

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

PUBLIC STORAGE and HARTFORD  
INSURANCE COMPANY,

Appellants,

v.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D04-1269

ESMERALDA GALANO,

Appellee.

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Opinion filed February 1, 2005.

An appeal from an order of the Judge of Compensation Claims. Mily Rodriguez Powell, Judge.

Robert L. Teitler and Warren Brown of Walton Lantaff Schroeder & Carson, LLP, Miami, for Appellants.

Martha D. Fornaris, Coral Gables, and Bill McCabe, Longwood, for Appellee.

PER CURIAM.

In this case, the trial court correctly found that appellants failed to deny compensability of appellee's workplace injury within 120 days "after the initial provision of benefits." § 440.20(4), Fla. Stat. (2002). Accordingly, appellants waived

the right to deny compensability. See Hutchinson v. Lykes Smithfield Packing, 870 So. 2d 144 (Fla. 1<sup>st</sup> DCA 2004). Where the employer/carrier seeks relief from the harshness of the 120-day “pay and investigate” provision, the burden is on the employer/carrier to demonstrate “material facts relevant to the issue of compensability that it could not have discovered through reasonable investigation within the 120-day period.” § 440.20(4), Fla. Stat. (2002). Neither in the pretrial stipulation, nor elsewhere, did appellants assert entitlement to relief from the 120-day rule, nor would competent substantial evidence in this record support such relief.

AFFIRMED.

WOLF, C.J., KAHN, and POLSTON, JJ., CONCUR.