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CASE NOTES
CASE LAW SUMMARY
August 2012

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

Attorney Fees/Effect of Advance Payment prior to payment of Compensation

Williams v. State of FL Dept. of Corrections/Div. of Risk Mgmt., (Fla.1st DCA 8/31/2012)

The DCA reversed and remanded the JCC’s denial of attorney fees claimed for late payment of PTD, in a case complicated by an interim advance payment. The claimant filed a PFB seeking PTD on 1/25/11, and the JCC entered an Order on claimant’s unopposed Motion for \$2,000 advance on 2/9/11. The E/C informed claimant’s counsel on 2/16/11 that they were accepting the claimant as PTD, and paid the \$2,000 advance pursuant to the Order, on 2/17/11.

The E/C next paid the claimant PTD benefits 41 days after the filing of PFB, offsetting the \$2,000 advanced to the claimant through that date. The claimant attorney subsequently sought a guideline fee on the value of PTD benefits, as although the E/C agreed to accept the claimant as PTD, they issued payments entitled “PTD” later than 30 days. The JCC analyzed the \$2,000 advance and the advance statute, reasoning that as the claimant was only seeking compensation in the form of PTD, the “advance compensation” paid on 2/17 could only be PTD, and as such the E/C timely paid PTD. The DCA distinguished the advance of compensation from specific “compensation due” (here PTD). Although the court notes the employer/carrier may recoup advance payments under 440.20(13), they found the E/C payment of PTD 41 days after the PFB to be untimely, triggering entitlement to

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attorney fees under F.S. 440.34(2008). [Click here to view Order](#)

Medical Bills/Jurisdiction of JCC

Bergstein v. Palm Beach County School Board/F.A. Richard and Assoc., (Fla.1st DCA 8/17/2012)

The court affirmed the JCC's finding that she lacked jurisdiction to rule on a claim for payment of medical bills. The E/C asserted the JCC lacked jurisdiction under Avalon Ctr. v. Hardaway, arguing that they had authorized the care, and any outstanding dispute over payment was a reimbursement dispute for which the claimant lacked standing. The DCA held that where an E/C asserts this defense under F.S. 440.13(11)(c), this is a de facto concession of responsibility, insulating the claimant from financial liability for such charges. If an E/C takes this position, they waive any argument as to the medical necessity of the bills, and agree they are responsible. [Click here to view Order](#)

Occupational Causation/MCC and Idiopathic Conditions

Walker v. Broadview Assisted Living/Chartis, (Fla.1st DCA August 8, 2012)

Following the 7/11/12 Caputo decision, the DCA issued another opinion clarifying the claimant's burden to prove occupational causation. In the instant case, the claimant, while at work "felt her foot slip from under her". She sustained a rotator cuff injury from the fall. She had no pre-existing condition or injury related to either the fall or the shoulder injury. The JCC denied compensability. Relying on Duval County School Board v. Golly, 867 So. 2d 491 (Fla. 1st DCA 2004), and Hernando County v. Dokoupil, 667 So. 2d 275 (Fla. 1st DCA 1995), the JCC denied compensability because "*claimant's accidental injury on the employer's premises did not arise out of her employment because her work activity at the time of the incident was not the major contributing cause of her fall or injury.*" The DCA reversed and remanded, noting that in contrast to this case, both of those cases involved pre-existing conditions (*seizures/syncopal episodes and osteoporosis respectively*) which contributed to the accident or the injury. As in Caputo, there was no dispute the claimant was engaged in work related activity. Thus, in the absence of competing causes of Claimant's accident injuries, Claimant satisfied the major contributing cause requirement. [Click here to view Order](#)

Burden of Proof/Compensability

Williams v. TARMAC America/Chartis Ins., (Fla.1st DCA 8/10/12)

The claimant worked as a truck driver for the Employer since 1987. He first alleged back pain in 1990. The claimant alleged knee and repetitive back injuries related to an accident of 1/26/04 and resigned his employment on 3/10/04. The DCA notes the claimant filed for PTD in 2010, but the PFB, while describing a back injury, did not "*raise compensability of the back condition...but instead assumed the E/C had accepted the accident as compensable*". Relying on the E/C IME, the JCC denied PTD, finding the claimant had not established a repetitive trauma injury to his back. The DCA agreed with the claimant's position that the JCC erred, noting that the issue of compensability of the back was "outside the issues framed for the hearing".

The court notes that the compensability of the back condition was neither put at issue by the claimant in the PFB or pretrial stipulation nor challenged by the E/C.*

The DCA states further that the E/C's provision of medical care for the back condition and failure to deny within 120 days precludes any challenge to compensability of "the condition". Remarkably, the opinion does not mention [Checkers v. Wiethoff](#), the 2006 en banc decision which clarified that 440.20(4) deals only with whether or not there was some type of initial injury, but does not create a waiver to contest whether and to what extent that injury is the MCC of additional requested benefits.

The DCA reversed and remanded for further fact finding, as the JCC's analysis "stopped short of the statutory requirements for such benefits."

**A review of the 3/16/11 Pre-Trial stipulation on the DOAH docket indicates the claimant listed "low back/left knee" as compensable injuries, with the carrier responding "left knee only". The opinion is silent, and review of the Docket does not shed much light on exactly what treatment the E/C provided for the back, although they agreed to provide a neurosurgical evaluation and diagnostic studies in responses to PFBs prior to the PTD petition. [Click here to view Order](#)*