

The Law Offices of Bolton & Helm, LLP

CASE LAW UPDATE

Illegal Alien Status Does Not Preclude PTD

In HDV Construction Systems, Inc., v. Aragon, 36 Fla. L. Weekly D1376a(Fla. 1st DCA, 6/28/11), the claimant filed a claim for PTD benefits, which the E/C denied on the basis that claimant was physically capable of sedentary work, and was unemployable only because of his illegal status. The 1st DCA affirmed the JCC's award of PTD benefits explaining that the Florida Legislature has expressed an unyielding intent that aliens, including those who are illegal and unlawfully employed, be covered and compensated under the Florida Workers' Compensation Law. F.S.440.02(15)(a)(2007)(defining "employee" to include any person who receives remuneration from an employer, including aliens, whether "lawfully or unlawfully employed"). The 1st DCA explained that the claimant's illegal alien status, of which the employer had knowledge, is one of the factors to be considered in the determination of whether a claimant may return to gainful employment. The JCC should generally consider: (1) medical evidence; (2) vocational evidence and; (3) reasonableness of the job search. Further, the appellate court held that a JCC is not limited in awarding PTD benefits on a continuing basis where there is an evidentiary foundation for disability, permanent in duration.

Discussion: Unfortunately, an illegal alien will not be precluded from PTD benefits even if such status impairs employment.

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