

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

Shannon Ware,
Employee/Claimant,

OJCC Case No. 18-025806WWA

vs.

Accident date: 4/6/2018

Flagler County Sheriff's Office/Florida
Sheriffs Risk Management Fund (FSRMF)
Employer/Carrier/Service Agent

Judge: Wilbur W. Anderson

ORDER DENYING MOTION FOR \$2,000 ADVANCE

This case is before the undersigned on Claimant's motion for an advance of \$2,000. The Employer/Carrier (E/C) opposes the motion. A previously filed motion for an advance in excess of \$2,000 was denied. As with the previously filed motion, the parties agreed this motion should be determined based on the pleadings and other documents submitted. I've considered the motion for the \$2,000 advance, the response to the motion, and a supplement to the motion. I have also considered the documents identified in the parties' notices of identification of documents referenced in the prior order denying the motion for an advance in excess of \$2,000. The parties waived the opportunity to present live testimony in support of, or in opposition to, the motion.

Findings of Fact and Conclusions of Law

1. Claimant is one of a number of employees of the Flagler County Sheriff's Office seeking workers' compensation benefits based on alleged exposure to unknown toxins at the Flagler County Sheriff's Office Operations Center. The E/C has denied all of these claims, and they have not yet been adjudicated. Each claimant is now seeking an advance of \$2,000 to help pay "the costs associated with the testing, evaluation of physical symptoms and required

deposition testimony to support the claim for compensation.” The motion for advance further alleges that “[w]ithout an advance of compensation, the Employee is unable to secure scientific evidence as to the cause of the Employee’s medical conditions and the source of the Employee’s exposure.”

2. I have made the two-step inquiry required by section 440.20(12)(c), Florida Statutes. See *ESIS/ACE American Ins. Co. v. Kuhn*, 104 So. 3d 1111, 1113 (Fla. 1st DCA 2012). Step one requires me to determine whether Claimant has not returned to the same or equivalent employment with no substantial reduction in wages, or has suffered a substantial loss of earning capacity or a physical impairment, actual or apparent. No evidence has been presented that this requirement has been met. There is no evidence as to whether Claimant has returned to the same or equivalent employment with no substantial reduction in wages. Nor is there any evidence at this point that Claimant has suffered a substantial loss of earning capacity or a physical impairment, actual or apparent. Consequently, step one of the inquiry must be answered in the negative.

3. Step two first requires me to determine whether Claimant is a "proper claimant." I find this requirement has been met because there is a pending petition for workers' compensation benefits. But step two then requires me to determine whether Claimant has provided adequate justification for the request. As the court explained in *Kuhn*, the need for an advance must have a plausible nexus to medical and related financial needs arising from workplace injuries.

4. “[A] JCC may consider a claimant's financial need for an advance pursuant to section 440.20(12)(c)2 even when the purpose of the advance is to pay for expenses related to establishing compensability or entitlement to benefits.” *Anderson v. Broward County Sheriff's Office*, 251 So. 3d 318, 321 (Fla. 1st DCA 2018). The only evidence of financial need for the

\$2,000 advance is contained in Claimant's financial affidavit, initially filed in support of the motion for an advance in excess of \$2,000, but also offered as evidence in support of the pending motion. That affidavit, the same in each of these cases, states in pertinent part:

I have requested an advance to pay for this testing and evaluation because I do not have the financial means to do so without jeopardizing my financial security, worsening my current financial condition or spending funds which may be required for treatment of the medical conditions from which I am suffering and for which my Employer has thus far denied any responsibility.

5. This general allegation of financial need is insufficient evidence that Claimant has a specific financial need for a \$2,000 advance. The financial affidavit tells me nothing about this particular Claimant's income, assets, debts, or living expenses. Based on the evidence before me, Claimant could be destitute, extremely wealthy, or anywhere in between. I am therefore unable to determine whether this particular Claimant has a real financial need for the advance. *See Kuhn* (holding that a claimant's interest in having a "cushion" to safeguard her finances was insufficient to justify the advance). I therefore conclude Claimant has not provided adequate justification for the request. Consequently, step two of the statutory inquiry must also be answered in the negative.

It is therefore,

ORDERED AND ADJUDGED that the motion for an advance of \$2,000 is denied.

DONE AND ELECTRONICALLY TRANSMITTED VIA EMAIL TO THE ATTORNEYS AND CARRIER LISTED BELOW this 4th day of December, 2018, in Daytona Beach, Volusia County, Florida.



Wilbur W. Anderson
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