

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

Ricardo Aponte,
Employee/Claimant,

OJCC Case No. 07-003989NPP

vs.

Accident date: 1/3/2007

FrankCrum, Inc./Broadspire,
Employer/Carrier/
Servicing Agent.

Judge: Neal P. Pitts

_____ /

FINAL COMPENSATION ORDER

This cause came on for a merits' hearing before the undersigned Judge of Compensation Claims on March 22, 2017, the subject matter of which was Petitions for Benefits filed with DOAH on February 19, 2016, March 1, 2016, and August 31, 2016. A mediation conference on the petition was held on January 10, 2017.

The Claimant, Ricardo Aponte, was present and was representing himself in a *pro se* capacity. Prior to the commencement of the hearing, the claimant was informed that should he wish to voluntarily dismiss his outstanding petitions for benefits, then the hearing would be canceled and there would be no hearing on the E/C's affirmative defense that he had violated the provisions of §440.105(4)(b) so as to cause the forfeiture of all further benefits as provided by §440.09(4). Having been duly informed of this, the claimant declined to

dismiss the outstanding petitions and elected to proceed with the hearing.

The Employer/Carrier was represented by Merette L. Oweis, Esq. Live testimony was received from the claimant, Kamilia Koloziouva, Robert W. Fugate, Ronald Paul "Bo" Collins, and Eli Barro during the hearing.

The following stipulations have been reached between the parties:

1. The date of accident is January 3, 2007;
2. Venue properly lies in Orlando, Orange County, Florida;
3. A mediation conference was held on January 10, 2017;
4. There was an employer/employee relationship at the time of the accident;
5. Workers' compensation insurance coverage was in effect on the date of accident;
6. Accident or occupational disease accepted as compensable;
7. The following specific body parts/psychiatric conditions were accepted as related to the accident: Back, neck and left arm;
8. Timely notice of pretrial and final hearing was given;
9. The case is not governed by a managed care arrangement;
10. The judge has jurisdiction of the parties and the subject matter;

11. If benefits under F.S. 440.13 (medicals) are determined to be due or stipulated due herein, the parties agree that the exact amounts payable to health providers will be handled administratively and any medical bills need not be placed into evidence at trial;
12. Medical treatment authorized: Dr. Razack, Dr. Jacobs, Dr. Placer, Dr. Figueroa;
13. Payout ledger(s) is stipulated into evidence;
14. Petitions for Benefits were filed on February 19, 2016, March 1, 2016, and August 31, 2016; and
15. Notices of Controvert/Denial/Responses to Petitions for Benefits were filed on April 8, 2016 and September 27, 2016.

The substantive claims for determination at the current merits' hearing are the following:

I. February 19, 2016

1. Authorization of wheelchair van per Dr. Jacobs on December 17, 2014;
2. Authorization of wrist splint per Dr. Jacobs on June 11, 2015;
3. Attorney Fees; and
4. Costs.

II. March 1, 2016

1. Reimbursement to claimant for hot tub purchase for medical relief for spasms to neck per Dr. Jacobs on February 22, 2016 in the amount of \$2,661.44;
2. Authorization of wheelchair van for lifting/transporting wheelchair per Dr. Jacobs on February 15, 2016;
3. Authorization of hot tub for medical relief for spasms to neck per Dr. Jacobs on February 15, 2016;
4. Attorney Fees; and
5. Costs.

III. August 31, 2016

1. Authorization of electrodes for TENS unit per Dr. Jacobs on August 24, 2016;
2. Authorization of Baclofen per Dr. Jacobs on August 24, 2016;
3. Authorization of Flexeril per Dr. Jacobs on August 24, 2016;
4. Attorney Fees; and
5. Costs.

