STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS

Israel Davila Employee/Claimant,	)	
vs.	)	OJCC Case No. 07008720 and 09000802JTF
Osceola County Sheriff's Department and Unisource Administrators. Employer/Carrier,	)	Judge: David Langham

FINAL ORDER DENYING COMPENSABILITY AND RELATED BENEFITS FOR DATES OF ACCIDENT MARCH 28, 2006 AND MARCH 28, 2007

THIS CAUSE was heard before the undersigned at Orlando, Orange County, Florida on October 14, 2009 before the undersigned sitting as visiting Judge. Claimant alleges two dates of accident, each of which has been assigned a distinct OJCC case number, to wit, case number 07008720JTF (date of accident alleged March 28, 2006) and 09000802JTF (date of accident alleged March 28, 2007). The parties agreed at trial that these two should be consolidated. An order granting consolidation was entered and served October 19, 2009.

The subject of Claimants claims as set forth in the pretrial compliance questionnaire ("PTCQ") filed in case number 07-008720 (alleged accident date 03.28.06) are compensability of the claim, temporary total disability benefits from March 28, 2006 through October 23, 2007, authorization of appropriate medical care provider for management of Claimant's hypertension, indemnity benefits pursuant to Dr. Mathias' report of 10% impairment rating, along with penalties, interest, attorney's fees and costs.

The subject of the Claimants claims as set forth in the PTCQ filed in case number 09-000802 (alleged accident date 03.28.07) are temporary total disability from March 28, 2007 through October 23, 2007, authorization of appropriate medical care provider for management of Claimant's hypertension,

reimbursement of out-of pocket medical expenses, compensability of claim, along with penalties, interest, attorney's fees and costs.

The undersigned appeared for trial by Video Teleconference System (VTS). The petition for benefits was filed January 13, 2009 (one this date in each case: 09000802JTF and 07008720JTF). The final hearing occurred two hundred seventy-four (274) days after the petition was filed. Stephen Pyle, Esq. was present in Orlando on behalf of the Claimant. Rex Hurley, Esq. was present in Orlando on behalf of the Employer/Carrier (hereafter "E/C").

Submitted into evidence at the Final Hearing were the following documents, each accepted and placed into evidence without any objection except where noted, as joint exhibits, Claimant's exhibits, or E/C exhibits, with each individual exhibit being further identified by a numerical designation as follows:

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

1. The PTCQ filed May 18, 2009 in case number 07008720 was marked as Judge's exhibit "1" for the record.
2. The PTCQ filed May 18, 2009 in case number 09000802 was marked as Judge's exhibit "2" for the record.
3. Claimant's trial memorandum filed October 9, 2009 was marked as Judge's exhibit "3" for the record.
4. The Employer/Carrier's hearing information sheet filed October 12, 2009 was marked as Judge's exhibit "4" for the record.

JOINT EXHIBITS:

1. None.

CLAIMANT'S EXHIBITS:

1. The Deposition of Sarah Gibbons taken August 4, 2009 was marked as Claimant's exhibit "1" and accepted as evidence.

2. The Deposition of Sarah Gibbons taken October 8, 2009 was marked as Claimant's exhibit "2" and accepted as evidence.

3. The Deposition of Rebecca Talley taken September 8, 2009 was marked as Claimant's exhibit "3" and accepted as evidence.

4. The Deposition of Patrick F. Mathias, M.D. taken December 2, 2008 was marked as Claimant's exhibit "4" and accepted as evidence.[1]

5. The Deposition of Patrick F. Mathias, M.D. taken August 14, 2009 was marked as Claimant's exhibit "5" and accepted as evidence.

6. The Deposition of Joseph Torres, M.D. taken August 28, 2009 was marked as Claimant's exhibit "6" and accepted as evidence.[2]

7. The Deposition of Joseph Torres, M.D. taken March 13, 2009 was marked as Claimant's exhibit "7" and accepted as evidence.

EMPLOYER/CARRIER'S EXHIBITS:

1. The Deposition of Michael Nocero, M.D. taken September 10, 2007 was marked as Employer/Carrier's exhibit "1" and accepted as evidence.

. 2. The Deposition of Claimant taken April 23, 2007 was marked as Employer/Carrier's exhibit "2" and accepted as evidence.

3. A voluntary dismissal dated March 6, 2008 was marked as Employer/Carrier's exhibit "3" and accepted as evidence.

4. A petition for benefits alleging date of accident March 28, 2006 and signed February 22, 2007 was marked as Employer/Carrier's exhibit "4" and accepted as evidence.

