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CASE NOTES
CASE LAW SUMMARY
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If you have any questions regarding Case Law Summaries, please contact W. Rogers Turner, Jr. : rturner@hrmcw.com

RES JUDICATA

Thomas v. Eckerd Drugs, 33 Fla. L. Weekly D2001 August 15, 2008.

The JCC granted the Employer/Carrier's Motion for Summary Final Order, concluding that the claimant's claim for a lumbar injury was barred by res judicata. The claimant had previously dismissed a claim for a lumbar injury before a prior March 31, 2005 Merits Hearing. The JCC ruled that the lumbar claim was ripe for adjudication at the time of the prior March 31, 2005 Hearing and was therefore barred by application of res judicata.

The 1st DCA reversed the JCC's Order ruling that the granting of the Motion for Summary Final Order was improper because it was possible that the claim for the lumbar injury was based on newly discovered evidence, as there were facts in the record that demonstrated that the claimant did not know that her low back condition was causally related to her industrial injuries at the time she dismissed her lumbar claim prior to the March 31, 2005 Merits Hearing.

Since the res judicata issue was decided via a Motion for Summary Final Order, where the facts must be viewed in a light most favorable to the non-moving party, the 1st DCA believed the evidence presented a material issue of fact as to whether the claimant knew her lumbar claim was ripe at the time of the prior March 31, 2005 Hearing thus making summary final order improper.

COSTS

Moore v. Hillsborough County School Board, 33 Fla. L. Weekly D2029 August 21, 2008.

The JCC denied a claimant attorney's request for costs that were associated with certain depositions because the JCC indicated she did not rely upon the opinions in those depositions in awarding benefits. The 1st DCA ruled that the JCC erred in denying these costs because if the deposition was used in any way to support an award of benefits, the witness fees should be taxed through the Employer/Carrier.

HEART ATTACK

Speed v. Securitas USA, 33 Fla. L. Weekly D2045 August 27, 2008.

While on the job, the claimant entered an elevator to head down to the floor of a 200-foot building when the elevator malfunctioned, resulting in a series of drop and catch episodes where the elevator would drop for a distance, catch, and then start dropping again. The claimant experienced what he self-described as a panic attack. When the claimant finally came to safety, he reported symptoms of chest pain. The claimant was later diagnosed as having a heart attack.

The JCC found that the claimant's heart attack was not compensable because the heart attack was a physical injury that resulted from a mental or nervous injury, which was unaccompanied by physical trauma. Fla. Stat. §440.093(1) states that a physical injury resulting from mental or nervous injuries unaccompanied by physical trauma requiring medical treatment is not compensable.

The 1st DCA reversed the JCC's decision since there was no medical evidence that the claimant's heart attack resulted from a mental or nervous injury. The only medical testimony came from the claimant's IME physician. The claimant's IME physician testified that the claimant's heart attack was caused by a stress response to the elevator incident. The doctor did not testify that the heart attack was caused by a

mental or nervous injury. The JCC merely concluded that common sense dictated the claimant had in fact suffered a mental or nervous injury since the claimant self-described himself having a panic attack while in the elevator.

Since there was no other medical evidence aside from the claimant's IME physician who testified that the work place accident was the major contributing cause of the claimant's heart attack, the 1st DCA reversed the JCC's decision and remanded for an opinion finding the claimant's heart attack to be compensable.

ATTORNEY'S FEES

Franco v. SCI at the Palmer Club at Prestancia, 33 Fla. L. Weekly D2047, August 27, 2008.

The claimant filed a Petition for PTD benefits. The E/C did not respond to the Petition within 14 days of its receipt, therefore, the claimant's request for PTD benefits was deemed denied. The Employer/Carrier later began payment of the claimant's PTD benefits on the 31st day following the E/C's receipt of the Petition requesting PTD benefits.

The claimant's attorney moved for fees and costs because the Employer/Carrier provided a benefit more than 30 days after its receipt of the Petition. The JCC denied the claimant's attorney's request for fees and costs because the JCC found that the claim was never controverted and the claimant attorney did not successfully prosecute the Petition because no more than minimal effort to procure the benefits for the claimant was necessary.

The 1st DCA overruled the JCC's decision indicating that the 2003 Amendments to the Fla. Stat. §440.34(1) fee statute removed the discretionary factors in determining fee entitlement including "minimal" effort. Since more than 30 days elapsed from the date the Employer/Carrier received the Petition to the date the Employer/Carrier provided the requested benefits, the statutory requirements to determine fee entitlement had been met.

In hindsight, the opinion suggests the Employer/Carrier should have responded to the claimant's Petition within 14 days accepting the claimant as PTD or initiated the PTD benefits within 30 days of its receipt of the Petition that requested PTD benefits.

PTD

Temples v. WDW Hospitality and Recreation Corporation, 33 Fla. Weekly D2077, August 29, 2008.

The 1st DCA affirmed the JCC's denial of the claimant's claim for PTD benefits, but the 1st DCA went out of its way to point out that even though the PTD claim was denied with prejudice, that would not preclude a subsequent PTD claim if the claimant became permanently totally disabled sometime in the future. This ruling follows up on a prior 1st DCA case that stated res judicata is not applicable when a claimant files a PTD claim where he was previously denied PTD in the past.

MEDIATION CONFIDENTIALITY

Hill v. Greyhound Lines, Inc. 33 Fla. L. Weekly D2078, August 29, 2008.

The claimant told his treating physician statements that were made by the Employer/Carrier's counsel at Mediation. The treating physician documented these statements in his report. The Employer/Carrier filed a Motion for Sanctions based on the claimant's violation of the Mediation confidentiality requirement. The Employer/Carrier alleged that it was potentially prejudiced by the claimant's disclosure because it would be possible for the doctor to be now biased against the Employer/Carrier. The JCC ruled that the claimant's disclosure of confidential information to his treating physician clearly impacted the physician's demeanor and sanctioned the claimant by dismissed the pending Petition with prejudice.

The 1st DCA reversed the JCC's ruling holding that the JCC abused his discretion in dismissing the petition with prejudice, as there was no evidence that the claimant willfully or deliberately violated the Mediation confidentiality requirement and also because the Employer/Carrier failed to provide competent substantial evidence that it was meaningfully prejudiced by the claimant's disclosure of the confidential statement to the doctor.