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CASE NOTES

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CASE LAW SUMMARIES: April, 2004

EMPLOYEE COVERAGE - CONTRACTOR

Bruce McCollough v. Melvin Bush, d/b/a Bush Logging and American Interstate Insurance, 29FLWD737: Section 440.02 (17)(b)(2) defines "employment" as including "all private employments in which four or more employees are employed by the same employer, or with respect to the construction industry, all private employment, which 1 or more employees are employed by the same employer." In this case, there was a non-construction industry general contractor who contracted to a sub-contractor (sub one) who then sub-contracted to a second sub-contractor (sub two). The claimant worked for sub two and was the only employee of sub two. The Judge of Compensation Claims ruled that the claimant was not considered an "employee" of sub two because sub two employed fewer than four people. Accordingly, The JCC denied compensability of the claim because the claimant did not meet the statutory definition of an employee under the statute.

The 1st DCA disagreed with this interpretation. Upon reversing the JCC's Order, the 1st DCA ruled that the Judge must include all of the employees under the main contractor for purposes of calculating the four employee threshold in order to be covered under Chapter 440.

COMPENSABLE ACCIDENTS - FRAUD - FORFEITURE OF BENEFITS

Carol Singletary v. Yoder's and Ameritrust Insurance Corporation, 29FLWD739: The claimant injured herself and the employer/carrier initially accepted compensability. At some point during the 120 day investigatory period, some evidence came to light to question whether the claimant had a preexisting condition or to question the compensability of the claim. The employer/carrier failed to deny compensability of the claim within the 120 days. However, at trial, the JCC found that "the claimant knowingly made false or misleading oral and written statements for the purpose of obtaining workers' compensation benefits....therefore, the claimant is not entitled to

benefits per §440.09(4)." The claimant's attorney attempted to make the argument that the 120 day provision bared the employer/carrier from denying the claim based on fraud. The 1st DCA disagreed and affirmed the JCC's Order.

120 DAY RULE - "PAY AND INVESTIGATE"

Bobby Willis v. Publix Supermarkerts, Inc. and Publix Risk Management, 29FLWD786: The claimant made a claim for work related neck pain, back pain, and carpal tunnel syndrome from a March 17, 2001 accident under a repetitive trauma theory. The employer/carrier accepted compensability for the carpal tunnel syndrome, but denied the claim for medical and indemnity benefits for his neck and back pain. On June 25, 2001, the claimant filed a PFB for his neck and back conditions. The employer/carrier decided to pay and investigate pursuant to the 120 day provision contained in §440.20(4). The employer/carrier's IME was conducted on October 25, 2001, 123 days after the claimant first notified Publix that he was filing a PFB. The IME physician opined that the claimant had osteoarthritis and that his neck and back conditions were preexisting and not work related. Based on this recommendation, the employer/carrier denied compensability on November 1, 2001, 130 days after the claimant first sought workers' compensation benefits for his neck and back conditions. The JCC found that a 4 day extension for the employer to deny compensability was warranted and found that the E/C's denial of the neck and back condition was within 120 days of the claimant's PFB. The 1st DCA disagreed and found that the employer/carrier failed to establish the exception to the 120 day rule that there were facts relevant to the issue of compensability that could not have been discovered through reasonable investigation within the 120 day period. The 1st DCA held that the 120 day period begins to run when the claimant specifically requests the benefit.

EXPERT MEDICAL ADVISOR (EMA)

AT&T Wireless and Kemper Insurance v. Valerie Frazier 29FLWD787: The employer/carrier appealed an Order of the JCC, which denied their request for an appointment of an expert medical advisor pursuant to §440.13(9). In this case, the Judge had accepted the medical opinion of the treating physician over the opinion of the employer/carrier's independent medical examination. The JCC had denied the employer/carrier's request for an EMA as being untimely and because it would require the continuance of the final hearing beyond the time limitations of §440.25. In reversing the JCC's Order, the 1st DCA noted that §440.13(9) imposes upon the JCC a statutory duty to order that the claimant be evaluated by an EMA before ruling on the merits of the PFB whenever it become apparent that there is a substantial conflict in the medical opinions, even if the conflict in medical opinions becomes evident only after the merits hearing has begun, and even if neither party requests appointment of an EMA. The 1st DCA further held that if a party requests an EMA with reasonable promptness once a conflict in the medical opinions becomes apparent, then the JCC must grant the EMA even if it will necessitate continuing the final hearing past the time limitations of §440.25.

CASE NOTES

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