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CASE NOTES

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CASE LAW SUMMARIES: April, 2006

AUTHORIZATION OF AN EMA

Keegan v. Southland Waste Systems & Liberty Mutual Ins. Co., April 11, 2006, Judge Dane

The claimant appealed a decision by the JCC denying him benefits. The claimant had requested an EMA and the JCC denied the request. An EMA should be appointed if there is conflicting medical testimony on a material issue.

Seminole Co. School Board & Preferred Governmental Claim Solutions, April 13, 2006, Petition for Writ of Certiorari – Original Jurisdiction

The petitioners asked the 1st DCA to review an order of the JCC which granted the claimant's request for an EMA. The petition was denied. The petitioners failed to identify any injury flowing from the JCC's order which could not be addressed on appeal from a final order.

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.

ENFORCING SETTLEMENT AGREEMENT

Fivecoat v. Publix Super Markets, Inc. & Publix Risk Mgt/Hartford Ins. Co., April 11, 2006, Judge Punancy

The JCC has the authority to determine whether the parties reached a binding settlement agreement and to give that agreement effect.

To enforce a settlement agreement, the E/C has a strict burden to prove that the claimant's attorney had "clear and unequivocal authority to settle on the client's behalf."

In this case, the parties, through their attorneys, entered into an agreement at mediation to settle the workers' compensation claim. The mediation had apparently been going on for a while and the claimant's attorney told the E/C's attorney that if a certain additional amount was added to the settlement, they had a deal. The claimant's attorney, however, apparently did not go back and clear this with the claimant. The following day, the claimant attorney called the claimant to discuss this and the claimant responded, "I don't have a choice". The claimant attorney assumed the claimant meant that she had no choice but to accept. The claimant later told the court that she meant she did not have any choice but to decline as the suggested settlement amount would not pay for her medical care. There was a misunderstanding between the claimant and her attorney so the attorney did not have "clear and unequivocal authority to settle" on the claimant's behalf.

The moral of the story is, even though the attorneys reached a clear agreement to settle, there must be sufficient evidence to support that the actual party, ie. claimant or adjuster/carrier, clearly and unequivocally agreed to the settlement too or the agreement cannot be enforced.

Quinlan (as personal representative for Estate of Betty Jean Jacobsen) v. Ross Stores & Sedgwick Claims Mgt Services, April 24, 2006, Judge D'Ambrosio

A proposed settlement agreement was entered into at mediation by the parties. The mediation agreement stated that the settlement was contingent upon both parties' approval of a Medicare set-aside amount for future medical care. The agreement was also expressly contingent

upon resolution of any Medicare lien amount. Neither of these contingencies had occurred prior to the claimant signing the proposed settlement agreement and the E/C never signed the settlement documents. The claimant died less than a month after signing the draft documents.

As the express contingencies in the mediation settlement agreement were not met or satisfied at the time the claimant signed the proposed settlement agreement or even by the time the claimant died, there was no final and enforceable agreement.

The claimant's representative tried to argue without success that the language of the settlement agreement itself which included a recommended set aside amount as well as language on responsibility for liens resolved and fulfilled all contingencies in the mediation agreement. In this case, it was shown that the parties actual intent at the time the proprosed agreement was made was that the agreement hinged upon CMS approval of the recommended MSA amount and actual resolution of the Medicare liens, if any, not just including certain language in the settlement document.

This case is different from Calderon v. J. B. Nurseries, Inc. (decided February 6, 2006), where the parties intended to settle the claim by the mediation settlement agreement with no contingencies. In Calderon, the claimant's failure to sign a general release did not void the binding settlement agreement.

FRAUD

Quiroz v. Health Central Hospital & Unisource, April 11, 2006, Judge Condry.

A claimant may make misrepresentations or outright lie, and it may not constitute a violation of s. 105(4), F.S. , ie. fraud, under the workers' compensation law. The purpose of the misrepresentation or lie must be to obtain workers' compensation benefits under Chapter 440, for such misrepresentation or lie to act as a violation of s. 440.105(4), F.S. and allow the E/C to deny benefits under s. 440.09(4), F.S.

In this case, the claimant injured his neck and back on 9/12/03 while cleaning offices. The E/C accepted compensability. The claimant returned to work light duty on March 1, 2004. At 10:30 that morning, the claimant was notified he had a call from his doctor's office. The

claimant then said he must have forgotten a doctor's appointment and left. He then showed up at the doctor's office but did not have an appointment. The claimant did not return to work for the remainder of the day. On March 2, 2004, the claimant arrived at work several hours late. On March 3, 2004, the claimant was told by the employer that he needed to provide a doctor's note for leaving work on March 1, 2004 and for being late on March 2, 2004. The claimant provided a form showing he paid for medical information from the doctor's office on March 1, 2004. The claimant was advised this was not a doctor's note and was suspended for 24 hours or until he returned with a doctor's note. The claimant's personnel file noted the claimant would be terminated if he failed to substantiate his absences.

On March 4, 2004, the claimant went to a doctor outside of workers' compensation for headaches which was paid by his health insurance. He did not tell this doctor he was being treated under workers' compensation for a neck and back injury. This doctor did not find anything that would prevent the claimant from returning to work and gave the claimant a certificate of return to work. This certificate noted, though, that the claimant had not been feeling well on 3/1/04 and 3/2/04 and because of that he was unable to work both days. Later that day, the claimant provided this doctor's note to his employer. The claimant was fired the next day on March 5, 2004 for dishonesty and willful misrepresentation on work records, lying about sickness or personal leave and falsifying his reason for leaving work. The claimant thereafter filed two separate Petitions seeking payment of TPD from 3/5/04 to 6/3/04 (the date of MMI) and payment of impairment benefits. The JCC denied these claims on the basis of fraud. The Order of the JCC specifically stated that the JCC found that the claimant intentionally obtained a note from an unauthorized doctor to justify his false statements of March 1, 2004 and March 2, 2004.

It was determined on appeal, however, that any misrepresentations made by the claimant were clearly for the purpose of preventing a termination of his employment and that there was no evidence that the misrepresentations would assist the claimant in obtaining any benefit under workers' compensation.

CASE NOTES

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