

08-2120-CD

Gregory Odrosky vs James Hile et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GREGORY ODROSKY, an
Individual,
Plaintiff,

vs.

JAMES HILE t/d/b/a COLOR
GALORE CONTRACTING,
Defendant.

No. 08-2120 -CD

Type of Pleading:

**PRAECIPE FOR ENTRY OF
JUDGMENT**

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

NOV 07 2008

0/11:00/

William A. Shaw
Prothonotary/Clerk of Courts
CENT. W/NOTICE

TO ATTY &
DEETS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

GREGORY ODROSKY, an
Individual,
Plaintiff,

vs.

JAMES HILE t/d/b/a COLOR
GALORE CONTRACTING,
Defendant.

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No. 08-

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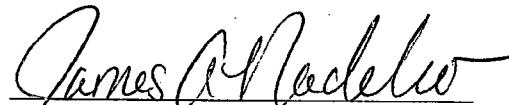
PRAECIPE FOR ENTRY OF JUDGMENT

TO THE PROTHONOTARY:

Please enter judgment in favor of Plaintiff, Gregory Odrosky, and against Defendant, James Hile t/d/b/a Color Galore Contracting in the amount of \$36,500.29 with interest thereon from June 15, 2005 in accordance with the award from Judge Michael E. Koll, Commonwealth of Pennsylvania, Bureau of Workers' Compensation which is attached hereto as Exhibit "A."

NADDEO & LEWIS, LLC

By



James A. Naddeo
Attorney for Plaintiff



DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

BUREAU OF WORKERS' COMPENSATION
1171 SOUTH CAMERON STREET, ROOM 103
HARRISBURG, PA 17104-2501

www.dli.state.pa.us

MAY 09 2008

May 6, 2008

The foregoing is hereby certified to be a true and correct copy of workers' compensation records in the case of Greg Odrosky vs Colors Galore Contracting-James Hile, BWC #2817418, Injury Date 06/15/2005 as full, entire, and complete as the same remaining on file in the Bureau of Workers' Compensation of the Department of Labor and Industry.

Certified this 6th day of May, 2008

Chief
Claims Management Division

ATTEST:

I hereby certify that Thomas L. Dinsmore, who signed the foregoing, was at the time of signing, Chief, Claims Management Division, Bureau of Workers' Compensation, and as such, was the legal custodian of the above-described records.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Department of Labor and Industry to be affixed on this 6th day of May, 2008

Seal of the Department
of Labor and Industry

Jude A. Mirasola



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION OFFICE OF ADJUDICATION
814-765-6398

Circulation Date: 11/15/2005

MICHAEL KOLL
CLEARFIELD JUDGES OFFICE
306 EAST LOCUST STREET
CLEARFIELD PA 16830-2445

DECISION RENDERED COVER LETTER

Bureau Claim Number: 2817418

Injury Date: 06/15/2005

Insurer Claim Number:

Petitions:

Claim-Pet

GREGORY ODROSKY
1212 SUGARCAMP RD
MAHAFFEY, PA 15757

JAMES NADDEO ESQ
207 E MARKET ST
PO BOX 552
CLEARFIELD, PA 16830

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

Vs

JAMES HILE
COLOR GALORE CONTRACTING
64 COLLAR LANE
CLEARFIELD, PA 16830

The attached Decision of the Judge is final unless an appeal is taken to the Workers' Compensation Appeal Board as provided by law.

If you do not agree with this Decision, an appeal must be filed with the Workers' Compensation Appeal Board within 20 days from but not including the date of this notice.

Forms for an appeal may be obtained from the Workers' Compensation Appeal Board, Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102

<input checked="checked" type="checkbox"/> OPEN	<input type="checkbox"/> SUSPENDED
<input type="checkbox"/> CLOSED	<input type="checkbox"/> UNKNOWN TO WCJ

Employee Witnesses & Exhibits:

- 1- Medical bills and costs of claimant
- 2- Fee Agreement

Employer Witnesses & Exhibits:

None

Hearings:

9/14/2005 09:00:00 Held
8/24/2005 09:30:00 Canceled by Employee Counsel on 08/11/05

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Claim Petition
PABWC Claim No. 2817418
Page 1 of 5

