

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
Melbourne District**

**EMPLOYEE:**

Steven McNatt  
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West Melbourne, FL 32904

**EMPLOYER:**

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**CARRIER:**

Preferred Governmental Claim Solutions  
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**ATTORNEY FOR EMPLOYEE:**

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**ATTORNEY FOR EMPLOYER/CARRIER:**

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**OJCC CASE NO.:** 08-006904PTT  
**D/A:** 12/29/2007

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**ORDER DENYING COMPENSABILITY OF CLAIM**

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THIS MATTER came on for Merit Hearing before the undersigned Judge of Compensation Claims on August 22, 2008 for a Petition for Benefits filed on March 13, 2008. At the conclusion of the Merits Hearing, a verbal ruling was issued with findings of fact and conclusions of law which are incorporated herein by reference. During the Hearing, the Claimant was represented by Dennis D. Smejkal, Esquire and the Employer/Carrier was represented by Derrick E. Cox, Esquire.

The issues presented for my determination were compensability of the Claimant's coronary artery disease and hypertension, payment of Temporary Total Disability/Temporary Partial Disability benefits from December 29, 2007 through January 21, 2008, authorization of a cardiologist, and penalties, interest, costs, and attorney's fees.

The claim was defended on the grounds that the Claimant did not sustain a compensable injury by accident arising out of the course and scope of his employment, and that the major contributing cause of the Claimant's disability and need for treatment was unrelated to the Claimant's employment. Also, that no penalties, interest, costs, and attorney's fees were due and owing. At the outset of the Hearing, the parties stipulated to a base Average Weekly Wage of \$949.62, exclusive of group health insurance which continued to be provided by the Employer to the Claimant.

The following exhibits were admitted into evidence:

Joint Exhibits:

1. Joint Pretrial Stipulation and Order.

Claimant's Exhibits:

1. The Claimant's Prehearing Checklist, which was admitted for identification purposes only;
2. The deposition of Denise Postlethweight taken on July 18, 2008;
3. The deposition of Wendy Hall taken on May 22, 2008;
4. The deposition of Imogene Mullins taken on August 13, 2008; and
5. The deposition of Dr. Patrick Mathias taken on August 11, 2008.

Employer/Carrier's Exhibits:

1. The Employer/Carrier's Prehearing Checklist, which was admitted for identification purposes only;
2. The deposition of Dr. Sunil Kakkar taken on August 13, 2008.

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the evidence that was presented to me. I have observed the candor and demeanor of the witnesses and resolved all of the conflicts in the testimony and evidence. In writing this Order, I have attempted to distill the salient issues together with findings and conclusions necessary to their resolution. Even though I have not attempted to summarize the testimony of each witness or to state non-essential facts, this does not mean that I have failed to consider all the evidence. After careful consideration of all of the evidence presented, and after having resolved any conflicts therein, I hereby find as follows:

1. The stipulations of the parties are factual and incorporated by reference as if set out at length herein.
2. Based on all of the evidence that has been presented to me, I hereby deny compensability of this claim.

3. In reaching my decision, I have considered the live testimony of the Claimant at trial. The Claimant testified in a forthright manner that he began smoking cigarettes when he was 16 years old. The Claimant smoked approximately one pack of cigarettes per day over the next 30 years. At trial, the claimant conceded that he had been repeatedly warned by his doctors to stop smoking cigarettes since at least 1997. However, despite these warnings from his doctors, the Claimant continued to smoke cigarettes until the date of his heart attack on December 29, 2007.

The Claimant further testified honestly at trial as to a history of high blood pressure and high cholesterol dating back to at least 2005. The Claimant testified that he took fish oil “off and on” for his high cholesterol. The Claimant was also prescribed the “Step-1 Diet,” but the Claimant testified that he did not follow that diet.

The Claimant also testified that he has a family history of heart disease. Specifically, his mother was diagnosed as having coronary artery disease and she similarly had a stent inserted approximately three or four years ago for a blocked artery. Moreover, the Claimant’s paternal grandfather sustained a heart attack prior to age 60. Therefore, the Claimant consistently disclosed a history of heart disease on both sides of his family.

