

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
LAKELAND DISTRICT

EMPLOYEE:

Loretta Henry-Jackson
3520 Cleveland Heights Blvd.
#173
Lakeland, FL 33813

ATTORNEY FOR EMPLOYEE:

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Winter Park, FL 32789

EMPLOYER:

City of Lakeland
520 N. Lake Parker Ave.
Lakeland, FL 33801

ATTORNEY FOR

EMPLOYER/CARRIER:

Juliana L. Curtis, Esquire
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Lakeland, FL 33803

CARRIER:

The Claims Center
P.O. Box 2928
Lakeland, FL 33806

OJCC #: 09-010601 MHH

D/Accident: 08/05/02

FINAL COMPENSATION ORDER

On October 29, 2009, a final hearing was held in the above referenced matter before Mark H. Hofstad, Judge of Compensation Claims in Lakeland, Polk County, Florida. The Claimant was represented by James Spears, Esquire. The Employer/Carrier was represented by Juliana Curtis, Esquire. The petition for benefits at issue was filed on April 24, 2009.

Pursuant to a stipulation between the parties and court approval, the sole issue for judicial determination was whether the Claimant's claim is barred by the statute of limitations.

The following exhibits were accepted into evidence at final hearing:

Court Exhibits:

1. Pretrial Stipulation and Order Approving Pretrial Stipulation entered August 25, 2009.
2. Claimant's Trial Memorandum.
3. Employer/Carrier's Trial Memorandum.

Claimant's Exhibits:

1. Composite exhibit of the Claimant's petition for benefits.

Employer/Carrier's Exhibits:

1. Employer/Carrier's Response to the Claimant's petition for benefits.
2. Deposition of Loretta Henry-Jackson.

The Claimant and retired sergeant, Joseph Loudon were the only witnesses to testify live at trial. The court accepts their testimony as honest and trustworthy.

The Employer/Carrier objected to the testimony of Joseph Loudon as he had not been specifically listed as a claimant witness on the pretrial stipulation. However, the Employer/Carrier had listed Sergeant Loudon on its witness list and further, the Claimant testified in her deposition of June 15, 2009, that Sergeant Loudon was her supervisor at the time of the industrial accident and that she reported the industrial accident to him. Based on these factors, it is clear that the Employer/Carrier was not prejudiced by the testimony of Sergeant Loudon. The Claimant should have included Sergeant Loudon on the pretrial or in a subsequent amended witness list however failure to do so is an insufficient basis to strike a relevant witness's testimony. The prejudice to the Claimant in striking Sergeant Loudon would far outweigh the prejudice to the Employer/Carrier in allowing his testimony, particularly in light of the fact that the Employer/Carrier had included Sergeant Loudon on its witness list.

The Employer/Carrier also objected to the Claimant's argument that the Employer/Carrier should be barred from asserting the statute of limitations defense based upon the theory of *estoppel*. The objection was overruled by the court in that there is no requirement that a claimant specifically file a defense to contest the Employer/Carrier's defense. The concept of *estoppel* is virtually inherent to any effort to overcome an Employer/Carrier's defense that a claim is barred by the statute of limitations.

Findings of Fact and Conclusions of Law

(1) The court accepts the testimony of the Claimant that she notified her supervisor of the incident at issue on the same day it took place. As such, the Employer had actual knowledge of the alleged industrial incident. [See Section 440.185(1)(a), Florida Statutes]. The Claimant's notice of the incident was confirmed by her supervisor, retired sergeant, Joseph Loudon. Both the Claimant and Sergeant Loudon testified that they were not aware that the Claimant's alleged coronary condition might be covered by the Workers' Compensation Act. A notice of injury was

not prepared nor was the Carrier placed on notice of a potential workers' compensation claim by the Employer.

The Claimant testified that it was not until this year that she learned that her heart condition may qualify her for workers' compensation benefits. The Claimant filed a petition for benefits on April 24, 2009. The court finds that the Claimant properly filed a petition for benefits within two years of the date she knew or should have know that her condition potentially arose out of work performed in the course and scope of employment. [See Section 440.19(1), Florida Statutes].

Because the Claimant timely reported the alleged industrial incident to the Employer and as the Claimant timely filed a petition for benefits within two years of learning that her coronary condition may be a compensable workers' compensation incident, the Claimant has complied with the requirement of the Workers' Compensation Act.

(2) In addition, upon being notified of a potentially compensable industrial incident, the Employer failed to timely provide the Claimant with information advising the Claimant of the fact that she may be entitled to certain benefits and the procedures for obtaining those benefits. [See Section 440.185(4), Florida Statutes]. This finding is based on the Claimant's testimony that it was not until 2009 that she learned that her coronary condition was potentially covered under the workers' compensation system. The Claimant's testimony was supported by the testimony of her supervisor, Sergeant Louden. The Employer/Carrier presented no competent evidence to rebut the testimony of the Claimant or Sergeant Louden. As such, the Employer/Carrier is estopped from raising the statute of limitations defense.

The court's findings herein would not have been altered had the testimony of Sergeant Louden been excluded.

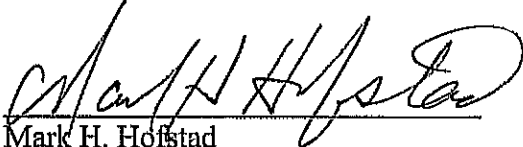
Based on the above findings, the statute of limitations defense is rejected. The court makes no findings regarding entitlement to the underlying benefits petitioned for.

Wherefore, it is **ORDERED and AJUDGED** that:

1. The Claimant's claims are not barred by the statute of limitations defense asserted by the Employer/Carrier.

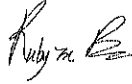
2. Counsel for the Claimant has established entitlement to a reasonable attorney fee and reimbursement of reasonable costs relative to the issue litigated. Jurisdiction is reserved should the parties be unable to reach agreement thereon.

DONE AND ORDERED in Chambers in Lakeland, Polk County, Florida.


Mark H. Hofstad
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered on this 4th day of November 2009, by the Judge of Compensation Claims, and that a copy thereof was sent to the parties identified above.


Digitally signed by Ruby
DN: cn=Ruby, o=State of Florida, ou=Lakeland,
email=Ruby_Brown@doah.state.fl.us, c=US
Date: 2009.11.04 16:34:28 -0500

Judicial Assistant to the
Judge of Compensation Claims