The defenses raised by the E/C were the following:

I. February 19, 2016, March 1, 2016, and August 31, 2016

1. No benefits due pursuant to 440.09(4) and 440.105;
2. Wheelchair van not medically necessary;

3. Wheel chair van not casually related to the industrial accident;
4. Only splint for left wrist is casually related to the industrial accident, Claimant sustained no injury to his right wrist;
5. Hot tub not medically necessary or casually related to the industrial accident;
6. Parties entered into a prior binding agreement which bars this hot tub claim;
7. Prescription for hot tub obtained after its purchase;
8. No PICA due;
9. Claimant knowingly made false, fraudulent or misleading oral statements for the purpose of obtaining benefits in his depositional testimony given on May 5, 2014, pg. 9-10, pg. 18, pg. 20-21, pg. 23-24, pg. 27 and pg. 33-34. Also statements made by the Claimant about his physical abilities to walk, bend, stand, grip, and reach to Dr. Villalobos, Dr. Placer and Dr. Jacobs;
10. Claimant caused to be presented statements in support of a claim for benefits pursuant to Chapter 440, which he knew were false, incomplete, or misleading that were material to such claim. (see above); and

11. Claimant caused to be prepared, oral statements in support of a claim for benefits to be presented to the Employer/Carrier knowing that they are false, misleading, and/or incomplete concerning things material to such claim. (see above).

The following documents were admitted into evidence at the current hearing:

Judge's Exhibits:

1. Uniform Statewide Pretrial Stipulation filed with DOAH on July 15, 2016 (Dkt. 359);
2. Order Approving Uniform Statewide Pretrial Stipulation entered on July 15, 2016 (Dkt. 360);
3. Employer/Carrier's Second Supplement to Pretrial Stipulation filed with DOAH August 3, 2016 (Dkt. 364);
4. Petition for Benefits filed with DOAH on February 19, 2016 (Dkt. 336-37);
5. Petition for Benefits filed with DOAH on March 1, 2016 (Dkt. 338-39)
6. Petition for Benefits filed with DOAH on August 31, 2016 (Dkt. 397-98);
7. Composite: Responses to Petition for Benefits filed with DOAH on April 8, 2016 and September 27, 2016 (Dkt. 344, 407);

8. Mediation Conference Report filed with DOAH on May 17, 2016 (Dkt. 357);
9. Mediation Conference Report filed with DOAH on December 20, 2016 (Dkt. 430);
10. Order on Claimant's Motion to Amend Pretrial Stipulation filed with DOAH on July 18, 2016 (Dkt. 362);
11. Amended Final Evidentiary Order Appointing Expert Medical Advisor filed with DOAH on September 28, 2016 (Dkt. 408);
12. Employer/Carrier/Servicing Agent's Supplemental Witness List and Exhibit List filed with DOAH on January 13, 2017 (Dkt. 438); and
13. Dr. Shea's EMA Report filed with DOAH on January 13, 2017 (Dkt. 440).

Claimant's Exhibit:

1. Composite Exhibit: Claimant's Binders 1-8 (Dkt. 458-65).

Employer's Exhibits:

1. Employer/Carrier's Trial Memorandum filed with DOAH on March 20, 2017 (Dkt. 457);
2. Deposition Transcript of Ricardo Aponte taken May 5, 2016, filed with DOAH on August 15, 2017 (Dkt. 380);
3. Deposition Transcript of James K. Shea, M.D. taken February 7, 2017, filed with DOAH on March 20, 2017 (Dkt. 456);

4. Deposition Transcript of Daniel H. Jacobs, M.D. taken August 16, 2016, filed with DOAH on February 2, 2017 (Dkt. 447);
5. Composite Medical Records from Daniel H. Jacobs, M.D. filed with DOAH on August 15, 2016 (Dkt. 369-70);
6. Composite Medical Records from Noel Figueroa, M.D. filed August 15, 2016 (Dkt. 372);
7. Supplemental Medical Report of Daniel H. Jacobs, M.D. filed with DOAH February 7, 2017 (Dkt. 450);
8. Deposition Transcript of Carlos Placer, M.D. taken on September 2, 2016, filed with DOAH on September 23, 2016 (Dkt. 404);
9. Deposition Transcript of Hunaldo Villalobos, M.D. taken September 6, 2016, filed with DOAH on September 23, 2016 (Dkt. 404);
10. Stipulation Resolving Current Issues and Attorney's Fees filed with DOAH on June 14, 2013 (Dkt. 382);
11. Order on Stipulation Resolving Current Issues filed with DOAH on June 17, 2013 (Dkt. 383);
12. Composite: Employer/Carrier/Servicing Agent's Exhibit List filed with DOAH on August 15, 2016 (Dkt. 366) and Email from Merette L. Oweis, Esq. to Sean McCormack, Esq.

