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

Jerry L. Adams Employee/Claimant,	)	
vs.	)	OJCC Case No. 02-014758JTF; 09-000657JTF
State of Florida – Highway Patrol and Division of Risk Management Employer/Carrier,	)	Judge: David Langham

FINAL ORDER DENYING CLAIM FOR COMPENSABILITY OF 2008 DATE OF ACCIDENT, TEMPORARY INDEMNITY, CORRECTION OF THE AWW/CR, AND PENALTIES/INTEREST AND GRANTING PSYCHIATRIC EVALUATION, COSTS AND ATTORNEY FEES

THIS CAUSE was heard before the undersigned at Orlando, Orange County, Florida on August 31, 2010 before the undersigned on Claimant's claims for authorization of care and treatment with a psychiatrist, determination of compensability of psychiatric conditions as a manifestation of compensable hypertension and heart disease or pursuant to F.S. 112.1815, payment of TTD/TPD benefits from 11/14/08 to present at appropriate AWW/CR, adjustment of AWW/CR to include all earnings and fringe benefits in the 13 weeks prior to the date of accident, and penalties, interest, costs and attorney's fees, and determination of compensability of 11/13/2008 date of accident. The undersigned appeared for trial by Video Teleconference System (VTS). The Petitions for Benefits ("PFB") were filed September 24, 2009 and January 27, 2010. Mediation occurred, January 25, 2010 (123 days after the initial PFB was filed). The final hearing occurred three hundred forty-one (341) [1] days after the initial PFB was filed. Kelli Hastings, Esq. was present in Orlando on behalf of the Claimant. Teri Bussey, Esq. was present in Orlando on behalf of the Employer/Carrier.

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:

[1] The matter was scheduled for trial on April 14, 2010 (202 days after the initial petition, but was continued on Claimant's motion. The two captioned case numbers were consolidated by order of May 17, 2010. Despite consolidation of all claims into case number 02-014758, the parties have continued to electronically file documents in both case number dockets.

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

1. A Pretrial compliance questionnaire filed February 5, 2010 was marked as JCC exhibit "1" for the record.
2. The Claimant's Trial Memorandum filed August 26, 2010 was marked as Judge's exhibit "2" for the record.
3. The Employer/Carrier's Trial Memorandum filed August 27, 2010 was marked as Judge's exhibit "3" for the record.

JOINT EXHIBITS:

1. The deposition of Lawrence W. Vallario MD taken September 3, 2009 was marked as Joint exhibit "1" and accepted as evidence.

CLAIMANT'S EXHIBITS:

1. The deposition of Patrick F. Mathias, M.D. taken January 28, 2010 was marked as Claimant's exhibit "1" and accepted as evidence.
2. A composite of petitions for benefits was marked as Claimant's exhibit "2" and accepted as evidence.

EMPLOYER/CARRIER'S EXHIBITS:

1. The deposition of Jerry Adams taken May 28, 2009 was marked as Employer/Carrier's exhibit "1" and accepted as evidence.
2. The deposition of Jerry Adams taken February 9, 2010 was marked as Employer/ Carrier's exhibit "2" and accepted as evidence.
3. The deposition of Lawrence W. Vallario MD taken June 3, 2003 was marked as Employer/Carrier's exhibit "3" 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' stipulations and agreements set forth in the pretrial compliance questionnaire are accepted and adopted.

3. Any and all issues raised by way of the Petitions for Benefits ("PFB"), but which issues were not dismissed (see footnote one) 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 ("FEC") controls admissibility of evidence in workers' compensation proceedings.[2] The Division of Administrative Hearings, Office of the Judges of Compensation Claims ("OJCC") has promulgated and adopted Rules of Procedure, Section 60Q6.101, et. seq. Florida Administrative Code governs the procedural aspects of this claim.[3] Those Rules are referred to herein as "OJCCRP."