The Claimant was hired by Brevard County in 1996 as a Deputy Sheriff. The Claimant underwent, and to his understanding passed, a pre-employment physical in connection with his employment. The Claimant continued to work as a Deputy Sheriff on a full-time basis prior to his heart attack. The Claimant testified, and the medical records support that he sustained his heart attack on December 29, 2007. That morning, the Claimant developed chest pain when he awoke several hours before he was scheduled to work. The Claimant testified that he was not at

work at the time of his heart attack. Moreover, the Claimant testified that he last worked on December 26, 2007, more than two days prior to his heart attack.

Following his heart attack, the Claimant was off work approximately three weeks before returning to work light-duty. The Claimant received sick leave benefits for the three weeks he was off work and his medical bills were paid by group health insurance. The Claimant continued to work light-duty for a few weeks before returning to work full-duty on February 9, 2008 as a Deputy Sheriff. The Claimant testified that he has been working full-duty as a Deputy Sheriff since that time. The Claimant testified that he is able to do his job and that he has had no heart symptomatology since returning to work. I find the Claimant presented as an honest witness and I accept his lay testimony.

4. I have also considered the deposition testimony of Imogene Mullins and Denise Postlethweight, two employer representatives in this case. I find that their deposition testimony is largely consistent with the testimony of the Claimant, and I accept their testimony. I have also reviewed the deposition testimony of Wendy Hall, the adjuster in this case, and I accept her deposition testimony as well.

5. I have also reviewed the deposition testimony of Dr. Sunil Kakkar, the Employer/Carrier's IME physician. Dr. Kakkar is a specialist in cardiovascular disease, and both attorneys stipulated to Dr. Kakkar's qualifications and expertise in the field of cardiology.

Dr. Kakkar saw the Claimant on June 11, 2008. Dr. Kakker noted that there was evidence of high cholesterol and hypertension dating back to at least October, 2005. Dr. Kakkar also noted the Claimant's maternal and paternal family history of heart disease. Finally, Dr. Kakker referenced the Claimant's history of smoking a pack a day of cigarettes for 30 years. Dr.

Kakkar also noted that the Claimant had been repeatedly counseled to stop smoking cigarettes for at least ten years prior to his heart attack. Dr. Kakkar further noted the Claimant's heart attack had occurred at home and, as a result, the Claimant was not actively engaged in the duties of his employment at the time of his heart attack. Moreover, Dr. Kakkar noted the Claimant was not under any apparent stress at the time he had his heart attack.

Dr. Kakkar identified the Claimant's significant non-work-related risk factors as being his history of smoking, high blood pressure, high cholesterol, and his family history. Dr. Kakkar opined that the combination of these primary risk factors was the major contributing cause of the Claimant's coronary artery disease and resultant heart attack. Dr. Kakkar stated the Claimant's smoking, high blood pressure, high cholesterol, and family history were at least 80% responsible for the Claimant's development of coronary artery disease and only 20% would be related to the Claimant's job and stress. Dr. Kakkar referenced numerous studies showing how smoking causes heart disease. Dr. Kakkar further explained how high cholesterol and high blood pressure produce a build-up of plaque where the plaque gets bigger and bigger until the plaque ruptures or the blockage becomes 100% which produces a heart attack.

6. I also considered the deposition testimony of Dr. Patrick Mathias, the Claimant's IME physician. Dr. Mathias testified the Claimant had a 99% stenosis of the circumflex coronary artery. Dr. Mathias performed a physical examination which was essentially normal. Dr. Mathias diagnosed the Claimant as having high cholesterol, coronary artery disease, a history of smoking, exercise-induced PCV's and non-sustained ventricular tachycardia and essential hypertension. Dr. Mathias specifically testified that he was unable to render an opinion on causation in this case. Dr. Mathias did not assign any work restrictions.

Dr. Mathias conceded that he did not know how long the Claimant had a history of high cholesterol. Dr. Mathias conceded he did not know how long the Claimant had a history of high blood pressure. Dr. Mathias conceded he did not have the medical records from Holmes Regional Medical Center, aside from the heart catheterization. Dr. Mathias thought the Claimant quit smoking cigarettes six months before his heart attack, but he later was corrected. Dr. Mathias stated if the Claimant quit smoking after his heart attack, then his testimony about smoking being a remote risk factor would be completely different. Dr. Mathias conceded that if the Claimant was counseled to quit smoking as early as 2003 and he failed to do so, that would increase the likelihood that he would develop cardiac problems. Dr. Mathias testified if the Claimant did not follow his doctor's orders, then it would increase the likelihood that his cardiac condition would worsen.

