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CASE NOTES
CASE LAW SUMMARY
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Mold Exposure/Claimant’s Burden of Proof

Altman Contractors/North River Insurance Company v. Gibson, (Fla. 1st DCA 4/29/2011)

(William H. Rogner on Appeal, Teri Bussey Trial Attorney)

The DCA reversed the JCC’s finding that the claimant’s mold exposure was compensable. This decision approves the heightened standard for such cases included in the 2003 amendments to the statute. The DCA noted that the reversal was warranted because no record evidence established the levels of mold to which Claimant was exposed in the workplace, a statutory condition imposed by section 440.02(1), Florida Statutes (2005). See Matrix Employee Leasing v. Pierce, 985 So. 2d 631 (Fla. 1st DCA 2008). They also noted that the JCC erred in substituting the causation standard expressed in Festa v. Teleflex, Inc., 382 So. 2d 122 (Fla. 1st DCA 1980), for the more exacting statutory causation standard for mold exposure claims enacted by the Legislature. See Mangold v. Rainforest Golf Sports Ctr., 675 So. 2d 639, 642 (Fla. 1st DCA 1996). The dissent argued that as the medical testimony agreed that the claimant inhaled Aspergillus mold which caused her injuries, no evidence of the levels to which she was exposed was necessary. [Click here to view Order](#)

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Permanent Total Disability

Martinez v. Lake Park Auto Brokers/Unisource Administrators, Inc., C & I Insurance Company, and AIG SB, (Fla. 1st DCA 4/29/2011)

The First DCA reversed the JCC's Order denying PTD. The First DCA remanded the case to JCC to address the adequacy of the claimant's job search. The DCA, citing, Blake v. Merck & Co., 43 So.3d 882 (Fla. 1st DCA 2010), outlined the three ways PTD can be proven under the new law: (1) permanent medical incapacity to engage in at least sedentary employment, within a 50-mile radius of the employee's residence, due to physical limitation; (2) permanent work-related physical restrictions coupled with an exhaustive but unsuccessful job search; or (3) permanent work-related physical restrictions that, while not alone totally disabling, preclude Claimant from engaging in at least sedentary employment when combined with vocational factors. The DCA found the JCC failed to consider the second method. [Click here to view Order](#)

Enforcement of Settlements/Contingencies

United Airlines/Gallagher Bassett Services v. Nemoto, (Fla.1st DCA 4/15/2011)

The opinion merely reverses the JCC's ruling that the parties did not enter into a binding settlement, and reverses an award of attorney fees for prevailing on a claim filed prior to the purported settlement agreement. The dissent, however, publishes the entire letter claimant's counsel sent to defense counsel, which, although it does not use the word contingencies, appears to set numerous specific conditions upon settlement. According to the dissent, the conditions were not satisfied, and thus the dissent would have affirmed the JCC. [Click here to view Order](#)

UC Benefits/Misconduct

Lewis v. Unemployment Appeals Cmmsn/City of Pensacola, (Fla.1st DCA 4/15/2011)

The DCA reversed the finding of the UC Commission that the claimant was not entitled to benefits. The opinion notes that excessive absenteeism may constitute misconduct for purposes of denying benefits, but only where the employer shows a serious and identifiable pattern of absenteeism that is willful. As the record showed only two absences in two years, the court reversed in favor of the unrepresented claimant. [Click here to view Order](#)

Statute of Limitations/Tolling/Provision of Medical Care

Varitimidis v. Walgreens/Sedgwick, (Fla.1st DCA 4/14/2011)

The DCA reversed the JCC's Order finding the claim barred by the SOL. The claimant's DOA was 12/7/07. The E/C "provided" medical benefits on 11/10/09. The JCC erroneously ruled that this medical benefit (a prescription from a previously authorized doctor) was outside of the two year period. The opinion finds the JCC erred in finding the prescriptions were provided erroneously (without further discussion of the facts) and that she erred in finding the claimant was required to prove detrimental reliance upon the actions of the E/C. The DCA noted the claimant was not seeking to show such detrimental reliance, but rather that the statute never expired because the carrier continued to provide benefits. The DCA noted the PFB filed in February of 2010 was

timely. The apparently significant issue of deliberate versus inadvertent authorization (likely payment of a bill) that served to toll the statute is not examined in this opinion.

[Click here to view Order](#)

Misrepresentation/Attorney Fees

Zampell Refractories/Zurich, NA v. Welch, (Fla.1st DCA 4/14/2011)

The DCA affirmed the JCC's finding that the claimant did not make a misrepresentation for the purpose of obtaining benefits. The claimant cross appealed the JCC's Order awarding fees, but limiting the fee to a guideline fee. (The opinion does not indicate if the fee award was solely related to the misrepresentation issue.) The DCA dismissed the cross-appeal, as the JCC's order reserved jurisdiction to determine the amount of the fee. [Click here to view Order](#)