

where the police had four men covering three exits to the apartment containing the suspect and officers did not know when the suspect was going to leave).

Finally, the police asserted that officer safety was threatened by the fact that drug dealers often carry guns. But the fact that the officers knew that suspects inside the motel room may have guns is not, in itself, sufficient to justify warrantless entry into the room. They expressed no concern that the suspects were going to shoot either a bystander inside the room or any of the officers. Indeed, they could not argue that the officers were in danger of being shot, as the suspects did not even know that the police were at the motel. Only when the police made their presence known to the suspects by knocking on the door and then breaking it down did the danger of officers being shot arise. This was another exigency created by the police officers' own conduct, so it cannot justify the warrantless entry.

None of the arguments advanced by the state are sufficient—either alone or taken together—to justify a warrantless entry into a constitutionally protected area. Therefore, we conclude that the motion to suppress should have been granted.

Reversed.

BENTON, PADOVANO and
BROWNING, JJ., concur.



**VILLAGE APARTMENTS and
Protegrity Services, Inc.,
Appellants,**

v.

Santiago HERNANDEZ, Appellee.

No. 1D02-2427.

District Court of Appeal of Florida,
First District.

Oct. 22, 2003.

Employer/carrier sought judicial review of decision of Judge of Compensation Claims (JCC), Shelley M. Punancy, awarding workers' compensation benefits to claimant. The District Court of Appeal, Hawkes, J., held that: (1) JCC misunderstood statute permitting denial of benefits for knowingly providing false, misleading, fraudulent, or incomplete information, and (2) remand was required to permit JCC to conduct hearing to address whether claimant, in support of his claim for benefits, made any oral or written statements concerning facts material to his claim that he knew were false, misleading, or incomplete, especially with regard to prior accidents.

Reversed and remanded with instructions.

1. Workers' Compensation ⇐771

By focusing only on written misrepresentations, Judge of Compensation Claims (JCC) clearly misconstrued requirements necessary to invoke sanctions against workers' compensation claimant under statute permitting denial of benefits to which claimant might otherwise have been entitled, if claimant, in seeking benefits, knowingly provided any false, misleading, fraudulent, or incomplete information. West's F.S.A. § 440.09(4).

2. Workers' Compensation § 1950

Remand was required to permit Judge of Compensation Claims (JCC) to conduct a hearing to address whether workers' compensation claimant, in support of his claim for benefits, made any oral or written statements concerning facts material to his claim that he knew were false, misleading, or incomplete at the time the statements were made, especially with regard to prior accidents in which claimant had been involved. West's F.S.A. § 440.09(4).

Cord Byrd, Rigell, Ring & Ardman, P.A., West Palm Beach, for Appellants.

Sandra L. McAuley, Findler & Findler, P.A., and Helene Hvizd Morris, West Palm Beach, for Appellee.

HAWKES, J.

In this workers' compensation appeal, Appellants, Employer/Carrier (E/C), argue the claimant should be denied benefits pursuant to section 440.09(4), Florida Statutes (Supp.1998). This provision sanctions workers' compensation claimants by denying benefits to which they might otherwise have been entitled, if a claimant, in seeking benefits, knowingly provides any false, misleading, fraudulent or incomplete information as set forth in section 440.105, Florida Statutes (Supp.1998). Because the JCC appears to have misunderstood the law, we reverse and remand.

[1] Section 440.09(4), has frequently been referred to as the "fraud defense."

1. Section 440.105(4)(b)2., provides:

(b) It shall be unlawful for any person:

* * * *

2. To present or cause to be presented any written or oral statement as part of, or in support of, a claim for payment or other

This misnomer appears to have narrowed the application of the sanction beyond that intended by the legislature. In interpreting any statute, full effect must be given to the language chosen by the legislature. Section 440.09(4), provides that the commission of *any* act prohibited by section 440.105, results in the sanction. For instance, section 440.105(4)(b)2., Florida Statutes (Supp.1998), which doesn't use the word "fraud," imposes the sanction if the claimant, in support of his claim for benefits, makes an *oral* statement concerning a material fact that he knows is false, incomplete or misleading.¹ However, at the merits hearing, when the E/C sought to invoke the provisions of section 440.09(4), the JCC asked "Well, where's the *written* representation that you feel was false?" By focusing only on written misrepresentations, the JCC clearly misconstrued the requirements necessary to invoke the sanctions provided by section 440.09(4).

Under most circumstances, accurate medical histories, evidence of prior accidents, and statements regarding the extent of current injuries are relevant and material to a workers' compensation claim. These statements are relevant and material whether made to health care providers, or during testimony given at depositions or the merits hearing. In a workers' compensation case, a claimant's responses to inquiries regarding his prior accidents, current injuries, or medical history are made in support of his claim for benefits.

Here, the E/C refer to numerous places in the record where the claimant makes oral statements at deposition, during the

benefit pursuant to any provision of this chapter, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim.

merits hearing, and to health care providers, that appear false, misleading or, at the very least, incomplete. Regardless of whether the claimant was under oath, if, at the time he made any of these statements, he knew they were false, incomplete or misleading, then the statements fall within the scope of section 440.105(4)(b)2., and, pursuant to section 440.09(4), result in the loss of workers' compensation benefits.

[2] We are particularly concerned with the claimant's testimony regarding his involvement in prior automobile accidents. Evidence of prior accidents in the discovery phase is relevant to determine whether the accidents may have caused or contributed to current injuries. Similarly, evidence of dishonesty in responses to discovery questions about prior accidents is relevant in the trial phase to establish the previous deception.

The record indicates the claimant testified three times during two depositions that he had no prior automobile accidents. The claimant had a qualified Spanish interpreter during these depositions, and there was no indication that the claimant misunderstood the questions. Moreover, automobile accidents tend to be memorable.

The E/C proffered records indicating the claimant had been involved in at least three prior accidents, the most recent of which occurred only eight months prior to his first deposition.² The JCC refused to admit this evidence of the claimant's prior accidents, reasoning she would be required to make an "intellectual leap" to conclude these accidents contributed to the claimant's current injuries. However, evidence of the accidents was not offered to show they contributed to the current injury. Rather, they were offered to show the

2. The E/C stated at the hearing that the evidence of the accidents was discovered too late to include in the pre-trial stipulation. This

claimant had misrepresented facts material to his claim for benefits. "Honesty is not a luxury to be invoked at the convenience of a litigant." *Baker v. Myers Tractor Servs., Inc.*, 765 So.2d 149, 150 (Fla. 1st DCA 2000) (quoting trial court's order). The workers' compensation system is designed to be efficient and self-executing. *See* § 440.015, Fla. Stat. (1997). It cannot depend on an adversary's ability to investigate and discover false testimony. The parties have a right to expect that all statements, whether written or oral, are truthful, responsive, and complete. Accordingly, we remand for the JCC to conduct a hearing to address whether the claimant, in support of his claim for benefits, made *any* oral or written statements concerning facts material to his claim that he knew were false, misleading or incomplete at the time the statements were made. Although the JCC's inquiry is not limited to prior accidents, on remand, the JCC should allow evidence of any prior accidents in which the claimant has been involved. If the JCC finds the claimant knew he had been involved in prior accidents when he testified he had not, that would constitute a false statement involving a material fact.

REVERSED and REMANDED with instructions.

WOLF, C.J., and BROWNING, J.,
Concur.



late discovery illustrates the problem that the sanctions provided through section 440.09(4), attempts to deter.