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CASE NOTES
CASE LAW SUMMARY
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Jurisdiction of JCC

Juarez v. Baker Construction/Amerisure, (Fla.1st DCA 2/24/10)

The DCA determined that the JCC did not have authority to vacate a final order, and was without jurisdiction to enter subsequent Orders. This short case does not discuss any facts, and a review of the DOAH docket fails to shed much light on the subject. [Click here to view Order](#)

Appeals/Dismissal

City of Lakeland/Claims Center, (Fla.1st DCA 2/24/10)

No facts or discussion is provided, but the case cites to prior cases that dismissed appeals for lack of jurisdiction, where the order did not include the certification required by rule 9.180(b)(1)(*that the Order was final, or non-final, but determining jurisdiction, venue or compensability*). [Click here to view Order](#)

Second Opinions/Standards for Appellate Review

Florida Detroit Diesel/Gallagher Bassett v. Nathai, (Fla. 1st DCA 2/18/10)

The DCA affirmed the JCC’s award of a second opinion evaluation. In so doing, they announced what may become a more common procedure for appellate review of

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Worker's Compensation cases. The Court analyzed the Carrier's argument on appeal under the summary disposition procedure found in Appellate Rule 9.315(a). This allows the court to decide a matter after only the initial brief has been filed, if the court determines "no preliminary basis for reversal has been demonstrated". In this case, the Court noted the authorized treating doctor opined a second opinion was medically necessary and causally related to the industrial accident. The E/C's brief apparently tried to distinguish the recommendation for the evaluation as not "orthopedically necessary", as the treating doctor indicated the evaluation was not to address knee surgery, but rather to address whether the claimant could be returned to work. The DCA noted that medical necessity was a fact question. They noted that the definition of medical necessity in 440.13(1)(m)(2003) is very broad, and they declined to entertain the E/C's invitation to limit that language. The opinion was released without the Appellee having to file a brief. [Click here to view Order](#)

Iomelli v. Tuttle Electric/Safeco Ins.,(Fla. 1st DCA 2/5/10)

Robert J. Osburn and William H. Rogner The First DCA issued a PCA without opinion affirming JCC's denial of the claimant's claim for payment of medical bills and authorization of a doctor. The E/C "disallowed" a number of medical bills from the authorized physician pursuant to an overutilization review. The Doctor was never de-authorized and continued to see claimant. The E/C asserted the JCC lacked jurisdiction regarding payment of the authorized physician's medical bills (Florida Department of Financial Services has exclusive jurisdiction regarding overutilization reviews and reimbursement disputes) and that the doctor remained authorized. The JCC denied all pending claims, and the DCA declined to overturn that ruling. [Click here to view Order](#)

Appellate Jurisdiction/Order Granting Motion to Dismiss

Boladares v. Olemshoe Corp./Hartford Ins.,(Fla. 1st DCA 2/12/10) Very brief PCA decision dismissing claimant's appeal for lack of jurisdiction. The opinion cites to prior case law holding that an order granting a motion to dismiss is not a final order, and that an order granting a motion to dismiss with prejudice is no more final than an order granting a motion to dismiss without prejudice. [Click here to view Order](#)

Permanent Impairment Benefits

Seminole County/John's Eastern v. Eric Baumgardner, (Fla. 1st DCA 2/5/2010) The DCA affirmed JCC Sculco's denial of the 50 percent reduction in impairment benefits pursuant to 440.15(3)(c). It was undisputed that the Claimant returned to work making less than 100% of his AWW due to an unrelated condition. The E/C paid IBs at the reduced rate because the Claimant's loss of earnings was not related to the industrial accident. The JCC found that the statute does not contain any language regarding causation, so that if the Claimant was not earning 100% of his AWW regardless of cause, no reduction was due. The DCA affirmed based on the language of the statute. [Click here to view Order](#)

