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Case Law Update

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This Update contains summaries of all relevant Appellate decisions for the preceding week, with comments on how a particular decision affects you. In addition, we review daily the Merit Orders posted on the DOAH website. This Update contains summaries and links to relevant JCC decisions for the past week.

Please feel free to contact Rogers Turner (rturner@hrmcw.com) or Matthew Troy (mtroy@hrmcw.com) with questions or comments on any of the listed cases.

Maximum Workers' Compensation Rate, Effective January 1, 2014 will be \$827.00

First District Court of Appeal Cases

Moya v. Trucks and Parts of Tampa, Inc./Ameritrust Insurance Co (Fla. 1st DCA 12/20/2013)

Summary Final Orders/Res Judicata

Bill Rogner and Greg White

On 1/30/99, the JCC entered an order finding that the claimant was at MMI and required no further treatment for alleged shoulder and neck problems as of 10/24/06. The same Order awarded continued treatment for bilateral carpal tunnel syndrome. On 12/27/12, Claimant filed a PFB seeking an MRI of the right shoulder per the authorized carpal tunnel doctor's prescription. The E/C filed a Motion for Summary Final Order, alleging the JCC's '06 Order denying any ongoing treatment for shoulder or neck problems barred the new claim under *res judicata*. The claimant filed a timely response, but alleged only that the doctor was authorized, they were setting his deposition and the matter was not appropriate for Summary proceedings. Any party may file a motion for summary final order when they assert there are no material factual disputes. The rule directs the opposing party to "file a response to a motion for summary final order together with supporting depositions, affidavits, and/or other documents within 30 days after service of the motion." Claimant filed no such supporting documents, except the prescription, and the JCC granted the Motion. The DCA found that rule specifically states that *res judicata* is an appropriate issue for such determinations, and in the absence of any supporting documents, the claimant's arguments alone were insufficient to establish a material fact that might have supported denying the E/C's Motion. [Click here to view Opinion](#)

Lopez v. All Star Investigations, Inc./Travelers Insurance Co.
Compensability/Evidence of Idiopathic Condition

(Fla. 1st DCA 12/17/2013)

The DCA reversed and remanded the JCC's denial that a compensable accident occurred and the denial of benefits. Claimant admittedly fell on 4/16/12 in a non-work related accident. He injured his right knee and obtained a CT scan. On 4/19/12, while at work, he fell, sustaining injuries to his right knee, elbow and shoulder. The E/C asserted the 4/16/12 left knee injury caused the 4/19/12 fall, and denied compensability. At trial the claimant argued that the E/C did not prove the claimant had a pre-existing condition, or that the condition caused the second fall. The opinion does not describe the medical evidence, but notes that the JCC's determined that the "fundamental issue" was whether the claimant was credible in his description of "slipping on grease or gravel". The DCA disagreed, noting that where the E/C agrees the "claimant was engaged in work activities at the time of the fall" but denies based upon an idiopathic defense, the JCC must determine whether or not the work related fall was due to a pre-existing condition. On remand, the JCC will have to rely on medical evidence that the claimant's prior right knee injury was a pre-existing condition which caused the fall. [Click here to view Opinion](#)

The underlying order indicates that the claimant reported to medical personnel that his fall was caused by his initial right knee injury, and that the claimant's rendition of how the workplace accident occurred ("slipped on grease or gravel") differed from his own initial descriptions and eyewitness accounts. [Click here to view Order](#)

Stahl v. Hialeah Hospital/Sedgwick
Independent Medical Examiners/Alternate Examiner

(Fla.1st DCA 12/17/2013)

The DCA granted the claimant's Petition for Certiorari, quashing the JCC's order compelling claimant to attend a second IME. The DCA rejected the claimant's position that there was no dispute to trigger the examination. The E/C attached the Pre Trial Stipulation to their motion, evidencing a dispute regarding disability and indemnity benefits. However, as to the examiner, the DCA granted the Petition. The E/C previously conducted their IME with Dr. Diaz, a psychiatrist. The DCA noted that F.S.§440.13(5)(a) limits the parties to one examiner per date of accident, not one examination per specialty. They examined the four exceptions to this rule found in subsection (b), which include (1) the first examiner is not qualified to render an opinion on an issue material to the claim; (2) the examiner has ceased to practice in that particular specialty, (3) examiner is unavailable due to death, relocation, illness etc. (4) the parties agree to an alternate examiner. The DCA found the E/C did not allege that one of the exceptions applied, nor did the JCC make any such findings. They noted that Dr. Diaz's position as a psychiatrist does not render him unable to opine as to the claimant's physical condition as a matter of law. [Click here to view Opinion](#)

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