5. There are repeated references in this record to a "court." From context, it is clear that those references are somehow to this administrative office. Clearly, the Office of Judges of Compensation Claims is not a "court." Therefore, the references to this Office as "court" are deemed to be misstatements resulting from unfamiliarity with the administrative law process generally or the Office of Judges of Compensation Claims specifically. Although these mischaracterizations of this Office as a "court" are potentially distracting, they are deemed harmless.

6. 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., 16 So.3d 200 (Fla. 1st DCA 2009). Each trial order of the Office of the Judges of Compensation Claims also potentially 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

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[2] 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).

[3] 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).

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 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, 22 So. 3d 648 (Fla. 1st DCA 2009).

7. Claimant was a law enforcement officer until his retirement January 31, 2009 (announced in November 2008). Claimant testified that he had a "massive heart attack" on January 2, 2002. He testified that he was hospitalized for about eight (8) days and then returned home. Claimant testified that after being home about two weeks, he had the "same symptoms" and returned to the hospital. He testified that at that time (the second visit to the hospital), he did not have to undergo a "stent" implantation and was instead diagnosed with "angina." He testified that he has not had any heart problems since that time, but has undergone blood pressure checks and EKG testing and "a few stress tests done, nuclear stress tests." He testified that those tests were "okay" and that he did not have to be hospitalized after 2002.

Claimant testified that on November 14, 2008 he felt "really lightheaded, dizziness." He testified that he then began becoming nauseated. He testified that he informed Captain Duncan that he did not feel well and went home. He testified that after being home resting for sixty (60) to ninety (90) minutes, he still did not feel well and decided to go to Dr. Vallario's office. Claimant testified that he was diagnosed with an "active angina" at that time, and he was told that Dr. Vallario recommended he "get out of uniform right away" as he was concerned that "it's too stressful and you may not pull the next one (heart attack) off." He testified that Dr. Vallario did not place restriction upon him however, other than "take care of" himself and to walk for exercise.

Claimant testified that he has been diagnosed with obsessive compulsive disorder, post trauma stress disorder and a third psychiatric diagnosis he could not recall the name of, which he described as "depression fighting with hyperthyism in your brain." He testified that he suffers nightmares, and awakens "flying out of bed, grabbing your chest." Claimant complained that he is in "depression a lot," and has difficulty dealing with "things at certain times of the day." Claimant testified that he lacks patience and seeks to be left alone when he is in these states.

Claimant testified that he announced his retirement from the Highway Patrol November 14, 2008. He testified that thereafter he was on sick leave until he actually left that employment in January 2009. Claimant testified that he worked full time for the Employer from August 2002 through November 14, 2008. He testified that during that time he took "normal sick days" to care for his skin cancer, or a cold, or to care for his high blood pressure (a condition that he described as sporadic and for which he could miss work without a doctor's excuse). He testified that he has not worked in any capacity since that time. He has applied for and is receiving social security benefits.

8. Dr. Vallario is a cardiologist. Claimant came under his care in early January 2002. He testified that Claimant presented with chest discomfort, and was found to have suffered a heart attack. He underwent cardiac catheterization and implantation of a stent in 2002. Dr. Vallario diagnosed coronary artery disease, and "post a nontransmural infarct." He explained that due to a blockage in an artery or arteries, the heart was denied oxygen and nutrients and can cause damage to the heart muscles. Dr. Vallario testified that when he was discharged from the hospital he was prescribed Plavex, Lopressor, Altace, Zocor, Niacin, and aspirin. Claimant was readmitted on January 20, 2002 with chest pain and underwent a heart catheterization. Dr. Vallario testified that he recommended Claimant remain active and to "participate in risk modification, cholesterol lowering drugs," "curtail his dietary consumption of saturated fats and cholesterol, and keep his weight down and his body composition in line" with standards. When Dr. Vallario saw him in April 2003, Claimant still complained of chest discomfort while exercising, but testing showed Claimant's exercise tolerance to be similar to the year prior. He testified that Claimant reached maximum medical improvement as of April 20, 2002. However, he cautioned that "this diagnosis will hang over him the rest of his natural life." Dr. Vallario assigned a forty percent (40%) whole body impairment related to the coronary artery disease condition and a zero percent (0%) whole body impairment related to his hypertensive condition. His testimony supports that this rating was an educated approximation at where Claimant fell within a range of impairments defined by symptomatology at the time.

