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CASE NOTES

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CASE LAW SUMMARIES: April, 2005

OCCUPATIONAL DISEASES

City of Cooper City v. Farthing, 30 FLWD 929 (1st DCA April 7, 2005)

In 1993, the claimant, a heavy smoker for 30 years, was diagnosed with COPD. On August 15, 2000, the claimant stopped working for the employer because of his disabling COPD condition and sought workers' compensation benefits under the theory that his COPD was an occupational disease. The JCC found that the claimant's COPD condition was a compensable occupational disease.

One of the requirements in establishing compensability of an occupational disease is that if the disease is an ordinary disease of life, the incidence of such disease must be substantially higher in the particular occupation that the claimant worked in as compared to the general public. The claimant presented no evidence that the incidence of COPD was substantially higher in his occupation as compared to the general public. However, the JCC did not believe this was significant because it was his belief that it was the employer/carrier's initial burden to establish that COPD was an ordinary disease of life. Since the employer/carrier failed to establish this, the JCC found the claimant's COPD condition to be compensable.

The First DCA disagreed. According to the First DCA, once an employer/carrier raises a defense that a disease is an "ordinary disease of life", it is the claimant's burden to prove that such disease is substantially higher in the claimant's occupation as compared to other occupations. Since the claimant failed to meet this burden, the First DCA reversed the JCC's decision and held that the claimant's COPD condition was not a compensable occupational disease.

RESULTING MANIFESTATIONS

A. Duda & Sons, Inc. v. Kelley, 30 FLDW 930 (April 7, 2005)

The claimant sustained an injury to his shoulder in a work related accident, which ultimately required surgery. While receiving treatment for his shoulder injury, the claimant was diagnosed with a perforated ulcer. The claimant's IME physician testified that the medications the claimant took for his shoulder condition contributed to his ulcer, but the physician could not state within a reasonable degree of medical certainty what was the major contributing cause of the claimant's ulcer. The JCC found the claimant's medications worked "synergistically" to cause the ulcer and awarded compensability for the ulcer condition. The claimant argued that he was not required to prove his shoulder injury was the major contributing cause of his ulcer because the ulcer was a resulting manifestation of his original work place injury.

While the First DCA acknowledged that claimants do not have to establish that their work place injuries are the major contributing cause of resulting manifestations, the First DCA did not characterize the claimant's ulcer condition as a manifestation. A manifestation is defined as "such diseases or infection as naturally or unavoidably result from the compensable work place injury". The First DCA found that there was no competent substantial evidence that claimant's ulcer condition was a natural or unavoidable result of his shoulder injury. Therefore, the First DCA ruled the claimant needed to establish that his shoulder condition was the major contributing cause to his resulting ulcer condition. Since the claimant could not do so, the First DCA reversed the JCC's decision and held that the claimant's ulcer condition was not compensable.

Anderson Columbia v. Brown, 30 FLWD 949 (April 12, 2005).

The claimant requested the employer/carrier's attorney's billing information to support a constitutional challenge the attorney fee statute that was amended in October 2003. The employer/carrier asserted that the requested billing information was protected by either the attorney client privilege or the work product privilege. The JCC disagreed and ordered the employer/carrier to produce the requested billing information. The JCC only ordered the employer/carrier to disclose the rate charged and the hours expended in defending the claim. Since the request only dealt with the rate charged and hours expended, the First DCA did not feel the information requested was protected by the work product privilege. The First DCA also did not believe the requested billing information was protected by the attorney/client privilege. As such, the First DCA affirmed the JCC's Order compelling the employer/carrier to produce the requested billing information.

Butterman v. Broward County School Board, 30 FLWD 950 (April 12, 2005).

The JCC entered an Order striking the claimant's Petition for Benefits since the petition failed to include the claimant's social security number. The First DCA reversed on the authority of an earlier case that determined that a social security number is no longer required to be written on the face of a Petition for Benefits.

CASE NOTES

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