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[1] There are multiple records attached to the deposition of Dr. Mathias. Some of these are duplicates of records presented elsewhere in the record, such as the attachments to Dr. Torres' deposition. The purpose of duplication is not clear.

[2] The records attached as exhibits to this deposition include multiple documents that are duplications of documents already in evidence as exhibits to Dr. Torres' deposition of March 13, 2009. The purpose of this duplication is not clear from the record.

5. The Deposition of Michael Nocero, M.D. taken July 27, 2009 was marked as Employer/Carrier's exhibit "5" and accepted as evidence.

In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

Based upon the parties' stipulations and the evidence and testimony presented, I find:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.

2. The parties entered the following stipulations at trial. The average weekly wage ("AWW") associated with the March 28, 2006 accident is one thousand forty-four and 92/100 dollars ($1,044.92). The AWW associated with the March 28, 2007 date of accident is one thousand eighty-three and 40/100 dollars ($1,083.40). The parties will handle any claims for payment of medical bills administratively should the claims herein be determined compensable. The first intake interview of Claimant occurred on February 16, 2007 at attorney Bichler's office. The two cases are consolidated. The issues in the PFB filed October 12, 2009 have not been mediated and are not ripe for adjudication.[3] These stipulations and agreements are accepted, adopted and made an order of this Office.

[3] The issues in the October 12, 2009 petition are therefore bifurcated from these proceedings pursuant to 60Q6.113 Florida Rules of Workers' Compensation Procedure.

3. Any and all issues raised by way of the Petitions for Benefits ("PFB"), but which issues were not dismissed or tried at the hearing, are presumed resolved, or in the alternative, deemed abandoned by the Claimant and, therefore, are Denied and Dismissed with prejudice. See, Betancourt v. Sears Roebuck & Co., 693 So.2d 680 (Fla. 1st DCA 1997); see also, McLymont v. A Temporary Solution, 738 So.2d 447 (Fla. 1st DCA 1999). The prevailing party may be entitled to costs. F.A. Richard & Assocs. v. Fernandez, 975 So.2d 1224 (Fla. 1st DCA 2008); Palm Beach Cty. Sch. Dist. v. Ferrer, 990 So.2d 13 (Fla. 1st DCA 2008); Morris v. Dollar Tree Store, 869 So.2d 704 (Fla. 1st DCA 2004).

4. The Florida Evidence Code controls admissibility of evidence in workers' compensation proceedings.[4] The Division of Administrative Hearings ("DOAH") Rules of Procedure, Section 60Q6.101, et. seq. Florida Administrative Code governs the procedural aspects of this claim.[5] Those Rules are referred to herein as "DOAHRP."

5. The order has two purposes. One is to afford the parties the opportunity for appellate review as appropriate. For that purpose, this order need contain only "findings of ultimate material fact . . . necessary to support the mandate." Garcia v. Fence Masters, Inc., and AIG Claims Services, Inc., 34 Fla. L. Weekly D 1598 (Fla. 1st DCA 2009). Each trial of the Office of the Judges of Compensation Claims also provides the parties and the public with the reasoning that resulted in the outcome reflected. It is often the case that this purpose requires more discussion than what is required by the Court for their purposes. I therefore expound upon my perceptions of the evidence more fully than perhaps necessitated for appellate review. In respect to the Court's admonition in Garcia, however, I have striven to clearly state the ultimate findings upon which

[4] See, e.g., Martin Marietta Corp. v. Roop, 566 So.2d 40 (Fla. 1st DCA 1990); Odom v. Wekiva Concrete Products, 443 So.2d 331 (Fla. 1st DCA 1983).

[5] On February 23, 2003, the OJCC enacted procedural rules, designated 60Q-6.101, et seq. The Florida Supreme Court recognized the enactment and efficacy of those rules in repealing the former Florida Rules of Workers' Compensation Procedure. See, In Re Florida Rules of Workers' Compensation Procedure 891 So.2d 474 (Fla. 2004).

my decisions ultimately rest. The absence from this order of recitation of specific testimony or documentary quotes should therefore be interpreted as a conscious effort to comply with the Court's admonition. Whether mentioned in this order specifically or not, the undersigned has carefully reviewed and considered all evidence admitted at trial. Certainly, any party has ample opportunity to address any perceived deficiency in the extent to which this order enunciates findings. See, Holland v. Cheney Brothers, Case no. 1D08-5917 (Fla. 1st DCA 2009)(rendered October 14, 2009)(not final until time expires to file motion for rehearing and disposition thereof).