9. Dr. Vallario testified that the "routine risk factors" for coronary artery disease are diabetes, high blood pressure, high cholesterol, smoking history, and a family history of heart disease. He also opined that "behavioral issues" such as the "so-called type A behavioral patterns" and how people respond to tense situations may have a higher rate of disease. Dr. Vallario opined in 2003 that Claimant's "primary objective" should be minimizing these "risk factors," to "do everything he

can to minimize progression of the disease." He opined that Claimant was at an increased risk of "having further cardiac problems with time."

10. Dr. Vallario testified in September 2009 regarding his care for Claimant over a period of years, including office visits in 2004, 2005, 2006, 2007, 2008, and 2009. As of the most recent of those visits as of September 2009, Dr. Vallario testified that his diagnosis was "history of tobacco use; number two, remote history of rheumatic fever, number three, coronary artery disease, which I have broken down into : (A) stuttering myocardial infarction in January of 2002; (B) subsequent catheterization with stent deployment. And number four, episodes of palpitations in the past." He added a "history of dyslipidemia" which he characterized as "an important diagnosis" to this list; he explained this means elevated cholesterol. Dr. Vallario opined that Claimant had no "cardiac events" after 2002, but "did have some complaints of chest discomfort for which we evaluated that." Dr. Vallario testified in 2009 that he was prescribing a variety of medications for Claimant for his coronary artery disease including medication for the cholesterol. He opined "treating just the coronary artery disease without addressing the prevention of progression of disease, in my opinion, is incomplete treatment." He opined that "lifelong" treatment for the cholesterol is needed to effectively treat the coronary disease. He also noted that coronary artery disease is "progressing" and therefore there is some increase in the risk of development as the person ages. Dr. Vallario discussed the potential for a law enforcement officer to be in a situation that requires "maximum physical output," (this discussion included whether Claimant might have to tackle and wrestle to the floor someone that he was pursuing as a police officer) and Claimant's age, and shared statistics with Claimant as to his risk for "reoccurring problems." Dr. Vallario testified that he advised Claimant "against maximum physical output and whatever that entails," but that he did not advise him "regarding his profession" specifically. In effect, he advised Claimant that he could work, but advised that he work in an occupation that would not require heavy physical output or maximum output. Dr. Vallario testified that this recommendation is for Claimant's "and other's safety." He testified that this advice ***was not new*** in 2008, and that he had cautioned him against such "maximum output" repeatedly, but the discussion on November 14, 2008 was a "very intensive discussion." Dr. Vallario testified that the issue was "more pertinent" in the sense that Claimant was then "an advancing-aged individual who's 54" combined with the artery disease, and he place emphasis "that decisions need to be made." He testified that Claimant has not had any further "cardiac event" since 2002, and he did not tell Claimant he could not work, or that he should or needed to retire. Dr. Vallario testified that Claimant's January 2008 stress test was unremarkable and his condition has not deteriorated

and he "remained the same" at maximum medical improvement at that time. Dr. Vallario testified that Claimant's condition cannot be "fixed" and that he will undergo "lifelong treatment." He characterized this as being "monitoring for progression of the disease" and "prevention of progression." This will include periodic testing and annual visits for monitoring.