- Producing Surveillance and Footage Dated July 14, 2016, filed with DOAH on August 15, 2016 (Dkt. 384);
13. Surveillance Video taken by Bo Collins on July 18, 2014, filed with DOAH on August 15, 2016 (Dkt. 374);
 14. Surveillance Video taken by Eli Barro on March 28, 2016 (Part 1), filed with DOAH on August 15, 2016 (Dkt. 374);
 15. Surveillance Video taken by Eli Barro on March 28, 2016 (Part 2) and May 14, 2016, filed with DOAH on August 15, 2016 (Dkt. 374);
 16. Surveillance Video taken by Eli Barro on May 30, 2016, filed with DOAH on August 15, 2016 (Dkt. 374);
 17. Surveillance Video taken by Angel Santiago on March 29, 2016 and May 10, 2016, filed with DOAH on August 15, 2016 (Dkt. 374);
 18. Surveillance Video taken by Kamilia Koloziowa on April 20, 2016, April 21, 2016 and April 22, 2016, filed with DOAH on August 15, 2016 (Dkt. 374); and
 19. Surveillance Video taken by Bobby Fugate on May 24, 2016, filed with DOAH on August 15, 2016 (Dkt. 374).

SUMMARY OF UNDISPUTED EVIDENCE:

1. The claimant was involved in a compensable accident on January 3, 2007 while moving a "Z-bar." He has undergone two cervical spine surgeries with an anterior fusion at the

C3/4 and C4/5, a left shoulder arthroscopic procedure, left ulnar nerve decompression at the cubital fossa, trigger point injections, cervical and lumbar medial branch blocks followed by neurotomies, facet blocks, and rhizotomies in both the cervical and lumbar spines. He also has been diagnosed with Major Depressive Disorder and is being treated by Dr. Figueroa with medication.

2. On May 11, 2007, the claimant underwent a left shoulder arthropathy with subacromial decompression performed by Dr. Goll for left shoulder impingement. On March 12, 2008, the claimant underwent an anterior partial corpectomy, discectomy, and bilateral foraminotomies and fusion at the C4/5 performed by Dr. Razack.
3. From December 08, 2008 to February 2, 2011, the claimant was treated by Dr. Eugene Melvin for left occipital neuralgia, right cervical facet osteoarthropathy and left cervical radiculopathy. Treatment included medication and interventional pain management modalities. Beginning on March 21, 2011, the claimant began treating with Dr. Gerber for pain management and underwent several trigger point injections.
4. On March 11, 2013, the claimant underwent anterior cervical discectomy and fusion at the C3/4 by Dr. Razack. This was

performed because of adjacent level disease. He was placed at MMI on March 20, 2014 by Dr. Razack.

5. The claimant also has treated for many years with Dr. Jacobs. This included EMG studies, treatment, and outside referrals. Dr. Jacobs has diagnosed complex regional pain syndrome (CRPS) for which he prescribed a wheelchair van. This was prescribed so as to enable the claimant to have greater mobile ability rather than being confined to the use of a scooter.
6. During a later visit on February 15, 2015, Dr. Jacobs prescribed a hot tub for medical relief of spasms in his neck or legs. On this visit, he again re-prescribed the wheelchair van. According to Dr. Jacobs, these prescriptions are reasonable and medically necessary to treat the claimant's compensable injuries.
7. The claimant also has treated with Dr. Carlos Placer, a psychiatrist. According to his records, the first office visit was on November 24, 2015 and treatment records reflect office visits through July 26, 2016. Treatment has consisted of medication and injections.
8. Dr. Placer's diagnosis, reflected in his office record for the November 24, 2015 office visit, was:

- a) degeneration of cervical intervertebral;

- b) chronic pain syndrome; and
- c) cervicalgia.