6. Claimant testified that he was hired in 1988 by the Osceola County Sheriff's Department ("OCSD") as a correctional officer. He testified that the OCSD stopped using their jail, and that all of the corrections officers became deputies. He testified that after he was thus deputized he worked in the warrants department, as a court deputy, transporting inmates, and is again a court deputy at this time. Claimant testified that when he was hired by the OCSD, he underwent a pre-employment physical examination. He testified that since that time, approximately 7 to 9 years ago, he has been diagnosed with hypertension, and that he now takes medication for that condition, prescribed by Dr. Torres, his family physician since the1990s.

Claimant testified that he began his medication use for hypertension before March 28, 2006, and that it is provided by his health insurance company. Claimant testified that on March 28, 2006 he argued with a supervisor, and left the OCSD to return to the Courthouse. He testified that in route he contacted his sergeant, asked if he could proceed home instead, and was advised he could. He testified that he was between the Courthouse and Dr. Torres' office when he passed out at a traffic light. Claimant testified that his next recall was being in the helicopter, which took him to Florida Hospital where he remained for four days. Claimant denied that he received anything from the Employer/Carrier following this hospitalization. He described how he keeps a

file of all of his important papers, and that this file does not contain anything he received after this event advising him of his rights.

Claimant testified at trial that he was out of work "maybe a month," but he was not sure. He also testified at trial that it was a few days or a few weeks. In his deposition testimony, Claimant testified that he was in the hospital for a week at that time, and that after he was discharged he did not return to work for "about a month and a half." He testified that he was at a briefing at work some time later and learned about the "heart-lung" legislation. Claimant testified that this was the first time he had heard of that legislation. He questioned a co-worker and was referred to Mr. Bichler. Claimant denied that he received a call from an adjuster following this event, and he denies thinking that this was a workers' compensation situation, or potentially so. Claimant testified that he visited Mr. Bichler's office February 16, 2007 and received information about his workers' compensation rights. He acknowledged that this was the first time he knew those rights.

Claimant testified that he was not aware that a claim was filed on his behalf, and testified that the signature on a petition for benefits form (page 3) is not his. He then acknowledged that his signature does appear on page 6 of that form.[6] Claimant testified that after that petition was filed, he was deposed and attended a mediation on those issues. He also acknowledged that this petition was scheduled for trial, but later cancelled. The evidence supports that this petition was dismissed March 6, 2008.[7]

Claimant testified that on March 28, 2007 he was in a courtroom and a defendant began "acting up." Claimant testified that he was yelling at the inmate, attempting to restore order,

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[6] This document in evidence supports that the signatures on pages 3 and 6 do not appear to be the same.

[7] The dismissal curiously references Rule 4.075(d) W.C.R.P. That appears to be a reference to the Florida Supreme Court Rules of Workers' Compensation Procedure in effect until February 23, 2003, see footnote 3 above. Although this reference is curious, I find the mistaken reference to a rule superceded five years earlier is of no legal effect in these proceedings.

when he again became dizzy and again passed out. Claimant acknowledged that he received a denial of this claim and a package of information from workers' compensation. He acknowledged that he "probably" signed a form and returned it to the Carrier regarding this accident/event. In his deposition taken April 23, 2007, Claimant testified that he was in the hospital for four days following this event.

Claimant admitted he has suffered other workers' compensation events, and that he was generally aware of the workers' compensation system. He acknowledged that he suffered a claim in 1998 or 1999 that was settled about one year ago. He denied knowledge of the occupational disease provisions of the statute, or knowledge that he might be entitled to workers' compensation for his March 28, 2006 event, until he heard about this at the meeting and consulted Attorney Bichler in February 2007.

7. Dr. Torres testified that he has diagnosed Claimant with hypertension, and that he has provided care therefore including prescription medication. Dr. Torres testified that his records include complaints of "syncope." In December 2001 his records document a report of two episodes of syncope. In June 2002, his records document "fainting."

Dr. Torres testified that when Claimant presented on March 28, 2006 his vital signs were tested. This revealed a sitting blood pressure of 154 over 104, a standing pressure of 160 over 104, and another reading of 160 over 110. Dr. Torres testified he diagnosed a possible CVA, administered first aid, and stabilized Claimant that day. He testified that his office arranged for transfer to the EMT and that Claimant was taken by helicopter to the hospital.