11. Patrick Mathias is a medical doctor Board Certified in internal medicine, cardiology, critical care, interventional cardiology, and electrophysiology. He performed an independent medical examination November 22, 2009. Claimant presented with a history of occasional chest discomfort on exhaustion, frequent awakenings with the sensation that "his heart had stopped," shortness of breath, swelling and numbness in his legs, and feeling "wiped out" daily requiring time to "lie down and rest." Claimant related history of "anxiety, enlarged prostate, carotid artery stenosis, skin cancer, depression, hyperlipidemia," and "history of coronary artery disease, a prior heart attack and chronic angina." Dr. Mathias testified that "we don't know the cause of coronary artery disease," but that "several risk factors" have been identified "that have a statistical correlation with an increased incidence of coronary artery disease." He opined that high cholesterol and smoking are such "risk factors." Dr. Mathias also opined that "family history, abdominal obesity, (and) psychosocial stress" are "risk factors." He opined that the correlation between psychosocial stress and the development of heart disease is "almost as strong or stronger than known risk factors like diabetes, smoking and family history." He testified that this is something that is not characterized with an "exact definition," but was "based on a questionnaire and patient's perceived stress level." Dr. Mathias testified that "multiple studies have found that patients have a much higher incidence of second and third coronary events if they have suffered from anxiety and depression after a heart attack." He testified that he is not a psychiatrist, and he would defer to a psychiatrist regarding the nature or diagnosis of any psychiatric conditions. Dr. Mathias testified that he prescribes antidepressants and anxiolytics to his patients after heart attacks.

Dr. Mathias opined that Claimant is not capable of the duties of a highway patrol officer. He noted as an example that Claimant could "pass out" and if this occurred during a vehicle chase it could "cause a lot of damage." He opined that Claimant was incapacitated from work as a law-enforcement officer since November 14, 2008.[4] Dr. Mathias opined that Claimant reached maximum medical improvement ("MMI") as of November 22, 2009. He noted that MMI is

[4] This opinion was rendered in response to a question that misstated the premise that Claimant's "treating cardiologist took him off work on 11/14/2008," which is not supported by the testimony of Dr. Vallario or any other physician in this record.

subject to change in "conditions like coronary artery disease" as further problems "can develop." He stated that Claimant "appears to be stable at this time, and that's why I have placed him at maximum medical improvement, but that does not rule out" that Claimant "could have a coronary event" in the future that might affect this conclusion/opinion. Dr. Mathias deferred to Dr. Vallario regarding claimant's work status and maximum medical improvement ("MMI") prior to his evaluation November 22, 2009. This specifically included MMI and he agreed that Claimant remained at MMI upon evaluation November 22, 2009, and Claimant's work status. Dr. Mathias denied that there was any objective evidence to support that Claimant suffered any "new coronary incidents."

Dr. Mathias noted that Claimant was "very anxious" and was taking two "strong medications for anxiety." He opined that Claimant's anxious state, while under the influence of these medications suggested "he may need to see someone who's a little more qualified at dealing with psychiatric problems in order to optimize his medications." Dr. Mathias testified that "there's absolutely no doubt that this man is very anxious and he's not happy." He's somewhat depressed." He opined that if Claimant's psychiatric problems are left untreated, anxiety and depression could "hinder" his recovery from coronary artery disease. He opined that treatment of the "psychiatric conditions" is necessary to "effectively treat the coronary artery disease." Dr. Mathias concurred with Dr. Vallario's assessment of Claimant's permanent impairment at forty percent (40%).

Dr. Mathias testified that the coronary artery disease ("CAD") can be treated discreetly. He opined that any psychiatric condition does not preclude his treating the Claimant's heart disease, nor does Claimant's high cholesterol. However, he testified that while it is possible to treat the CAD without treating the cholesterol, to do so "would be malpractice." He clarified that the only way to "treat" CAD is to control the various risk factors that are known by "statistical correlation" to correspond to that disease process.

12. Dr. Vallario's office note of November 14, 2008 reflects Claimant presented for a "follow-up," and was observed as being "without chest pain, shortness of breath PND, orthopnea or pedal edema." On physical examination, he was in "no acute distress." This record documents the past care, stent, and hospitalization in 2002, but notes that an imaging study in January 2008 was "entirely unremarkable," that Claimant had complained in the past of palpitations, but "holter monitoring" was unremarkable, and that "echocardiographicdata has been unremarkable." The note also contains a lengthy discussion of Claimant's work and diagnostic findings,

memorializing conversation between Dr. Vallario and Claimant that is pertinent part consistent with Dr. Vallario's testimony.

