

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Ray Jones,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 12-011693DSR
Indian River County Fire Rescue/Johns Eastern)	
Company, Inc., and Johns Eastern Company,)	Accident date: 7/2/2010
Inc.,)	
Employer/ Carrier/Servicing Agent.)	
_____)	

FINAL COMPENSATION ORDER

This cause was heard before the undersigned at Sebastian, Indian River County, Florida on October 15, 2012, upon the Claimant’s claims of authorization of care and treatment of his heart disease with a board certified cardiologist or other qualified physician; compensability of Claimant’s heart disease condition; costs and attorney’s fees. The Petitions for Benefits were filed on May 21, 2012 and May 22, 2012. Mediation occurred on August 8, 2012, and the parties’ pretrial compliance questionnaire was filed on August 13, 2012. Michael P. Clelland, Esq., was present on behalf of the Claimant. Paul L. Westcott, Esq., was present on behalf of the Employer/Carrier.

The defenses were that Claimant’s condition is not related to employment; major contributing cause for Claimant’s heart disease is his smoking not his employment; the cause for the Claimant’s heart disease is his failure to follow medical advice by not smoking; any continuing need for care is caused by the Claimant’s continued abuse of tobacco by smoking; need for medical care is due to Claimant’s smoking; no entitlement to costs and attorney’s fees.

The following documentary items were received into evidence:

1. Pretrial Stipulation Sheet and Order dated August 13, 2012, together with the documentary items required by Rule 9.180 (Court's Exhibit #1).
2. Deposition of Patrick Mathias, M.D., taken on September 18, 2012 (Claimant's Exhibit #1).
3. Current Payout Ledger filed on October 10, 2012 (Employer/Carrier's Exhibit #1).
4. Responses to Petition for Benefits filed on May 30, 2012, and June 1, 2012 (Employer/Carrier's Exhibit #2).
5. Notice of Denial filed on May 11, 2012 (Employer/Carrier's Exhibit #3).
6. Deposition of Amy Eversole, M.D., taken on September 18, 2012 (Employer/Carrier's Exhibit #4).
7. Deposition of Claimant taken on March 9, 2012 (Employer/Carrier's Exhibit #5).
8. Deposition of Howard Tee, M.D., taken on August 30, 2012 (Employer/Carrier's Exhibit #6).

At the hearing, Ray Jones, appeared and testified before me. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the witness' testimony and may not refer to each piece of documentary evidence, I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. The items to which the parties were in agreement on the pretrial stipulation sheet are accepted and adopted as findings of fact.

2. The Claimant asserts that he suffered an industrial accident arising out of and in the course and scope of his/her employment on July 2, 2010, and suffered injuries to his heart and cardiovascular system. The Employer/Carrier initially accepted the condition as compensable, but denied the claim in its entirety on May 11, 2012.

3. The parties stipulated that the claim was not governed by a managed care arrangement, that timely notice, average weekly wage, and maximum medical improvement were not issues for determination at the hearing.

4. The parties stipulated that the Claimant had filed a recent Petition for Benefits seeking impairment benefits, but that the claim had not yet been mediated so it was not ripe for adjudication at the hearing and could be tried at a later date if necessary.

5. The Claimant has been employed as a Firefighter with Indian River County since April 7, 1991. Currently, the Claimant is employed as a driver/engineer, which does not require him to fight fires.

6. The Claimant underwent a pre-employment physical that did not reveal any evidence of either heart disease or hypertension. There is no evidence that the Claimant had any heart problems, not even high cholesterol, prior to the accident date of July 2, 2010.

7. On November 23, 2009, the Claimant testified that he woke up at the fire station with chest pain. He was taken by ambulance to the hospital, but after testing, he was released. The Claimant followed up with a cardiologist, Dr. Baker, who performed heart catheterization on July 2, 2012. The catheterization revealed a 98% blockage of the left ascending coronary artery. The Claimant was treated by placement of a drug-eluting stent. After the stenting procedure, the Claimant testified that he was unable to perform his duties as a firefighter for approximately one shift. Since the stenting procedure, the Claimant has been on cholesterol medication and his

cholesterol levels are normal, he has not had any symptoms, and he has continued to work full time, including his concurrent employment as an A/C technician.

8. Florida Statute §112.18(2007)(Heart/Lung Bill), provides in pertinent part: “Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer or correctional officer as defined in s. 943.10(1),(2), or (3) caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence.”