FINDINGS OF FACT

1. On July 12, 2005, the Claimant, Gregory Odrosky, filed a Claim Petition, asserting that he sustained a severed thumb on his left hand on June 15, 2005, during the course and scope of his employment with Defendant/Employer James Hile, trading and doing business as Colors Galore Contracting. Such Petition asserts that the Claimant sustained the loss of use of such left thumb, resulting in full disability from June 15, 2005 ongoing.
2. Such Petition was assigned to this Workers' Compensation Judge by Notice of Assignment of July 15, 2005. No answer to such Petition has been filed on behalf of Defendant/Employer. Pursuant to the Notice of Assignment, there is no insurance listed for Defendant/Employer.
3. By Notice of Hearing of August 18, 2005, a hearing in the above matter was scheduled for September 14, 2005. A Notice of Hearing addressed to Defendant/Employer, was not returned as undelivered by the United States Post Office.
4. A hearing in the above matter was held on September 14, 2005. As of the time of such hearing, Defendant/Employer did not appear, nor was represented by counsel. Present at such hearing was the Claimant, together with counsel for the Claimant. Brief testimony of the Claimant was obtained, with the Claimant testifying that on June 15, 2005, while cutting Styrofoam as an employee for Defendant/Employer, he saw that he was using caught the Styrofoam, severing his thumb. The Claimant testified that as of the time of such injury, he was working forty hours per week, at a rate of \$7.00 per hour. The Claimant further testified, displaying the function of his thumb, indicating that while he can slightly move such thumb, he cannot use it to make a fist, nor for all practical intensive purposes had any functional use of his thumb. He indicated that other than his thumb, the rest of his hand was not affected by the injury. He testified that he has not worked since June 15, 2005. The Claimant further testified that he incurred medical bills and costs associated with treatment for his thumb, which remained unpaid. (September 14, 2005 Hearing)
5. Subsequent to such hearing, counsel for the Claimant has submitted copies of medical bills, which the Claimant has incurred, relative to his treatment relative to his severed left thumb as follows:

R&R Radiology, LLC. \$ 28.00
P. O. Box 129, Clearfield PA 16830

Susquehanna Anesthesia Associates \$ 810.00
809 Turnpike Ave, P.O. Box 687, Clearfield, PA 16830

Clearfield Hospital \$5,315.52
P. O. Box 992, Clearfield, PA 16830

Dr. L. D. Bell \$ 825.00
807 Turnpike Ave, Clearfield, PA 16830

DRMC \$ 928.00
P. O. Box 447, DuBois, PA 15801-0447

City Drugs of Curwensville \$ 19.08
360 Thompson St., Curwensville, PA 16833

CVS Pharmacy \$ 89.07
3055 Park Place, Clearfield, PA 16830

Wal-Mart Pharmacy \$ 15.62
100 Supercenter Drive, Clearfield, PA 16830

6. The Claimant and his counsel have entered into a Fee Agreement providing for attorney's fees in the amount of twenty percent. (Claimant Exhibit Two)
7. Following the September 14, 2005 hearing, by correspondence of September 16, 2005, an individual representing himself as the Defendant/Employer, Jim Hile, contacted this office, regarding his failure to attend the scheduled hearing. He was advised by this office staff, that an Interlocutory Order would be issued regarding his failure to attend the scheduled hearing, that he should contact an attorney, taking any documentation, together with the Interlocutory Order to such attorney. No further communications, written or otherwise have been received from Defendant/Employer.
8. Thereafter, by Interlocutory Order of October 11, 2005, the following Order was entered:

Gregory Odrosky vs. James Hile, tdba Colors Galore Contracting, et al
Claim Petition

PABWC Claim No. 2817418

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"AND NOW, this 11th day of October 2005, Defendant/Employer James Hile, trading and doing business as Colors Galore Contracting shall submit written notice within twenty days of the date of this Order as to whether any substantial or compelling basis existed for his failure to attend the scheduled hearing in this matter. In the absence of receipt of such written notice within twenty days hereof, with a copy to counsel for the Claimant, together with indication as to the nature, if any, of any defense to the Claimant's Petition, the evidentiary record in this matter shall be deemed closed, with such failure on behalf of Defendant/Employer to respond in this matter being deemed as an admission as to the Claimant's entitlement to relief, and a Final Order issued accordingly."