13. I find the Court's holding in Orange County Fire Rescue v. Jones, 959 So.2d 785 (Fla. 1st DCA 2007) instructive in this case. There, an employee was diagnosed with an occupational disease in 1992, received temporary disability for a closed period from December 1992 to January 1993 and for another closed period in April 1993 before returning to work full time while receiving periodic medical care. About four years later, that employee was excused from work for four months while he underwent care. The Court held that the subsequent excuse from work constituted a new date of accident. Shortly after that excused absence (disability) and treatment, that worker was placed at maximum medical improvement ("MMI") and assigned an impairment rating. Similarly, in this case, Claimant was disabled in 2002 when he was hospitalized for the heart attack. He then returned to work and continued until he elected to retire in November, 2008. Claimant argues that thereupon, Claimant suffered a new "disability" and that a new 2008 "date of accident" occurred under the logic of Jones. I find Jones (and for similar reasons City of Mary Esther v. McArtor, 902 So.2d 942 (Fla. 1st DCA 2005)) distinguishable from the case at bar however. I note, that only these two cases were cited by Claimant in support of his theory that a "new" accident date of November 14, 2008 controls.

In Jones, the injured worker's second "disability" in 1997 (a distinct date of disability caused by the disease, but separate from the earlier disability dates) was followed by achievement of maximum medical improvement ("MMI") in 1998. That "disability" occurred because of a change in the injured worker's condition (increased viral load), which required treatment that was different (interferon treatment) in character than his prior care. In the case at bar, Claimant reached MMI for his coronary artery disease April 20, 2002. Thus, while Jones established a new date of accident, he did so based upon a progression of the illness, a resulting need for care, and all prior to reaching MMI. There is no competent evidence that his status as MMI thereafter changed.

Admittedly, Dr. Mathias testified that Claimant had reached MMI as of the date of his IME (November 22, 2009), but he also deferred to Dr. Vallario as to the achievement of MMI prior to that time. The competent evidence therefore supports that Claimant, unlike Jones was MMI before the purported "new" date of disability found by the Court to therefore be a new "accident." Furthermore, Claimant here was impaired by the heart attack and physical symptoms in 2002, and he remained so at the time of Dr. Mathias' IME in 2009. The impairment did not change, and neither did the disability. Clearly, "impairment" and "disability" are not

interchangeable terms. However, Dr. Vallario did not "disable" Claimant from employment in 2008, in fact his testimony and records are consistent with Claimant's situation remaining unchanged on November 13, 2008. Dr. Vallario was advising Claimant to leave law enforcement before that time, and continued to advise him to do so at that time. Unlike Jones, there was no "new" disability or date of disability in this instance. All that had changed, in Dr. Vallario's opinion, was that Claimant was continuing to age, and he again repeated his same advice to Claimant, that he should elect to remove himself from the line-of-duty, that is, "retire." In the eyes of, the opinion of, Dr. Vallario, Claimant was no more (though also no less) "disabled" on November 13, 2008 than he had been before that time and since his heart attack in 2002. Dr. Mathias does not contradict those conclusions of Dr. Vallario, but in fact defers to them. The competent evidence supports that all that had changed at that November 13, 2008 appointment was that Claimant was a little older, and for whatever reason Claimant had finally come to the conclusion that Dr. Vallario's advice regarding retirement should be heeded. Nothing had changed medically (as it conversely had changed in Jones, with the viral load issue and the need for significant treatment with interferon and time missed from work, i.e. disability), Claimant merely elected to heed the advice at that time. Claimant was at MMI for his cardiac condition in April 2002, remained so in November 2008, remained so in November 2009 and remains so to this day according to the competent evidence. I am persuaded that in this setting, the legislative logic outlined by Judge Webster (dissenting in Jones) is more consonant with reason. I therefore conclude that there was no new "accident" in 2008 in this case. The disablement began with the hospitalization for care and treatment in 2002. I find no basis in fact to conclude that disability changed in any way, or Claimant's condition deteriorated in any way, until the time he elected to retire on the long-standing advice of his treating physician.