9. Dr. Placer's diagnosis, reflected in his office record for the July 26, 2016 office visit, was:

- a) Cervical disc disorder with myelopathy;
- b) cervicalgia;
- c) chronic pain syndrome;
- d) intervertebral disc disorders with radiculopathy in the lumbar and thoracic regions;
- e) lumbago; and
- f) cervical disc degeneration, mid-cervical region.

10. Dr. Placer's deposition was taken on September 2, 2016 during which he testified that his clinical "plan" would be treatment for chronic low back pain, lumbar facet syndrome, cervicalgia, and chronic cervical radiculopathy. Dr. Placer further testified that he had not diagnosed the claimant with idiopathic neuropathy nor did he believe the claimant has such condition based upon the EMG studies. Finally, Dr. Placer testified that he did not believe that the requested wheelchair accessible vehicle and/or the hot tub were reasonable or medically necessary.

11. The E/C obtained an IME with Dr. Villalobos who in his IME report agreed with Dr. Razack's assessment that the

claimant had reached MMI on March 20, 2014 after undergoing a very extensive course of diagnostic and treatment procedures over almost 10 years without definitive improvement of his symptoms. He opined that he did not believe that the claimant's symptoms matched any anatomical pattern. He found the claimant to be uncooperative with the physical examination and that he is highly suspicious for malingering for secondary gain. He did not believe that the recommended hot tub or a wheelchair accessible vehicle was reasonable or medically necessary.

12. Dr. Villalobos' deposition was taken on September 6, 2016 during which he testified that the recommended hot tub and/or the wheelchair accessible van were not reasonable or medically necessary to treat the claimant's neck condition.
13. With regards to the diagnosis of complex regional pain syndrome, Dr. Villalobos testified on page 14 of his deposition that while he noted in the records from [Dr.] Gerber that he had diagnosed the claimant with a complex regional pain syndrome, "I mean, it's hard to - based upon his clinical presentation, it's hard to explain. Complex regional pain syndrome can present with very minimal trauma, not necessarily severe trauma, but simply not

related to the location. None of the other physicians, including Dr. Melvin, had any mention of that.”¹

14. On September 28, 2016, Dr. James Shea was appointed to serve as the EMA. He evaluated the claimant on October 5, 2016 and subsequently issued his report. He was deposed by the parties on February 7, 2017. Dr. Shea expressed the following opinions during his deposition:

- a) The claimant does not currently have evidence of RSD (complex regional pain syndrome);
- b) There was no evidence of neuropathy based upon the normal study by Dr. Nwaogwugwu;
- c) Based upon the surveillance footage, the claimant’s cervical spine problem is not sufficiently severe to warrant the use of a hot tub and thus was not reasonable or medically necessary; and
- d) Based upon the surveillance footage, a wheel chair equipped handicapped van was not reasonable or medically necessary.²

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

In making my findings of fact, I have carefully considered and weighed all of the evidence presented to me. Although I may

¹ See Employer’s Ex. 9 at 14:19-24.

² See Employer’s Ex. 3 at 29:5-6, 31:8-10, 32:1-6 and 32:7-15 respectively.

not reference each piece of evidence presented by the parties, I have carefully considered all the evidence and the exhibits in making my findings of fact.

Based upon the evidence, I make the following findings of fact and conclusions of law:

1. I have jurisdiction of the parties and the subject matter.
2. The stipulations of the parties are accepted and adopted by me as findings of fact.
3. The evidence closed in this matter on March 22, 2017 at the time the parties made their closing arguments.
4. Pursuant to the provisions of §440.015, Fla. Stat., I have not interpreted the facts in this case liberally in favor of either the rights of the injured worker or the rights of the employer. I have construed the law in accordance with the basic principles of statutory construction.

