/C contends, the TTD award at issue is not supported by competent, substantial evidence. The only medical evidence contained in the record pertaining to this time period came from Claimant’s surgeon’s February 5, 2009, medical report, wherein the surgeon recommended that Claimant return to work and set forth that he had carefully discussed the recommendation with Claimant. We, therefore, reverse the compensation order as to the TTD award from February 5, 2009, through the date of the final hearing and remand the case for further proceedings. See Yellow Cab v. Landin, 780 So. 2d 296, 296 (Fla. 1st DCA 2001) (reversing the award of TTD benefits from April 1999 until the date of the final hearing where all of the medical evidence indicated that the claimant was capable of working and where the only evidence offered in support of the TTD award was the claimant’s subjective belief that she was incapable of doing any work offered by the employer).

REVERSED and REMANDED for further proceedings.

DAVIS, VAN NORTWICK, and ROWE, JJ., CONCUR.