14. Claimant is at maximum medical improvement physically. He has not presented any competent evidence that he has not achieved maximum medical improvement psychiatrically, despite his arguments that he "clearly" has not. Whether he has or has not is up to a psychiatrist to determine. Claimant had an opportunity for an independent medical examination in this case. He elected to have that with a cardiologist, Dr. Mathias, but could have elected instead a psychiatric IME. Furthermore, he might have asked for a "second" IME in psychiatry after obtaining Dr. Mathias' testimony in which he conceded that psychiatry is beyond his expertise (except to the extent he does feel qualified to identify symptoms of those maladies). There is a long-standing maxim of Florida workers' compensation law that recognizes that an injured worker "may be considered to be at maximum medical improvement and entitled to permanent benefits for

continuing disability even though it is anticipated that the claimant will likely become a candidate for additional remedial treatment at some time in the future." Holder v. Keller Kitchen Cabinets, 610 So. 2d 1264 (Fla. 1992); Emanuel v. David Piercy Plumbing, 765 So. 2d 761, 762 (Fla. Dist. Ct. App. 1st Dist. 2000); see also, American Airlines v. Taylor, 575 So. 2d 669, 670 (Fla. 1st DCA 1991). Such could be the case in the issues presented at bar, but factually, it is not the case. Factually, at bar, Claimant reached MMI on April 20, 2002 and has remained such. There is no competent evidence that he has ever reverted from that status for one moment since that time. Thus, even if Jones were not distinguishable on the points noted above, the fact remains that whether the "date of accident" is January 2, 2002 or November 13, 2008, the Claimant is at MMI, and has been at MMI since April 20, 2002. For the purposes of temporary indemnity benefits, it is therefore irrelevant[5] which "date of accident" was selected. As he has been at MMI since that time, there is no basis for the award of temporary indemnity benefits for any of the claimed periods, related to any accident date, as Claimant is and has been at MMI during all of those periods. Dr. Vallario says so without contradiction and Dr. Mathias defers to him on this point. Claimant has not suffered a new date of accident, and he has clearly reached MMI for the 2002 date of accident in this case. If he was not MMI psychiatrically, he could have presented evidence thereof from a psychiatrist. He did not. I cannot, on this record, conclude that he has psychiatric conditions, and/or that they are or are not compensable and related. As he has reached physical MMI, and not proven psychiatric temporary disability, he is not entitled to temporary partial disability benefits for the claimed period November 14, 2008 through the present and continuing.

15. Certainly, however, Claimant is entitled to at least an evaluation of his psychiatric condition under the January 2, 2002 date of accident. The Court explained in Gallagher Bassett Servs. v. Mathis, 990 So.2d 1214, 1220 (Fla. 1st DCA 2008) that "treatment for a condition not causally related to the compensable injury is (the) E/C's responsibility if one of the primary purposes of

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[5] Claimant might (he has not on this record) claim prejudice results from this decision in that his permanent indemnity, should any be claimed, would be based upon his 2002 earnings rather than his 2008 earnings. Certainly, such effect is possible. However, because the permanent indemnity calculations include a "supplemental benefit," to accommodate for inflation, and because that calculation is based in part on the number of years between the date of accident and the payment of benefits, the earlier date will likely provide a greater supplemental benefit calculation while the later date provides a higher compensation rate, thus higher base benefit, but lower supplemental benefits. It is also notable that the supplemental benefit on the 2002 date of accident which the E/C argues for, and which is supported by the evidence in this case is a 5% per year supplement, while the supplemental calculation for a hypothetical 2008 accident date is a 3% per year supplement.

