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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

Medical Evidence/Records of Authorized Treating Physicians
Vaughan v. N. Broward Medical Center/N.Broward Dis. Hosp.Risk Mgmt., (Fla.1st DCA 12/19/12)

The DCA reversed the JCC's denial of physical therapy, noting that the correspondence of an authorized treating physician was not a medical record otherwise admissible under Chapter 440. In January of 2008, the authorized treating physician wrote a prescription for physical therapy and filled out a DWC -25 indicating the therapy was medically necessary and causally related. He placed claimant at MMI in December of 2008. The claimant returned to him in November of 2009, again recommending therapy and stating the accident was the MCC of the need for therapy. He wrote a "to whom it may concern" letter in December of 2009 stating MCC no longer existed. The matter proceeded to trial and the E/C, after moving for a continuance to try and depose the authorized doctor, indicated they would not be prejudiced if the JCC denied their motion. The judge expressed concern that the matter had been continued twice. The E/C then changed their position on prejudice, but the JCC ruled the claimant had not initially objected to the continuance. The JCC then ruled against the claimant, admitting the letter over the objections of the claimant. The DCA clarified that the letter was not an authorized medical record, and that any findings the JCC made that the E/C complied with the provisions of 440.29 (motion to admit authorized medical records) were in error. As there was no basis to overcome the evidentiary hearsay or authentication requirements, the letter should have been excluded.

Click here to view opinion

Coverage/Employee Status
Jenks v. Bynum Transport/Zenith Ins. Co., (Fla.1st DCA 12/17/2012)
Bill Rogner
The DCA reversed the JCC's finding that the claimant was not an employee at the time of his accident. Claimant attended a two day orientation, where the employer provided lodging, lunch and transportation. The employer paid trainees $50 per day for the orientation, which they would receive following successful completion of orientation. On the second day, claimant was injured in a car accident while riding with the recruiter to lunch. The claimant was ultimately hired, drove a single route for the company and received the $100 in his paycheck from the one trip. He then filed a PFB as a result of the accident, which the employer/carrier denied, asserting the claimant was not an employee at the time of the accident. The safety director testified the training did not constitute employment, and that the $100 is provided to new hires as a "starter fund" for them. Claimant testified he considered himself hired during the orientation, and that he would not have resigned from his prior company of six years on a "maybe". The JCC's decision that the claimant was not an employee hinged on the employer's testimony that the claimant's orientation pay was not wages, that the claimant was not officially "hired" until after he received his ID badge (5 hours after the accident) and other factors. The DCA analyzed Tennessee law and found it significant that the employer exerted control over the claimant during orientation, reimbursed expenses during orientation and provided WC benefits previously to other individuals injured during orientation and reversed.
Click here to view Order

Arising out of/Idiopathic Conditions
Urbina v. Kindred Hopsital N. Fl/Sedgwick, (Fla.1st DCA 12/17/12)
Citing the recent Caputo case (issued after the JCC's Order), the DCA reversed the JCC' denial of compensability. While driving to pick up medical supplies at the request of the employer, claimant crashed his vehicle into a telephone pole. Claimant had no recollection of this occurring, and the E/C denied compensability, asserting that an idiopathic condition caused the crash, and the employment was not the MCC of the accident. The parties stipulated the claimant "blacked out" during the trip. However, this stipulation included no evidence that the claimant had an idiopathic condition, or whether the claimant blacked out before or after the accident. The JCC's denial found the claimant's injuries did not arise out of employment, and denied that he had been exposed to any increased hazard by merely driving. The DCA noted that in the absence of any evidence of a pre-existing condition, claimant under Caputo is not required to prove MCC. Further, the DCA noted that the claimant would have been due benefits as a traveling employee, as he was clearly in travel status at the time of the accident. **Click here to view Order**