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Case Law Update

July 25, 2014

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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.

*District Court of Appeal Cases***

Smith v. City of Daytona Beach Police Dept./City of Daytona Beach Risk Mgmt., ___ So. 3d ___ (Fla.1st DCA 7/16/14)

Law Enforcement Presumption/Res Judicata/Collateral Estoppel

Claimant appealed the JCC's determination that res judicata and collateral estoppel barred his claims, which were based on a new period of disability arising from treatment for a non-compensable cardiac condition. The court wrote specifically to reject claimant's argument that he was not required to show a new injury, or worsening of a prior injury to establish a new date of accident.

Claimant began working for the DBPD in 2001. In 2007, claimant required a heart transplant. Before he could return to work he developed bradycardia (low heart rate) and had a pacemaker installed, returning thereafter to the police department. In 2010, claimant filed a PFB related to his heart condition, which the JCC denied based upon SOL and that the E/C successfully rebutted the presumption. Claimant subsequently dismissed his appeal but stipulated to the finality of the Order. In 2012, the replacement of a lead in the pacemaker implanted in 2007 resulted in a period of disability. Claimant then filed a new PFB, seeking compensability for the new period of disability, which the JCC denied based upon res judicata and collateral estoppel.

The DCA affirmed rejecting claimant's argument that each new period of disability results in a new "date of accident", regardless of whether the claimed condition has previously been found non-compensable. The court noted that although heart disease is analyzed under the occupational exposure analysis, disability alone does not control the outcome. Claimant can only prove a new date of accident

with an underlying compensable condition and disability. The opinion distinguishes the Jones and Michels cases, and rejects the claimant's argument urging the court to analyze occupational disease cases as they would a repetitive trauma claim (no need to prove a change in condition, only exposure and legal causation). [Click here to view Opinion](#)

Levy County Sheriff's Office v. Allen, ___ So. 3d ___ (Fla.1st DCA 6/30/2014)
Going and Coming Rule

The claimant, a police officer, was on his way to work in his personal vehicle when he saw a tractor-trailer stopped and jutting into his lane. The officer intended to stop and try and get the vehicle to move so he could direct traffic, but instead hit the tractor-trailer. Even though claimant's main job was security at the courthouse, the DCA agreed with the JCC that off-duty officers still have a responsibility to safeguard citizens. As the claimant was required to deal with the tractor-trailer situation, he was therefore within the 440.09(1) exception to the going and coming rule. The court rejected the E/C's position that the 2001 amendment to 440.092(2) created only two situations in which there was an exception for officers to the going and coming rule (*during the officers work period & while going/coming from work in official police vehicle*). They found that under this theory, law enforcement officers could never be in the course and scope of their employment, even when going from an off to on-duty status due to an emergent situation. [Click here to view Opinion](#)

Gil v. Cargo Force Inc., ___ So. 3d ___ (Fla. 1st DCA 7/1/2014)
Medical Non-Compliance/Payment of TPD

The DCA affirmed the JCC's finding that the claimant failed to take reasonable steps to secure medical care when first offered by the E/C, and was not entitled to TPD up until mediation due to medical non-compliance. However, after the mediation conference, the E/C agreed to authorize a spine specialist, but then failed to schedule the evaluation. As the E/C was responsible to set the appointment, from that point forward the claimant did not have the responsibility to take reasonable steps to secure care and was not non-compliant. The DCA accordingly reversed the JCC's order denying TPD for the period post mediation. [Click here to view Opinion](#)

Please note that the DCA Opinions and Merit Orders contained in this newsletter are non-final until 30 days after their rendition. Until that time, they are subject to amendment, vacation, or other action which may remove or alter some or all of the decision. Please contact any HRMCWW attorney if you have a question as to the finality and applicability of an Opinion or Order. We endeavor to include any amendments or alterations to Opinions or Orders that may occur at a later date.

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