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July 2011
 Volume 5, Issue 7

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Lucas v. ADT Security — § 440.105(4)(b) Requires Provably False or Misleading “Statement”

In *Lucas v. ADT Security*, 2011 WL 2937309; 36 Fla. L. Weekly D1580a (1st DCA), Claimant challenged an order of the JCC denying benefits on the ground she violated section 440.105, by intentionally or knowingly making false or misleading statements for the purpose of obtaining workers' compensation benefits. The First DCA reversed the finding of fraud or misrepresentation because the items the JCC listed were not all “statements”, and the actual statements listed were not provably false or misleading.

The First DCA reasoned that the Claimant's reported “posturing and cog wheeling” were not oral or written statements (as required by section 440.105(4)(b)), but behavior identical to behaviors captured on surveillance in *Dieujuste V. J. Dodd Plumbing, Inc.*, 3 So.3d 1275 (1st DCA 2009),

which the court found could not serve as the predicate for disqualification from benefits under sections 440.09 and 440.105.

The First DCA found that the actual statements made by Claimant were not provably false or misleading. For example, the E/C did not provide an objective method of measuring Claimant's subjective complaints of pain.

Do not confuse this ruling with the First DCA *per curiam affirmed* order of former JCC Dan Turnbull in *Zepeda v. Six L's Packing Company*, OJCC# 97-017598. In *Zepeda*, the Claimant underwent a functional capacity evaluation. JCC Turnbull found that the claimant knowingly and deliberately made false statements to the registered physical therapist who administered the evaluation, when Claimant stated he was unable to perform certain requested tasks.

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***Rodriguez v. Coastal Granite & Marble — Sarasota District JCC Rules Claimants Can Receive Multiple Advances***

Claimant had already been granted a \$2,000 advance after a hearing on December 15, 2010. The E/C argued that because this was Claimant's second advance, the amounts should be considered in the aggregate to be in excess of \$2,000. JCC Beck stated that the language in section 440.20(12)(c) and (d) lead her to conclude that each requested advance should be considered separately and not in the aggregate (other than ensuring that \$7,500 or 26 weeks of benefits is not exceeded in any 48-month period). Judge Beck found that the claimant had not returned to the same or equivalent employment with no substantial reduction in wages and that the E/C's rights would not be materially prejudiced by the advance (OJCC# 09-015820).

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Newsletter Challenge

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Answers to June Newsletter Challenge

- 1) True
- 2) True
- 3) True
- 4) A
- 5) True



Get a free 2011 Russell H. Young & Associates mousepad imprinted with a quick-reference statute guide. Send your request to:

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1) True or False? The Workers' Compensation Act does not require employees to make an official or formal written accident report.

2) True or False? Evidence proving intoxication creates an irrefutable legal presumption that the intoxication caused the injury.

3) True or False? If the injured worker refuses

to submit to a drug test, it shall be presumed in the absence of clear and convincing evidence to the contrary that the injury was occasioned primarily by the influence of drugs.

4) True or False? In all cases, a claimant will have a minimum of two years from the date of injury within which to file a Petition for Benefits.

5) True or False? Injured workers have a duty to reduce the effects of an injury by obtaining prompt medical care.

Send your answers to:
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An entry will be drawn at random from all correct submissions. The winner will receive a \$25 gift card.

June Newsletter Challenge

1) The exemption of workers' compensation claims from creditors does not extend to claims based on an award of child support or alimony. Florida Statutes § 440.22.

2) If the injured worker is not represented by an attorney, carriers and injured workers may settle all benefits on a controverted claim at any time, but on one condition: The carrier must have filed its notice of denial within 120 days after the employer received notice of the injury. Settlement may take place even before the worker has reached maximum medical improvement. (See section 440.20(11)(a), Fla. Statutes.)

3) Lump-sum settlements of benefits do not

require the approval of the JCC if the claimant is represented by an attorney. To settle a claim, the parties simply need to execute a settlement agreement releasing the employer and carrier from further liability in exchange for the agreed upon settlement amount. JCC approval is still necessary, however, with regard to fees to be paid to the claimant's attorney by the claimant and appropriate recovery of child support arrearages. (See section 440.20(11)(c) & (d), Fla. Statutes.)

4) Adjusters must be certain to pay, on time, any settlement approved by a JCC's order or be subject to a penalty. "If any compensation, payable under the terms of an award, is not paid within 7 days after

it becomes due, there shall be added to each unpaid compensation an amount equal to 20 percent thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 440.25." Florida Statutes section 440.20(7).

5) If the injured worker is not represented by an attorney, the parties may settle all other claims in full, any time after the date of maximum medical improvement. Carriers and injured workers may settle all benefits including medical, indemnity, and rehabilitation. (See section 440.20(11)(b), Fla. Statutes.) [Source: *Dubreuil's Florida WC Handbook.*]