the treatment is also removal of a hindrance to recovery from the compensable accident' (quoting Roth Bros. of Fla. v. Spodris, 451 So.2d 947, 947 (Fla. 1st DCA 1984)); Urban v. Morris Drywall Spray, 595 So.2d 60 (Fla. 1st DCA 1991); Parish v. Baptist Hosp., 512 So.2d 1031 (Fla. 1st DCA 1987). I rely upon Webster's Dictionary, as have various Florida Courts[6] for the definition of "hindrance." Webster's New Collegiate Dictionary defines "hindrance" as being "hindered," which means "to make slow or difficult the progress of; to hold back." The plain meaning of "hinder" thus supports that if something prevents recovery, it is a hindrance, and likewise is something makes progress difficult, it is a hindrance. I find no distinction in this setting between a barrier to progress, which would effectuate remaining static, and a condition that is deleterious to the underlying condition. Thus, if Claimant's unrelated high cholesterol condition were limiting his recovery from or treatment for his CAD, then treatment of that high cholesterol would be appropriately the responsibility of the Employer. I find it pertinent that Dr. Mathias has identified symptoms of psychiatric conditions of depression and anxiety. I find it pertinent that the Employer is providing care for this malady in conjunction with the care for Claimant's compensable CAD. Dr. Mathias' testimony in uncontroverted[7] in likening these conditions to conditions such as high cholesterol. He opined without contradiction that it is possible to treat CAD without treating co-morbid high cholesterol, but that to do so would be medical malpractice. He opined without contradiction that depression and anxiety are "risk factors" for CAD in the same way that high cholesterol is, and that these mental or stress manifestations are a correlative as "risk factors" as other known and accepted "factors." In that setting, Claimant would certainly be entitled to have testing to determine if he had high cholesterol or high blood pressure. If those conditions were found, Claimant would certainly be entitled to treatment for one or both if their presence were hindering his recovery from the occupational injury or disease, or otherwise

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[6] See, Taylor v. School Bd. of Brevard County, 2004 WL 1846219 (Fla. 2004); Cuero v. Ryland Group, Inc., 849 So.2d 326 (Fla. 2nd DCA 2003); Gilbreth v. Genesis Eldercare, 821 So.2d 1226 (Fla. 1st DCA 2002); Strama v. Union Fidelity Life Ins. Co., 793 So.2d 1129 (Fla. 1st DCA 2001); Capps v. Buena Vista Const. Co., 786 So.2d 71 (Fla. 1st DCA 2001); Closet Maid v. Sykes, 763 So.2d 377 (Fla. 1st DCA 2000).

[7] 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). This means that the finder of fact could disbelieve even an uncontradicted witness if cross examination or other inconsistencies supported such a conclusion, and even perhaps if the Judge merely found the witness unworthy of credibility. However, that is not the situation here, in which this Board Certified doctor, well informed, well credentialed and logical in his explanation, renders credible, complete and uncontradicted testimony.

impairing the efficacy of treatment for that disease whether remedial or palliative. The Employer has not cited or provided any authority to the contrary. Dr. Mathias' opinions in these regards are uncontradicted on this record. In parallel to this logic, I conclude that Claimant is absolutely entitled to evaluation of his mental status to determine the existence of psychiatric illness or injury and whether treatment therefore is necessary to allow successful management of his CAD condition. I cannot, conclude that Claimant either has psychiatric conditions or that they are or are not compensable on the lay testimony of Claimant and the symptom identification of his cardiology IME provider.

Wherefore, it is ORDERED AND ADJUDGED:

1. Claimant's claims for TTD/TPD benefits from 11/14/08 to present at appropriate AWW/CR, adjustment of AWW/CR to include all earnings and fringe benefits in the 13 weeks prior to the alleged 11/13/2008 date of accident, and penalties, interest, costs and attorney's fees, and determination of compensability of 11/13/2008 date of accident are DENIED.
2. Claimant's claim for authorization of a psychiatric evaluation to determine the need for treatment of Claimant's anxiety and depression as diagnosed by Dr. Mathias is GRANTED. The Employer/Carrier shall schedule said evaluation immediately and advise Claimant and counsel of the evaluation date. This evaluation shall include determination of the existence of mental health issues (i.e. diagnoses), and determination of whether those specific diagnoses are or are not a hindrance to the care for Claimant's coronary artery disease condition. Claimant is entitled to attorney's fees and costs for the prosecution of this claim, and same are GRANTED.

DONE AND ORDERED and ELECTONICALLY MAILED in Chambers, Pensacola, Escambia County, Florida, this 14th day of September 2010.

JUDGE OF COMPENSATION CLAIMS

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