

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-3194

HARBOR FREIGHT TOOLS, INC.
and SAFETY NATIONAL
CASUALTY CORP./CORVEL,

Appellants,

v.

PATRICIA WHITEHEAD,

Appellee.

On appeal from an order of the Judge of Compensation Claims.
Ralph J. Humphries, Judge.

Date of Accident: May 3, 2015.

May 18, 2018

PER CURIAM.

A judge of compensation claims awarded workers' compensation benefits based on the so-called "120-day rule," which generally precludes carriers from denying compensability if they begin paying benefits and do not challenge compensability within 120 days. *See* § 440.20(4), Fla. Stat. (2015); *see also Sierra v. Metropolitan Protective Servs.*, 188 So. 3d 863, 866-67 (Fla. 1st DCA 2015). But "[a] claimant's 'defense' of waiver to an [employer's] ability to deny compensability of an accident or specific injury/condition pursuant to the '120-Day Rule' is an

affirmative pleading which must be timely raised and specifically plead[ed].” *Teco Energy, Inc. v. Williams*, 234 So. 3d 816, 823 (Fla. 1st DCA 2017). Here the claimant did not specifically plead application of the 120-day rule. The judge of compensation claims therefore erred in awarding benefits based on the rule.

REVERSED.

LEWIS, KELSEY, and WINSOR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Daniel M. Schwarz and Gina M. Jacobs of Cole, Scott & Kissane, P.A., Plantation, for Appellants.

Daniel J. Glary, Jacksonville, for Appellee.