9. Pursuant to §112.18, F.S., there are four (4) prerequisites to the application of the presumption. They are:

A. That the claimant is a member of the protected class (firefighter, police officer, corrections officer);

B. That the claimant suffer from a covered condition (heart disease, hypertension, tuberculosis);

C. That the claimant underwent a physical prior to entering into service with the employing agency which failed to reveal evidence of the condition claimed;

D. That the condition resulted in disability.

10. The parties stipulate that the Claimant satisfies the first and third criteria.

11. The Claimant was initially authorized to treat with Harold Tee, M.D., a board certified cardiologist. Dr. Tee saw the Claimant on January 6, 2012. The Claimant had a history of coronary artery disease with stenting of the left anterior descending artery (LAD) July 2010. The Claimant has two of the risk factors for development of coronary artery disease. The Claimant was a pack a day smoker and Dr. Tee opined that the major contributing cause of the

Claimant's heart disease is the history of smoking. Dr. Tee offered the Claimant smoking cessation aids but the Claimant refused them.

12. According to Dr. Tee, smoking is the "most likely cause of his coronary artery disease and his eventual stent." Ninety percent (90%) of the causation for the Claimant's coronary artery disease is attributable to his smoking, according to Dr. Tee. Within a reasonable degree of medical certainty the cause of the Claimant's coronary artery disease is smoking.

13. Dr. Tee also discussed the detrimental effects of the Claimant's continuing to smoke since the stent implantation. The Claimant is at a much greater risk for the stent to restenose due to his continued smoking. Likewise, he will require closer follow-up and monitoring. Dr. Tee made the Claimant aware of this and he still declined to receive help with giving up smoking.

14. The Employer/Carrier had an Independent Medical Evaluation performed on the Claimant by Amy Eversole, a board certified cardiologist, on September 11, 2012. Dr. Eversole testified that the Claimant developed a history of coronary artery disease at a young age, 47 years old. As a result the Claimant underwent catheterization on July 2, 2010, and as a result of the 90% blockage of the proximal portion of the left anterior descending artery required stenting. The Claimant had no evidence of heart damage and has no ongoing symptoms. The Claimant reported a family history of early onset heart disease involving his mother and that he was a smoker. Dr. Eversole testified that smoking is a risk factor for coronary artery disease. Dr. Eversole testified within a reasonable degree of medical certainty, that the Claimant's smoking is the major contributing cause for the onset of his coronary artery disease. Taking together the Claimant's family history with smoking history is an even more significant causative consideration. Dr. Eversole's opinion is that consistently smoking, i.e. an almost daily for six

months to a year would be enough to raise concern for the patient's cardiac health. This opinion is based upon Dr. Eversole's training as a medical student, medicine resident, cardiology fellow and review of medical journals. The Claimant gave no history of work stress to Dr. Eversole. Dr. Eversole testified that the Claimant's continued smoking puts him at an even greater risk for restenosis of the stent.

15. The Claimant had an independent Medical Evaluation performed by Patrick Mathias, a board certified cardiologist, on September 9, 2012. Dr. Mathias testified that the Claimant's heart disease is caused by atherosclerosis and that there is no known cause of this condition, although there are many risk factors. He acknowledged that smoking is a risk factor but testified that there is a clear distinction between risk factors and a cause. Dr. Mathias went on to testify that among the risk factors, occupational stress is one. He testified that there is no scientific way to say what the major contributing cause of Mr. Jones' heart disease is.

16. Dr. Mathias, has no opinion on the cause of the Claimant's heart disease. He could not state what is the major contributing cause of the Claimant's heart disease. Dr. Mathias did identify the Claimant's smoking as a risk factor for developing heart disease. The Claimant's risk factor's put him at a statistically higher risk to develop coronary artery disease.

17. Dr. Mathias is a fellow in the American College of Cardiology. He regularly attends continuing education courses presented by the ACC. Dr. Mathias agrees that the American College of Cardiology is a reliable source concerning the cause of coronary artery disease. The ACC's position is that "Smoking is a leading cause of the most common forms of heart and vascular disease, major lung diseases, and some of the most common forms of cancer; it is also a cause of other significant diseases." Smoking As A Health Hazard, American College of Cardiology Position Statement, Approved October 11, 1992. Dr. Mathias' opinion is that this

statement is scientifically untrue.