Dr. Mathias conceded that he could not testify that the Claimant's employment was in any way causally related to the Claimant's hypertension. Dr. Mathias had no idea as to whether the Claimant was working as a Deputy Sheriff at the time of his heart attack. Dr. Mathias also had no idea as to whether the Claimant was exposed to any levels of carbon monoxide as part of his employment. Finally, Dr. Mathias conceded that he did not ask any questions about the claimant's non-work lifestyle or stress around the home or his marital situation.

7. After considering the testimony of all of the witnesses, including Dr. Kakkar and Dr. Mathias, I find there is clear and convincing evidence the Claimant's coronary artery disease and subsequent heart attack was caused by the Claimant's non-occupational high cholesterol, hypertension, 30-year history of smoking, and family history of heart disease. I find these non-occupational primary risk factors were the major contributing cause of the Claimant's

development of coronary artery disease and subsequent heart attack, and that the Employer/Carrier successfully rebutted the statutory presumption.

In reaching my decision, I accept the opinions rendered by Dr. Kakkar over and to the extent that they conflict with the opinions rendered by Dr. Mathias. I find Dr. Kakkar was concise regarding his opinions. Dr. Kakkar specifically testified 80% of the cause of the Claimant's development of coronary artery disease was due to the non-occupational risk factors referenced above. Dr. Mathias, on the other hand, could or would render no opinion on causation regarding either the Claimant's coronary artery disease or hypertension. Moreover, Dr. Mathias conceded that he was missing significant pieces of the Claimant's medical history, as well as significant medical records of the Claimant's hospitalization regarding his heart attack. Dr. Mathias did not know whether the Claimant was at work or off work when he had his heart attack. Dr. Mathias had no idea as to whether the Claimant was exposed to any levels of carbon monoxide as part of his employment. Dr. Mathias did not know the Claimant smoked until the day of his heart attack, and appeared to have been unclear on the EKG/Stress Test findings. Overall, it is clear that Dr. Kakkar had a firm grasp of the facts in this case, whereas Dr. Mathias was missing key pieces of information. Dr. Kakkar gave a thoughtful, certain and well-reasoned opinion after considering all of the information presented in this case. For these reasons, I hereby accept Dr. Kakkar's opinions and reject Dr. Mathias' opinions to the extent that they are inconsistent. Based on Dr. Kakkar's testimony and the other evidence presented in this case, I find there is clear and convincing evidence of a specific non-occupational cause of the Claimant's heart disease sufficient to overcome the statutory presumption afforded the claimant under Florida Statute §112.18.



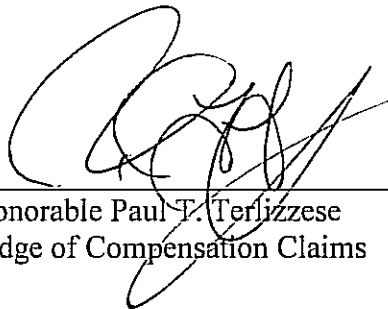
WHEREFORE, it is the order of the undersigned Judge of Compensation Claims as follows:

1. Based on the evidence presented in this case, I hereby deny compensability of this claim.

2. Since compensability is denied, the Claimant's request for authorization of a cardiologist, payment of Temporary Total Disability/Temporary Partial Disability benefits, and penalties, interest, costs, and attorney's fees, is also denied.

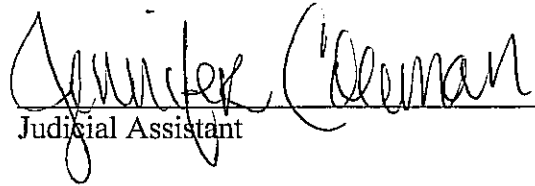
3. Finally, since the Employer/Carrier prevailed in this proceeding, I hereby find the Employer/Carrier is entitled to costs pursuant to Florida Statute §440.34(3). Moreover, pursuant to Guckenberger v. Seminole County, 979 So.2d 407 (Fla. 1<sup>st</sup> DCA 2008), I hereby retain jurisdiction to determine the costs payable to the employer/carrier for the proceedings in this case.

DONE and ORDERED in Melbourne, Florida, this 3 day of September, 2008.

  
Honorable Paul T. Terlizzese  
Judge of Compensation Claims



THIS IS TO CERTIFY that the foregoing Order was entered on the 3 day of September, 2008, and that a copy thereof was sent by regular U.S. Mail to all parties noted previously at their last known address.

  
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Judicial Assistant