**Misrepresentation 440.09/440.105**

By Melissa Volk and Laura A. Buck

1. **Introduction (20 Mins)**
	1. Florida Statutes, Section 440.09
		1. Compensation or benefits are not due or owing if any JCC, ALJ, court or jury find employee has “knowingly or intentionally” engaged in any act described in 440.105, or any criminal act for the purpose of securing workers’ compensation benefits.
		2. This section applies to all accidents, regardless of the date of accident.
		3. All benefits (medical and indemnity) are forfeited, even if claimant commits misrepresentation as to only indemnity benefits. *Citrus Pest Control v. Brown*, 913 So. 2d 754 (Fla. 1st DCA 2005).
	2. Florida Statutes, Section 440.105
		1. It shall be unlawful for any person to:
			1. Knowingly make, or cause to be made, any false, fraudulent, or misleading oral or written statement for the purpose of obtaining any benefit or payment under Chapter 440.
			2. Present or cause to be presented any written or oral statement containing false, incomplete or misleading information concerning any fact or thing material to such claim.
2. **Elements for a successful misrepresentation defense (20 mins)**
	1. Defense must be raised timely
		1. Rule 60Q-6.113(2)(h)
		2. *Isaac v. Green Iguana, Inc.,* 871 So. 2d 1004 (Fla. 1st DCA 2004)
		3. *2K South Beach Hotel, LLC v. Musteilier, DCA #19-0713*
	2. E/C has burden of proving a statutory violation by a preponderance of the evidence. *Singletary v. Yoder’s*, 871 So. 2d 289 (Fla. 1st DCA 2004).
		1. Statements/Actions were knowingly or intentionally made
		2. Statements were oral or written
		3. Statements were made for purpose of obtaining workers’ compensation benefits
	3. Testimony and documentary evidence needed
3. **Types of Misrepresentation (20 mins)**
	1. Medical Mileage
		1. *Richmond v. Lowe’s Home Centers, OJCC #14-013039*
	2. Misrepresentations to Doctors
		1. *Cal-Maine Foods v. Howard,* 225 So. 3d 898 (Fla. 1st DCA 2017)
	3. Past Medical History
		1. *THG Rentals & Sales v. Arnold*, 196 So. 3d 485 (Fla. 1st DCA 2016)
		2. *Joseph v. South Lake Hospital, OJCC #19-003916*
		3. *Mendez v. Pinnacle Property Mgmt, OJCC #17-009753*
	4. Misrepresentation by Omission
		1. *Scandizzo v. Nelson & Affiliates, Inc., OJCC #15-003319*
		2. *LaFerriere v. Wire Products, Inc., OJCC #15-013683*
		3. *Javier v. City of Cape Coral, OJCC #18-010663*
	5. Physical complaints/activities
		1. *Lee v. Volusia County School Board*, 890 So. 2d 397 (Fla. 1st DCA 2004)
		2. *Lucas v. ADT*, 72 So. 3d 270 (Fla. 1st DCA 2011)
		3. *Acosta v. Florida Crystal*, 53 So. 3d 1022 (Fla. 1st DCA 2011)
	6. Social Security Number
		1. *Hernandez v. Food Market Corp.*, 44 Fla. L. Weekly D2647b
		2. *Arreola v. Administrative Concepts*, 17 So. 3d 792 (Fla. 1st DCA 2009)
		3. *Gonzalez v. Workforce Business Services, Inc., OJCC #18-020308*
	7. Misrepresentation to Employer
		1. *Martin v. Carpenter*, 132 So. 2d 400 (Fla. 1st DCA 1961)
		2. *Steel Dynamics v. Markham*, 46 So.3d 641 (Fla. 1st DCA 2010)
		3. *Joseph v. South Lake Hospital, OJCC #19-003916*
4. **Considerations before raising misrepresentation defense**
	1. An unsuccessful misrepresentation defense results in attorney’s fees, even if all other claimed benefits are denied. *Carrillo v. Case Engineering*, 53 So. 3d 1214 (Fla. 1st DCA 2011).
	2. E/C cannot force a trial on a misrepresentation defense, if there is no pending Petition for Benefits.
	3. Settlement negotiations when a potential defense misrepresentation exists.