

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

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

RICARDO CAGNOLI,

Appellant,

v.

CASE NO. 1D03-5563

TANDEM STAFFING and
SPECIALTY RISK SERVICES,
INC.,

Appellees.

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Opinion filed November 5, 2004.

An appeal from an order of the Judge of Compensation Claims.
S. Scott Stephens, Judge.

Mark L. Zientz and Andrea Cox, of Law Offices of Mark L. Zientz, P.A., Miami, for appellant.

JoNel Newman, of Florida Legal Services, Inc., Miami; and Rebecca Smith, of National Employment Law Project, Olympia, Washington, for amici curiae National Employment Law Project, Farmworker Coordinating Counsel of Palm Beach County and Coalition of Florida Farmworker Organizations Inc., in support of appellant.

Thomas Hodas, of Law Office of Thomas Hodas, P.A., Tequesta, for appellees.

Andrea L. Reino, Assistant General Counsel, Department of Financial Services, Division of Legal Services, Tallahassee, for intervenor Division of Workers' Compensation, in support of appellees.

WOLF, C.J.

Claimant, Ricardo Cagnoli, challenges a final order striking his petition for workers' compensation benefits for failing to include a social security number as required by section 440.192, Florida Statutes. Claimant raises a number of issues, including whether the requirement of including a social security number violates section 7 of the federal Privacy Act of 1974, at 5 U.S.C. § 552a note. We agree with claimant that the requirement does in fact violate the federal statute. It is, therefore, unnecessary for us to reach the other issues raised by appellant.

Section 7 of the Privacy Act provides, in relevant part, as follows:

(a)(1) It shall be unlawful for any Federal, State, or local government agency to deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to -

.....

(B) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

5 U.S.C. § 552a note.

The exception provided in section 7(a)(2)(B) of the Privacy Act would not apply to section 440.192, Florida Statutes, requiring injured workers to list their social security number, because section 440.192 was not enacted until 1980. We have reviewed other exceptions to the Privacy Act, including those contained in section 42 U.S.C. § 405, and find none to be applicable.¹

We, therefore, determine that the Judge of Compensation Claims erred in dismissing the petition for benefits and direct that the claim be reinstated.

BARFIELD and WEBSTER, JJ., CONCUR.

¹The brief of the intervenor, Division of Workers' Compensation, does not direct us to any relevant exceptions from application of the Privacy Act. We also note that the Division failed to appear for oral argument in this case.