18. Dr. Mathias accepts the United States Surgeon General as a reliable source for information regarding coronary artery disease. Although Dr. Mathias has not read any of the reports on smoking promulgated by the Surgeon General, he disagrees with them to the extent they express an opinion that smoking causes heart disease. Again, Dr. Mathias admits that smoking is “a huge risk factor for coronary heart disease, “but remained firm in his own inability to opine that smoking causes heart disease. He agreed with the statement that “Active smoking and involuntary exposure to cigarette smoke injure [sic] endothelial cell that line the arteries and impair endothelial function. Dr. Mathias citing How Tobacco Smoke Causes Disease, Executive Summary Report of the U.S. Surgeon General 2010. The significance is that the damage to the endothelial cells which line the interior of blood vessels, contribute to the accumulation of plaque but he disagreed that “Inhaling the complex chemical mixture of combustion compounds in tobacco smoke causes adverse health outcomes, particularly cancer and cardiovascular and pulmonary diseases...” He would only agree that smoke contributes to the development of coronary artery disease. He would not agree with the Surgeon General’s conclusion that “Evidence reviewed ... provides additional validation that cigarette smoking and involuntary exposure to cigarette smoke are major causes of coronary heart disease, stroke, aortic aneurysm, and peripheral arterial disease.” He would not agree that “it can be concluded that smoking is causally related to coronary heart disease for both men and women in the United States.” In every case he would only agree that smoking is a contributing factor.

19. Dr. Mathias spoke in terms of his own inability to opine smoking causes heart disease saying “I can’t do that scientifically,” “That’s correct. I can identify only – I can only identify his risk factors.”

20. While he may have disagreed with the conclusions of various scientific studies on causation, the thrust of his testimony was that he was personally unable to opine that the Claimant's coronary artery disease was caused by smoking. He did not opine that such opinions could not be reached.

21. Dr. Mathias bases his disagreement with both the ACC and the Surgeon General, authoritative sources by his own admission, on the fact that their opinions are made for general public consumption. Their statements must be dumbed down for the general public to understand. This is despite the fact that the Executive Summary alone of the Surgeon General's report is 17 pages.

22. The five largest risk factors for developing heart disease are smoking, high cholesterol, a positive family history, diabetes and hypertension. The Claimant is a smoker. At the time of the procedure he reported a smoking history of smoking cigars on and off for 10 years, and smoking a pack every two to three days of cigarettes for the past two to three years. The Claimant provided Dr. Tee with a history of one pack a day smoking and Dr. Mathias with a history of one pack per day for eight years. In addition to the smoking, the Claimant's mother was diagnosed with early onset heart disease. The other risk factors do not appear relevant at this time.

23. When the Claimant presents no evidence other than the presumption as to causation, the Employer/Carrier may rebut the presumption "by competent evidence," Punsky v. Clay County Sheriff's Office, 18 So.3d 577 (Fla. 1st DCA 2009). The Claimant herein relies solely upon the presumption. Dr. Mathias, the Claimant's IME, has no opinion on the cause of the Claimant's heart disease.

24. Dr. Mathias' opinions and distaste for the word causation would essentially render

the presumption found in 112.18 F.S. unrebuttable. The operative standard for proving causation in Workers' Compensation cases is that the proof must "be established to a reasonable degree of medical certainty." Section 440.09*1) and Rose v. Geico, 90 So.3d 886 (Fla. 1st DCA 2012).

Dr. Mathias would instead substitute his own medical legal standard that in order to prove (or in this case disprove) the cause of a patient's heart disease requires absolute unquestionable one to one cause and effect be established or observed.

25. I find that the Employer/Carrier has rebutted the presumption. Dr. Mathias, the Claimant's IME has no opinion on the cause of the Claimant's heart disease. Dr. Tee opined that the major contributing cause of the Claimant's heart disease is the history of smoking. Smoking is the "most likely cause of his coronary artery disease and his eventual stent." Similarly, Dr. Eversole testified within a reasonable degree of medical certainty, the Claimant's smoking is the major contributing cause for the onset of his coronary artery disease. The Claimant's familial history also plays a causative role, although the extent is not certain. The only medical opinions in this case on causation are those of Dr. Tee and Dr. Eversole. Within a reasonable degree of medical certainty, the cause of the Claimant's coronary artery disease is smoking. The Claimant's familial history also plays a causative role, although the extent is not certain.

26. Since the Claimant has not proven that he sustained an injury arising out of and in the course and scope of his employment all claims are hereby denied and dismissed.

WHEREFORE, it is hereby ORDERED and ADJUDGED that:

All pending claims are hereby denied and dismissed.

DONE AND ELECTRONICALLY SERVED ON COUNSEL this 24th day of October,

2012, in Sebastian, Indian River County, Florida.



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