

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF JUDGE OF COMPENSATION CLAIMS
PORT SAINT LUCIE DISTRICT

EMPLOYEE:

Luis Martinez
1902 Colonial Road
Fort Pierce, Florida 34947

ATTORNEY FOR EMPLOYEE:

Unrepresented

EMPLOYER:

Conco, Inc.
3418 Enterprise Road
Fort Pierce, Florida 34982

ATTORNEY FOR EMPLOYER/CARRIER:

Anthony M. Amelio
603 North Indian River Drive
Suite 102
Fort Pierce, Florida 34950

CARRIER:

Amerisure
PO Box 10790
Saint Petersburg, Florida 33733

OJCC#: 08-034604RDM
VENUE: Saint Lucie County
D/A: 9/29/2008

ORDER ON THE MERITS

A MERITS HEARING was conducted in this matter. Claimant was not represented and not in attendance. After considering the documents in the file, including the pretrial stipulation and the agreements therein, I make the following determinations:

A. The Judge of Compensation Claims (JCC) has jurisdiction over the parties and subject matter.

B. The parties were properly notified of the merits hearing.

C. As to the particulars of this case the parties agree:

1. Claimant sustained injury by accident on the date indicated while working in Saint Lucie County, Florida.
2. There was an employer/employee relationship.
3. Workers' compensation insurance coverage applies.
4. The accident is accepted as compensable subject to defenses stated.
5. The employer was timely notified of the accident.
6. Managed medical care does not apply.
7. All issues pertaining to attorney's fees and costs may be reserved for subsequent hearing.

D. Claimant seeks the following:

1. Provision of treatment for his back, left knee and both ankles.
2. Physical therapy as recommended by Dr. Rossario.
3. Penalties and interest.
4. Attorney's fees and costs.

E. The employer/carrier (E/C) responds stating:

1. Claimant is not entitled to benefits due to the application of section 440.09(4) and 440.105(4) (b) 9.
2. Claimant is not entitled to indemnity benefits because he did not report or pay income taxes.
3. General denial of all remaining claims.

4. Costs pursuant to section 440.34.

HAVING CONSIDERED the evidence presented, together with argument of counsel, I make the following determinations:

1. The Judge of Compensation Claims (JCC) has jurisdiction over the parties and subject matter.

2. The parties were properly notified of the merits hearing.

3. The stipulations of the parties are accepted and incorporated by reference.

4. Claimant was previously represented by Ronald Rowars who was permitted to withdraw on March 17, 2009. Reich and Mancini, P.A., then assumed claimant's representation. They were allowed to withdraw on April 17, 2009. However, claimant was cautioned that the case would remain on the trial docket.

This order disposes of Petitions for Benefits (PFB) filed December 19, 2008, February 6, 2009, March 18, 2009, and March 23, 2009.

5. Claimant injured his back, left knee and both ankles as a result of falling off a roof. He was seen at a walk-in clinic and later by Dr. Rossario, known to me as an orthopedic surgeon.

6. The employer is in the concrete construction business. Claimant, indicating he was born January 15, 1984, applied for the job he obtained with Conco on March 25, 2008. He used social security number 221-54-3422. This alleged social security number was utilized on an "Employee Eligibility Verification" form as well as a "W-4" tax form.

7. Claimant presents no evidence regarding his injury. Therefore, the claim before me must be denied on that basis since claimant has the burden of going forward with his proof.

8. Because claimant did not voluntarily dismiss his claim, however, I consider the affirmative defenses raised by E/C. *Compare, Polston v. Hurrican Island Outward Bound*, 920 So. 2d 766 (Fla. 1st DCA 2006) ("The JCC in the present case also lacked jurisdiction to rule on the defense *in the absence* of a pending petition for benefits filed by Polston") (emphasis added).

Claimant presented for deposition on March 23, 2009. At that time he refused to answer questions regarding the use of the aforementioned social security number for obtaining a job and seeking to obtain workers' compensation benefits. Although based on the Fifth Amendment, I declined to compel claimant to answer questions of this

nature, I also determined a rebuttable presumption would apply in the trial of this case to the effect that claimant used the aforementioned social security number to obtain a variety of compensation benefits. That order, mailed April 10, 2009, is incorporated by reference.

9. I find the social security number in question was issued by the federal government in 1974 to 1975 to a female located in Delaware.

10. I find claimant knowingly used a false social security number to obtain workers' compensation benefits.

11. Accordingly, in keeping with Section 440.105(4)(b)9, *Florida Statutes* (2007), claimant is disqualified from receiving workers' compensation benefits both in the past and in the future. See, *Matrix Employee Leasing v. Hernandex*, 975 So. 2d 1217 (Fla. 1st DCA 2008).

12. I decline to address the question of whether claimant can establish an average weekly wage given if the industrial accident is otherwise compensable inasmuch as that issue is moot.

13. All issues pertaining to costs taxable against claimant are reserved for subsequent hearing.

WHEREFORE, it is,

ORDERED AND ADJUDGED as follows:

a. The claim for authorization for treatment of

claimant's back, left knee and both ankles is denied.

b. The claim for authorization for physical therapy as recommended by Dr. Rossario, is denied.

c. The claim for penalties and interest is denied.

d. The claim for costs and attorney's fees taxable against the employer/carrier is denied.

e. Claimant is disqualified from receiving workers' compensation benefits of any nature both in the past and in the future.

f. All pending Petitions for Benefits are dismissed.

g. All hearings, mediation conferences or pretrial conferences are CANCELED including the mediation conference presently scheduled for June 9, 2009.

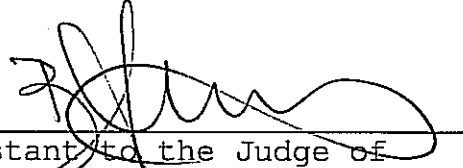
DONE AND ORDERED in chambers, in Fort Pierce, Saint Lucie County, Florida, this 12 day of May, 2009.



Robert D. McAliley
Judge of Compensation Claims
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Compensation Claims
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I HEREBY certify that a true and correct copy of the foregoing has been mailed via U.S. Mail to all of the parties on this 12 day of May, 2009.

A handwritten signature in black ink, consisting of several loops and flourishes, positioned above a horizontal line.

Assistant to the Judge of
Compensation Claims