Dr. Torres testified that he saw Claimant in follow-up on April 2, 2007. He testified that Claimant had passed out, had severe hypertension and was "concerned about the possibility of a stroke." A return to work/school form was signed that day documenting Claimant had been under his care 4-2-07 to 4-2-07 and was to follow-up 4-5-07. This form does not document any

excuse from work for any specified period. Dr. Torres testified that he saw Claimant on April 4, 2007 and documented a blood pressure of 158 over 100 that day. A return to work/school form was signed that day documenting Claimant had been under his care 4-5-07 to 4-5-07 and was to follow-up 4-12-07. This form likewise does not document any excuse from work for any specified period. A return to work/school form was signed April 12, 2007 documenting Claimant had been under his care "4-12 to _____" and was able to return to work 4/16. Dr. Torres' "Nurse Assessment" on April 12, 2007 reflects Claimant was seen "for lab results," in follow-up for his blood pressure, which was "under control." This record does not elaborate on whether or why Claimant might have been excused from work at that time.

8. Dr. Mathias[8] performed an independent medical examination of Claimant. This included review of medical records from Dr. Torres, Florida Hospital, Osceola Regional Medical Center, and Dr. Nocero. Dr. Mathias testified that Claimant suffers from "essential hypertension," which means "high blood pressure for which a cause is not evident." He also testified that this is "arterial hypertension." Dr. Mathias opined that Claimant had reached maximum medical improvement for his essential hypertension as of the time he examined him, October 23, 2007.

Dr. Mathias testified that Claimant presented with complaints that "since his stroke he'd had headaches." Dr. Mathias stated that "stroke" was the term used by Claimant. Claimant described his headaches as frequent, "once or twice a week," and of a severity that caused him to lay down and take Motrin. Claimant also described numbness in the left shoulder and leg, as well as experiencing a cold sensation in the fingertips of his left hand. He also described a feeling of weakness on the left side of his body.

Dr. Mathias testified that during his evaluation, Claimant's blood pressure was "normal." He testified that Dr. Torres' records document "multiple elevated blood pressure readings." Dr.

[8] Dr. Mathias is a medical doctor Board Certified in internal medicine, cardiology, critical care, interventional cardiology and electrophysiology.

Mathias testified that a reading from March 28, 2006 (the date of Claimant's first alleged "date of accident" by occupational disease) of 210 over 110 "was high enough to require hospitalization." Dr. Mathias opined that potential manifestations of a blood pressure this high include facial numbness, leg pain and headache. He opined that "the headache is a clear cut indication that the blood pressure was elevated." Dr. Mathias opined that the symptoms of which Claimant complained on March 28, 2006 were consistent with the blood pressure readings that date, which he testified is "hypertensive encephalopathy." Dr. Nocero testified that hypertensive encephalopathy is a "syndrome" and is a "medical emergency." He opined that the Claimant did not "show" the requisite "symptoms or signs" and so he disagreed with the diagnosis of "hypertensive encephalopathy."

Dr. Mathias testified that Claimant's symptoms "were strongly suggestive of a CVA or TIA." He testified, however, that Claimant "definitely did not have a CVA, cerebrovascular accident" in March 2006. He testified that Claimant "could have had" a TIA or transient ischemic attack, but that "his detailed neurological investigations didn't elicit a cause for TIA," and so Dr. Mathias had "ruled that out." Dr. Mathias opined that Claimant "probably had an episode of hypertensive encephalopathy," that he "developed these symptoms that are very similar to stroke" and that when his blood pressure "came down, his entire problem resolved." In his August 2009 testimony, Dr. Mathias conceded that he is the only physician involved in this case that has made a diagnosis of "hypertensive encephalopathy." Dr. Mathias conceded that this is part of his differential diagnosis, which he characterized therefore as "one of the possibilities." Dr. Mathias characterized the March 28, 2006 event as a temporary event from which Claimant has recovered "based upon objective neurological tests." He characterized Claimant's continued symptoms as "puzzling" and he could offer no explanation of them. Dr. Mathias opined that

Claimant's event on March 28, 2006 incapacitated Claimant as a corrections officer, throughout his hospitalization.

Dr. Mathias opined that Claimant's event in March 2006 could not have been a "common faint" because that condition results from decreased blood pressure. He testified that when a patient recovers from a faint, the blood pressure recovers, but does not elevate to the levels recorded that day (March 28, 2006).

