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# CASE NOTES

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## CASE LAW SUMMARIES: FEBRUARY, 2004

### TEMPORARY PARTIAL DISABILITY

Infinger Transportation and Travelers Insurance Co. v. Johnson, 29 FLW D301(c) (Fla. 1<sup>st</sup> DCA January 23, 2004). The claimant is limited to a maximum of 104 weeks of any combination of temporary total/temporary partial disability benefits.

City of Hollywood and Gallagher Bassett v. Cappozzia, 29 FLW D447 (Fla. 1<sup>st</sup> DCA February 19, 2004). The claimant suffered a compensable injury and requested payment of temporary indemnity. The JCC awarded temporary partial disability benefits, finding that the claimant had been eligible for a disability pension by the city. The employer/carrier appealed arguing there was no causal connection between the claimant's post-injury loss of wages and his work related injury. The First DCA reversed the JCC, finding there was no causal connection between the work-related injury and the claimant's loss of earnings, even though the claimant was eligible for a disability pension through the city.

### COMPENSABLE ACCIDENTS

Lanham v. Department of Environmental Protection and Florida Department of Insurance Risk Management, 29 FLW D323(a) (Fla. 1<sup>st</sup> DCA February 2, 2004). The claimant tripped and fell on a sidewalk approximately one quarter of a mile from her office. The stipulated facts include the claimant was on a break at the time of the injury, she was not on the employer's premises, she would not be performing any task for the employer, the claimant was not required to clock out and there were no limitations on the type of the activities the claimant could engage in during her break.

The JCC determined the claimant's injury did not, "arise out of," her employment. The First DCA reversed the JCC, finding the break was of insubstantial duration, the claimant was paid during the break, the claimant was subject to the employer's control in that she could

have been called back to work prior to the expiration of 15 minutes, the walk was not a substantial personal deviation and it was condoned by her employer. Accordingly, the First DCA reversed indicating the claimant's accident did occur within the course and scope of her employment.

Prather v. Process Systems, Wal-Mart AMSTAFF/Greers, et. al., 29 FLW D413(b) (Fla. 1<sup>st</sup> DCA February 13, 2004). The claimant filed a Petition for indemnity and medical benefits. The claimant obtained an EMA who concluded the claimant's need for treatment was causally related to the industrial accident. The JCC denied the claim as he found the claimant's testimony lacked candor and was not reliable. The JCC is permitted to give greater consideration to lay testimony, than medical testimony. The claimant appealed this order.

The First DCA affirmed the order ruling the JCC can give greater weight to lay testimony than medical testimony. The First DCA also determined that because the JCC found the claimant's lack of credibility was supported by competent, substantial evidence regarding her previous psychiatric medical history, the JCC was correct in rejecting the claimant's Petition for Benefits.

## APPEALS

Wright-Long v. Wellington Manor and Constitution State Service Company, 29 FLW D324(a) (Fla. 1<sup>st</sup> DCA February 2, 2004). The claimant did not file a Notice of Appeal within 30 days of the rendition of the order. The claimant argues there were two dates the final order was actually mailed to the parties. The case was remanded to the JCC to determine whether the claimant detrimentally relied upon an amended mailing date of the order. However, the First DCA dismissed the appeal for lack of jurisdiction until the JCC conducted hearings on the facts regarding the amended mailing date.

## ATTORNEY'S FEES

Sanchez v. Woerner Management and Atlantic Mutual Company, 29 FLW D448(b) (Fla. 1<sup>st</sup> DCA February 20, 2004). The claimant challenged the reasonableness of an attorney fee awarded to his attorney. The JCC reduced the claimant's attorney's hours by nearly half. However, the attorney for the employer/carrier did not cross examine or provide any evidence as to why the amount should be reduced. The First DCA noted that the JCC had reduced the award without any competent, substantial evidence to support the reduction. Accordingly, the First DCA reversed the reduced award and awarded the requested amount in the verified petition for attorney's fees, submitted by the claimant's attorney, which equated to 137.1 hours times the hourly rate of \$225.00.

According to the footnote, it appears counsel for the employer/carrier did not submit a timely response to the verified petition, which can result in the acceptance of the allegations in the verified petition as being true. See Rule 4.144(d) and Florida Administrative Code Rule 60Q-6.124(3)(b).

## NOTICE OF INJURY

Todorovic v. Arctic Air and American All-Risk Administrators, 29 FLW D417(e) (Fla. 1<sup>st</sup> DCA February 10, 2004). The claimant filed a

Petition for Benefits requesting various benefits. The e/c denied the claim based on a notice defense under 440.185. The JCC agreed and denied the claim. The First DCA reviewed the claim on appeal. The First DCA reversed holding that the facts did fall within the exceptional circumstances exception in 440.185(1)(d).

#### CASE NOTES

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