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CASE NOTES
CASE LAW SUMMARY
December 2011

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Temporary Indemnity/Penalties and Interest

Ballard v. Helms Designs/Amerisure, Fla.1st DCA 12/30/2011

The claimant was awarded TPD for a certain period. The claimant then sought TPD for a different period, but the evidence showed the claimant was placed only on TTD for that period, but collecting unemployment. The JCC determined that the \$87.05 in penalties and interest for the first period should be offset from the overpayment made by the carrier during the period the claimant collected unemployment (citing 440.34(3)(b)(2008) (*which precludes receipt of PTD or TTD during periods where the claimant collects UC benefits*)). The DCA reversed, finding that the carrier did not timely assert a right to the overpayment until the written closing argument after the close of evidence in the Merit Hearing. The DCA ordered payment of the \$87.05, and awarded entitlement to attorney fees and costs for that benefit.

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WC Immunity/Related Entities/Employer Premises

Pensacola Christian College/Maddox v. Bruhn, (Fla.1st DCA 12/30/2011)

The circuit court denied the defendant college’s motion seeking summary judgment based on WC immunity. The plaintiff, a full time student, was hired by PCC under an hourly work contract, which indicated she might be placed in employment with “any affiliate of PCC”. She then began working for a bookstore on campus. She was injured when hit by a PCC van while she rode her bicycle back to the bookstore from a lunch break. The injury

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was reported to PCC's carrier, who had purchased a policy which included the bookstore and all campus affiliates. The circuit court based its denial of summary judgment on the facts that the plaintiff worked for a separate "legal entity" and that the injury did not occur on the premises of the bookstore. The appeals court analyzed immunity under the separate questions of whether the plaintiff was an employee of PCC and whether her injury occurred in the course and scope of employment. The DCA rejected the court's reasoning that she was not an employee of PCC (because her W-2 indicated she was an employee of the bookstore), noting that of the "special employer" factors, wages are the least important. Finding she was an employee of PCC, the DCA then determined that her injury on the premises of PCC occurred in the course and scope of her employment, and remanded the case for the circuit judge to enter an Order for the Defendant(s) awarding Summary Judgment on WC Immunity. [Click here to view Order](#)

DWC-19s/Carrier's Ability to Suspend Benefits where PTD adjudicated

Glinski v. Pan Am Bank/CNA, (Fla. 1st DCA 12/9/2011)

Claimant had been receiving PTD benefits since 1990. In August of 2009, the E/C sent the claimant DWC -19 forms for the period of 11/07 through 8/26/09. The claimant ultimately returned the forms on 9/22/09, but with missing information. After requesting the forms be properly completed and not receiving a response, the carrier cut off the claimant's benefits on 12/21/09, and did not reinstate them until the claimant submitted the properly completed forms on 1/15/10. The claimant then sought payment of PTD for the period where the carrier refused to pay her PTD, arguing the failure to return the properly executed forms was not "willful" per the statute, and that the carrier may not suspend the claimant's benefits where there has been an order adjudicating PTD. The DCA affirmed the JCC as to both arguments. They found the JCC was correct in finding the claimant's excuses insufficient to overcome evidence of willful non-compliance. Further, the DCA noted that the statute was clear and unambiguous that the carrier need not seek judicial approval to suspend benefits, regardless if the benefits were previously awarded by judicial determination. [Click here to view Order](#)

Defenses to Payment of Temporary Partial Disability Benefits/Failure to File DWC-19s

Rucker v. Just Brakes/The Hartford, (Fla.1st DCA 12/2011)

The DCA reversed and remanded the JCC's denial of penalties and interest. The JCC awarded a majority of temporary partial disability benefits claimed, but denied penalties and interest. The DCA noted that the E/C did not assert at trial that the claimant failed to provide required evidence of establishment of earning capacity. The statute indicates that such failure by the claimant "shall" result in a suspension or nonpayment of TPD until the proper notification is provided. The DCA held the JCC committed error in ruling upon the affirmative defense of failure to provide DWC-19s, depriving the claimant of an opportunity to provide evidence of her entitlement to the "awards". The court found that as the claimant proved entitlement to temporary benefits, it was error to not award the attendant penalties and interest. [Click here to view Order](#)