Dr. Mathias was deposed a second time in August 2009. At that time he testified that Claimant had suffered a "syncopal episode" on March 28, 2007. Claimant described symptoms of headache, dizziness, and some blurry vision. He opined that Claimant's blood pressure that day, upon presentation at the hospital was "substantially elevated." Dr. Mathias opined that Claimant's symptoms that day were consistent with blood pressure elevations. Dr. Mathias opined that he has no "conclusive diagnosis" of Claimant's complaints, but that Claimant does suffer "essential hypertension," for which there is no "known cause." Dr. Mathias opined that the March 2007 event, and the elevated blood pressure at that time, incapacitated Claimant from his duties as a correctional officer. He conceded, however, that hospitalizations are in part to treat symptoms, but are also to diagnose the cause of symptoms. He opined that Claimant's hypertension was treated during that hospitalization.

Dr. Mathias testified that he has not diagnosed Claimant with neurocardiogenic syncope of vasovagal syndrome, and that to make that diagnoses "at the very least" a physician would have to have a "tilt table test."

9. Sara Gibbons is a Claims Examiner with North American Risk Services. She testified that she has been the adjuster assigned to Claimant's claim since March 31, 2006. Ms. Gibbons testified twice in these proceedings, both times by deposition. She testified that the March 28, 2006 event was reported to the Carrier by the Employer on March 30, 2006. She testified that two letters

were mailed to Claimant on April 3, 2006. One was "the workers' comp introduction packet." She described this as a ten page package including an introductory letter, the first report of injury, the employee workers' comp letter and brochure, managed care grievance process, employee satisfaction survey, records, wage information authorization, fraud statement acknowledgement form, request for travel reimbursement form, and statement of charges for drugs and medical supplies. The second letter enclosed an authorization form that she requested he sign and fax back to her. Ms. Gibbons acknowledged that she did not send these letters to Claimant herself. She testified that Kay Gibson mailed the "intro packet" on March 31, 2006 according to a note in her adjusting file. She testified that she spoke with Claimant on April 11, 2006 by telephone. Ms. Gibbons testified that Claimant acknowledged receipt of the release at that time and told her that his girlfriend had faxed it to Ms. Gibbons. She testified that she never received that form back from Claimant. Ms. Gibbons testified that her notes do not memorialize that she discussed the list of documents in the "intro packet" with Claimant that day. She testified that on April 11, 2006 she denied the claim for March 28, 2006. Ms. Gibbons testified that no indemnity benefits were thereafter paid on the March 28, 2006 accident date, nor were medical benefits provided. She also testified that none of the documents in the "workers' comp introduction packet" was completed and returned to her.

Ms. Gibbons testified that on February 27, 2007 she received a Petition dated February 22, 2007 regarding the March 28, 2006 accident. She testified that on March 11, 2008 she received a voluntary dismissal of that petition dated March 6, 2008.

Ms. Gibbons testified that on January 20, 2009 she received a petition dated January 12, 2009 regarding the March 28, 2006 event. She testified that she responded on January 21, 2009 and plead the statute of limitations regarding that petition.

Ms. Gibbons testified that the adjuster file contained copies of documents related to the March 28, 2007 event, which were signed by Claimant. Ms. Gibbons testifies that she filed a notice of denial regarding the March 28, 2007 accident on April 10, 2007. She testified that no indemnity of medical benefits have since been provided for this accident.

10. Rebecca Talley is the HR Supervisor of OCSD. She does all of the hiring, insurance, and workers' compensation for OCSD. She testified that Claimant was hired September 19, 1988 as a corrections officer. She testified that he underwent a pre-employment physical at or around the time of hiring, and that Claimant's blood pressure at that time was 120 over 80. She later testified that the physical was performed around the time that Claimant "was going to the academy" to "be certified." She testified that he "finished his corrections officer" on December 16, 1988. She testified that a new physical was not performed when Claimant became certified. She testified in 1990 Claimant entered "cross over" and became a law enforcement officer for the OCSD on September 17, 1990. This testimony is consistent with Claimant's recollection and testimony. She testified that he did not undergo a repeat physical at that time. She testified that he has been consistently employed with the OCSD, and that he is currently a court bailiff. She testified that the "corrections" department was "given to the Board of County Commissions" in 1997, and that the OCSD has not had a corrections department since that time. She testified that she did not know of him ever ceasing to be a corrections officer.

11. Michael Nocero is a medical doctor Board Certified in cardiovascular disease. He testified that he did not examine Claimant, but he reviewed records including those from Dr. Torres and various hospitals.

