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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

Statute of Limitations/Dismissal of PFB

Airey v. Wal-Mart/Sedgewick CMS, (Fla.1st DCA 12/31/09) The First DCA reversed the JCC's determination that the subject PFB was time barred. The opinion contains few facts, but notes that the JCC's dismissal of the Petition was apparently based on the finding that the PFB had been "pending for too long". The DCA noted the proper method for dismissing a PFB that has been outstanding for an inordinate amount time is a motion (either by a party or the JCC) to dismiss for lack of prosecution pursuant to F.S.§ 440.25(4)(i). The DCA did not that such a motion would not have been proper here, however, as evidence of record activity within the past year existed in the record. **Click here to view Order**

WC Immunity/Effect of Washout on Civil Claims

Petro Stopping Centers v. Gall, (Fla. 5th DCA 12/11/2009) The 5th DCA reversed a denial of summary judgment based on WC immunity. The employee/Plaintiff sustained injuries in a meat grinder accident. The claimant received WC benefits for the injuries, was accepted as PTD, and entered into a mediated settlement agreement. The DCA found that the circuit judge erred in finding that this agreement was not a conclusion on the merits of the claimant's WC claim, and that the active pursuit of a tort remedy against the employer did not constitute an election of remedies. The DCA discussed prior immunity cases, and noting that the case law the court based its

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ruling on was distinguishable, in that Gall obtained acceptance of PTD. The court indicates this established her ability to "receive benefits that flowed therefrom". The opinion suggests the DCA understands an acceptance of PTD to be the end of litigation in a WC case. **Click here to view Order**

Attorney Fees/Authority of JCC to Determine Reasonableness

Jackson v. Ryan's Family Steakhouse/Zurich Ins., (Fla. 1st DCA 12/22/09) The DCA affirmed the JCC's determination that $3860 was a reasonable fee for obtaining $211.04 in mileage. The parties attended a merit hearing where all benefits were denied except for the mileage. The claimant attorney then submitted an affidavit alleging he spent 40.33 hours securing that benefit. The E/C alleged such a fee would be manifestly unfair, but failed to specifically attack his time. Rather, they left it up to the JCC. The JCC noted that the hours sought would shock the conscience, and determined that $3860 was reasonable, citing his duty per Murray to be vigilant on fees. The claimant asserted error, in that the reduction was not based upon record evidence. The majority opinion notes that record evidence showed the fee was unconscionable and excessive, but further notes that they had no doubt if they were to remand the case the E/C would provide the necessary evidence. The details in the case come from a 12 page concurrence by Hawkes re. WC attorney fees and how fee hearings are conducted. Judge Benton dissented, noting he could not distinguish this case from Sanchez v. Woerner(which reversed a JCC's Order on fees that was based on his subjective belief and personal experience) **Click here to view Order**

Dismissal of Appeals/Non Appealable/Non-Final Orders

Gonzalez v. Walgreens/Sedgewick, Fla. 1st DCA 12/22/09) The Court dismissed the appeal, noting the Order (per the DOAH website a dismissal of two PFBs) was a non-final and non-appealable. The opinion further noted the form order did not contain any factual or legal findings sufficient for appellate review. **Click here to view Order**

Firefighter Presumption/Compensability

Volusia County Fire & Risk Mgmnt v. Taaffe, (Fla.1st DCA 12/15/09) The JCC found the claim compensable under the Firefighter presumption. The claimant began working for Cedar Hammock FD in 1992, with a clean physical. In February of 2004 he was diagnosed with hypertension while still employed with Cedar Hammock. In December of 2004 he was hired by Volusia County FD, and his pre-employment physical noted his hypertension, but cleared him for "full duty". In September of 2005 he was seen by a physician for elevated blood pressure and heart rate, and released to work two days later. After PFBs were filed, the carrier denied compensability. The JCC based compensability on the language in F.S.§112.18(1) regarding successfully passing a physical upon entering "any such service", finding his clean 1992 physical qualified him in this regard. The First DCA rejected this interpretation, holding the JCC erred in ignoring the claimant's pre-employment physical with Volusia County. **Click here to view Order**

Carney v. Sarasota County Sherriff's Dept/OptaComp, (Fla.1st DCA 12/15/09) The DCA

reversed the JCC's denial of the claimant's presumption claim. The JCC found the claimant's overnight stay in the hospital was not sufficient to show requisite disability under the statute. The claimant wore a Holter monitor, and after receiving the results, was told to go to the hospital immediately. While there, the claimant received medications to try and bring his heartbeat under control. He was released from the hospital the next day (the first day of Thanksgiving holiday) and the evidence showed the claimant missed no time from work due to the hospitalization. The JCC based her denial of compensability on the lack of evidence that the hospitalization produced a disability. She noted that merely spending the night in the hospital did not equate to disability under Bivens. The DCA distinguished Bivens by noting in that case the claimant's hospital stay was for diagnostic purposes only, while here he actually received medication and experienced temporary partial disability. The opinion really does not identify the medical evidence to support this distinction. **Click here to view Order**