

**RISSMAN, BARRETT, HURT,
DONAHUE & McLAIN, P. A.**
ATTORNEYS AT LAW

STEVEN A. RISSMAN
ROBERT C. BARRETT
JENNINGS L. HURT III
ROBERT A. DONAHUE
JOHN E. McLAIN III
RICHARD S. WOMBLE
JOHN P. DALY
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EDWARD M. COPELAND IV
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G. WILLIAM LAZENBY IV
R. CLIFTON ACORD II
ROBERT D. BARTELS
JILL M. SPEARS
JEFFREY J. KERLEY
KARISSA L. OWENS

OF COUNSEL
ROBERT J. JACK
EXECUTIVE DIRECTOR
W. SCOTT PETERSON

201 EAST PINE STREET
15TH FLOOR
P.O. BOX 4940
ORLANDO, FLORIDA 32802-4940
TELEPHONE (407) 839-0120
TELECOPIER (407) 841-9726
ORLANDO@RISSMAN.COM

TAMPA COMMONS
ONE NORTH DALE MABRY HIGHWAY
11TH FLOOR
TAMPA, FLORIDA 33609
TELEPHONE (813) 221-3114
TELECOPIER (813) 221-3033
TAMPA@RISSMAN.COM

207 S. 2nd STREET
FT. PIERCE, FLORIDA 34950
TELEPHONE (772) 409-1480
TELECOPIER (772) 409-1481
FTPIERCE@RISSMAN.COM

WWW.RISSMAN.COM

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PERMANENT TOTAL DISABILITY – ILLEGAL ALIENS

Aragon v. HDV Construction Systems, Inc., 36 Fla. L. Weekly D1376 (Fla. First DCA June 28, 2011).

The claimant suffered an injury at work and filed a petition seeking permanent total disability benefits. The Employer/Carrier argued that the claimant was not entitled to permanent total disability benefits as he was an illegal alien and unemployable. The claimant relied on Cenvill Development Corp. v. Candelo, 478 So.2d 1168 (Fla. 1st DCA 1995) in arguing that the Employer/Carrier knew or should have known he was illegal at all times and was precluded from using his illegal status as a defense. The JCC agreed with the claimant and found that because the employer knew or should have known that the claimant was illegal prior to his injury and continued to employ him that the Employer/Carrier was precluded from arguing the claimant's illegal status meant he was not eligible to receive permanent total disability benefits. The JCC also found the claimant was entitled to PTD benefits but only through the merits hearing because the JCC could not award benefits on a continuing basis.

The Employer/Carrier appealed the JCC's decision arguing that the claimant's illegal status should defeat his entitlement to PTD and the claimant cross-appealed the JCC's conclusion that he was not entitled to PTD benefits on a continued basis for periods following the merits hearing.

The First District Court of Appeal first addressed the status of illegal aliens in Workers' Compensation claims. The court cited to Candelo and confirmed that employers who employ illegal workers are estopped from asserting the status of an illegal alien as a defensive matter so as to avoid liability for disability benefits otherwise due when the employer "knew or should have known of the true status of the employee." The Court went on to state that an entity that knowingly employs unlawful labor should not be able to avoid the cost of injuries it creates. The Court dismissed the Employer/Carrier's argument that although Candelo was recognized authority, the application of its ruling should not be applied as the claimant would be rewarded for being an illegal alien. The First District Court of Appeal stated that if the employer wanted to avoid the loss it should have refrained from knowingly hiring an illegal alien. The Court then held that the claimant's disabling physical injuries when combined with his vocational impediments rendered him incapable of engaging in at least sedentary employment within a 50 mile radius of his residence and the JCC's award of PTD benefits was without error.

The court then addressed the JCC's determination that it could not award PTD benefits on a "continuing basis." The court found that the Florida Statute §440.192(3) contemplates awarding benefits on a continued basis and the benefits should have been awarded. Therefore, the case was reversed and remanded back to the JCC for an order awarding PTD benefits on a continuing basis.