Dr. Nocero characterized the event in March 2006 as a "syncopal episode or so-called blackout episode." He interpreted the testing at that time as demonstrating normal carotid ultrasound, normal EEG, and various imagings. He opined that "no pathology was ever

diagnosed." He testified that although the records document a "possible transient ischemic attack," that there "was never any definitive testing that substantiated that."

Dr. Nocero noted from the records another "blackout spell" in March 2007 during which Claimant "developed some elevation in his blood pressure." He opined that the neurological evaluation conducted during the hospitalization that followed was "completely within normal limits." He noted that a "cardiac echo" also did not indicate specific pathology. Dr. Nocero noted that Claimant has since continued to complain of headaches that have not been diagnosed to "any specific etiology."

Dr. Nocero opined that the totality of the medical records led him to conclude that Claimant's events in 2006 and 2007 were "functional." He explained that the events sounded like Claimant suffered a "transient drop in his (blood) pressure that would cause these blackout spells." Dr. Nocero conceded that he did not find decreased blood pressure "documented" in the records he reviewed. He testified that the decreased blood pressure can "be very transient." He described that this is known as a "common faint." Dr. Nocero testified that fainting occurs "where the resistance vessels in the upper extremities can just vasodilate; they can open up for reasons that are not quite clear." He explained that the blood pressure can then "precipitously fall and cause the person to pass out." Dr. Nocero opined that Claimant "quite possibly could have had" a common "faint" on the occasions of the two events. He described his conclusion saying "that (common faint) was a possibility, and it was not rooted in any straightforward analysis that I was able to do." Dr. Nocero testified that another name for "common faint" is "neurocardiogenic syncope" or "vasovagal syncope." He conceded that a "tilt table test" is one of the diagnostic tools for making that diagnosis, and that he was not aware of that test having been performed on Claimant. He testified that "another possibility is unknown syncope due to unknown causes." Dr. Nocero's testimony is not entirely clear on what Claimant had in March 2006 and March

2007 that precipitated the events described. He is clear that neither event is related to Claimant's hypertension. In his report of May 29, 2009, Dr. Nocero opined that the "claimant has a diagnosis of essential hypertension which is labile . . .." He opined that "labile" means there can be "wide fluctuations" throughout the day.

Dr. Nocero opined that the event on March 28, 2006 was "neither caused by hypertension of coronary artery disease." He held the same opinion regarding the event on March 28, 2007. In each instance, he diagnosed a "faint" and opined that it was not caused either by high blood pressure or heart disease. Dr. Nocero opined that Claimant had no permanent impairment as a result of either event, nor any permanent restrictions.

12. Claimant seeks compensability of each event of "passing out" as workers' compensation accidents. He relies upon the provisions of Fla. Stat. §112.18, which provides:

> (1) 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. However, any such firefighter or law enforcement officer shall have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition. Such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

This statute therefore presumes certain "conditions" or health "impairments" to be accidental and "suffered in the line of duty." To avail himself of this statutory presumption, Claimant must demonstrate:

> (1) that he is a firefighter, law enforcement officer, or correctional officer, and
> (2) that he successfully passed a physical examination upon entering into such service as a law enforcement officer, and
> (3) that he has been diagnosed with a covered condition during employment, and
> (4) that he has suffered resulting total or partial disability

The evidence in this case is uncontroverted that Claimant has been a law enforcement officer or corrections officer since 1988. He has satisfied the first element.

All of the evidence supports that Claimant successfully passed a physical at or near the time he began working for the Employer. The Employer thereafter facilitated Claimant obtaining certification and he worked in various departments of the OCSD. I reject that the phrase "upon entering into any such service" alters the outcome of this question. When he entered service as a corrections officer, he successfully passed a physical. When he "entered service" as a sworn deputy, he did not have another physical. His alleged "accidents" that he relates to hypertension occurred when he was a sworn officer in 2006 and 2007, when he was no longer a corrections officer. However, during all pertinent times, Claimant was employed as an officer for the OCSD, and worked where and how they assigned him to work. Certainly his responsibilities changed from corrections "officer" to police "officer." However, he entered into the service of the OCSD one time, and passed a physical when he did so. I conclude that Claimant has satisfied the requirement of element two.

Dr. Torres has diagnosed essential hypertension. "Hypertension" is a condition specified as part of Fla. Stat. §112.18. Claimant has satisfied the third element of qualifying for/invoking the presumption of Fla. Stat. §112.18.