CLAIMS FOR MEDICAL BENEFITS:

5. The opinions of the Expert Medical Advisor are entitled to a presumption of correctness unless clear and convincing evidence to the contrary is established. See *Walgreen Co. v. Carver*, 770 So.2d 172, 175 (Fla. 1st DCA 2000). An EMA opinion has nearly conclusive effect. See *Pierre v. Handi Van, Inc.*, 717 So.2d 1115, 1117 (Fla. 1st DCA 1998). A JCC is required to find and articulate the reason for rejecting

the EMA's opinion. See *Travelers Ins. v. Armstrong*, 118 So.3d 865, 866 (Fla. 1st DCA 2013); *Mobile Med. Indus. v. Quinn*, 985 So.2d 33, 36 (Fla. 1st DCA 2008). A determination by a JCC rejecting the opinion of an EMA will not be disturbed on appeal so long as it is predicated upon competent substantial record evidence which the judge could reasonably find to be clear and convincing. *Burns v. Hilton Enters.*, 853 So.2d 1107, 1108 (Fla. 1st DCA 2003). However, contradiction between the EMA and one of the disagreeing physicians is not, by itself, a reasonable basis for the JCC to reject the EMA's opinions because the EMA is appointed with the expectation that the EMA's testimony will contradict the record testimony of one of the healthcare providers. See *Arnau v. Winn Dixie Stores*, 105 So.3d 669, 671 (Fla. 1st DCA 2013); *Manuel v. Amstaff*, 915 So.2d 679, 680 (Fla. 1st DCA 2005).

6. I conclude from my review of the record evidence that there is no clear and convincing evidence to reject Dr. Shea's EMA opinions that:

- a) The claimant does not currently have evidence of RSD (complex regional pain syndrome);
- b) There was no evidence of neuropathy based upon the normal study by Dr. Nwaogwugwu;

c) Based upon the surveillance footage, the claimant's cervical spine problem is not sufficiently severe to warrant the use of a hot tub and therefore was not reasonable or medically necessary; and

d) Based upon the surveillance footage, a wheel chair equipped handicapped van was not reasonable or medically necessary.

7. The claimant has the burden of proof to establish the claims for reimbursement of his expenses for the purchase of a hot tub and his claim for authorization of a wheel chair equipped handicapped van. Based upon the conclusive opinions of Dr. Shea, I find that the claimant has not met his burden of proof, and therefore, deny the claims for medical benefits.

AFFIRMATIVE DEFENSE RELATING TO §440.105(4)(b) :

8. The E/C contends that the claimant violated the provisions of §440.105(4)(b), frequently referred to as the "fraud defense," see *Arreola v. Admin. Concepts*, 17 So.3d 792, 793 (Fla. 1st DCA 2009). To establish a violation of §440.105(4)(b), so as to justify the ultimate sanction of denial of any further benefits under Chapter 440, the E/C has the burden to prove by the preponderance of the

evidence that a claimant knowingly or intentionally engaged in one of the acts prohibited by the statute for the purpose of securing workers' compensation benefits. See *Matrix Emp. Leasing v. Hernandez*, 975 So.2d 1217, 1218 (Fla. 1st DCA 2008); *Vill. of N. Palm Beach v. McKale*, 911 So.2d 1282, 1283 (Fla. 1st DCA 2005); *Pavilion Apartments v. Wetherington*, 943 So.2d 226, 228 (Fla. 1st DCA 2006).

9. Workers' compensation benefits must be denied if statements of medical history, prior accidents, or the extent of current injuries are knowingly false, fraudulent, incomplete, or misleading. *Vill. Apartments v. Hernandez*, 856 So.2d 1140, 1141 (Fla. 1st DCA 2003); *Lee v. Volusia Cnty. Sch. Bd.*, 890 So.2d 397, 399 (Fla. 1st DCA 2004); *Citrus Pest Control v. Brown*, 913 So.2d 754, 755 (Fla. 1st DCA 2005). Moreover, a claimant's responses to inquiries regarding his or her medical history, prior accidents, and current condition are in support of the claim for benefits. *Vill. Apartments*, 856 So.2d at 1141.
10. Regardless of whether the claimant is under oath, if the claimant makes any statement which the claimant knew is false, incomplete, or misleading, the statement falls within the scope of §440.105(4)(b), Fla. Stat., and results in the loss of workers' compensation benefits. However,

only oral or written statements made by the claimant may serve as the predicate for disqualification of benefits. See *Dieujuste v. J. Dodd Plumbing, Inc.*, 3 So.3d 1275, 1277 (Fla. 1st DCA 2009).