9. The October 11, 2005 Interlocutory Order, addressed to Defendant/Employer, has not be returned as undelivered by the United States Post Office. No additional communications written or otherwise have been received on behalf of Defendant/Employer.
10. Based upon the foregoing and review of the record in its entirety, it is further found as follows:
 - a) On June 15, 2005, the Claimant Gregory Odrosky sustained a severed thumb on his left hand, during the course and scope of his employment with Defendant/Employer James Hile, trading and doing business as Colors Galore Contracting. Such has resulted in the Claimant sustaining a permanent loss of use of his left thumb, entitling him to receipt of total disability benefits, for a period of one hundred weeks, plus an additional ten week healing period. Such Workers' Compensation benefits shall be paid, based upon an average weekly wage of \$280.00 per week, with a resultant compensation rate of \$252.00 per week.
 - b) Defendant/Employer shall further be responsible for payment for and/or reimbursement of the Claimant's medical costs and expenses, including those as set forth in paragraph five of the preceding Findings of Fact. In reaching such findings, the testimony of the Claimant is found to be credible, and unrefuted, together with Defendant/Employer being deemed to admit the averments of the Claimant's Claim Petition in failing to file an Answer to the Petition, together with Defendant/Employer's failure to present any defense in this matter, or otherwise present any written response to the October 11, 2005 Interlocutory Decision.

CONCLUSIONS OF LAW

1. The parties hereto are bound by the respective provisions of the Pennsylvania Workers' Compensation Act, as amended.
2. The Claimant has sustained his Burden of Proof, that on June 15, 2005, he sustained an injury, resulting in a permanent loss of use of his left thumb, entitling him to Workers' Compensation benefits as set forth in the preceding Findings of Fact.
3. Defendant/Employer has failed to sustain its Burden of Proof that its contest of this matter was at all times reasonable, in that Defendant/Employer has presented no defense in this matter. In determining the amount of attorney's fees to be assessed for unreasonable contest, it is noted the counsel for the Claimant has not submitted a quantum meruit statement with respect to time required to be incurred in this matter and/or that actually expended. In light of the undefended nature of the Petition, it is found that in addition to Defendant/Employer's responsibility for paying the preceding award, Defendant/Employer shall additionally pay attorney's fees in the amount of \$750.00, reflecting five hours at \$150.00 per hour. In assessing such amount, the entirety of the evidentiary record in this matter has been reviewed, with it being found and concluded that approximately five hours of legal time would be required in meeting with the Claimant and preparing the initial Claim Petition, the attendance at the short pre-trial conference, compiling the medical bills and expenses, together with follow-up correspondence to this Workers' Compensation office. Such amount shall be paid directly to the Claimant, as reimbursement to the Claimant, for the twenty percent deduction of attorney's fees pursuant to the Fee Agreement entered into between the Claimant and his counsel.
4. The twenty percent Fee Agreement entered into between the Claimant and his counsel is hereby approved as reasonable.

ORDER

And now this 14th day of November 2005, the Claimant's Claim Petition is GRANTED. Defendant/Employer shall be responsible for making payment of Workers' Compensation benefits to the Claimant for a total period of one hundred ten weeks at a rate of \$252.00 per week. Defendant/Employer shall further be responsible for payment

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Claim Petition***

PABWC Claim No. 2817418

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of the Claimant's medical costs and expenses, causally related to the work injury, with the reasonableness and necessity of such being subject to the Cost Containment Provisions of the Pennsylvania Workers' Compensation Act, as amended. Defendant/Employer shall further be responsible for deduction of twenty percent of the preceding award, making such amounts payable directly to counsel for the Claimant, James A. Naddeo, Esquire. Defendant/Employer shall further be responsible for making payment of an additional amount of \$750.00, as reimbursement for unreasonable contest, directly to the Claimant. All awards hereunder shall be subject to the statutory interest in the amount of ten percent.



Michael E. Koll
Workers' Compensation Judge
Clearfield District Office

MEK:klp

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CIVIL DIVISION

GREGORY ODRISKY, an
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Plaintiff,

vs.

JAMES HILE t/d/b/a COLOR
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Defendant.

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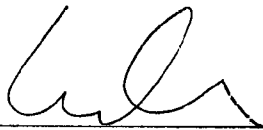
No. 08-2120 -CD

NOTICE

NOTICE is given that a JUDGMENT in the above captioned
matter has been entered against you in the amount of \$36,500.29
with interest from June 15, 2005.

PROTHONOTARY

By



William A. Shaw

Date 11-7-08