I find the fourth element of Fla. Stat. §112.18 most troubling in this case. Certainly, an employee may suffer an occupational disease and have multiple "accident dates" stem from that singular diagnosis. See, City of Mary Esther v. McArtor, 902 So.2d 942 (Fla. 1st DCA 2005). As clearly, Claimant need not be "permanently" disabled in order to be qualified for the presumption in Fla. Stat. §112.18. The determination of this fourth element in this case is tied directly to the testimony of Dr. Mathias and Dr. Nocero, although Dr. Torres' conclusions regarding his

diagnoses and treatment are also relevant, as are the treatment and diagnoses during the two subject hospital admissions.

The Office of the Judges of Compensation Claims is charged with determinations of credibility of witnesses. Prather v. Process Systems, 867 So.2d 479 (Fla. 1st DCA 2004); Ullman v. City of Tampa Parks Dep't, 625 So.2d 868, 873 (Fla. 1st DCA 1993) (citing Orange City Water Co. v. Barkley, 432 So.2d 698 (Fla. 1st DCA 1983). The Florida Supreme Court in Crowell v. Messana Contractors, 180 So. 2d 329, 330 (Fla. 1965), held, that the competent substantial evidence rule must allow room for the compensation judge "as trier of the facts [to] accept the testimony of one doctor over the testimony of several others." See also, United States Casualty Co. v. Maryland Casualty Co., 55 So.2d 741 (Fla. 1951); Chavarria v. Selugal Clothing, Inc., 840 So.2d 1071, 1076 (Fla. 1st DCA 2003). The District Court, citing Chavarria has reiterated that competent substantial evidence is the standard in occupational disease cases involving the presumptions of Fla. Stat. §112.18. Punsky v. Clay County Sheriff's Office, 34 Fla. L. Weekly D 516 (Fla. 1st DCA 2009)(en banc).

There is also a line of authority which supports that the appellate courts may re-weigh evidence when it is presented in deposition form, based upon their conclusion that “the appellate court is in as good a position as the judge of compensation claims to evaluate the credibility of a witness's deposition testimony.” See, Schafrath v. Marco Bay Resort, 608 So.2d 97, 109 (Fla. 1st DCA 1992); see also, Romero v. Waterproofing Systems of Miami, 491 So.2d 600 (Fla. 1st DCA 1986); Poorman v. Muncy & Bartle Painting, 433 So.2d 1371 (Fla. 1st DCA 1983); Jones v. Citrus Cent., Inc., 537 So.2d 1123, 1125 (Fla. 1st DCA 1989). However, the analysis of Chavarria and Punsky are more recent.

I find the conclusions of both Dr. Mathias and Dr. Nocero have been subjected to skillful cross-examination and review. I find that there are issues presented that cause me some degree of

doubt as to the opinions each expressed, and I have struggled extensively with the ultimate conclusions each reached in this case, in light of the underlying medical testing, and in some instances absence of testing. For example, Dr. Nocero conceded that Claimant had not had a "tilt table" test that is part of diagnosing "neurocardiogenic syncope" or "vasovagal syncope." However, Dr. Nocero did not diagnose this condition(s), but merely opined that this or "unknown syncope due to unknown causes" is the appropriate diagnosis based upon the medical testing and symptoms. Dr. Nocero's inability to definitively state the cause of Claimant's syncope on March 28, 2006 and March 28 2007 is somewhat troublesome. Similarly, Dr. Mathias' testified that he too had "ruled out" multiple potential diagnoses, and in the end concluded that Claimant "***probably*** had an episode of hypertensive encephalopathy," although Dr. Nocero's testimony supports that Claimant did not present with the "signs and symptoms" to diagnose this "syndrome." Dr. Mathias even admitted that hypertensive encephalopathy is merely part of his differential diagnosis. This is essentially testimony by Dr. Mathias that Claimant ***may*** have that malady. I have therefore likewise struggled with this less than definitive diagnosis.

The existence of elevated blood pressure at Dr. Torres' office prior to the Florida Hospital admission is notable. The "discharge diagnosis" in the Florida Hospital Orlando (FHO) records on March 30, 2006 was "left-sided weakness." This document memorializes tests which were "completely normal" and that the neurological consult "felt that this could have been a psychosomatic complaint as there was no evidence of any medical disease at this point." Records from Osceola Regional Medical Center in March 2007 evidence similar conclusions as to findings on medical testing. The March 2007 Discharge summary from that hospitalization reflects that laboratory testing including CT scan, MRI and MRA were negative or within normal limits.