11. When an objective misrepresentation has been made by the claimant, the JCC must answer the ultimate question of whether the claimant subjectively believed or intended that the statement, when made, to be false, and whether the claimant subjectively believed or intended the statement would assist him or her in securing benefits. See *Steel Dynamics, Inc. v. Markham*, 46 So.3d 641,645 (Fla. 1st DCA 2010); *Arreola v. Admin. Concepts*, 17 So.3d 792, 794 (Fla. 1st DCA 2009). A claimant's state of mind is an issue of fact to be determined by the JCC in evaluating the evidence, including the credibility and demeanor of the witnesses. It is not necessary that the false, fraudulent or misleading statement be material to the claim; only that the claimant thought the statement would have a material impact on their case and was made with the intent to secure workers' compensation benefits. See *Vill. Apartments*, 856 So.2d at 1142; *McKale*, 911 So.2d 1283.
12. It is not axiomatic that providing false information following a compensable accident automatically will

disqualify a claimant from receiving benefits. See *Steel Dynamics*, 46 So.3d at 645. Rather, because all testimony is to a certain extent shaded by the personal experience and the subjective perceptions of the providing witness, a revelation that a witnesses' experience or perception is different than that of the fact finder or another witness is not, in and of itself, evidence of a willful or knowing intent to deceive; rather, it is commonly a demonstration of the varying degrees to which even well intentioned individuals may interpret (or misinterpret) and later relay, objective events. It is only where a sufficient showing of a knowing or intentional misrepresentation for a specific purpose of deceiving and securing compensation benefits is demonstrated to the satisfaction of the JCC that §440.09(a) operates to divest a claimant of entitlement to compensation benefits. *Id.* at 646.

13. In his deposition taken on May 5, 2016, the claimant provided the following testimony:

- 1) That he didn't remember the last time he drove;
- 2) That he didn't drive "due to [his] disabilities";

- 3) That he has difficulty getting in and out of his car due to lumbar spine, arms, shoulders, and neck;
- 4) That he needs help getting in and out of a car;
- 5) That his son helps him get in and out of a car;
- 6) That he can sit for about ten minutes in a car;
- 7) That he uses a walking stick wherever I go;
- 8) That the walking stick helps him stand up;
- 9) That he can stand still without a walking stick for about 10 to 15 minutes;
- 10) That he can stand comfortably for about 20 to 25 minutes, tops with a walking stick;
- 11) That he used a scooter every day during the 6 months period prior to his deposition in May, 2016;
- 12) That he uses it to get around the inside of his home and also outside depending on the weather;
- 13) That he can sit for about 25 to 30 minutes and then his back, arms, and shoulders get heavy;
- 14) That he needs a wheelchair van because he has difficulties walking more than 30 yards; and
- 15) There is no a day when he doesn't have problems walking more than 30 yards.

14. In the deposition taken of the claimant's authorized physician, Dr. Carlos Placer, testified that the claimant's presentation to him in the office were inconsistent with the activity reflected on the video surveillance. In his May 10, 2016 office note, it reflects that Dr. Placer was only able to perform a limited examination because the claimant was unable to come out of the chair for evaluation.
15. Video surveillance taken on April 20, 2016, April 21, 2016, April 22, 2016 and then on May 28, 2016, May 29, 2016 and May 30, 2016, do not reflect any such limitations. In fact, these videos reflect the claimant being able to move around without the limitations described by the claimant during his deposition or conveyed to Dr. Placer during the May 10, 2016 office visit.
16. I do not find the claimant to have been credible or believable in his testimony before me. I carefully observed the claimant's demeanor while testifying and did not find his testimony to be straightforward or believable.
17. In his deposition, the claimant testified in part that:
 - 1) That he didn't drive "due to [his] disabilities";

- 2) That when he was able to drive, he would usually drive the Nissan;
- 3) That he has difficulty getting in and out of his car due to lumbar spine, arms, shoulders, and neck;
- 4) That he needs help getting in and out of a car;
- 5) That his son helps him get in and out of a car;
- 6) That he can sit for about ten minutes in a car;
- 7) That he does not drive much, that his family does, his wife and daughter;
- 8) That he would have to recline in his car seat with the TENS unit on in order to sit more than 10 minutes in the car;
- 9) That he uses a walking stick wherever he goes;
- 10) That the walking stick helps him stand up;
- 11) Other than watching TV during the day, he sleeps;
- 12) He goes outside to the backyard where he sits in the hot tub;
- 13) That he needs a wheelchair van because he has difficulties walking more than 30 yards; and
- 14) There is not a day when he doesn't have problems walking more than 30 yards.

