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CASE NOTES

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CASE LAW SUMMARIES: December 2003

JURISDICTION

Miller v. Bell South Phone Co., 28 FLW D2807 (Fla. 1st DCA, Dec. 8, 2003). The JCC entered a Final Order denying compensability of the claim after he had reversed an earlier Order recusing himself.

The 1st DCA reversed and found the Order void and without effect. The 1st DCA held that once a Judge recuses himself or herself for whatever reason, the Judge may not thereafter reconsider their recusal decision and reassert judicial authority over the case.

Cupo v. Seminole Tribe of Florida, 28 FLW D2857 (Fla. 1st DCA, Dec. 11, 2003). The claimant was injured during the course and scope of his employment with the employer, the Seminole Tribe of Florida. The JCC dismissed the claimant's Petition based upon lack of subject matter jurisdiction over the Tribe. The 1st DCA affirmed, finding the claimant failed to show a clear, express and unmistakable waiver of sovereign immunity by the Tribe, or any act of Congress abrogating the Tribe's sovereign immunity.

EVIDENCE

O'Leary v. USA Waste Management, 28 FLW D2808 (Fla. 1st DCA, Dec. 8, 2003). The JCC denied this claim finding the claimant was disqualified from receiving benefits pursuant to Fla. Stat. §440.09(4). In making this finding, the JCC relied on a recorded statement which was not properly authenticated under Fla. Stat. §90.901. The 1st DCA held it was error to admit the recorded statement and rely on the statement without it being properly authenticated.

SOCIAL SECURITY OFFSETS

Raymond James & Assoc. v. Smith, 28 FLW D2859 (Fla. 1st DCA, Dec. 11, 2003). The JCC held that an employer or insurance carrier, having taken an offset against temporary compensation benefits, cannot, upon accepting the claimant as PTD, recalculate the amount of the offset to take Supplemental Benefits into account. The 1st DCA affirmed and noted that if the employer or insurance carrier were allowed to do so, this recalculation would render Supplemental Benefits of no practical significance.

APPEALS

Thompson v. Park Place of Venice, Inc., 28 FLW D2860 (Fla. 1st DCA, Dec. 11, 2003). The Sarasota JCC issued a final Order on August 21, 2003. The final date to invoke the 1st DCA's jurisdiction was September 22, 2003. The claimant filed a Notice of Appeal in the St. Petersburg JCC's office on September 22, 2003 which was transferred to the Sarasota office on September 23, 2003. A Notice of Appeal was also filed with the 1st DCA on September 26, 2003. The E/C moved to dismiss the Appeal, arguing the 1st DCA's jurisdiction was not timely invoked. The 1st DCA denied the E/C's Motion.

The 1st DCA looked to Fla. R. App. P. 9.180(b)(2); 9.420(e). Rule 9.180 was adopted effective January 1, 1997 and provides the Notice of Appeal shall be filed "with the lower tribunal"(that entered the order) within 30 days of the mailing of the Order. Under an earlier version of the applicable Rule, a Notice of Appeal could be filed with any JCC.

The 1st DCA also looked to Kaweblum v. Thornhill Estates Homeowners Ass'n, Inc., 755 So.2d 85 (Fla. 2000). In that case, the only Notice of Appeal was filed with the Circuit Court for Broward County although review was sought of a judgment of the Circuit Court for Palm Beach County. The 1st DCA found that appellate jurisdiction was appropriately invoked in this circumstance and this result was required by Article V, Section II(a), of the Florida Constitution and Fla. R. App. P. 9.040(b)(1) and (c). The 1st DCA found the reasoning of Kaweblum applied in the instant matter and that a different result could not be justified simply because the instant case involves a workers' compensation appeal.

94th Aero Squadron of Miami, Inc. v. Colon, 28 FLW D2721 (Fla. 3rd DCA, Nov. 26, 2003). This case involves an appeal by the E/C on a non-final Order denying their Motion for Summary Judgement on the issue of workers' compensation immunity.

The 3rd DCA found that because the Order was non-final, the case was not appealable under Fla. R. App. P. 9.130(a)(3)(C)(v). The 3rd DCA therefore treated this as a Petition for Issuance of a Writ of Certiorari and denied same. The 3rd DCA explained that for a non-final Order to be reviewable by a Petition for Certiorari, it must depart from the essential requirements of law, causing material injury to petitioner throughout the remainder of proceedings below, effectively leaving no adequate remedy on Appeal.

PERMANENT TOTAL DISABILITY (PTD)

Integrated Adminstr. v. Valdes, 28 FLW D2710 (Fla. 1st DCA, Nov. 25, 2003). The JCC found the claimant to be PTD. The 1st DCA reversed, finding the claimant had earlier sought PTD benefits which were denied. The 1st DCA held the re-litigation of the PTD issue was barred by the Doctrine of Res Judicata and further noted the claimant did not demonstrate a change in condition or a mistake of fact which would warrant modification of the previous Order denying the claim for PTD benefits.

EXPERT MEDICAL ADVISER (EMA)

Broward Children's Center, Inc. v. Hall, 28 FLW D2710 (Fla. 1st DCA, Nov. 26, 2003). In the instant matter, there was a disagreement between the parties' IME's regarding causation. Accordingly, the JCC ordered an EMA to evaluate the claimant and appointed Dr. Feldman. The JCC was later informed that Dr. Feldman had declined the appointment. Subsequently, the JCC entered an Order holding that because there was no other qualified EMA available, he would resolve the disagreement between the parties' IME's. He accepted the claimant's IME and held the claim compensable.

The 1st DCA reversed and remanded. The 1st DCA found if there are no physicians certified in a particular expertise, the JCC shall request the Agency for Health Care Administration, pursuant to Rule 59A-30.006, to select a temporary EMA.

WORKERS' COMPENSATION IMMUNITY

Byers v. Ritz, 28 FLW D2721 (Fla. 3rd DCA, Nov. 26, 2003). Both defendants (Ritz and Barcinas) were supervisors with the employer. On the date of accident, the claimant and the defendants were manually clearing debris following hurricane Andrew. A co-employee of the claimant stole a backhoe from a local gas station to help with the clearing of debris. Neither defendant prohibited the use of the backhoe. The claimant was involved in a fatal accident with the backhoe. The claimant's estate filed a civil claim. The defendants filed a Motion for Summary Judgment on the issue of workers' compensation immunity. The circuit court denied the Motion for Summary Judgement.

The 3rd DCA affirmed. The 3rd DCA agreed the theft of the backhoe caused the injury and therefore found the "criminal acts" exception to the workers' compensation immunity was applicable.

GOING AND COMING RULE

Alvarez v. Sem-Chi Rice Products Corp., 28 FLW D2861 (Fla. 1st DCA, Dec. 12, 2003). The vice president and general manager of the employer instructed the claimant, on the date of the accident, to go to the vice president's residence and assemble a computer table for the vice president's wife. The claimant was on the clock at this time. As the claimant left the residence, he was involved in a motor vehicle accident.

The JCC ruled against the claimant and found the claimant was not within the course and scope of his employment at the time of his accident. The 1st DCA reversed. The 1st DCA found the claimant's case fell within the dual purpose and special errand exceptions to the going and coming rule. The 1st DCA found the purpose of the claimant's trip served a business purpose for the employer and the claimant had made special arrangements and went out of his way to perform a special errand for his employer.

CASE NOTES

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