Ultimately, I conclude that Dr. Nocero's conclusions are more consonant with logic and reason. Claimant was admitted to the hospital on two occasions, March 28, 2006 and March 28, 2007. Certainly, during those hospitalizations, he was not able to perform the functions of a police officer. He was thus "disabled" during those two brief times. However, to employ the presumption of Fla. Stat. §112.18, Claimant must demonstrate:

(1) that he is a firefighter, law enforcement officer, or correctional officer, and
(2) that he successfully passed a physical examination upon entering into such service as a law enforcement officer, and
(3) that he has been diagnosed with a covered condition during employment, and
(4) that he has suffered resulting total or partial disability

The final of these elements requires both a demonstration of disability, and the demonstration of causation, e.g. "resulting" disability. Phrased differently, Claimant has the burden of proving that he has a covered condition (3) and that disability has ***resulted from*** that covered condition. On this record, I cannot conclude that Claimant has proven this. Claimant has not satisfied his burden of proof of this causation portion of the element. Even If Dr. Mathias' opinions were accepted, they would prove at most that "something" unspecified, "somehow" related to blood pressure, "somehow" caused Claimant to suffer syncope events on March 28, 2006 and March 28, 2007. Dr. Mathias offers "possible" diagnoses, but admittedly no "conclusive diagnosis" of what caused the hospitalizations and therefore the disability. Dr. Mathias' testimony does not sufficiently substantiate ***what malady*** existed and therefore ***what malady*** was disabling, and his conclusion is, effectively, that he does not know. These examples are noted in explaining how Dr. Mathias' testimony fails to support any disability "resulting" from the hypertension. Dr. Mathias' testimony is not persuasive that hypertension resulted in disability. On the basis of these flaws in his testimony and conclusions, I would reject Dr. Mathias' opinion as to the cause of disability even if those opinions were not contradicted by other opinion. Prather, Ullman. On

this basis alone I would conclude that claimant has not proven "resulting disability," and that he is therefore not entitled to the presumption of Fla. Stat. §112.18.

Dr. Mathias' opinions are contradicted however. On this record, I find the conclusions of Dr. Nocero more logical and consonant with reason. I have therefore accepted and adopted his opinions regarding causation of disability, United States Casualty Co., Chavarria. On this basis alone I would conclude that claimant has not proven "resulting disability," and that he is therefore not entitled to the presumption of Fla. Stat. §112.18.

13. In the absence of the presumption, Claimant bears the burden of proving the compensability of his condition. Fla. Stat. §440.151; King Motor Co. v. Pollack, 409 So.2d 160 (Fla. 1st DCA 1982). The evidence in this record does not satisfy the required elements of proving an occupational disease.

14. An employee may have multiple "accident dates" that stem from a singular diagnosis. See, City of Mary Esther v. McArtor, 902 So.2d 942 (Fla. 1st DCA 2005). Therefore the "finality" of this order is limited to the allegations of "resulting disability" (that is, "date of accident") from Claimant's hypertension alleged as March 28, 2006 and March 28, 2007. The first three elements of the presumption of Fla. Stat. §112.18 have been litigated and proven by competent substantial evidence. Should Claimant allege in the future that his essential hypertension has produced "resulting disability" at some point in the future, nothing in this order shall prevent him from litigating that issue at that future time as to that future "date of accident."

Wherefore, it is ORDERED AND ADJUDGED:

1. Claimants claims in case number 07-008720 (alleged accident date 03.28.06) for compensability, temporary total disability benefits, authorization of medical care for hypertension, impairment indemnity benefits and penalties, interest, attorney's fees and costs are DENIED. As to these Claims, the Employer/Carrier shall go forth without day.

2. Claimants claims in case number 09-000802 (alleged accident date 03.28.07) for temporary total disability, authorization of medical care, reimbursement of out-of pocket medical expenses, along with penalties, interest, attorney's fees and costs are DENIED. As to these Claims, the Employer/Carrier shall go forth without day.

3. Jurisdiction is reserved for determination of whether the prevailing party is entitled to costs in this matter, and if so for determination of the amount thereof.

DONE AND ORDERED in Chambers, Pensacola, Escambia County, Florida, this 21st day of October 2009.

JUDGE OF COMPENSATION CLAIMS

CERTIFICATE

This is to certify that the above **FINAL ORDER DENYING COMPENSABILITY AND RELATED BENEFITS FOR DATES OF ACCIDENT MARCH 28, 2006 AND MARCH 28, 2007** was entered and rendered on the date stated, and that copies were emailed to the parties' counsel as set forth below.

JUDGE OF COMPENSATION CLAIMS

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