18. Based upon the surveillance video, Dr. Placer's medical records, and Dr. Placer's deposition testimony, I am compelled to find by the greater weight of the evidence that the E/C did establish that the claimant made objectively false, fraudulent, or misleading statements, which he subjectively believed or intended, would assist him in securing workers' compensation benefits. I further find that the above statements made by the claimant in his deposition are objective misstatements when viewed in the light of the video surveillance.
19. Specifically, I find that the claimant is able to enter and exit his truck without assistance and without apparent distress. I noted that he drove his pickup for longer periods than 10 minutes without stopping and stretching. I find that he drove his truck rather than the Nissan. I find that he was able to work around his boat, able to hitch the boat trailer to his truck, get in and out of the boat without assistance including while refueling the boat and adding oil at a gas station, drive the boat to the launch site and then launch the boat; all without apparent limitations or physical distress. This activity is inconsistent with the descriptions made during his deposition of his activities and limitations and his

physical presentation to Dr. Placer in support of his claim for a handicapped equipped van and a hot tub.

20. There is no dispute that the claimant has sustained multiple spinal and other orthopedic injuries for which he has undergone extensive authorized medical treatment, including but not limited to surgery and interventional pain management. Notwithstanding what are not inconsiderable injuries nor minor treatment, I find that the claimant exaggerated the scope and extent of his current functional limitations and abilities in an effort to appear more disabled than he is; all with the subjective intent of securing additional medical benefits to which he would otherwise may not have been qualified for had he been honest with his healthcare providers as to his actual limitations and functional abilities. Specifically, I find that in making these statements, the claimant did so because he subjectively thought that the statements, taken either singularly and as a whole would have a material impact on his case and were made with the intent to secure workers' compensation benefits in the form of the requested handicapped equipped van and a hot tub.

21. Based upon the foregoing law and the above findings of fact, I find that the E/C has met its burden to prove by

the preponderance of the evidence that the claimant knowingly or intentionally engaged in one or more of the acts prohibited by the statute and for the purpose of securing workers' compensation benefits. In making the above conclusion, I do so because the cumulative weight of the evidence is too significant to ignore. Consistent with the above law, I find that the provisions of §440.09(a) operate to divest a claimant of entitlement to any compensation benefits under this date of accident.

Wherefore, **IT IS CONSIDERED, ORDERED, and ADJUDGED** as follows:

1. All claims for medical benefits, costs, and attorney's fees set forth in the petitions for benefits filed with DOAH on February 19, 2016, March 1, 2016, and August 31, 2016, are hereby denied with prejudice.
2. Pursuant to sections 440.09(4)(a) and 440.105(4)(b), Fla. Stat., the claimant is barred from receiving any further benefits under Chapter 440 for this date of accident.
3. The petitions for benefits filed with DOAH on February 19, 2016, March 1, 2016, and August 31, 2016, are hereby dismissed with prejudice.

DONE AND SERVED this 28th day of March, 2017, in Orlando, Orange County, Florida.



Neal P. Pitts,
Judge of Compensation Claims
Division of Administrative
Hearings
Office of the Judges of
Compensation Claims
Orlando District Office
400 West Robinson Street, Ste 608N
Orlando, Florida 32801
(407)245-0844
www.jcc.state.fl.us

COPIES FURNISHED:

Ricardo Aponte
10324 Westley Way
Orlando, FL 32825

Merette L. Oweis
Dixon & Associates
3335 W Bearss Ave
Tampa, FL 33618
merette.oweis@dxlegal.com, sonia.vega@dxlegal.com